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March 17, 2015

The Honorable Bob Goodlatte
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member
House Committee on the Judiciary
2142 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jim Sensenbrenner
Chairman
Subcommittee on Crime, Terrorism, Homeland
Security, and Investigations
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Sheila Jackson Lee
Ranking Member
Subcommittee on Crime, Terrorism, Homeland
Security, and Investigations
House Committee on the Judiciary
2142 Rayburn House Office Building
Washington, D.C. 20515

Re: H.R. 707, "Restoration of America's Wire Act"

Dear Chairman Goodlatte, Ranking Member Conyers, Chairman Sensenbrenner and Ranking Member Lee:

Thank you for the opportunity to submit this statement on H.R. 707, entitled the "Restoration of America's Wire Act" ("HR 707"), for inclusion in the March 26, 2015 hearing record. I have represented suppliers and operators of systems, software and services in the gaming and lottery industry for twenty-five years. Among my clients is GTECH Corporation, the largest supplier of lottery systems and services in the world.

I write in opposition to HR 707. If enacted, it would have significant and dire adverse consequences on state lotteries throughout the United States.

As you know, HR 707 would amend the Wire Act,¹ a 1961 statute that was originally enacted to prohibit gambling businesses from using wire communication facilities to transmit in interstate or foreign commerce sports bets and related information. The Department of Justice ("DoJ") confirmed that the Wire Act applied only to sports betting in an opinion issued in December, 2011.² While that opinion changed the DoJ's then-existing internal interpretation of the Wire Act, it was not contrary to longstanding legal precedent. Rather, the DoJ Opinion relied upon the legislative history of the bill and was consistent with a 2002 decision by a unanimous three-judge

¹ 18 U.S.C. §§ 1081, 1084 (2013).

² Memorandum Opinion for the Assistant Attorney General, Criminal Division, "Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act," September 20, 2011 (issued December 23, 2011) (the "DoJ Opinion").

panel of the United States Court of Appeals for the Fifth Circuit (the only federal circuit court to decide the issue) which held the Wire Act was limited to sport betting.³ Moreover, the DoJ Opinion was consistent with the view of Congress in the 1990s, which in that decade considered several bills that would have broadened the applicability of the Wire Act beyond sport betting, thus demonstrating that members of Congress understood that the Wire Act was limited to sports betting.⁴

If HR 707 were enacted, the Wire Act, as amended, would prohibit gambling businesses (including state lotteries) from using any network involving a wire or like connection, including the “internet,”⁵ to transmit in “interstate or foreign commerce”:

1. any bet or wager,
2. information assisting in the placing of any bet or wager,⁶ or
3. a communication entitling the recipient to receive money or credit as a result of any bet or wager, or for information assisting in the placing of any bet or wager.

However, HR 707 would provide four important exemptions. It would:

1. preserve the status quo as to internet betting on horse races;⁷
2. preserve the status quo as to internet betting on charitable games;⁸
3. not apply to pay-for-play online fantasy sports tournaments conducted in accordance with the Unlawful Internet Gambling Enforcement Act of 2006 (the “UIGEA”);⁹ and
4. not change or limit “the ability of a State licensed lottery retailer to make in-person, computer-generated retail lottery sales under applicable Federal and State laws in effect on the date of the enactment of [HR 707]”. Thus, “in-person” lottery sales by licensed

³ *In re MasterCard Int'l Inc.*, 313 F.3d 257 (5th Cir. 2002) (hereinafter, “*MasterCard*”); *contra. United States v. Lombardo*, 639 F.Supp. 1271 (D. Utah 2007) and *Report and Recommendation of United States Magistrate Judge Regarding Gary Kaplan’s Motion to Dismiss Counts 3-12*, in *United States v. Kaplan* (E.D.Mo. Mar. 20, 2008) (No. SI4:06CR337 CEJ(MLM)).

⁴ “*The Original Intent of the Wire Act and Its Implications for State-based Legalization of Internet Gambling*,” by Michele Minton, Occasional Paper Series, 29. Las Vegas: Center for Gaming Research, University Libraries, 2014 (hereinafter, “Minton”).

⁵ “Internet” is not defined in HR 707, nor is it defined in the Wire Act (which was enacted decades before the internet existed). Thus, courts looking for its meaning would likely refer to the Unlawful Internet Gaming Enforcement Act (31 U.S.C. § 5361 *et seq.*) (2013). There, “internet” is defined as the “international computer network of interoperable packet switched data networks.” (31 U.S.C. § 5362(5) (2013)).

⁶ Oddly, HR 707 would leave intact the Wire Act’s existing exception pertaining to the transmission of information assisting in sports betting transmitted between states in which such sports betting was legal. Because this exception applies only to information assisting in betting on sports events, Congress’ enactment of HR 707 in this form would suggest that Congress intended to favor (and create a special exception unique to) sports betting. This is the opposite of what Congress intended in 1961 when the original Wire Act was enacted, and indeed, it is very unlikely that Congress intends to uniquely favor sports betting today. One would expect that this exception will be amended so as to apply to information assisting in making *any* bet or wager, before HR 707 proceeds to a final vote in either the House or Senate.

⁷ It is generally accepted that internet betting on horse races is lawful under a 2000 amendment to the Interstate Horseracing Act (15 U.S.C. § 3001 *et seq.*) (2013).

⁸ Thus, to the extent internet betting on charitable games was lawful under state laws in effect on the date HR 707 became law, it would remain lawful.

⁹ 31 U.S.C. §§ 5361 – 5367 (2013).

lottery retailers would remain lawful to the extent they were lawful on the date HR 707 became law.

HR 707's sponsor and supporters assert that it would merely "restore" the Wire Act to the status quo that existed prior to the issuance of the DoJ Opinion in December 23, 2011. As stated above, this claim is inaccurate, because:

1. the legislative history of the Wire Act, as discussed in detail in the DoJ Opinion, shows that the Wire Act was always intended to be limited to sports betting;
2. several federal bills introduced in the 1990s that would have broadened the scope of the Wire Act show that members of Congress believed the Wire Act was limited to sports betting;¹⁰ and
3. in 2002, the U.S. Fifth Circuit Court of Appeals, the only federal circuit court to decide the issue, held that the Wire Act applied only to sports betting.¹¹

Most important, the assertion that HR 707 would restore the pre-DoJ Opinion status quo is incorrect because HR 707 would eliminate substantial rights that states enjoyed prior to the issuance of the DoJ Opinion.

As a result of HR 707, the Wire Act would very likely render unlawful the following lottery activities, as none would be exempted by any of the above exemptions:

1. the operation of a state lottery (*including traditional online games!*) by any current non-lottery state that had not enacted lottery legislation by the date HR 707 became law (assuming, as is traditionally the case, that lottery retailer terminals would exchange wagering information (even if not actual wagers) with a central system via the internet);¹²
2. the implementation of video lottery games by existing lottery states if state laws existing when HR 707 became law did not allow for video lottery games (assuming wagers or information assisting in wagering would be communicated with a central system via the internet);
3. sales of lottery draw games via PCs and/or mobile devices, as now being conducted by four state lotteries, with a fifth to follow later this year;¹³
4. sales of lottery ticket subscriptions via PCs and/or mobile devices, as now being conducted by eight state lotteries;¹⁴
5. sales of lottery products by the state lotteries themselves (as is allowed in several states), unless such state lotteries were licensed as lottery retailers;
6. sales of lottery products via telephone; and
7. sales of casino games (including poker) via PCs and/or mobile devices, as currently overseen by the Delaware Lottery.

¹⁰ Minton.

¹¹ *MasterCard*.

¹² Currently the states of Alabama, Alaska, Hawaii, Mississippi, Nevada and Utah have not authorized a state lottery.

¹³ The state lotteries in Georgia, Illinois, Michigan and Minnesota currently conduct such sales, and the state lottery in Kentucky is expecting to implement such sales functionality later this year.

¹⁴ Such subscription sales are currently conducted by the state lotteries in Illinois, Maine, Minnesota, New Hampshire, New York, North Carolina, North Dakota and Virginia.

In addition, as a result of HR 707, the Wire Act *could* render unlawful the following state lottery activities because in each case it is not clear that such sales would meet the “in person” licensed retailer sales requirement of HR 707’s lottery exemption:

1. existing video lottery gaming where the video lottery terminals exchange wagering information (even if not actual wagers) with a central system via the internet;
2. existing (and future) video lottery wide-area progressive (“WAP”) games – even if the bets are received in the same state in which they are placed – if the video lottery terminals exchange wagering information (even if not actual wagers) among themselves or with a central system via the internet;
3. sales of traditional lottery draw games via player-activated terminals (“PATs”) and sales of physical instant tickets via instant ticket vending machines (“ITVMs”) where the PATs and ITVMs exchange wagering information with a central system via the internet. (A narrow reading of HR 707’s “in-person” licensed retailer sales exemption could be held to require direct player interaction with lottery retailer personnel and no such interaction is necessary with PATs and ITVMs); and
4. player-operated ticket checkers, as these too could be deemed to be outside of – and thus not covered by – the “in-person” licensed retailer sales exemption.

Finally, if amended by HR 707, the Wire Act most likely *would* render unlawful several non-lottery internet gaming activities, including the intrastate internet casino games currently operated by certain Atlantic City casinos in New Jersey, and the intrastate internet poker currently conducted by commercial licensees in Nevada.

Unless one of the four above-described exemptions applied, wagers or wagering information sent via the internet would be prohibited – *even if sent between points in the same state*. This is because HR 707 clarifies that a “transmission in interstate or foreign commerce,” as used in the Wire Act, “*includes* any transmission over the Internet carried interstate or in foreign commerce, *incidentally or otherwise*.” (emphasis added) Thus, considering a transmission of wagers or wagering information between points in the same state, if the intermediate routing of such transmission crossed state lines, it would violate the Wire Act (assuming none of the four exemptions applied). Moreover, the U.S. courts of appeal in the first, third and fifth federal circuits have held that transmissions via the internet are in interstate commerce, regardless of the actual routing.¹⁵

Finally, HR 707 does not address the advertising or payment prohibitions that exist in the Wire Act. Accordingly, if HR 707 were enacted, lotteries also:

1. could be prohibited from paying prizes electronically, because it would be unlawful to transmit via the internet a “communication which entitles the recipient to receive money

¹⁵ The U.S. Court of Appeals for the Third Circuit stated: “[B]ecause of the very interstate nature of the Internet, once a user submits a connection request to a website server...the data has traveled in interstate commerce.” *U.S. v. MacEwan*, 445 F.3d 237, 244 (3rd Cir. 2006); and the U.S. Court of Appeals for the First Circuit stated: “Transmission...by means of the Internet is tantamount to moving [data] across state lines.” *U.S. v. Carroll*, 105 F.3d 740, 742 (1st Cir. 1997), followed by *U.S. v. Runyan*, 290 F.3d 223 (5th Cir. 2002) and by *U.S. v. Yong Wang*, 2013 U.S. Dist. LEXIS 16153 (S.D.N.Y. 2013).

- or credit as a result of any bet or wager,” and a court could interpret this to preclude electronic funds transfers and wire transfers of prizes; and
2. might be prohibited from posting on the internet lottery game rules, “how to play” advice or advertising. This would be the case if such posted information was deemed to “assist[] in the placing of any bet or wager” and its ban was not deemed to change or limit the ability of licensed lottery retailers to make in-person sales. (However, such a ban on commercial speech might be unconstitutional under United States Supreme Court precedent applicable to broadcast advertising of lawful gaming.)

In summary, while HR 707 may be intended to prohibit only wagering via personal computers and mobile devices, its actual effects would be much more far-reaching. If enacted, HR 707 would make unlawful several of state lotteries’ customary and traditional activities – activities that are important to their successful raising of revenues for good causes.

HR 707 neither shrinks the size and influence of the federal government nor supports the right of states to govern themselves. To the contrary, HR 707 would expand the scope and reach of the Wire Act – a federal law – and thereby restrict the rights of states to decide for themselves what, if any, gambling shall be permitted within their borders. Further, restricting the rights of states by passing HR 707 would be inconsistent with Congressional action when it last passed federal legislation related to internet gambling. Specifically, when Congress passed the UIGEA in 2006, Congress expressly carved out an exception for intrastate wagering authorized by applicable state law (and where state regulations included age and location verification requirements and appropriate data security standards).¹⁶ In addition, in the Interstate Horseracing Act of 1978 (the “IHA”),¹⁷ which Congress amended in 2000 to allow internet wagering on horse races on an interstate basis (where such wagering was lawful in each state involved), Congress expressly provided for states to regulate internet wagering on horse races, to the extent such internet wagering was permitted by states within their respective borders. The Congressional findings contained in the law reflect Congress’ mindset at the time, and include Congress’ finding that “the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders.”¹⁸

Accordingly, it has long been – and it should remain – the prerogative of the individual states to determine the types of gambling – if any – allowed within their respective borders. HR 707 would usurp that prerogative, by expanding the reach of the Wire Act to prohibit wagering activities currently authorized and conducted by states. In particular, HR 707 would be bad for state lotteries and the good causes they benefit.

Very truly yours,



Mark Hichar

Partner

Chair, Hinckley Allen Gaming Law Group

¹⁶ 31 U.S.C. § 5362(10)(B) (2013).

¹⁷ 15 U.S.C. §3001, *et seq.* (2013).

¹⁸ 15 U.S.C. §3001(a)(1) (2013).



Federal Criminal Investigators Association

12427 Hedges Run Dr. Suite 104

Lake Ridge, VA 22192

February 27, 2015

Hon. Bob Goodlatte
Chairman and U.S. Representative
Subcommittee on Crime, Terrorism, Homeland Security, and Investigations
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515-3951

Re: H.R.707, the "Restoration of America's Wire Act"

Dear Chairman Goodlatte and Members of the Subcommittee,

As President of the Federal Criminal Investigators Association, I head the premier nationwide organization of Federal Law Enforcement Professionals—a highly-trained membership who must constantly adjust to changing technologies, new enforcement strategies, and a criminal element that is increasingly sophisticated, violent, well-funded, and often international in scope. The nature of our membership's work give us, more so than many of our law enforcement brother and sisters, opportunities to engage in complex, long-term investigations and to consider social implications of policies incorporated by our nation's criminal laws.

Because of this vantage point, I am confident that our experience and training provides our membership with a valuable, informed insight regarding H.R. 707, the "Restoration of America's Wire Act," a bill which is presently under consideration by the subcommittee's membership and staff.

H.R. 707 seeks to re-implement the long-standing federal prohibition on illegal gambling businesses' use of communication facilities affecting interstate and foreign commerce. Since the Wire Act (18 U.S.C. §1084) was enacted in 1961, federal courts, federal law enforcement agencies, and the U.S. Department of Justice (DOJ) had understood that law to prohibit both sports and non-sports wagering over interstate and foreign-commerce affecting communications systems. This fifty-year history was upended when, in December 2011, the DOJ's Office of Legal Counsel issued an opinion that the Wire Act suddenly, somehow, did not reach non-sports gambling. History, tradition, legislative intent, and precedent mattered less than the placement of a comma, apparently, to the author of the new interpretation who, apparently, assumed that Congress in 1961 would ban organized crime from making money from illegal sports bookmaking yet allow the same criminals to continue operating numbers

rackets and bolita and other lottery-like illegal enterprises. The illogic of such an approach evidently escaped the attention of the author of the revisionist interpretation of the Wire Act.

Fortunately, members of this Congress have seen through the policy weakness of the DOJ's recent opinion regarding the Wire Act and have introduced H.R. 707, which seeks to both clarify Congressional intent and return the law to its' original and comprehensive purpose as a key tool in the fight against organized crime and today's intertwined concerns of fighting money laundering and terrorist financing. Thus, our organization fully supports H.R. 707's intent and endorses the passage of this important provision, but with an important amendment or modification: the so-called carve-out, which would permit online poker wagering via usage of interstate and foreign communication facilities, needs to be removed from the bill before its' final passage.

No good policy reason supports the carve-out. People can, and have long been able to, play poker online for fun and entertainment, without wagering money or other assets of value. Indeed, advocacy groups who seek legalization of online wagering merely use poker as a façade: their real interest is not in playing poker but in promoting the corporate profits to be made by wagering, yet these gambling industry profits will only serve to further divide the haves from the have-nots in our society. Nothing about legalizing online gambling, whether involving poker or any other game, is designed to mitigate the growing income inequality that worries Americans.

Experience with investigating wide varieties of existing illegal online gambling, whether centered in offshore or onshore operations, has shown us that, whether the game is poker, blackjack, roulette, other casino games, or sports bookmaking, these enterprises invariably attract organized crime figures; serve as convenient vehicles for money laundering, tax fraud, and terrorist financing schemes; and lure thousands of Americans into wholly non-productive losses of vast sums which could have been better saved, invested, or spent on real goods and services rather than, effectively, thrown away. Simply re-drawing a legislative line to say that such illegal enterprises are now legal would be a naïve and ineffectual decision, doing nothing to eliminate or mitigate the societal harms long known to stem from commercial gambling—indeed, the carve-out for online poker in H.R. 707, if allowed to stand, simply would be step one in a slow surrender of the public interest to corrupting, mercenary, greed-driven forces.

Importantly, our experience and knowledge of the time- and resource-intensive nature of investigations of commercial gambling-based crimes conclusively shows us that no realistic level of increases in law enforcement resources, staffing, IT capability, and training would be sufficient to effectively police or regulate the millions of rapid electronic transactions by which expanded online gambling would operate. The costs of expansion of the law enforcement and regulatory workforce to a level needed to provide even minimally-acceptable levels of protection from criminal misuse of legalized online gambling is beyond that which the American taxpayer will, or should, bear. The carve-out in H.R. 707 does not begin to address this concern and, for that reason alone, should be stripped from the bill before its' passage.

To be clear, our organization decries the recent gutting of the Wire Act and wholeheartedly endorses its restoration, this time using clearer language than was used in 1961, so that no one can misapply its terms—i.e., the Act reaches sports and non-sports betting activities using interstate and foreign wire communications, including the Internet. This solution fully protects the values of

federalism by recognizing individual states' rights to choose to legalize, or not, such intra-state gambling activities as their citizens may choose. It precludes interstate compacts or other measures some might seek to use to evade the Wire Act's standards. It further advances the federal interest in protecting the integrity of interstate and foreign communications systems from misuse for tax evasion, fraud, money laundering, and terrorist financing, while assisting states who resist the corrupting influence of the commercial gambling industry.

I trust the Subcommittee will take this endorsement to heart and, as always, we stand ready to provide you and the American people with further our service and informed views.

Respectfully submitted,

A handwritten signature in black ink that reads "Richard Zehme". The signature is written in a cursive, flowing style.

Richard Zehme
President, FCIA

Cc: Robert Parmiter,
Counsel, House Committee
on the Judiciary



Interactive
Gaming Council

TESTIMONY OF THE INTERACTIVE GAMING COUNCIL (IGC)

BEFORE THE HOUSE SUBCOMMITTEE ON CRIME, TERRORISM, HOMELAND SECURITY AND INVESTIGATIONS

HEARINGS ON THE RESTORATION OF THE WIRE ACT (RAWA)

MARCH 25, 2015

Mr. Chairman and Members of the Committee, I would like to thank you for the opportunity to submit written testimony on behalf of the Interactive Gaming Council (IGC). I personally bring some expertise on gambling policy to this debate, having served with the New Jersey Division of Gaming Enforcement from 1995 through 2000 and in various capacities with the IGC since 2001, including serving as the association's CEO.

The IGC is an advocate for regulation of the online gaming industry where players' rights are protected, sites operate in a reasonably transparent fashion, and operators comply with the licensing and regulatory policies of the jurisdictions in which they operate. The movement toward regulation has been successful throughout Europe.

In the U.S., at least three states license, regulate, and tax online. In New Jersey, the state's top gaming regulator published a list of achievements after New Jersey's first year of successfully regulating online gaming. While New Jersey didn't achieve the revenues that were initially forecast, the internationally respected Division of Gaming Enforcement reported that their system of licensing and regulating online gaming is working. And, just recently Pennsylvania introduced bipartisan legislation to legalize online gaming.

It is the IGC's contention that the solution lies in a strictly regulated alternative aimed at ensuring the presence of harm minimization measures, not the least of which relate to the protection of children and

compulsive gamblers. New technologies actually provide regulators with tools not previously available in most traditional forms of gambling, including the ability to provide an audit trail for each transaction, to limit players to total or individual amounts bet, and to block participation by specified players or classes of players, such as college athletes. Similar arguments have been made regarding problem gamblers. With proper regulation, a computer-based system can allow a gambler to self-exclude or to establish loss limits. In fact, computer technology provides an opportunity to identify patterns of behavior that may lead to problem gambling, and offer intervention in a more timely and critical manner.

The IGC has concluded that its support for Internet gaming regulation is focused on the exact issues raised by proponents of restoring the Wire Act. The key issues of such an approach are overall consumer protection, prevention of underage gamblers, appropriate compulsive gambling controls, oversight of revenue and the integrity of products and probity of those involved.

The IGC believes regulation will do far more to restrict problem and underage gambling than will any attempt at prohibition. The RAWA legislation will provide opportunities for unregulated, underground on-line gaming, rather than well regulated, transparent and fair online gaming.

I hope at some point, this debate can move beyond the question of how we can get rid of online gambling – we can't, unless the U.S. is prepared to pull the plug on the world wide web– and move on to the question of how we can get rid of the problems that can accompany it.

Once again, thank you for the opportunity to testify. I have pasted below a sampling of Myths vs. Facts, as a way that IGC has worked hard against misinformation being disseminated by online gaming opponents.

THE TRUTH ABOUT IGAMING: SOME MYTHS VS FACTS

MYTH: ONLINE GAMBLING TARGETS PROBLEM GAMBLERS

Fact: The risk with land-based casinos is that a person can just walk in and play. Thanks to technology, tools have been developed to offer a more robust system of checks and balances for online gambling

than land-based gaming, including enabling players to set limits on their play if they choose and blocking access to those who should not gamble online.

MYTH: IT IS EASY FOR KIDS TO GAMBLE ONLINE

Fact: The bottom line is that kids shouldn't gamble. Ever. The IGC strongly believes that if policy makers want to protect children, individuals that suffer adverse consequences of excessive gambling, and the general public, then the true and only response is regulation. With proper regulation, there are a series of checks and balances, including verification of age, that have to occur before any player can deposit, play or withdraw.

MYTH: ONLINE GAMING CANNIBALIZES FROM LAND-BASED CASINOS

Fact: The reality is that we live in an online world. Based on the rollout of online gaming in the UK, legal online poker did not cannibalize casinos' revenues. In fact, many believe that the popularity of online poker is responsible for the resurgence or increase in land-based gambling.

Keith Furlong, CEO

Interactive Gaming Council



MIWOK
MAIDU

United Auburn Indian Community
of the Auburn Rancheria

Gene Whitehouse
Chairman

John L. Williams
Vice Chairman

Danny Rey
Secretary

Brenda Adams
Treasurer

Calvin Moman
Council Member

April 13, 2015

The Honorable Jim Sensenbrenner, Jr.
Chairman
Subcommittee on Crime, Terrorism, Homeland
Security, and Investigations
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

VIA ELECTRONIC MAIL

RE: Subcommittee Hearing on H.R. 707, the Restoration of America’s Wire Act

Dear Chairman Sensenbrenner:

I am writing on behalf of the United Auburn Indian Community (“United Auburn”) in response to the Subcommittee’s hearing on March 25, 2015, regarding H.R. 707, the Restoration of America’s Wire Act. I ask that my letter be included in the official record of this hearing.

United Auburn owns and operates one of the most successful Class III casinos in Northern California. Like other Indian tribes in California operating casino and resort facilities under the Indian Gaming Regulatory Act, we have been concerned about the threat that Internet gaming—and specifically Internet poker—may pose to the significant capital investments we have made in our brick and mortar facilities. However, instead of opposing any type of Internet gaming proposal at the state level in California, we have chosen to work to shape Internet poker legislation in the State legislature that provides benefits to all affected parties on an intrastate basis.

United Auburn opposes H.R. 707 because it appears to preempt efforts by California and other states to regulate Internet gaming as an entirely intrastate activity. This raises significant federalism concerns, as the Commerce Clause of the U.S. Constitution limits Congressional authority to national and interstate matters and does not grant Congress authority over exclusively intrastate activities.¹

The limits on Congressional power regarding intrastate activities under the Commerce Clause were described very clearly by Chief Justice John Marshall in the 1824 case of *Gibbons v. Ogden*:

¹ U.S. Const. art I, § 8, cl. 3 (“The Congress shall have power ... [t]o regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes.”) (emphasis added).

The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. *The completely internal commerce of a State, then, may be considered as reserved for the state itself.*² (emphasis added).

Both the Wire Act, first enacted in 1961, and the Unlawful Internet Gambling Enforcement Act (“UIGEA”), enacted in 2006, respect these federalism limitations. The plain language of the Wire Act’s prohibitions applies only to interstate betting and not exclusively intrastate activities. The Wire Act also specifically exempts transmissions relating to “bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.”³

The UIGEA also specifically carves out intrastate transactions.⁴ In addition, UIGEA provides that the “intermediate routing” of electronic data on Internet servers outside of a single state does not establish an interstate activity that would impose the UIGEA’s prohibitions.⁵

The current language of H.R. 707 is inconsistent with this Constitutional and statutory framework respecting activities that are exclusively intrastate. In particular, United Auburn is concerned with the language of the bill that extends a gaming prohibition to any activity that “includes any transmission over the Internet carried interstate or in foreign commerce, *incidentally or otherwise.*” (emphasis added). These last three words can be interpreted as prohibiting any Internet transmission that crosses a state boundary, whether or not the transmission or activity involves legal, intrastate wagering. This is completely contrary to the UIGEA provision that permits intermediate routing of electronic data within the Internet.

A second problem involves section 3 of H.R. 707, which only provides protection against federal preemption for any State law that *prohibits* gaming activities. This section of the bill does not clarify whether the authors of H.R. 707 intend to preempt State laws that permit and regulate any type of Internet gaming within the borders of a single state, which we believe is problematic.

²*Gibbons v. Ogden*, 22 U.S. 1, 195 (1824). This limitation on Congress’s Commerce Clause powers was also described in the syllabus of this case. (“This [Commerce Clause] power is not only concurrent, but is limited in Congress. It does not extend to the regulation of the internal commerce of any State. This results from the terms used in the [Commerce Clause] grant of power, ‘among the several States.’”).

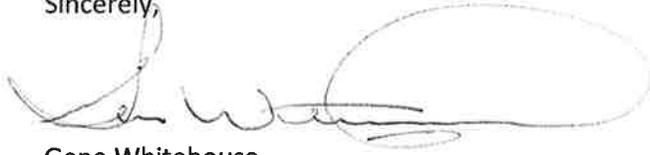
³ 18 U.S.C. § 1084(b).

⁴ 31 U.S.C. § 5362(10)(B) (“The term ‘unlawful Internet gambling’ does not include placing, receiving, or otherwise transmitting a bet or wager where ... the bet or wager is initiated and received or otherwise made exclusively within a single State.”).

⁵ 31 U.S.C. § 5362(10)(E) (“The intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made.”).

United Auburn believes that H.R. 707 should be redrafted to permit Internet gaming activities that are exclusively intrastate and authorized under state law. Until this occurs, United Auburn reiterates its opposition to H.R. 707.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene Whitehouse". The signature is fluid and cursive, with a large loop at the end.

Gene Whitehouse
Tribal Chairman



NATIONAL INDIAN GAMING ASSOCIATION

Rebuilding Communities Through Indian Self-Reliance

STATEMENT OF ERNEST STEVENS, JR., CHAIRMAN NATIONAL INDIAN GAMING ASSOCIATION

HOUSE JUDICIARY COMMITTEE SUBCOMMITTEE ON CRIME, TERRORISM, HOMELAND SECURITY AND INVESTIGATIONS

HEARING: H.R. 707, THE RESTORATION OF AMERICA'S WIRE ACT

2237 RAYBURN HOUSE OFFICE BUILDING

MARCH 25, 2015

Introduction

Good morning Chairman Sensenbrenner, Ranking Member Jackson Lee, and members of the Subcommittee. My name is Ernie Stevens Jr., I am a member of the Oneida Nation of Wisconsin, and it is my honor to serve as Chairman of the National Indian Gaming Association (NIGA).

NIGA is an intertribal association of 184 federally recognized Indian tribes united behind the mission of protecting and preserving tribal sovereignty and the ability of tribes to attain economic self-sufficiency through gaming and other economic endeavors.

I thank you for the opportunity to provide this statement on tribal government views of federal Internet gaming legislation in general, and more specifically on H.R. 707, the Restoration of America's Wire Act.

The subject of Indian gaming begins and ends with tribal sovereignty—the sovereign authority of tribes to govern actions on Indian lands. The authority and status of Indian tribes as separate governments is recognized in the U.S. Constitution, and through hundreds of treaties, federal laws, and Supreme Court decisions.

Before contact with European Nations, Indian tribes were independent self-governing entities vested with full authority and control over their lands, citizens, and visitors to their lands. The Nations of England, France, and Spain all acknowledged tribes as sovereigns and entered into treaties with various tribes to establish commerce and trade agreements, form wartime alliances, and preserve the peace.

The United States Constitution specifically acknowledges the importance of trade with tribal governments in the Commerce Clause, which states that “Congress shall have power to ... regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” U.S. Constitution, Article I, section 8, clause 3. The United States also entered into hundreds of treaties with tribal governments. Through these treaties, tribes ceded hundreds of millions of acres of tribal homelands. In return, the United States promised to provide for the education, health, public safety and general welfare of Indian people. The U.S. Supreme Court later acknowledged that this course of dealing with tribal governments established a trust relationship between tribes and the United States, with accompanying obligations on the part of the United States towards Indian people.

Over the past two centuries plus, the federal government has fallen far short in meeting these solemn treaty and trust obligations. In the late 1800’s, the United States adopted and implemented a policy of forced Assimilation, whereby the federal government took Indian children from their homes, and placed them in military and religious boarding schools where they were forbidden from speaking their language or practicing their Native religions. The concurrent policy of Allotment sought to destroy tribal governing structures, sold off treaty-protected Indian lands, and had the result of further eroding tribal land bases and devastating tribal economies. Finally, the Termination policy of the 1950’s again sought to put an end to tribal governing structures, eliminate remaining tribal land bases, and attempted to relocate individual Indians from tribal lands with the help of one-way bus tickets to urban areas with the promise of vocational education.

These policies resulted in death of hundreds of thousands of our ancestors, the taking of hundreds of millions of acres of tribal homelands, the suppression of tribal religion and culture, and the destruction of tribal economies. The aftermath of these policies continues to plague Indian country to this day.

Tribal Government Self-Determination

Time and time again, these policies were revealed as failures. The persistence and perseverance of Indian people demonstrated to the federal government that Indian country was not going to fade away. On July 8, 1970, President Nixon formally repudiated the policy of Termination and adopted a policy supporting Indian Self-Determination, which seeks to improve Indian education, fosters tribal culture, and enhances tribal economic development, among other goals. Self-Determination remains the Indian Affairs policy of the United States to this day. Tribal governments have seen progress in rebuilding their communities as a result of the Self-Determination policy.

In the late 1960’s and early 1970’s, tribal governments took self-determination to heart, and opened the first Indian gaming operations to generate governmental revenue to fund essential tribal government programs and meet the shortfalls in the federal obligations to provide for Indian education, health, and the general welfare of Indian people.

State governments and commercial gaming operations challenged the rights of tribes to conduct gaming on their lands. These challenges culminated in the Supreme Court case of *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). The *Cabazon* Court upheld the right of tribes, as governments, to conduct gaming on their lands free from state control or interference. The Court reasoned that Indian gaming is crucial to tribal self-determination and self-governance because it provides tribal governments with a means to generate governmental revenue for essential services and functions.

In 1988, one year after the *Cabazon* decision, Congress enacted the Indian Gaming Regulatory Act (IGRA). The stated goals of IGRA include the promotion of tribal economic development and self-sufficiency, strengthening tribal governments, and establishing a federal framework to regulate Indian gaming. The Act also established the National Indian Gaming Commission (NIGC). While there are dozens of forms of gaming in America, the NIGC is the only federal commission to regulate any form of gaming in the United States.

IGRA did not come from Indian Country. A number of tribal governments strongly opposed the federal legislation. The Act is far from perfect, and the U.S. Supreme Court has added to its imperfections. However, for nearly 23 years, more than 200 tribes nationwide have made IGRA work to help begin to rebuild their communities and meet the stated goals of the Act.

Today, 245 Indian tribes use gaming revenues to improve tribal education, health and elder care, rebuild tribal infrastructure and much more. For many tribes, Indian gaming is about jobs. In 2013, Indian gaming created more than 665,000 direct and indirect American jobs. Indian gaming is putting people to work.

Tribes realize that these gains would not be possible without strong regulation. The Indian gaming regulatory system employs more than 6,500 regulators¹ and state of the art technology to protect tribal revenues. In 2013 alone, tribes spent more than \$422 million on regulation. This system is costly, it is comprehensive, and our record and experience shows that it is working.

Indian gaming is not a cure all. However, it has proven to be the best tool for economic development for a great number of Indian tribes. Through Indian gaming, Native Nations have generated billions in tribal governmental revenue to rebuild our communities, provide reservation-based jobs to many who never had the opportunity to work before, and offer hope for an entire generation.

As a result of these gains, all tribes are wary when Congress considers changing the playing field with regard to gaming. Federal legislation on the issue of Internet gaming raises significant concerns.

¹ NIGC Testimony before the Senate Committee on Indian Affairs, July 25, 2012.

NIGA Internet Gaming Principles

Congress has considered various forms of Internet gaming legislation for more than 15 years. NIGA's position on the issue has been consistent throughout this debate. I first testified in 2001 that NIGA is not seeking to expand, promote, or prohibit Internet gaming. We simply ask that if any legislation goes forward, that it preserves the existing rights of Indian tribes as governments to conduct gaming, and affords tribes the same opportunity—as governments—to participate in Internet gaming. Our position has not changed.

Early on, the congressional Internet gaming discussion focused on prohibition. This early debate culminated in the 2006 enactment of the Unlawful Internet Gambling Enforcement Act (UIGEA). UIGEA was attached as a midnight rider to the Security and Accountability for Every Port Act, *P.L. 109-347*.

NIGA worked with the committees of jurisdiction to ensure that UIGEA protected existing rights under IGRA and in existing tribal-state compacts. As a result, UIGEA exempts intertribal gaming, linked electronic Class II and Class III Indian gaming, and other forms of gaming authorized under IGRA from the definition of "unlawful Internet gaming."

Since enactment of UIGEA, the debate in Congress has shifted to primarily focus on efforts to legalize Internet gaming in the United States. The debate was considerably impacted by the U.S. Department of Justice, Office of Legal Counsel position released to the public in December of 2011. The OLC position concludes that, "The Wire Act prohibits only the transmission of communications relating to bets or wagers on sporting events or contests." As a result of this position, over the past four years, a number of state and tribal governments have considered legalizing non-sports gaming over the Internet.

In 2010, prior to release of the DOJ opinion, NIGA established the Internet Gaming and Economic Development Subcommittee as federal legislative efforts turned towards legalization of Internet gaming. The Subcommittee met on two-dozen occasions to discuss the pros and cons of federal Internet gaming legislation with input from regional tribal gaming associations and other national tribal organizations. During these meetings, we heard from experts in the Indian gaming and Internet gaming industry, economists, and others. From these meetings, tribal leaders came together to form a united voice in support of general principles regarding federal Internet gaming legislation. This work resulted in the unanimous position adopted by our 184 member tribes in August 2011 that remain in place today.

NIGA's Internet gaming principles are more than policy recommendations. They are directives from our tribal leadership that are guided by and grounded in the mission to protect tribal sovereignty and to protect rights of all tribes to shape their economic futures through gaming. NIGA's Internet gaming principles require that federal Internet gaming legislation adhere to the following principles:

- Indian tribes are sovereign governments with a right to operate, regulate, tax and license Internet gaming, and those rights must not be subordinated to any non-federal authority
- Internet gaming authorized by Indian tribes must be available to customers in any locale where Internet gaming is not criminally prohibited
- Consistent with long-held federal law and policy, tribal revenues must not be subject to tax, as Indian gaming revenues are 100% dedicated to addressing the severe unmet needs of tribal communities
- Existing tribal government rights under tribal-state compacts and IGRA must be respected
- The legislation must not open the Indian Gaming Regulatory Act for amendments
- Federal legalization of Internet gaming must provide positive economic benefits for Indian country
- Indian tribes possess the inherent right to opt in to a federal regulatory system and not subject tribal eligibility to a state government's decision to opt-out

NIGA's Resolution and accompanying principles acknowledge that Indian country has diverse economies that could be adversely impacted by the federal legalization of Internet gaming. The Resolution resolves that, at a minimum, federal Internet gaming legislation must incorporate the fundamental principles listed above.

Internet Gaming Proposals Before Congress

In the 114th Congress, no legislation has yet been introduced to legalize any form of Internet gaming. However, Internet gaming bills that have been introduced in recent years violate many of the principles discussed above. NIGA remains strongly opposed to these proposals. In sum, these proposals to legalize Internet gaming: envision only commercially operated Internet gaming; would not treat tribes as governments; would subject tribal revenue to taxation; fail to respect the regulatory expertise of tribal governments; and infringe on existing tribal government rights under IGRA and tribal-state compacts among other flaws.

Instead of working to legalize Internet gaming, H.R. 707, the Restoration of America's Wire Act, seeks to reverse the 2011 DOJ Office of Legal Counsel Opinion. The bill: (1) would clarify that Internet transmissions related to gaming activities are covered and prohibited by the Wire Act; and (2) would delete the phrase "on any sporting event or contest" to expand the reach of the Wire Act to include all forms of Internet gaming. In addition, the bill includes a rule of construction that seeks to protect the status quo with regard to horseracing, in-person electronic sales of state lottery tickets, and state charitable gaming.

NIGA has concerns with possible unintended consequences that could adversely impact existing linked land-based Indian gaming that has been authorized for more than twenty-five years now under IGRA.

NIGA looks forward to working with Representative Chaffetz to ensure that existing Indian gaming rights pursuant to IGRA and tribal-state compacts—and specifically cited in the Unlawful Internet Gaming Enforcement Act of 2006—are protected. I understand that Representative Cole has been working with Mr. Chaffetz to find solutions that protect the existing rights of tribes. I am pleased that these discussions are taking place and stand ready to provide technical assistance in helping Congress craft legislation on this important topic in a way that fully protects tribal interests.

Conclusion

For four decades, Indian gaming has proven to be the most effective tool for many Indian tribes to begin to address generations of failed federal Indian affairs policies.

NIGA's Member Tribes remain concerned that legalizing Internet gaming in the United States could threaten the American jobs and precious tribal government revenues established through Indian gaming.

If Congress instead moves to ban Internet gaming, the legislation must not adversely impact Indian gaming operations or the existing rights acknowledged in IGRA or tribal-state compacts.

We again thank you for this opportunity to provide our views on this important issue. NIGA looks forward to working with the Subcommittee to address tribal government concerns prior to moving any Internet gaming legislation to markup.



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TESTIMONY OF JOHN A. PAPPAS

on behalf of

THE POKER PLAYERS ALLIANCE

UNITED STATES HOUSE SUBCOMMITTEE

on

Crime, Terrorism, Homeland Security & Investigations

“H.R. 707, The Restoration of America’s Wire Act”

March 25, 2015

Chairman Sensenbrenner, Ranking Member Jackson-Lee, and distinguished members of the Subcommittee, I would like to thank you for your consideration of this important matter. I have the great honor of serving as Executive Director of the Poker Players Alliance (PPA), an organization of 1.2 million American poker enthusiasts. These individuals, along with countless more Americans, enjoy this great game of skill in commercial and Tribal casinos, in their homes, in bars, in charitable games, and on the Internet. While I am not formally testifying at today's hearing, I am pleased to serve as a resource to help you better understand how Internet poker and Internet gaming are already being regulated effectively in the United States and throughout the world.

Poker players are passionate about the freedom to play this game and I have little doubt that every member of this subcommittee has heard from poker activists in their home states urging lawmakers to reject H.R. 707, the so-called Restoration of America's Wire Act (RAWA). As an organization, the PPA has been at the forefront of advocating for strong consumer protections and accountability. Unfortunately, H.R. 707 will achieve neither. It is a misguided prohibition that seeks to impose a federal ban on states' ability to govern within their borders. It should not be characterized as an "Internet gambling ban" because it does nothing to address the off-shore, unregulated market. It solely extends its reach into the prerogatives of states, restricting their ability to authorize and regulate Internet gaming. For more than a decade, Congress has sought to address unregulated offshore Internet gambling; however, never before has Congress considered upending the traditional rights of states in this area. This federal overreach is particularly troubling given that three states -- Nevada, Delaware and New Jersey -- have authorized and are successfully regulating Internet poker and Internet gaming. Other states like California,

Pennsylvania and New York are currently considering similar systems. Further, a handful of other states offer their lotteries over the Internet. Wagering on online fantasy sports is available in nearly all 50 states. And of course, for many years, horse bettors have been able to wager through the Internet in more than two dozen states. While I will address how these states responsibly regulate Internet gaming, I think it is important that I first discuss the history of the law in question, the 1961 Wire Act, because what is at issue with H.R. 707 is whether a statute enacted more than half a century ago to stop mob-run interstate telephone sports betting operations should be rewritten to stop state-licensed intrastate Internet casino games, poker and lotteries.

The Wire Act and the legislative history¹ is very clear and unambiguous in its focus. It was enacted to stop organized criminal “Wire Services” – telephone and telegraph operations that processed bets on sporting events and horse racing. The black letter of the law says it prohibits the use of a communication facility to transmit information related to “bets or wagers on a sporting event or contest.” Thirty years later, in the 1990’s, when offshore Internet gaming operators began taking bets from Americans, the U.S. Department of Justice (DOJ) took the position (more accurately stated their opinion) that such activity violated the Wire Act, whether it involved sports betting or casino-style bets or wagers. However, even in taking that position, the Criminal Division went on to admit that the statute’s application to non-sports betting was uncertain; they asked Congress to clarify it.

¹ [“The Original Intent of the Wire Act and Its Implications for State-based Legalization of Internet Gambling” Michelle Minton, 2014, UNLV Center for Gaming Research](#)

Federal courts have not been kind to that interpretation. Two federal appellate courts have ruled on the application of the Wire Act to non-sports betting. First the Fifth Circuit in *in re: Mastercard*² and later, the First Circuit in *U.S. v. Lyons*³ found that the Wire Act applies (as its language suggests) only to sports betting. Nonetheless, the DOJ Criminal Division continued to insist that the Wire Act applied to non-sports betting, even as they urged Congress to update the Wire Act to apply it to non-sports betting.

Between 1996 and 2006, Congress considered a series of bills to update the Wire Act, all of them authored by then-Sen. Jon Kyl (R-AZ) and now Chairman of the House Judiciary Committee Rep. Bob Goodlatte (R-VA). Each of these would have applied the Wire Act to non-sports betting, but each of them would have specifically exempted from the Wire Act intra-state bets accepted by a state-licensed entity. While none of those bills was ever enacted, both Houses of Congress at different times passed Wire Act bills that made clear that the Act should apply to a casino games operator based overseas taking Internet play from Americans, but not to a state-based operator licensed by that state to offer casino games to the state's citizens.

In the end, Congress was unable to update the Wire Act. Instead, in 2006 they enacted the Unlawful Internet Gambling Enforcement Act (UIGEA)⁴ which required banks and payment processors to block payment for “unlawful Internet gambling” as defined by other federal and state laws. However, in that statute, Congress specifically exempted from its definition of “unlawful Internet gambling” state-licensed intrastate Internet bets.

² [In re Mastercard International Inc., 2002, United States Court of Appeals, 5th Circuit](#)

³ [U.S. v. Lyons, 2014, United States Court of Appeals, 1st Circuit](#)

⁴ [Security and Accountability For Every Port Act \(SAFE\), P.L. 109-347, enacted 2006](#)

The UIGEA is an important component of this debate, because it is the only time Congress enacted law with respect to Internet gaming. UIGEA was approved by a Republican controlled Congress and signed into a law by President George W. Bush.

From UIGEA's definition of exempted "internet gaming" ...

(B) INTRASTATE TRANSACTIONS.—The term ‘unlawful Internet gambling’ does not include placing, receiving, or otherwise transmitting a bet or wager where— ‘(i) the bet or wager is initiated and received or otherwise made exclusively within a single State; ‘(ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and placed in accordance with the laws of such State, and the State law or regulations include— ‘(I) age and location verification requirements reasonably designed to block access to minors and persons located out of such State; and ‘(II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with such State’s law or regulations;

...it is clear that Congress never intended to ban states from authorizing and regulating online gaming within their own borders. In fact, it is clear that Congress suggested just the opposite as the UIGEA prescribes regulatory safeguards for the states that choose to authorize the activity.

Supporters of H.R. 707 suggest it is executive branch overreach that has led to state regulated Internet gaming, however, the evidence, and the precise language of the only Internet gaming bill enacted by Congress (UIGEA), tells a much different story. It was in response to this that in 2011 the Department of Justice's Office of Legal Counsel (OLC) was correct to update the DOJ's position so that it conformed to the two other branches of government. The OLC memo properly noted that the Wire Act was enacted to aid the states in fighting illegal gambling, and not circumscribe the prerogatives of states with respect to legal gambling within their borders. It noted that the construction of older laws like the Wire Act can be refined by newer laws like UIGEA. It rejected the dubious assertion that the 87th Congress set out to prohibit something – Internet play of casino games and poker – that they didn't know was possible at that time.

As I stated earlier in my testimony, three states have licensed commercial operators to offer Internet casino or poker games to their residents. State lotteries in Minnesota, Michigan, Illinois and Georgia are selling drawing tickets over the Internet. H.R. 707 would retroactively apply the Wire Act to non-sports betting, such that the aforementioned activities of those states would immediately become illegal. The practical result of banning states from regulating online gaming is far more troubling. Internet gaming prohibition is a foolhardy proposition which would only serve to harm the vulnerable populations that regulation properly protects. As a player organization, the Poker Players Alliance takes consumer protections very seriously. Given the unjustifiable position of Internet gaming prohibitionist and supporters of H.R. 707; I would argue that states like Nevada, New Jersey and Delaware have created a far more reasonable and effective approach to consumer protections than those who would simply stick their heads in the sand.

I would like to take a moment to address some concerns that have been raised about Internet gaming and its impact on society. I am fortunate to be able to provide the subcommittee with facts, not rhetoric or speculation, on how a combination of regulation and technology can and does meet these perceived challenges.

First, it is important that policymakers in the U.S. no longer consider regulated Internet gaming as a theoretical. It is not a theory; it is reality. Not only can we now reference the current U.S. regulated Internet gaming market, we also have the benefit of learning from Europe and

Canadian provincial governments, where Internet gaming has long been regulated. Today, in the U.S. and in regulated markets throughout the world, it is required that Internet gaming companies consent to audits, the implementation of anti-money laundering compliance programs and multi-step identity verification processes, bot detection, and other regulatory measures. These operators employ “best of breed” technologies that protect minors and problem gamblers, ensure that the games are fair, and that sites block players in prohibited jurisdictions. Additionally, regulated operators are accountable to the players, regulators, and law enforcement, and they are continually reviewed to ensure they are meeting (and exceeding) the prescribed technical safeguards.

But don’t just take my word for it. The evidence speaks for itself. On January 2, 2015, the Division of Gaming Enforcement (DGE) for the state of New Jersey, the regulator that oversees Internet gaming in the state, released a report card entitled “New Jersey Internet Gaming One Year Anniversary—Achievements to Date and Goals for the Future.”⁵ In the report DGE Director, David Rebeck concludes, “From a regulatory standpoint, our system is working. There have been no major infractions or meltdowns or any systematic regulatory failures that would make anyone doubt the integrity of operations. The issues that have arisen have been dealt with appropriately just like in the brick-and-mortar casinos.” This should leave little doubt in lawmakers’ minds that the states can properly regulate and control Internet gaming.

Underage Access

⁵ [“New Jersey Internet Gaming One Year Anniversary – Achievements to Date and Goals for the Future” New Jersey Division of Gaming Enforcement, Director David Rebeck, 2015](#)

Restricting underage access to Internet gaming websites is something that all regulated operators address. The three states in the U.S. that have licensed Internet gaming and the currently regulated Internet gaming markets in Europe require very high standards of identity verification. Gaming site operators are required to undertake age verification before accounts are opened and bets settled. Therefore, anyone who is placing a bet on a website will have to have proved that they meet the minimum age requirements for the U.S. and in Europe and Canada. These requirements are a condition of operators' licenses issued by their various regulators, and regulators can and do regularly test the efficacy of operators' age verification mechanisms. Failure to undertake rigorous age verification could result in the loss of the license and closure of the business.

All online betting companies require customers to open an account to make a bet. Let me be clear: to open an account for real-money play, a player does not have to merely prove that he or she is an adult; the would-be player has to prove that he or she is a specific adult whose identity can be verified through existing third-party databases, such as credit reporting agencies. Identity verification and know-your-customer requirements in the regulated online gaming space are as robust as those in the online banking space. The suggestion by some that you can open an account as "John Smith" just because you have John Smith's credit card information is simply wrong. In all likelihood, you will need to know, for example, the date and amount of John Smith's last mortgage payment and other similarly granular information. The reason for this is obvious; it is the same incentive banks have for securing their websites to protect against stolen funds. If someone can log-in to an online gaming site pretending to be someone they are not, they will likely steal money which will ultimately have to be paid by the operator. Age

verification is an important element of identity verification because, in a regulated environment, failure to do so will result in a revoked license.

While the U.S. market is just under two years old, it is notable that in the three states that offer online poker and casino games, the states have not had a single reported incident of underage access. Even more impressive, however, is what we have learned from Europe's history of regulation. In late 2011, the European Commission sought feedback on the effectiveness of its online age controls as part of its review of Internet gaming.⁶ A response was submitted by the Children's Charities' Coalition on Internet Safety. Their response stated:

“Since the online age verification laws came into force in the UK in September 2007, the children's organizations have not been made aware of a single instance where a child has beaten the system and got online to gamble. There have been instances where a child has “borrowed” a parent's credit or debit card and has been able to pass themselves off as the parent, but that raises different issues ... However, we are not aware of any instances where a child was able to lie about their age and get away with it in an online environment, as they used to do quite easily before the law was changed. By comparison it may not be so difficult to “PhotoShop” a fake ID to use in a real world setting.”

The age verification technologies available today, coupled with hard evidence that shows that underage access to online gaming sites does not even register, should give this subcommittee supreme confidence that American youth will not be playing on regulated online gaming sites.

Gambling Addiction

⁶ European Commission *Green paper on on-line gambling in the internal market 22, 2011* (“**EC Green Paper**”).

Another important matter is ensuring we are appropriately addressing problem gambling. First, it is important to point out that extensive research conducted in recent years proves that online gaming does not increase the social risks and damage of problem gaming⁷.

Moreover, comprehensive research on the issue concludes that online gaming operators have more effective and sophisticated tools to prevent and combat problem gaming compared to the measures that are available in brick-and-mortar casinos. Such measures have been adopted in jurisdictions around the world that specifically regulate online gaming and have been proven to be highly efficient.

Here are some key findings that clearly demonstrate that there is no linkage between online gaming and an increase in gambling addiction:

- The European Union concluded in a formal report that "it is difficult to draw a direct link between remote gambling and the likelihood of becoming an addicted gambler."⁸
- France liberalized its policies on Internet gambling in 2010. Recently ARJEL, the French online gambling regulator, concluded that since the introduction of a new regulatory framework, the overall proportion of online players classified as "excessive and moderate risk" is decreasing: The proportion of problem gamblers in online gambling was down from 8.3% in 2010 to 6.6% in 2012, and the proportion of moderate-risk gamblers also declined from 14.4% in 2010 to 10.4% in 2012. ARJEL concludes that the significant declines illustrate the positive effects of regulation of online gambling since market opened.⁹
- Similarly, rates of problem gambling in Sweden didn't change after the implementation of Internet gambling.¹⁰ The European Union's analysis of this issue concluded that "it is

⁷ [*"Expansion of gambling does not lead to more problem gamblers"* University at Buffalo Research Institute on Addictions, 2014](#)

⁸ European Commission *Green paper on on-line gambling in the internal market 22, 2011* ("EC Green Paper").

⁹ <http://www.arjel.fr/Baisse-sensible-de-la-proportion,967.html>

¹⁰ Svenska Spel, *The cost of gambling. An analysis of the socio-economic costs resulting from problem gambling in Sweden.* Council of the EU. DS 406/09. Brussels, 2009.

difficult to draw a direct link between remote gambling and the likelihood of becoming an addicted gambler."¹¹

- Researchers at Harvard Medical School's Division on Addiction Studies have summarized the evidence of the UK study as follows: "The case of Internet gambling provides little evidence that exposure is the primary driving force behind the prevalence and intensity of gambling."¹²
- According to a 2014 study by the University of Buffalo Research Institution on Addictions, despite a seven-fold increase in the numbers of Americans reporting gambling on the Internet (from 0.3 percent to 2.1 percent) between 1999 and 2013, the prevalence rate for problem gambling in the United States has not changed.¹³

Most regulated online gaming markets have required their licensees to ensure that measures are in place to prevent and combat issues associated with problem gaming. These measures are proven and effective as outlined in a study of Internet gaming behaviors¹⁴. Such measures include:

- Providing defined and clear deposit limits which are either set by the regulators or by the players themselves (for a certain period of time, for a certain number of games etc.). For example, if a player sets a limit of \$100 per month for himself/herself, regulations can ensure that no operator lets that player deposit any more than that amount in any month.
- Allowing easy and straightforward self-exclusion by players, whether on a temporary or permanent basis, when players realize that they may have a problem.
- Ensuring that comprehensive information regarding the player's play history is made available to the players at all times, in order to allow the players to fully control their play and the money spent by them.
- Prohibition on extending or granting credit to players.
- Links to problem gambling help lines and websites.

¹¹ European Commission *Green paper on on-line gambling in the internal market* 22, 2011.

¹² Howard Shaffer and Ryan Martin, *Disordered Gambling: Etiology, Trajectory, and Clinical Considerations*, *Annual Review of Clinical Psychology* 2011. 7:483–510.

¹³ [Gambling and Problem Gambling in the United States: Changes Between 1999 and 2013](#), *Journal of Gambling Studies*, 2014.

¹⁴ *Real Limits in the Virtual World: Self-Limiting Behaviors of Internet Gamblers*, Harvard University, Division of Addictions, 2008

While gambling addiction is indeed an issue, I believe it is best addressed through proactive regulation that seeks to mitigate the problem, rather than be left to an ill-advised prohibition that protects no one.

Geolocation

A common argument made by proponents of a federal ban on Internet gambling is that states could not possibly ensure that only people within their own state borders have access. But, in fact states are able to do this very effectively. According to the Columbia University Science and Technology Law Review, “Geolocation technologies have the potential to make Internet gambling law both more effective and more efficient by enabling each state to enforce its own substantive regulations.”¹⁵

New Jersey again is an excellent example of the effectiveness of geolocation. With major populations centers from other states on two borders (Pennsylvania and New York), New Jersey DGE employs some of the most sophisticated technologies to ensure compliance. Using satellite-based geo-positioning technology, the DGE verifies the location of Internet gamblers across New Jersey on digital maps and computer screens. Geo-positioning is so precise that it can distinguish between gamblers who are on the very edges of New Jersey’s boundaries and those just across the border in another state.

¹⁵ *Geolocation and Federalism on the Internet: Cutting Internet Gambling's Gordian Knot*, Columbia University, Kevin F. King, 2010

Similar technologies are being employed in Nevada and Delaware. There are multiple technology companies who are licensed in these jurisdictions dedicated to developing geolocation systems that preempt those trying to thwart the system. We believe that any state that chooses to regulate Internet gaming should require “best of breed” technologies to verify the location of gamblers and limit it to those eligible to play in the state.

Money Laundering

Finally, opponents of Internet gaming have claimed that the activity is vulnerable to fraud and criminality, even going as far as to say it could serve as a tool for money laundering and terrorist financing. Let me first say that prohibition will just play into the hands of the criminal element, just as it did in the 1920’s when alcohol was banned. It is far better for the players’ financial fate if the safety and security of Internet gaming transactions are in the hands of the U.S. banking system and the responsible and regulated American gaming corporations. If anything, a prohibition would make the likelihood of money laundering or other fraudulent activity far greater because it would be forced underground without any oversight or control.

It is also important to address a letter from the Federal Bureau of Investigations (FBI) dated September 20, 2013. In that letter, the FBI justifiably addresses potential concerns that could arise from an *unregulated* Internet gaming market. Opponents of state regulated Internet gaming have attempted to present the letter as evidence against regulation, when in fact, the letter does nothing of the sort. First, the FBI letter exclusively addresses unregulated online casinos and does not cite a single example of the any harms, flaws or vulnerabilities of state regulation of Internet gaming. The FBI is simply a list of hypotheticals; it does not examine the current

regulated marketplaces anywhere in the world. The letter does not address the impact that government regulators have on the safety and security of online gaming websites and the industry as a whole. But the FBI does acknowledge that money laundering “could be detected and thwarted by a prudent online casino.” This is exactly what occurs in the U.S. today. Online operators are thoroughly vetted by state regulators and the operators offer online games in a tightly regulated marketplace.

Under a regulated market, the opportunity for a fraudulent money laundering scheme to flourish is minimal. To date, looking again at Europe, there have been no significant instances of money laundering through Internet gaming sites. A study conducted by Dr. Michael Levi, professor of criminology at the Cardiff School of Social Sciences¹⁶, concluded that, “compared to methods of customer identification and monitoring in the off-line gaming and financial services sector, the scope for substantial abuse of e-gaming for laundering purposes is modest.” The study pointed to both the ability to record and track Internet gaming transactions and banking regulations to which authorized companies would be required to adhere. Further, the sophistication of identity verification and the requirement that regulated sites implement these technologies would make it extremely difficult for someone to move money anonymously on an Internet gaming site. More recently, researchers in Germany at the University of Lintz examined whether online poker in

¹⁶ Michael Levi, Ph.D., D.Sc. (Econ.) *Money Laundering Risks and e-Gaming: A European Overview and Assessment*. 2009

that country was a tool for money laundering¹⁷ and they concluded “that online poker is no means relevant for money laundering.”

Studies aside, the money laundering argument still seems to resonate with some because of historic concerns about brick-and-mortar gaming and money laundering. It is true that, as a cash-intensive business, brick-and-mortar gaming has had to go to extraordinary lengths to protect against money laundering. However, Internet gaming does not involve cash at all. Additionally, every deposit, every withdrawal – indeed, every bet, raise and fold – is recorded and available for review.

The one instance that some alarmists point to as a particular Anti-Money Laundering (AML) vulnerability would be the instance where one player in a poker game attempts to lose money to another player intentionally as a way to launder that money as poker winnings. However, licensed sites utilize sophisticated software surveillance tools that continuously monitor play to identify unusual betting patterns. This is done in part to prevent player collusion, which is a form of cheating, but also to prevent money laundering. This is a vast oversimplification, but for example, if the software “sees” me fold my pocket kings – the second-best possible starting hand in Texas Hold’em -- to your pocket aces pre-flop, it will flag us as likely colluders and all of our play -- prior and future -- will be subject to intense scrutiny. Similarly, if it “sees” me fold my pocket aces to your deuce-seven, it will flag both of us as potential money launderers; if it continues, we will be blocked from the site and a suspicious activity report will be filed with proper authorities.

¹⁷ *Online Poker: Possible Money Laundering and its Prevention*, Prof. Dr. DDr. h.c. Friedrich Schneider, University of Linz, 2013

Outlined in this testimony are just some of the robust technologies that are in use today to ensure the safety, security and compliance of state regulated online gaming. While there is much more information I can make available to the subcommittee, the information I have provided should give you confidence that as more states proceed with regulated Internet gaming, it will be done in a way that best protects the consumer.

Since our nation's founding, gaming law and regulation (other than sports betting) has always been left to the states, and this model has been successful. It continues to be successful on the Internet. The alternative to a regulated on-shore market is an unregulated offshore market. Despite UIGEA and the regulations issued pursuant thereto, Americans bet billions every year in this grey market, with little in the way of consumer protections. Far from helping consumers, RAWA would expose them even further.

The best argument against the so-called Wire Act fix is this: the Wire Act isn't broken. There are several federal laws – the Illegal Gambling Business Act, the Travel Act, and UIGEA – that make it a federal crime to use the Internet to violate state gambling laws. If enacted, RAWA would take a law aimed at stopping criminals, and turn it into a law that would criminalize states. Congress should soundly reject it.



ADVANCING FAITH, FAMILY AND FREEDOM

March 20, 2015

Representative
U.S. House of Representatives
Washington, DC 20515

Dear Representative:

On behalf of the Family Research Council (FRC) and the families we represent, I urge you to cosponsor H.R. 707, the bipartisan Restoration of America's Wire Act sponsored by Congressman Jason Chaffetz (R-UT) and Congresswoman Tulsi Gabbard (D-HI). This bill would restore the long standing federal ban on internet gambling and protect the vulnerable and their families from the 24-7, easy access of online gambling.

On December 23, 2011, the Justice Department unilaterally gutted the Wire Act, the 50 year old ban on the transmission of information related to bets and wagers, by reinterpreting it as only applying to sports-related betting. They did so without input from Congress, law enforcement or the American public. Overnight, cash-strapped states were given an avenue to pursue online gambling without the nation first assessing the technological limitations, the risks of money laundering and the impact on families.

There is overwhelming evidence that the prevalence of compulsive gambling is three to four times higher among online gamblers than non-internet gamblers. The 24-7 ease of access, the speed of the game, the solitary nature of play and the ability to play multiple games at once, make online gambling inherently more dangerous than other forms of gambling.

In 1999, the National Gambling Impact Study Commission (NGISC), one of the most comprehensive and factual studies to date, released its three years findings recommending a complete ban of internet gambling. The NGISC reported receiving "abundant testimony and evidence that compulsive gambling introduces a greatly heightened level of stress and tension into marriages and families, often culminating in divorce and other manifestations of familial disharmony," and that "respondents representing 2 million adults identified a spouse's gambling as significant factor in a prior divorce."

While online gambling initiatives are sold as a boon to state budgets, voters and policymakers should be aware that there is no proof expanding gambling positively impacts net state revenues. In fact, there's evidence to the contrary. Gambling functions like a regressive tax that disproportionately impacts the poor, diverting money away from local businesses and displacing existing sales tax revenue while fueling societal ills.

The increase in crime, financial hardship, lost work and the break-up of families have lead professor and economist at Baylor University, Earl L. Grinols to estimate the costs of gambling outweighing its benefits 3 to 1.

Online gambling vendors claim they will be able to screen out minors, ensure player's identities and validate they are physically located within proper jurisdictions. However, the FBI countered this claim in a 2009 letter to the Financial Services Committee stating, "While the [online gambling] vendors may claim that they can validate age and location, they are more than likely relying on credit card information and geolocation to gather this information. Both can be spoofed."

Again, I urge you to cosponsor the Restoration of America's Wire Act (H.R. 707) sponsored by Congressman Jason Chaffetz (R-UT) and Congresswoman Tulsi Gabbard (D-HI). This bill would protect families by restoring the federal prohibition against online gambling.

Sincerely,

A handwritten signature in black ink that reads "David Christensen". The signature is written in a cursive style with a large initial "D".

David Christensen
Vice President of Government Affairs

Testimony of Former Congressman Ron Paul

Hearing on H.R. 707, "The Restoration of America's Wire Act"

Subcommittee on Crime, Terrorism, Homeland Security, and Investigations

March 25, 2015

Chairman Sensenbrenner, Ranking Member Jackson-Lee, and members of the Subcommittee, thank you for the opportunity to submit testimony on the "Restoration of America's Wire Act," H.R. 707. On behalf of Campaign for Liberty's nearly three quarters of a million members, I urge Congress to reject this unconstitutional, anti-liberty legislation.

Nowhere in the United States Constitution is Congress given the authority to criminalize online gambling. Instead, the question of whether online, or any other type of gambling, should be legal is one of the many areas "reserved to the states" under the Tenth Amendment.

H.R. 707's assault on federalism is not just theoretical. By passing this bill, Congress would nullify laws in the three states where Internet gambling is lawful, as well as laws in the nine states that allow their citizens to purchase lottery tickets online. State governments are supposed to nullify federal laws, not the other way around!

Supporters of the bill claim that online gambling is controlled by criminals and terrorists. This argument turns reality on its head. As with all forms of prohibition, criminalizing Internet gambling will not stop people from engaging in the activity. Instead, the bill would make it more likely the online gambling industry would be controlled by criminals. If running online casinos is outlawed, only outlaws will run online casinos.

By giving federal bureaucracies another excuse to spy on our online activities, the "Restoration of America's Wire Act" will further erode our privacy and expand the surveillance state. Given what we have learned in the last few years about government surveillance of our Internet activities, can anyone seriously believe that criminalizing Internet gambling will only affect the privacy of online gamblers? Even those who have moral objections to gambling should oppose this bill since it threatens their liberty.

Many supporters of the Internet gambling ban sincerely believe that gambling is an immoral and destructive activity that should be outlawed. Of course, this bill is not about the morality of gambling but whether Americans should have the choice to gamble online or be forced to visit brick-and-mortar casinos if they wish to gamble. Even if there were some moral distinction between gambling online and in a casino, the government has no role to play in prohibiting immoral behavior that does not involve force or fraud.

The main problem with this bill is that it is incompatible with a free society. Gambling is a non-violent behavior that adults choose to engage in. Those with moral objections to gambling are, of course, free to use persuasion to try to convince others not to gamble. What they may not do is use the force of the state to stop people from gambling. Not only will such efforts be futile,

but such attempts violate the rights of those who would choose to engage in this activity and, by strengthening the surveillance state, threaten all of our liberties.

Finally, this legislation represents the worst form of crony capitalism. It is no secret that this assault on the Constitution and individual liberty is being done at the behest of one billionaire casino owner who, not coincidentally, is also one of the nation's top political donors. Rather than compete in the marketplace of Internet gambling, this donor is using his wealth and influence to outlaw his online competition.

In conclusion, the "Restoration of America's Wire Act" infringes on individual liberties, violates the Constitution, and amounts to little more than crony capitalism on steroids. This bill thus represents everything members of the growing liberty movement find repugnant about American politics. Therefore, I once again urge the members of this Subcommittee to show their commitment to the Constitution, individual liberty, and true free markets by rejecting this bill.



March 24, 2015

United States House of Representatives
Washington, D.C. 20515

Dear House Judiciary Committee Member,

On December 23, 2011, Eric Holder's Department of Justice unilaterally reversed a long-held position that federal law prohibits Internet gambling. He effectively changed a law which had been on the books for 50 years and did so without seeking Congressional input, consulting with law enforcement, or allowing for public comment. Since then three states have legalized some form of Internet gambling, and many others are actively considering following suit.

Rep. Jason Chaffetz has taken the first steps toward stopping the scourge of Internet gambling by restoring the longstanding interpretation of the Wire Act with the introduction of the Restoration of America's Wire Act, H.R. 707.

This legislation will restore the law undermined by the Justice Department and, by so doing, will prevent every smartphone, tablet, and laptop across the country from being turned into a portable, virtual casino available 24 hours a day, seven days a week. Our priority must be protecting the young, the poor, and the elderly from being targeted by Internet gambling casinos and apps.

Please co-sponsor the Restore America's Wire Act (H.R. 707) to protect the right of American families to keep gambling casinos, online poker and lotteries out of their homes and off their children's cell phones, and support the Judiciary Committee promptly reporting out this bill with no loopholes.

Again, two days before Christmas in 2011, a Justice Department lawyer issued a legal opinion that threatens to fundamentally change how gambling is conducted in this country - taking it from an activity which requires physical presence in a public destination and making it available on potentially every cell phone, mobile device, tablet, laptop and home computer in the country.

The Justice Department opinion reversed 50 years of interpretation of the anti-gambling Federal Wire Act, stating that it now applies only to sports bets and not to online slot machines, casino games, lotteries or poker. The opinion opened the door for states to authorize Internet gambling, threatening to make gambling pervasive in American society - even though, as the President's nominee to be Attorney General, Loretta Lynch, testified, the opinion does not carry the force of law.

This momentous change to our nation's gambling policy was concocted in secret and without public consent. There is absolutely no evidence that December 23, 2011, the date of the Justice Department opinion, was the date the Internet became safe for gambling. There is no evidence the Justice Department even considered whether it is safe to turn cell phones into mobile casinos.

The Justice Department lawyers did not consider the threat to children or to individuals vulnerable to a gambling problem and to their families. There was no opportunity for public comment, nor was Congress made aware of what the Justice Department lawyers were up to. There was no consultation with law enforcement agencies that already have their hands full combating terrorist threats and cybercrimes.

The Justice Department opinion is a direct affront to the 10th Amendment, and the absolute right of every state to control gambling within its borders. The Internet is inherently interstate. It does not recognize state borders. Once something is online, it cannot be controlled or contained - just ask the dozens of blue chip American companies who have had their sites hacked and the millions of Americans whose personal information have been stolen.

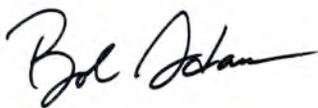
The Director of National Intelligence, James Clapper, recently testified to Congress about the serious cyber threats posed to our national security. The FBI, when asked if it has the financial resources and personnel to police a legalized online poker market, made clear that its limited resources are properly focused on our nation's highest priorities - "Counterterrorism, Counterintelligence, and Cyber threats to critical infrastructure."

If states desperate for cash are permitted to offer Internet gambling and online lotteries, who is going to police them? Who will ensure the gambling websites they license do not take bets from children and residents of states who do not want Internet gambling - if it is even possible to police such sites? And who is going to pay for policing and regulating an Internet gambling industry governed by a patchwork of state laws?

Internet gambling is a bad idea at the wrong time. The American people do not want this. Poll after poll has shown that the public opposes Internet gambling by large margins - with the opposition cutting across all demographics and political party affiliations - and for good reason. The public instinctively knows there is something fundamentally different and dangerous about putting mobile gambling casinos available 24 hours a day, 7 days a week on people's cell phones, tablets, laptops and computers.

In summary, please co-sponsor the Restore America's Wire Act to protect every Family's Right to keep gambling casinos, video poker and lotteries out of their homes and off their children's cell phones, and support the Judiciary Committee promptly reporting out this bill with no loopholes.

Sincerely,

A handwritten signature in black ink that reads "Bob Adams". The signature is written in a cursive, flowing style.

Bob Adams
President



March 19, 2015

The Honorable
U.S. House of Representatives
Washington D.C. 20515

Dear Representative,

On behalf of our 500,000 members nationwide, Concerned Women for America Legislative Action Committee (CWALAC) wishes to express our support for Representative Jason Chaffetz's (R-Utah) Restoration of America's Wire Act, H.R. 707. This legislation will ensure that the longstanding federal ban on Internet gambling is restored and will prevent every smartphone, tablet, and laptop across the country from being turned into a portable, virtual casino available 24-hours a day, seven days a week.

In December 2011, Attorney General Eric Holder gutted the Wire Act when he unilaterally reinterpreted the Act to only apply to sports-related betting.

The Justice Department lawyers did not consider the threat to children or to individuals vulnerable to a gambling problem and to their families. There was no opportunity for public comment, nor was Congress made aware of what the Justice Department lawyers were doing. There was no consultation with law enforcement agencies that already have their hands full combating terrorist threats and cybercrimes.

The Internet is inherently interstate. It does not recognize state borders. Once something is online, it cannot be controlled or contained – just ask the dozens of blue chip American companies who have had their sites hacked and the millions of Americans whose personal information has been stolen.

Internet gambling represents the most invasive and addictive form of gambling in history. Speed, accessibility, availability and anonymity make Internet gambling the perfect storm for gambling addiction.

It also poses a number of dangers for our culture in general and the overall well-being of families in particular. Compulsive gambling threatens families with a variety of financial, physical, and emotional problems, including divorce, domestic violence, child abuse and

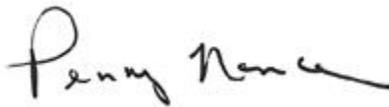
neglect, and a range of problems stemming from the severe financial hardship that commonly results from pathological gambling.

According to the National Council on Problem Gambling, among problem gamblers ages 45 to 64, women outnumber men. “Women tend to be ‘escape gamblers,’ meaning they’re more drawn to machines that are based on luck to distract themselves from problems in their personal life,” said Sam Skolnik, author of *High Stakes: The Rising Cost of America’s Gambling Addiction*. According to the California Council on Problem Gambling, the easy access of Internet gambling has a greater appeal to escape gamblers.

While there are significant dangers posed by gambling, there is no proof that it will help states financially. Gambling proponents have claimed that it will bolster state budgets. However, the evidence suggests gambling disproportionately impacts the poor and fuels societal ills.

CWA firmly believes the Restoration of America’s Wire Act provides the best means to restore the federal Internet gambling ban so that American families are protected. Please support legislative work on this bill.

Sincerely

A handwritten signature in black ink that reads "Penny Nance". The signature is written in a cursive, flowing style.

Penny Nance
President and CEO
Concerned Women for America Legislative Action Committee

FIRST PRINCIPLES PAC
754 First Colonial Road
Virginia Beach, Virginia 23451

March 25, 2015

United States House of Representatives
Washington, D.C. 20515

Dear House Judiciary Committee Member,

On December 23, 2011, Eric Holder's Department of Justice unilaterally reversed a long-held position that federal law prohibits Internet gambling. He effectively changed a law which had been on the books for 50 years and did so without seeking Congressional input, consulting with law enforcement, or allowing for public comment. Since then three states have legalized some form of Internet gambling, and many others are actively considering following suit.

Rep. Jason Chaffetz has taken the first steps toward stopping the scourge of Internet gambling by restoring the longstanding interpretation of the Wire Act with the introduction of the Restoration of America's Wire Act, H.R. 707.

This legislation will restore the law undermined by the Justice Department and, by so doing, will prevent every smartphone, tablet, and laptop across the country from being turned into a portable, virtual casino available 24 hours a day, seven days a week. Our priority must be protecting the young, the poor, and the elderly from being targeted by Internet gambling casinos and apps.

Please co-sponsor the Restore America's Wire Act (H.R. 707) to protect the right of American families to keep gambling casinos, online poker and lotteries out of their homes and off their children's cell phones, and support the Judiciary Committee promptly reporting out this bill with no loopholes.

Again, two days before Christmas in 2011, a Justice Department lawyer issued a legal opinion that threatens to fundamentally change how gambling is conducted in this country – taking it from an activity which requires physical presence in a public destination and making it available on potentially every cell phone, mobile device, tablet, laptop and home computer in the country.

The Justice Department opinion reversed 50 years of interpretation of the anti-gambling Federal Wire Act, stating that it now applies only to sports bets and not to online slot machines, casino games, lotteries or poker. The opinion opened the door for states to authorize Internet gambling, threatening to make gambling pervasive in American society – even though, as the President's nominee to be Attorney General, Loretta Lynch, testified, the opinion does not carry the force of law.

This momentous change to our nation's gambling policy was concocted in secret and without public consent. There is absolutely no evidence that December 23, 2011, the date of the Justice

FIRST PRINCIPLES PAC
754 First Colonial Road
Virginia Beach, Virginia 23451

Department opinion, was the date the Internet became safe for gambling. There is no evidence the Justice Department even considered whether it is safe to turn cell phones into mobile casinos.

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The Director of National Intelligence, James Clapper, recently testified to Congress about the serious cyber threats posed to our national security. The FBI, when asked if it has the financial resources and personnel to police a legalized online poker market, made clear that its limited resources are properly focused on our nation's highest priorities – “Counterterrorism, Counterintelligence, and Cyber threats to critical infrastructure.”

If states desperate for cash are permitted to offer Internet gambling and online lotteries, who is going to police them? Who will ensure the gambling websites they license do not take bets from children and residents of states who do not want Internet gambling – if it is even possible to police such sites? And who is going to pay for policing and regulating an Internet gambling industry governed by a patchwork of state laws?

Internet gambling is a bad idea at the wrong time. The American people do not want this. Poll after poll has shown that the public opposes Internet gambling by large margins – with the opposition cutting across all demographics and political party affiliations – and for good reason. The public instinctively knows there is something fundamentally different and dangerous about putting mobile gambling casinos available 24 hours a day, 7 days a week on people's cell phones, tablets, laptops and computers.

In summary, please co-sponsor the Restore America's Wire Act to protect every Family's Right to keep gambling casinos, video poker and lotteries out of their homes and off their children's cell phones, and support the Judiciary Committee promptly reporting out this bill with no loopholes.

Sincerely,

David Nygaard
President

U.S. Senator Malcolm Wallop
(1933-2011) • Founder



George C. Landrith
President & CEO

Re: National Security Threats Posed by Internet Gambling

March 24, 2015

Dear House Judiciary Committee Members,

Online gambling presents significant national security and cyber risks to Americans. That is why I write today in support of the Restore America's Wire Act (H.R. 707) and support the Judiciary Committee promptly reporting out this bill with no loopholes.

Top law enforcement and intelligence officials as well as independent security experts agree: Internet gambling forums provide numerous opportunities for terrorists and criminals to launder illicit proceeds with increased anonymity.

Terry Prattar, a specialist in counter-terrorism with Jane's Strategic Advisory Services, notes that the Internet has been used to raise funds for terrorists in Afghanistan including the use of on-line gambling sites to launder cash. Academic experts worry meanwhile that new encryption technologies could allow terrorists to abuse the bank technologies that process payments to offshore gambling websites adding another layer of complexity to tracking funds.

While many industries are susceptible to money laundering, Internet gambling poses additional risks by offering an anonymous forum for bad actors to move money without detection. According to one Federal Bureau of Investigation report, "criminals may participate in games with exclusively criminal players, exchanging money to launder criminal proceeds."

In a recent Congressional hearing, the Director of National Intelligence, James Clapper, testified about the serious cyber threats posed to our national security. Meanwhile, the FBI has made clear that its limited resources are properly focused on our nation's highest priorities – "Counterterrorism, Counterintelligence, and Cyber threats to critical infrastructure" - not on policing a legalized online poker market.

Most chilling is a report referenced by Congressman Frank Wolf shortly before his retirement after more than 30 years in Congress stating that "an established al-Qaida poker network could extract enough untraceable money from the United States in just a few days to fund several 9/11 sized attacks."

International terrorist organizations are always seeking out new methods to move and hide money with an ultimate goal of facilitating terror and purchasing weapons of mass destruction. Bringing online gambling to every computer, smartphone and tablet in America will threaten our nation's security by providing a new and widely available funding vehicle for terrorism. As terrorist groups such as ISIS continue to proliferate, Congress should act now and make terror financing more difficult by restoring the long-standing federal ban on all forms of Internet gambling.

Sincerely,



George Landrith
President, Frontiers of Freedom



March 23, 2015

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20510

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20510

Dear Chairman and Ranking Members:

Please co-sponsor the Restore America's Wire Act (H.R. 707) to protect the right of American families to keep gambling casinos, online poker and lotteries out of their homes and off their children's cell phones, and support the Judiciary Committee promptly reporting out this bill with no loopholes.

Two days before Christmas in 2011, a Justice Department lawyer issued a legal opinion that threatens to fundamentally change how gambling is conducted in this country – taking it from an activity which requires physical presence in a public destination and making it available on potentially every cell phone, mobile device, tablet, laptop and home computer in the country.

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This momentous change to our nation's gambling policy was concocted in secret and without public consent. There is absolutely no evidence that December 23, 2011, the date of the Justice Department opinion, was the date the Internet became safe for gambling. There is no evidence the Justice Department even considered whether it is safe to turn cell phones into mobile casinos.

The Justice Department lawyers did not consider the threat to children or to individuals vulnerable to a gambling problem and to their families. There was no opportunity for public comment, nor was Congress made aware of what the Justice Department lawyers were up to. There was no consultation with law enforcement agencies that already have their hands full combating terrorist threats and cybercrimes.

The Justice Department opinion is a direct affront to the 10th Amendment, and the absolute right of every state to control gambling within its borders. The Internet is inherently interstate. It does not recognize state borders. Once something is online, it cannot be controlled or contained – just ask the dozens of blue chip American companies who have had their sites hacked and the millions of Americans whose personal information have been stolen.

NATIONAL HEADQUARTERS: 1455 PENNSYLVANIA AVENUE NW ★ SUITE 400 ★ WASHINGTON, D.C. 20004
ADMINISTRATIVE OFFICE: 8855 RESEARCH DRIVE ★ IRVINE, CA 92618
OFFICE (TOLL FREE): 1 (855) 852-1995 ★ FAX: (866) 496-1944



The Director of National Intelligence, James Clapper, recently testified to Congress about the serious cyber threats posed to our national security. The FBI, when asked if it has the financial resources and personnel to police a legalized online poker market, made clear that its limited resources are properly focused on our nation's highest priorities – "Counterterrorism, Counterintelligence, and Cyber threats to critical infrastructure."

If states desperate for cash are permitted to offer Internet gambling and online lotteries, who is going to police them? Who will ensure the gambling websites they license do not take bets from children and residents of states who do not want Internet gambling – if it is even possible to police such sites? And who is going to pay for policing and regulating an Internet gambling industry governed by a patchwork of state laws?

Internet gambling is a bad idea at the wrong time. The American people do not want this. Poll after poll has shown that the public opposes Internet gambling by large margins – with the opposition cutting across all demographics and political party affiliations – and for good reason. The public instinctively knows there is something fundamentally different and dangerous about putting mobile gambling casinos available 24 hours a day, 7 days a week on people's cell phones, tablets, laptops and computers.

Please co-sponsor the Restore America's Wire Act to protect every Family's Right to keep gambling casinos, video poker and lotteries out of their homes and off their children's cell phones, and support the Judiciary Committee promptly reporting out this bill with no loopholes.

Sincerely,

Hector V. Barreto
Chairman



March 31, 2014

The Honorable Lindsey Graham
290 Russell Senate Office Building
Washington, DC 20510-4003

Dear Senator Graham:

On behalf of the National Association of Convenience Stores (NACS), I'm writing to convey our industry's strong support for your legislation, the Restoration of America's Wire Act. This issue is of vital importance to NACS members.

Since 1961, NACS has represented the interests of the convenience store industry. NACS is an international trade association representing more than 2,200 retail company members doing business in nearly 40 countries around the world, with the majority of members based in the United States. Many of our members are small, family-owned businesses. In fact, 70 percent of NACS members operate 10 stores or less. The industry as a whole employs more than 1.5 million people across the United States.

Several years ago, Congress took steps to limit the abuses of Internet gambling and protect Americans, including children, from what promised to be a rapid explosion of gambling on the Internet. Unfortunately, in late 2011 the Department of Justice changed nearly 50 years of legal precedent and decided that the Wire Act does not prevent gambling on the Internet (other than sports betting). Because of this dramatic change, the Internet is poised to be the Wild West of gambling with individual states allowing gambling businesses of all kinds to set up shop online and prey upon vulnerable Americans without any federal check or consistency.

Not only would this put kids at risk and dramatically increase gambling addiction and related problems, but it would devastate NACS member businesses throughout the country. Among the products NACS members offer are lottery tickets. NACS members spend substantial time and money ensuring that they verify age before customers can buy lottery tickets. No website will be able to replicate that. And, for problem gamblers and those who cannot afford to lose the money, just the need to leave home, go to a store and deal with another person in a face-to-face transaction can create some friction on decisions that they would later regret – certainly more friction than clicking a mouse in the privacy of home would cause. All of that will be lost if there are no federal limits on lotteries and other online gambling.

In Europe, where Internet gaming is legal, "lotteries" offer everything from slot machines to card games and more. And all too often these games are accessed and played by minors.

Convenience Stores depend upon lottery ticket sales to get foot traffic. Purchasers tend to purchase other products while in the store and these ancillary purchases are a key piece of the economic viability of convenience stores. Now is not the time to put brick-and-mortar small businesses in jeopardy by closing our eyes to a coming explosion of gambling on the Internet.

The Restoration of American's Wire Act would address these problems. If Congress does not act to pass this legislation, states will open the floodgates to Internet gambling and it will become difficult or impossible to turn it back. We appreciate your work in getting this legislation introduced and we look forward to seeing it become law.

Thank you for your efforts to help protect Americans from the problems of Internet gambling.

Sincerely,

A handwritten signature in black ink that reads "Lyle Beckwith". The signature is written in a cursive style with a large, looping initial "L".

Lyle Beckwith
Senior Vice President,
Government Relations

Bad Juju

For many years, NACS has respectfully disagreed with assertions made by lottery officials that the sale of lottery tickets via the Internet would not harm convenience stores. This is the basis for our support of federal legislation that would prohibit online gaming (and online lottery sales). It's OK to disagree with your customers (I guess), but you had better have your facts buttoned-up when you do.

The National Association of State and Provincial Lotteries (NASPL) has circulated a paper claiming that there will be more than \$5.5 billion in losses if Congress passes the bipartisan, bicameral legislation known as the Restoration of America's Wire Act, which would restore the long-standing inter-

pretation of the 1961 Wire Act and reverse an abrupt Department of Justice (DOJ) decision in December 2011 to expand online gaming. Remarkably, and without support, NASPL asserts that the legislation would prohibit the use of electronic "vending machine" terminals in retail lottery outlets. Here's the only problem with NASPL's claim — it isn't true.

“Lottery representatives misleading legislators is particularly troubling because they are potentially hurting their own customers — licensed retailers.

The communication of lottery information electronically to these machines to facilitate lottery purchases has always been legal under the Wire Act. That was the case before DOJ reversed 50 years of legal interpretation to weaken the law and it has been true since that opinion. The Restoration of America's Wire Act simply makes clear that all gaming (and not just sports gaming, as DOJ theorized) is illegal on the Internet. It does nothing to change the status of lottery machines in retail locations.

In fact, to get ahead of the misleading claims NASPL is now making, Restoration of America's

Wire Act authors added a provision that makes clear retail terminals will remain legal if the bill becomes law. That provision states that nothing in the bill will “alter, limit, or extend . . . the ability of a State licensed lottery retailer to make in-person, computer-generated retail lottery sales under applicable Federal and State laws in effect on the date of the enactment of this Act.” This provision ensures that licensed retailers will not be negatively impacted by the proposed legislation and can use electronic terminals to aid lottery ticket sales. Again, the provision was added specifically for this purpose.

The willingness of lottery representatives to mislead legislators about the legislation is unfortunate. That is particularly troubling because they are doing so in a way that could potentially hurt their own customers — licensed retailers. It is clear that NASPL has made its goal of blocking legislation to prevent Internet gambling a higher priority than good relations with licensed lottery retailers.

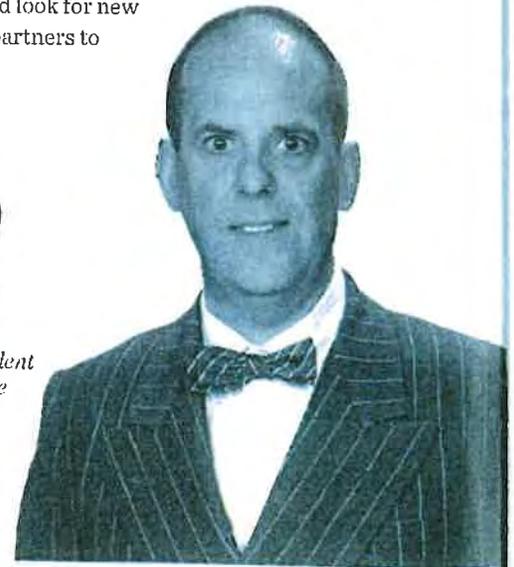
The other thing that NASPL's misleading claim shows is desperation, and that is good news for convenience store owners. NASPL recognizes that the 2014 Wire Act is gaining momentum and has a chance to become law. And that has made NASPL desperate enough to try to mislead people in order to derail the bill.

This all seems so unnecessary. State lotteries and convenience store operators can and should have a symbiotic working relationship. We need each other to be successful. Rather than disseminating misleading information to obtain an artificial legislative victory that creates an adverse environment for cooperation, lotteries should look for new ways to work with their retail partners to everyone's benefit.

From Capitol Hill,



Lyle Beckwith is senior vice president of government relations. He can be reached at (703) 518-4220 or at lbeckwith@nacsonline.com.





September 12, 2014

The Honorable Kelly Ayotte
144 Russell Senate Office Building
Washington, D.C. 20510-2907

Re: The Restoration of America's Wire Act (S. 2159)

Dear Senator Ayotte:

On behalf of Cumberland Farms, Inc. and its subsidiary, Gulf Oil Limited Partnership, I am writing to thank you for your co-sponsorship of S. 2159, the Restoration of America's Wire Act. This bill is needed to prevent a rush of states selling lottery tickets online – and a rush of other gambling businesses offering online games of every kind. The potential for this onslaught of internet gaming can create problems for children, increase addiction issues, and hurt Main Street businesses like ours. Your leadership on this issue is truly appreciated.

As you know, Cumberland Farms has been serving customers in New England since 1939. Today, we have 46 company-operated Cumberland Farms stores in New Hampshire, plus an additional 80 outlets in the state through which Gulf sells our branded fuels. We directly employ 475 people in New Hampshire, remit \$28 million in federal and state taxes annually from our New Hampshire operations, and have invested millions more in the state toward renovations and new construction in recent years.

One of the reasons for our success in New Hampshire and throughout the United States is our adherence to a simple philosophy: in an on-the-go world, we provide the products that our customers demand. This includes everything from food and beverages to gasoline. We try to make our customers' lives easier and respond to the fast pace of their daily routines.

Among the items that we offer in our stores are lottery tickets. While we don't make much money selling the tickets, we depend upon the customers they bring into our stores. Those customers buy other items and help keep us going. Many stores in our industry throughout New Hampshire and across the country depend on these sales just like we do. Indeed, industry data shows that customers that purchase lottery games in a store will also purchase at least one non-lottery product 95% of the time. Almost by definition, convenience stores strive to offer one-stop shopping, and the competition to do so is fierce. Therefore, if a customer purchases lottery tickets elsewhere, we stand an increased chance of losing their business for food, beverages, motor fuels, and other items as well.

Your support for S. 2159 will go a long way toward allowing our stores in New Hampshire to continue to thrive. We remain concerned, however, that some will try to create carve-outs to allow the sale of lottery tickets online. We urge you to do whatever you can, working with the cosponsors of S. 2159 and Senate leadership, to prevent that from happening. We need the bill to pass and we need it to pass without carve-outs.

Thank you for your efforts to-date championing New Hampshire businesses like ours. We hope these efforts will be successful and that you will be able to get S. 2159 passed this year.

Sincerely,

Ari N. Hascotes
Chief Executive Officer

MEMORANDUM

TO: LAS VEGAS SANDS CORPORATION
FROM: DAVE SACKETT
RE: VOTER ATTITUDES TOWARDS INTERNET GAMBLING
DATE: OCTOBER 9, 2013

The Tarrance Group is pleased to present the Las Vegas Sands Corporation with the key findings from a survey of voter attitudes in four states – California, Kentucky, Virginia, and Pennsylvania – regarding internet gambling. These key findings are based on telephone interviews with a total of N=2,216 “likely” registered voters throughout these four states. Responses to this survey were gathered during the period between June-October, 2013. The margin of error associated with the sample for each of these studies is $\pm 4.3\%$ in 95 out of 100 cases.

KEY FINDINGS

- Voters in these four states are largely “pro-gaming.” Sixty percent (60%) of voters in these four states approve of their state allowing gaming as a way to generate revenue for the state, and only thirty-five percent (35%) are opposed.

| | | <u>PA</u> | <u>CA</u> | <u>KY</u> | <u>VA</u> | <u>Mean</u> |
|-----------------------------------|------------|-----------|-----------|-----------|-----------|-------------|
| Allow gaming to generate revenue: | Approve | 66% | 57% | 61% | 54% | 60% |
| | Disapprove | 29% | 37% | 35% | 40% | 35% |

- It is also the case that a majority of voters in both California and Pennsylvania favor their state expanding gambling as a way to generate additional revenue for the state to help deal with budget issues.

| | | <u>PA</u> | <u>CA</u> | <u>KY</u> | <u>VA</u> | <u>Mean</u> |
|-----------------------------------|--------|-----------|-----------|-----------|-----------|-------------|
| New gambling to deal with deficit | Favor | 54% | 48% | --- | --- | 51% |
| | Oppose | 41% | 48% | --- | --- | 45% |

- In three of the four states, the fundamental view that voters have of “casinos with Las Vegas style gaming” are quite positive, with fifty-three percent (53%) indicating that they have a positive view of these casinos and only thirty-nine percent (39%) indicating that they have a negative view.

| | | <u>PA</u> | <u>CA</u> | <u>KY</u> | <u>VA</u> | <u>Mean</u> |
|-------------------------------------|----------|-----------|-----------|-----------|-----------|-------------|
| Casinos with Las Vegas style gaming | Positive | 57% | 58% | 53% | 44% | 53% |
| | Negative | 35% | 34% | 41% | 48% | 39% |

- However, voters in all four states have a universally different (and far more negative) view of internet gambling and internet poker. As you can see from the chart below, over 60% of voters in each of these four states indicate that they have a negative view of internet gambling/poker.

| | | <u>PA</u> | <u>CA</u> | <u>KY</u> | <u>VA</u> | <u>Mean</u> |
|-------------------------|----------|-----------|-----------|-----------|-----------|-------------|
| Internet gambling/poker | Positive | 21% | 26% | 24% | 18% | 22% |
| | Negative | 69% | 61% | 63% | 72% | 66% |

- Further confirming evidence of the fact that voters view internet gambling/poker very differently than they do traditional forms of gambling was found in the results of the “competing thematic” that respondents were exposed to.

Some people say/

Other people say that internet gambling is no different than the other types of gambling that already exist, and that it is simply a natural extension of gambling options in this technological age.

Other people say/

Some people say that internet gambling is very different from other types of gambling that already exist and that there are a number of key problems and potential abuses with online gambling that do not exist with traditional casino gambling.

| | | <u>PA</u> | <u>CA</u> | <u>KY</u> | <u>VA</u> | <u>Mean</u> |
|---------------------------------|----------------|-----------|-----------|-----------|-----------|-------------|
| Online vs. traditional gambling | No difference | 27% | 30% | 32% | 31% | 30% |
| | Very different | 63% | 58% | 51% | 56% | 57% |

- The data from the surveys in Kentucky and Virginia found strong support for the current ban on internet gambling, with almost sixty percent (60%) indicating that they favor the current ban on internet gambling.

| | | <u>PA</u> | <u>CA</u> | <u>KY</u> | <u>VA</u> | <u>Mean</u> |
|----------------------------------|--------|-----------|-----------|-----------|-----------|-------------|
| Current Ban on internet gambling | Favor | --- | --- | 63% | 55% | 59% |
| | Oppose | --- | --- | 27% | 33% | 30% |

- Finally, the data from these four states shows a universal opposition to any proposal that would legalize internet gambling or internet poker. As you can see from the chart below, over 60% of voters in these four states are opposed to any proposal to legalize internet gambling or internet poker, and this opposition is strong in each state.

| | | <u>PA</u> | <u>CA</u> | <u>KY</u> | <u>VA</u> | <u>Mean</u> |
|------------------------------------|--------|-----------|-----------|-----------|-----------|-------------|
| Legalizing Internet gambling/poker | Favor | 32% | 30% | 35% | 27% | 31% |
| | Oppose | 64% | 63% | 58% | 66% | 63% |

- Even among those voters in each of these four states that self-identify as “active gamblers”, a solid majority in each of the four states indicate that they would be opposed to allowing internet gambling or internet poker.

###

Poll: Americans split on recreational marijuana, but against online gambling

RJ [reviewjournal.com](http://reviewjournal.com/business/casinos-gaming/poll-americans-split-recreational-marijuana-against-online-gambling) /business/casinos-gaming/poll-americans-split-recreational-marijuana-against-online-gambling

ASSOCIATED PRESS

ATLANTIC CITY — Americans are split over whether marijuana should be legalized for recreational use, according to a poll released Thursday. But the same poll finds them solidly opposed to online gambling.

The Fairleigh Dickinson University PublicMind poll finds that 50 percent of Americans favor legalizing marijuana use, while 27 percent support legalizing Internet gambling in the 47 states that don't allow it.

Although only New Jersey, Nevada and Delaware currently allow Internet gambling, at least 10 other states are or recently considered legalizing it.

"Right now online gambling looks to be a long shot in the court of public opinion," said Krista Jenkins, the poll's director and a professor of political science at the university.

The poll examined public attitudes about two activities that Jenkins said are taking place whether legal or not.

It found that 65 percent of respondents are not closely following news about Internet gambling.

But when asked if they favor or oppose allowing casinos to run online gambling for people in their states, 63 percent are opposed, with 27 percent approving. The numbers are largely unchanged from when similar questions were asked in 2012 and 2010.

In contrast, far more Americans are paying attention to news on marijuana legalization, with 86 percent saying they've heard of or read about legalization efforts.

By a ratio of 2-to-1, Democrats (63 percent) favor legalization more than Republicans (32 percent), with independents (58 percent) more closely aligned with Democrats.

Young people also are far more supportive of legalization, with 65 percent of the millennial generation and over half of Gen Xers (56 percent) in favor, compared with fewer than half (48 percent) of baby boomers and around a third (36 percent) of the World War II generation.

"Democrats see getting high as a lifestyle choice, whereas Republicans are more likely to understand it through the prism of morality and social deviance," Jenkins said. "However, the age differences we're seeing suggest that legal (pot) smoking in the future is more a question of 'when' rather than 'if.'"

Washington and Colorado have legalized recreational marijuana use, and several other states are considering it. Numerous others have approved medical marijuana use.

The nationwide poll of 1,151 adults ages 18 and older who reside in the United States was conducted by telephone with both landline and cellphones from April 21-27. It has a margin of error of

plus or minus 2.9 percentage points.

The Christian Science Monitor – CSMonitor.com

Why the chips are down for Internet gambling

Three states jumped into online gaming last year with high hopes. But so far their take is very low. The inherent problems in this addictive form of gambling should give pause to other states and to Congress if they are tempted to follow suit.

By the Monitor's Editorial Board | JULY 21, 2014

Last year, three states became the first to launch Internet gambling – but only for people within each state in order to avoid breaking federal law.

In New Jersey, by far the largest of the three, Gov. Chris Christie predicted \$180 million in revenue by July 1.

But like a gambler who believes in the mirage of luck, he was sadly disappointed. Online gambling revenue turned out to be \$10.7 million, far below the predicted \$180 million.

At the same time, the number of problem gamblers seeking help from the state went up, a clue to how 24-hour access to online gambling in the privacy of one's home can lead to trouble, especially for young people.

And to add to New Jersey's dashed dreams, a poll revealed a sharp rise in the disapproval of Internet gambling among residents – from 46 percent to 57 percent – in less than a year.

Internet gambling is off to a slow start in the three states – New Jersey, Delaware, Nevada – and rightly so. The inherent problems of protecting problem gamblers and other necessary regulations give it a troublesome future. In Europe, too, which has nearly half of the world market, online poker traffic is down while concern about the industry's effect is rising.

Last week, the European Union recommended to member states that gambling websites be required to check players' ages and identities when they open accounts. The EU also wants the industry to tell players about the risks of gambling and enable them to set spending limits.

"We must better protect all citizens, and in particular our children, from the risks associated with gambling," said an EU commissioner, Michel Barnier.

The online gambling industry in the United States is worried. It needs one big state to succeed in order to break open the market nationwide and also convince Congress to drop a federal law against Internet gambling across state lines. As hopes fade for New Jersey's experiment, the industry is turning its sights on Pennsylvania as the next big state to jump on board.

About 4 to 8 percent of young adults are vulnerable to compulsive gambling, according to New Jersey officials. And a Canadian think tank, the Alberta Gambling Research Institute, estimates that problem gambling touches about 10 percent of families in North America.



This photo shows gambling chips from four Atlantic City N.J. casinos that have either already gone out of business this year, or could do so by September, in part because of their low earnings after their entry into the new business of online gaming. (AP Photo)

As more elected leaders make big predictions about the revenue from Internet gambling, voters must not only puncture those rosy predictions but also tally up the social costs of expanding gambling to the Web. The winnings are often an illusion, but the costs from gambling addiction are real.

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H R 4411 RECORDED VOTE 11-Jul-2006 3:18 PM

QUESTION: On Passage

BILL TITLE: Unlawful Internet Gambling Enforcement Act

| | <u>AYES</u> | <u>NOES</u> | PRES | <u>NV</u> |
|---------------|-------------|-------------|------|-----------|
| REPUBLICAN | 201 | 17 | | 12 |
| DEMOCRATIC | 115 | 76 | | 10 |
| INDEPENDENT | 1 | | | |
| TOTALS | 317 | 93 | | 22 |

1. Votes on UIGEA by Current RSC Members Serving in 2006

---- AYES -- 42 among current RSC Members ---

| | | |
|--------------|---------------|---------------|
| *Aderholt | *Garrett (NJ) | *Miller (FL) |
| *Barton (TX) | *Gingrey | *Neugebauer |
| *Bishop (UT) | *Gohmert | *Pearce |
| *Blackburn | *Goodlatte | *Pitts |
| *Brady (TX) | *Granger | *Price (GA) |
| *Burgess | *Graves | *Rogers (AL) |
| *Carter | *Hensarling | *Royce |
| *Chabot | *Issa | *Shimkus |
| *Cole (OK) | *Johnson, Sam | *Smith (TX) |
| *Conaway | *King (IA) | *Thornberry |
| *Culberson | *Kline | *Turner |
| *Fortenberry | *Lucas | *Westmoreland |
| *Foxx | *Marchant | *Wilson (SC) |
| *Franks (AZ) | *McCaul (TX) | |
| | *McMorris | |

(note: also voting AYE -- Chocola (club for growth))

---- NOES - 1 among current RSC members ---

| | | |
|--|--|------|
| | | *Poe |
|--|--|------|

---- NOT VOTING -- 4 among current RSC members ---

| | | |
|---------|----------|-----------|
| *Forbes | *McHenry | *Sessions |
|---------|----------|-----------|

| | | |
|--|------------|--|
| | *Ryan (WI) | |
|--|------------|--|

2. Full Roll Call vote on UIGEA (note: *current Members)

---- AYES 317 ---

| | | |
|----------------------|----------------------|------------------------|
| *Aderholt | Gallegly | Myrick |
| Akin | *Garrett (NJ) | *Neugebauer |
| *Alexander | Gerlach | Northup |
| <i>Allen</i> | Gilchrest | Norwood |
| Bachus | Gillmor | *Nunes |
| <i>Baird</i> | Gingrey | <i>Oberstar</i> |
| Baker | *Gohmert | <i>Obey</i> |
| Barrett (SC) | Goode | <i>Ortiz</i> |
| <i>Barrow</i> | *Goodlatte | Osborne |
| Bartlett (MD) | <i>Gordon</i> | Otter |
| *Barton (TX) | *Granger | Oxley |
| Bass | *Graves | * <i>Pallone</i> |
| <i>Bean</i> | * <i>Green, Al</i> | * <i>Pascrell</i> |
| Beauprez | * <i>Green, Gene</i> | <i>Payne</i> |
| <i>Berry</i> | Gutknecht | *Pearce |
| Biggert | Hall | * <i>Pelosi</i> |
| Bilbray | <i>Harman</i> | Pence |
| Bilirakis | *Harris | * <i>Peterson (MN)</i> |
| * <i>Bishop (GA)</i> | Hart | Peterson (PA) |
| <i>Bishop (NY)</i> | Hayes | Petri |
| *Bishop (UT) | Hayworth | Pickering |
| *Blackburn | Hefley | *Pitts |
| * <i>Blumenauer</i> | *Hensarling | Platts |
| Blunt | Herger | <i>Pomeroy</i> |
| Boehlert | <i>Herseth</i> | *Price (GA) |
| *Boehner | * <i>Higgins</i> | * <i>Price (NC)</i> |
| Bonilla | Hobson | Pryce (OH) |
| Bonner | Hoekstra | Putnam |
| Bono | <i>Holt</i> | Radanovich |
| Boozman | <i>Hooley</i> | <i>Rahall</i> |
| <i>Boren</i> | Hostettler | Ramstad |
| <i>Boswell</i> | Hulshof | Regula |
| <i>Boucher</i> | *Hunter | Rehberg |
| Boustany | Hyde | *Reichert |
| <i>Boyd</i> | Inglis (SC) | Renzi |

| | | |
|--------------------|--------------------|----------------|
| Bradley (NH) | *Issa | Reynolds |
| *Brady (PA) | Jefferson | *Rogers (AL) |
| *Brady (TX) | Jindal | *Rogers (KY) |
| Brown (OH) | Johnson (CT) | Rogers (MI) |
| Brown (SC) | Johnson (IL) | Ross |
| Brown-Waite, Ginny | *Johnson, Sam | *Royce |
| *Burgess | *Jones (NC) | *Ruppersberger |
| Burton (IN) | Jones (OH) | *Ryan (OH) |
| *Butterfield | Kanjorski | Ryun (KS) |
| Buyer | *Kaptur | Sabo |
| *Calvert | Keller | Salazar |
| Camp (MI) | *Kelly | Sanders |
| Campbell (CA) | Kennedy (MN) | Saxton |
| Cannon | *King (IA) | Schmidt |
| Cantor | *King (NY) | Schwartz (PA) |
| Capito | Kingston | Schwarz (MI) |
| Cardin | Kirk | *Scott (GA) |
| Cardoza | *Kline | *Sensenbrenner |
| *Carter | Knollenberg | Shadegg |
| Case | Kuhl (NY) | Shaw |
| Castle | LaHood | Shays |
| *Chabot | *Langevin | *Sherman |
| Chandler | Lantos | Sherwood |
| Chocola | *Larsen (WA) | *Shimkus |
| *Cleaver | *Larson (CT) | *Shuster |
| *Clyburn | Latham | Simmons |
| Coble | LaTourette | *Simpson |
| *Cole (OK) | Leach | Skelton |
| *Conaway | *Levin | *Smith (TX) |
| *Cooper | Lewis (CA) | *Smith (WA) |
| Costa | *Lewis (GA) | Snyder |
| Costello | Lewis (KY) | Sodrel |
| Cramer | Linder | Souder |
| *Crenshaw | Lipinski | Spratt |
| *Crowley | *Lowey | Stearns |
| Cubin | *Lucas | Stupak |
| Cuellar | Lungren, Daniel E. | Sullivan |
| *Culberson | *Lynch | Sweeney |
| Davis (AL) | *Maloney | Tancredo |
| *Davis (CA) | Manzullo | Tanner |
| Davis (KY) | *Marchant | Taylor (MS) |
| Davis (TN) | Marshall | Taylor (NC) |
| Davis, Tom | Matheson | *Thornberry |
| Deal (GA) | *McCarthy | *Turner |
| *DeFazio | *McCaul (TX) | Udall (CO) |
| *DeGette | *McCollum (MN) | *Upton |

| | | |
|-------------------|---------------------------|----------------------------|
| * <i>DeLauro</i> | McCotter | * <i>Van Hollen</i> |
| *Dent | McCrery | * <i>Visclosky</i> |
| Diaz-Balart, L. | McHugh | *Walden (OR) |
| *Diaz-Balart, M. | <i>McIntyre</i> | Walsh |
| <i>Dicks</i> | McKeon | Wamp |
| * <i>Doggett</i> | *McMorris | * <i>Wasserman Schultz</i> |
| Doolittle | <i>Meehan</i> | * <i>Waters</i> |
| Drake | <i>Meek (FL)</i> | <i>Waxman</i> |
| Duncan | * <i>Meeks (NY)</i> | Weldon (FL) |
| * <i>Edwards</i> | <i>Melancon</i> | Weldon (PA) |
| Ehlers | *Mica | Weller |
| <i>Emanuel</i> | <i>Michaud</i> | *Westmoreland |
| Emerson | <i>Millender-McDonald</i> | *Whitfield |
| English (PA) | *Miller (FL) | Wicker |
| <i>Etheridge</i> | *Miller (MI) | Wilson (NM) |
| Everett | <i>Miller (NC)</i> | *Wilson (SC) |
| <i>Fattah</i> | Miller, Gary | Wolf |
| Feeney | <i>Mollohan</i> | <i>Wu</i> |
| Ferguson | <i>Moore (KS)</i> | <i>Wynn</i> |
| *Fitzpatrick (PA) | * <i>Moore (WI)</i> | Young (FL) |
| <i>Ford</i> | Moran (KS) | |
| *Fortenberry | <i>Moran (VA)</i> | |
| *Foxy | *Murphy | |
| *Franks (AZ) | <i>Murtha</i> | |
| *Frelinghuysen | Musgrave | |

--- NOES 93 ---

| | | |
|-------------------------|---------------------------|----------------------------|
| <i>Abercrombie</i> | <i>Hastings (FL)</i> | <i>Owens</i> |
| <i>Ackerman</i> | *Hastings (WA) | * <i>Pastor</i> |
| * <i>Andrews</i> | <i>Holden</i> | Paul |
| <i>Baca</i> | * <i>Honda</i> | *Poe |
| <i>Baldwin</i> | * <i>Hoyer</i> | Pombo |
| * <i>Becerra</i> | <i>Inslee</i> | Porter |
| <i>Berkley</i> | * <i>Israel</i> | * <i>Rangel</i> |
| <i>Berman</i> | <i>Jackson (IL)</i> | <i>Reyes</i> |
| * <i>Brown, Corrine</i> | * <i>Jackson-Lee (TX)</i> | *Rohrabacher |
| * <i>Capps</i> | * <i>Johnson, E. B.</i> | <i>Rothman</i> |
| * <i>Capuano</i> | <i>Kennedy (RI)</i> | * <i>Roybal-Allard</i> |
| <i>Carnahan</i> | <i>Kildee</i> | * <i>Rush</i> |
| * <i>Carson</i> | <i>Kilpatrick (MI)</i> | * <i>Sánchez, Linda T.</i> |
| * <i>Clay</i> | * <i>Kind</i> | * <i>Sanchez, Loretta</i> |
| * <i>Conyers</i> | Kolbe | * <i>Schakowsky</i> |
| * <i>Cummings</i> | <i>Kucinich</i> | * <i>Schiff</i> |
| * <i>Davis (IL)</i> | * <i>Lee</i> | * <i>Scott (VA)</i> |

| | | |
|-------------------|-------------------------|---------------------|
| <i>Delahunt</i> | * <i>LoBiondo</i> | * <i>Serrano</i> |
| * <i>Dingell</i> | * <i>Lofgren, Zoe</i> | <i>Solis</i> |
| <i>Dreier</i> | <i>Mack</i> | <i>Stark</i> |
| * <i>Engel</i> | * <i>Markey</i> | <i>Tauscher</i> |
| * <i>Eshoo</i> | * <i>Matsui</i> | * <i>Tiberi</i> |
| * <i>Farr</i> | * <i>McDermott</i> | * <i>Tierney</i> |
| <i>Filner</i> | * <i>McGovern</i> | <i>Towns</i> |
| <i>Flake</i> | <i>McKinney</i> | <i>Udall (NM)</i> |
| <i>Foley</i> | * <i>Miller, George</i> | * <i>Velázquez</i> |
| <i>Fossella</i> | * <i>Nadler</i> | <i>Watson</i> |
| <i>Frank (MA)</i> | * <i>Napolitano</i> | * <i>Watt</i> |
| <i>Gibbons</i> | * <i>Neal (MA)</i> | <i>Weiner</i> |
| <i>Gonzalez</i> | <i>Ney</i> | <i>Woolsey</i> |
| * <i>Grijalva</i> | <i>Olver</i> | * <i>Young (AK)</i> |

---- NOT VOTING 22 ----

| | | |
|----------------------|-----------------------|---------------------|
| <i>Davis (FL)</i> | * <i>Hinojosa</i> | * <i>Sessions</i> |
| <i>Davis, Jo Ann</i> | <i>Istook</i> | * <i>Slaughter</i> |
| * <i>Doyle</i> | <i>Jenkins</i> | * <i>Smith (NJ)</i> |
| <i>Evans</i> | * <i>McHenry</i> | <i>Strickland</i> |
| * <i>Forbes</i> | <i>McNulty</i> | <i>Tiahrt</i> |
| <i>Green (WI)</i> | <i>Nussle</i> | <i>Wexler</i> |
| * <i>Gutierrez</i> | * <i>Ros-Lehtinen</i> | |
| <i>Hinchey</i> | * <i>Ryan (WI)</i> | |

3. Current RSC MEMBERSHIP

RSC Member List

| | | | |
|---|-------|---|----|
| <u>Robert Aderholt</u> | AL-04 | <u>Steve King</u> | IA |
| <u>Justin Amash</u> | MI-03 | <u>Jack Kingston</u> | GA |
| <u>Michele Bachmann</u> | MN-03 | <u>John Kline</u> | MO |
| <u>Spencer Bachus</u> | AL-06 | <u>Raul Labrador</u> | ID |
| <u>Andy Barr</u> | KY-06 | <u>Doug LaMalfa</u> | CA |
| <u>Joe Barton</u> | TX-06 | <u>Doug Lamborn</u> | CO |
| <u>Dan Benishek</u> | MI-01 | <u>James Lankford</u> | OK |
| <u>Kerry Bentivolio</u> | MI-11 | <u>Robert Latta</u> | OH |
| <u>Gus Bilirakis</u> | FL-12 | <u>Billy Long</u> | MO |
| <u>Rob Bishop</u> | UT-01 | <u>Frank Lucas</u> | OK |
| <u>Diane Black</u> | TN-06 | <u>Blaine Luetkemeyer</u> | MO |
| <u>Marsha Blackburn</u> | TN-07 | <u>Cynthia Lummis</u> | WV |

| | | | |
|------------------------|-------|-------------------------------|-------|
| <u>Kevin Brady</u> | TX-08 | <u>Kenny Marchant</u> | TX-24 |
| <u>Jim Bridenstine</u> | OK-01 | <u>Tom Marino</u> | PA-10 |
| <u>Mo Brooks</u> | AL-05 | <u>Thomas Massie</u> | KY-04 |
| <u>Susan Brooks</u> | IN-05 | <u>Michael McCaul</u> | TX-10 |
| <u>Paul Broun</u> | GA-10 | <u>Tom McClintock</u> | CA-04 |
| <u>Vern Buchanan</u> | FL-16 | <u>Patrick McHenry</u> | NC-10 |
| <u>Larry Bucshon</u> | IN-08 | <u>Buck McKeon</u> | CA-25 |
| <u>Michael Burgess</u> | TX-26 | <u>David McKinley</u> | WV-01 |
| <u>Dave Camp</u> | MI-04 | <u>Cathy McMorris Rodgers</u> | WA-05 |
| <u>John Campbell</u> | CA-45 | <u>Mark Meadows</u> | NC-11 |
| <u>Eric Cantor</u> | VA-07 | <u>Luke Messer</u> | IN-06 |
| <u>John Carter</u> | TX-31 | <u>Jeff Miller</u> | FL-01 |
| <u>Bill Cassidy</u> | LA-06 | <u>Markwayne Mullin</u> | OK-02 |
| <u>Steve Chabot</u> | OH-01 | <u>Mick Mulvaney</u> | SC-05 |
| <u>Jason Chaffetz</u> | UT-03 | <u>Randy Neugebauer</u> | TX-19 |

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| <u>Tom Cole</u> | OK-04 | <u>Kristi Noem</u> | SD |
| <u>Chris Collins</u> | NY-27 | <u>Richard Nugent</u> | FL-11 |
| <u>Doug Collins</u> | GA-09 | <u>Alan Nunnelee</u> | MS-01 |
| <u>Michael Conaway</u> | TX-11 | <u>Pete Olson</u> | TX-22 |
| <u>Tom Cotton</u> | AR-04 | <u>Steven Palazzo</u> | MS-04 |
| <u>Kevin Cramer</u> | ND | <u>Steve Pearce</u> | NM-02 |
| <u>Rick Crawford</u> | AR-01 | <u>Scott Perry</u> | PA-04 |
| <u>John Culberson</u> | TX-07 | <u>Robert Pittenger</u> | NC-09 |
| <u>Steve Daines</u> | MT | <u>Joe Pitts</u> | PA-16 |
| <u>Rodney Davis</u> | IL-13 | <u>Ted Poe</u> | TX-02 |
| <u>Jeff Denham</u> | CA-10 | <u>Mike Pompeo</u> | KS-04 |
| <u>Ron DeSantis</u> | FL-06 | <u>Bill Posey</u> | FL-08 |
| <u>Scott DesJarlais</u> | TN-04 | <u>Tom Price</u> | GA-06 |
| <u>Sean Duffy</u> | WI-07 | <u>Trey Radel</u> | FL-19 |
| <u>Jeff Duncan</u> | SC-03 | <u>Tom Reed</u> | NY-23 |

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| <u>Renee Ellmers</u> | NC-07 | <u>Jim Renacci</u> | OH-16 |
| <u>Blake Farenthold</u> | TX-27 | <u>Reid Ribble</u> | WI-08 |
| <u>Stephen Fincher</u> | TN-08 | <u>Tom Rice</u> | SC-07 |
| <u>Chuck Fleischmann</u> | TN-03 | <u>Scott Rigell</u> | VA-02 |
| <u>John Fleming</u> | LA-04 | <u>Phil Roe</u> | TN-01 |
| <u>Bill Flores</u> | TX-17 | <u>Mike Rogers</u> | AL-03 |
| <u>Randy Forbes</u> | VA-04 | <u>Todd Rokita</u> | IN-04 |
| <u>Jeff Fortenberry</u> | NE-01 | <u>Peter Roskam</u> | IL-06 |
| <u>Virginia Foxx</u> | NC-05 | <u>Dennis Ross</u> | FL-15 |
| <u>Trent Franks</u> | AZ-08 | <u>Keith Rothfus</u> | PA-12 |
| <u>Cory Gardner</u> | CO-04 | <u>Ed Royce</u> | CA-39 |
| <u>Scott Garrett</u> | NJ-05 | <u>Paul Ryan</u> | WI-01 |
| <u>Bob Gibbs</u> | OH-07 | <u>Matt Salmon</u> | AZ-05 |
| <u>Phil Gingrey</u> | GA-11 | <u>Mark Sanford</u> | SC-01 |
| <u>Louie Gohmert</u> | TX-01 | <u>Steve Scalise</u> | LA-01 |

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| <u>Bob Goodlatte</u> | VA-06 | <u>David Schweikert</u> | AZ-06 |
| <u>Paul Gosar</u> | AZ-04 | <u>Austin Scott</u> | GA-08 |
| <u>Trey Gowdy</u> | SC-04 | <u>Pete Sessions</u> | TX-32 |
| <u>Kay Granger</u> | TX-12 | <u>John Shimkus</u> | IL-15 |
| <u>Brett Guthrie</u> | KY-2 | <u>Adrian Smith</u> | NE-03 |
| <u>Sam Graves</u> | MO-06 | <u>Jason Smith</u> | MO-08 |
| <u>Tom Graves</u> | GA-14 | <u>Lamar Smith</u> | TX-21 |
| <u>Tim Griffin</u> | AR-02 | <u>Steve Southerland</u> | FL-02 |
| <u>Michael Grimm</u> | NY-11 | <u>Chris Stewart</u> | UT-02 |
| <u>Ralph Hall</u> | TX-04 | <u>Steve Stivers</u> | OH-15 |
| <u>Richard Hanna</u> | NY-22 | <u>Steve Stockman</u> | TX-36 |
| <u>Gregg Harper</u> | MS-03 | <u>Marlin Stutzman</u> | IN-03 |
| <u>Andy Harris</u> | MD-01 | <u>Mac Thornberry</u> | TX-13 |
| <u>Vicky Hartzler</u> | MO-04 | <u>Scott Tipton</u> | CO-03 |
| <u>Jeb Hensarling</u> | TX-05 | <u>Mike Turner</u> | OH-10 |

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| <u>Jaime Herrera Beutler</u> | WA-03 | <u>Ann Wagner</u> | MO-02 |
| <u>George Holding</u> | NC-13 | <u>Tim Walberg</u> | MI-07 |
| <u>Richard Hudson</u> | NC-08 | <u>Jackie Walorski</u> | IN-02 |
| <u>Tim Huelskamp</u> | KS-01 | <u>Randy Weber</u> | TX-14 |
| <u>Bill Huizenga</u> | MI-02 | <u>Daniel Webster</u> | FL-10 |
| <u>Randy Hultgren</u> | IL-14 | <u>Brad Wenstrup</u> | OH-02 |
| <u>Duncan Hunter, Jr.</u> | CA-50 | <u>Lynn Westmoreland</u> | GA-03 |
| <u>Robert Hurt</u> | VA-05 | <u>Roger Williams</u> | TX-25 |
| <u>Darrell Issa</u> | CA-49 | <u>Joe Wilson</u> | SC-02 |
| <u>Lynn Jenkins</u> | KS-02 | <u>Robert Wittman</u> | VA-01 |
| <u>Bill Johnson</u> | OH-06 | <u>Steve Womack</u> | AR-03 |
| <u>Sam Johnson</u> | TX-03 | <u>Rob Woodall</u> | GA-07 |
| <u>Jim Jordan</u> | OH-04 | <u>Kevin Yoder</u> | KS-03 |
| <u>David Joyce</u> | OH-14 | <u>Ted Yoho</u> | FL-03 |
| <u>Mike Kelly</u> | PA-03 | <u>Todd Young</u> | IN-09 |



Urban League of
Greater Kansas City

1710 Paseo Blvd
Kansas City, Missouri 64108

816 471 0550
816 471 3064

March 17, 2015

Rep. Emanuel Cleaver II
U.S. House of Representatives
2335 Rayburn House Office Building
Washington, D.C. 20515

*Empowering Communities.
Changing Lives.*

Re: H.R.707, Restore America's Wire Act

Dear Congressman Cleaver:

As Chief Executive Officer of the Urban League of Greater Kansas City, I am writing to thank you for your past support of legislation to reinstate a longstanding ban on Internet gambling and provide Congress the chance to more fully consider the significant ramifications of legalizing such activities. H.R. 707, Restore America's Wire Act, is a bi-partisan bill which reinstates the longstanding view of the Justice Department and numerous federal courts that the Wire Act bans Internet gambling.

As you know, the Urban League of Greater Kansas City is a 95-year old, multi-racial organization dedicated to the economic advancement and empowerment of African Americans and other minorities. From time to time we take positions on legislation we believe will have an impact on the advancement of this mission. In our measured opinion, online gambling presents a special threat to African Americans and other minorities in our community, particularly the economically disadvantaged who may be lured by the prospect of winning "easy money" by gambling on their mobile phones, tablets, or computers. A 2009 study commissioned by the National Institute of Health (NIH) bears out such concerns. According to the NIH, African Americans are more likely than the general population to become what it calls "disaffected gamblers." Couple this with the fact that a recent Pew Institute study demonstrates that African Americans are more likely to use their cell phones for purposes other than making phone calls, and in our view we have a problem.

We are also concerned that Internet gambling may cut into our tax base and pose a direct threat to jobs and economic growth in our City. As you know, local brick and mortar casinos have become economic engines for job growth and tourism in our area. If online gambling were to be legalized, casino patrons would be less inclined to spend their money at our thriving local casinos. And our casinos – as well as the surrounding bars, restaurants and shops – would not have the hiring needs they currently enjoy.

In advance of next Thursday's Judiciary Committee hearing on Internet gambling, the KC Urban League respectfully asks that you again co-sponsor this very important legislation.

Respectfully,

Gwendolyn Grant
President & CEO



Dear House Judiciary Committee Member,

Please co-sponsor the Restore America's Wire Act (H.R. 707) to protect the right of American families to keep gambling casinos, online poker and lotteries out of their homes and off their children's cell phones, and support the Judiciary Committee promptly reporting out this bill with no loopholes.

Two days before Christmas in 2011, a Justice Department lawyer issued a legal opinion that threatens to fundamentally change how gambling is conducted in this country – taking it from an activity which requires physical presence in a public destination and making it available on potentially every cell phone, mobile device, tablet, laptop and home computer in the country.

The Justice Department opinion reversed 50 years of interpretation of the anti-gambling Federal Wire Act, stating that it now applies only to sports bets and not to online slot machines, casino games, lotteries or poker. The opinion opened the door for states to authorize Internet gambling, threatening to make gambling pervasive in American society – even though, as the President's nominee to be Attorney General, Loretta Lynch, testified, the opinion does not carry the force of law.

This momentous change to our nation's gambling policy was concocted in secret and without public consent. There is absolutely no evidence that December 23, 2011, the date of the Justice Department opinion, was the date the Internet became safe for gambling. There is no evidence the Justice Department even considered whether it is safe to turn cell phones into mobile casinos.

Internet gambling is a bad idea at the wrong time. An estimated 40% of white collar crime is committed by gambling addicts. Should we expand gambling in America online, we can only expect this number to increase.

The American people do not want this. Poll after poll has shown that the public opposes Internet gambling by large margins – with the opposition cutting across all demographics and political party affiliations – and for good reason. The public instinctively knows there is something fundamentally different and dangerous about putting mobile gambling casinos available 24 hours a day, 7 days a week on people's cell phones, tablets, laptops and computers.

Please co-sponsor the Restore America's Wire Act to protect every Family's Right to keep gambling casinos, video poker and lotteries out of their homes and off their children's cell phones, and support the Judiciary Committee promptly reporting out this bill with no loopholes.

Sincerely,

A handwritten signature in black ink that reads 'Regina Brown'.

Regina Brown
President
Transforming Florida, Inc.
10233 130th St.
Largo, Fl 33774

STATEMENT FOR THE RECORD

ON BEHALF OF

THE NATIONAL ASSOCIATION OF CONVENIENCE STORES

FOR THE

**HEARING OF THE HOUSE JUDICIARY SUBCOMMITTEE ON CRIME,
TERRORISM, HOMELAND SECURITY AND INVESTIGATIONS**

MARCH 25, 2015

“H.R. 707, THE RESTORATION OF AMERICA’S WIRE ACT”

My name is Lyle Beckwith. I am the Senior Vice President, Government Relations for the National Association of Convenience Stores (NACS) and I appreciate this opportunity to present NACS' views regarding Internet gambling law and regulation.

NACS is an international trade association representing more than 2,200 retail and 1,600 supplier company members. NACS member companies do business in nearly 50 countries worldwide, with the majority of members based in the United States. The U.S. convenience store industry, with more than 150,000 stores across the country, posted \$700 billion in total sales in 2012, of which \$501 billion were motor fuels sales. The majority of NACS members are small, independent operators. More than 70 percent of our total membership is composed of companies that operate ten stores or fewer, and more than 60 percent of our membership operates a single store.

In the United States, the convenience store industry sells more lottery tickets than any other channel of trade. Those sales are an important part of the economic viability of convenience stores, not because the sale of tickets earns the store a lot of money—it doesn't—but because the sale of lottery tickets gives customers a reason to go into the store and, in the process, they often buy other items. Those ancillary sales are tremendously important. Convenience stores have profit margins of just more than one percent and an average store makes less than \$40,000 per year in annual pre-tax profits. With these numbers, our members simply cannot afford to lose consumer foot traffic and resulting ancillary sales—indeed, for some of our members, it could make the difference between running a viable business or going under.

Unfortunately, our industry's sales and American consumers are threatened by an impending explosion of Internet gambling. In this testimony, I'd like to cover: how we got to this point; problems with the Department of Justice's change in its legal views on online gambling; what things will look like if Congress doesn't act; and the serious public policy ramifications of Congressional inaction. For all of the reasons discussed below, NACS strongly supports H.R. 707 (the Restoration of America's Wire Act) and urges every member of the Committee to support it as well.

I. Background

The Wire Act was enacted in 1961, and during the first fifty years the law was in effect, the U.S. Department of Justice took the view that gambling by use of the wires--everything from phone lines to the Internet--was illegal. All the while, the Department brought prosecutions to enforce the Wire Act and testified before Congress on this view of the law. Significantly, the Department maintained its view that the Wire Act prohibited gambling over the Internet during the early 2000s when Congress was considering legislation to create additional tools to curb illegal Internet gaming. Congress did pass such legislation in the form of the Unlawful Internet Gaming Enforcement Act (UIGEA). This Committee and Chairman Goodlatte in particular were central to the passage of that legislation. UIGEA did not define the universe of illegal Internet gaming because Congress understood that the Department of Justice had fully formed its view on the issue; namely, that other than some limited exceptions (e.g., for off-track betting on horse

ances, which was dealt with specifically in a separate law), the Wire Act clearly prohibited nearly all forms of Internet gambling.

From 2006, when UIGEA passed, to 2011, the only questions surrounding illegal Internet gaming involved enforcement (effectiveness of enforcement efforts and how to make them stronger). Then, in December 2011, the Department of Justice abruptly reversed its long-held position on the Wire Act and undercut the law that Congress had passed (UIGEA) relying upon the Department's 50-year-old legal interpretation. This remarkable move by the Department of Justice turned Internet gambling law and regulation on its head.

Overnight, we went from a nation in which gambling on the Internet was illegal under federal law to one in which individual states could authorize any and every form of gambling on the Internet, other than sports betting. Now, several states allow gambling on the Internet and many more are actively considering such a move. And, according to the Department of Justice, federal law does not bar these activities and we are left without any federal regulation to limit what states can do with respect to Internet gambling. This is a remarkable, and perhaps unprecedented, turn of events. The Internet, of course, does not recognize state boundaries, which means that we are moving toward every home, office and smart phone in the nation becoming a gambling hall.

II. Problems with the 2011 Department of Justice Opinion

Before looking at the implications of bringing gambling to every corner of the country, it may be helpful to examine what the Department of Justice actually did in 2011. First, the 2011 opinion from the Department's Office of Legal Counsel amounts to an end run around Congressional authority. The opinion, which does not carry the force of law but impacts enforcement of Internet gaming laws, effectively gutted multiple acts of Congress. The Department of Justice's move had a drastic impact on the law without going through official channels or the legislative process. Of course, legislating is not supposed to be the province of the Department of Justice.

The impropriety of the Department of Justice's action is only compounded by the fact that the Department got the law wrong in 2011. Exhibits A and B to this testimony are brief white papers detailing the legal issues involved, but I'd like to highlight a few points here. The first, which is the focus of Exhibit A, is that the Department's 2011 opinion runs afoul of well-established canons of statutory construction and mischaracterizes (where it does not ignore) the Wire Act's legislative history and purpose. The Wire Act was part of a package of anti-crime legislation developed by Congress over a decade, and was passed after Congress heard hours upon hours of testimony on the operations of organized crime and its reliance on revenues derived from illegal gaming operations, including sports and non-sports wagering. Indeed, as enacted, the Wire Act reflects a committee rewrite of certain provisions to clarify that the Act applies to use of the wires for "numbers" games, not just sports wagering. While the Wire Act was enacted pre-Internet, its fundamental purpose remains the same: to serve as a tool for federal prosecutors to combat gambling activities operated or otherwise advanced across state lines. A thorough review of the Wire Act, its legislative history, and its purposes demonstrates the deficiencies and incorrect conclusion in the Department of Justice's 2011 opinion.

Second, as discussed further in Exhibit B, the Department ignored other laws that grew up around the Wire Act to reinforce the illegality of Internet gambling—particularly the illegality of Internet lotteries. For example, the Interstate Transportation of Wagering Paraphernalia Act (“ITWPA”) of 1961 bars records, data, items, devices and other materials used in lotteries and other types of gambling from being sent through interstate commerce. And federal courts have ruled on more than one occasion that any communication over the Internet—even if that communication is initiated and received in the same state—is a communication through interstate commerce. *See, e.g., U.S. v. Hornaday*, 392 F.3d 1306, 1311 (11th Cir. 2004); *U.S. v. Kammersell*, 196 F. 3d. 1137, 1139 (10th Cir. 1999). In other words, the Internet is inherently interstate and therefore, lotteries conducted on the Internet trigger bans like those in the ITWPA.

Additionally, the Anti-Lottery Act and Interstate Wagering Amendment of 1994 (together, the “ALA”) makes Internet lotteries illegal in the United States. Unfortunately, the Department did not deal with either the ITWPA or the ALA in its 2011 opinion on the Wire Act, and consequently left the false impression that Internet lotteries are legal if they are authorized by a state when they clearly are not. Of course, the interplay between these laws and the Wire Act may itself have led the Department to a different conclusion on the Wire Act. To abruptly reverse a fifty-year-old legal position and undercut Congress' work is one thing, but to do so without even considering other relevant laws undermines the Department's credibility.

The upshot of the Department of Justice’s 2011 opinion is that federal prosecutors have been given bad guidance. Unfortunately, no one is in a position to challenge that bad guidance because the Department has significant prosecutorial discretion. With one fell swoop the Department struck down its position on the Wire Act and essentially expunged the ITWPA, the ALA, and UIGEA from the U.S. Code. Now it is up to Congress to restore those laws.

III. The Current Trajectory for Internet Gambling in the United States

Without Congressional action, the Department of Justice has set the country on a course for widespread gambling on the Internet. We need only look to Europe for a sense of where we’re headed. For example, the United Kingdom’s lottery has been online for years; Exhibit C to this testimony provides a clear picture of what the UK “lottery” looks like now. The UK “lottery” website offers gambling of virtually all sorts imaginable. Not only does the website offer people the chance to pick numbers for a lottery, play instant-win games and the like, it offers games called "Monopoly," "Snakes and Ladders," "Scrabble," "Hangman," "Connect Four," "Tetris," and many more. Not only is the variety of gambling games available on the "lottery" website remarkable, but it is difficult not to notice that a great many of the games are named after popular children's games. Is that the model we want in the United States?

With every state able to authorize any and every gambling game on the Internet and without federal regulation or limitations, the UK model is likely where we are headed. In fact, we are already getting close. The Delaware lottery already promotes "table games" on its website. These games are offered on other websites - those for the Delaware Park Racetrack, Dover Downs, and the Harrington Raceway - but the official Delaware lottery website lists the

games and prominently links to those websites. Oregon, which has not yet puts its games on the Internet, has electronic “lottery” terminals that allow people to play slots and poker. Indeed the Oregon lottery makes more than 80% of its money from video slots and video poker—it is far more casino than lottery. While this approach is Oregon’s prerogative and non-Internet video lottery terminals are legal, they help demonstrate how easy it will be for Internet “lotteries” to evolve into full-blown gambling websites very quickly.

Some argue that the Department of Justice opinion limits Internet gambling so the games can only be played in the states where they are authorized. While that is what the opinion says, the practical reality is more complicated than that. Things on the Internet are there for everyone to see, and while gambling websites might try to verify where someone is located to stop out-of-state gambling, there are methods available now (that will only multiply with more Internet gambling) to provide false locations. The simplest search on how to do this yields articles like, *How to Fake Your Location in Google Chrome* (at <http://www.labnol.org/internet/geo-location/>), *How to Disable or Fake Your Location in Firefox, Internet Explorer & Chrome* (at <http://www.makeuseof.com/tag/disable-fake-location-firefox-internet-explorer-chrome/>), and *Fake GPS Location* (at <https://play.google.com/store/apps/details?id=com.lexa.fakegps>). And this is just the tip of the iceberg. There are specific articles on the Internet with instructions on how to fake your location on android phones, iPhones, iPads and other devices.

This raises serious questions about the ability of gambling websites to accurately determine where customers are when they gamble. Of course, there are many questions about just how diligent gambling websites will be in trying to limit gambling to a particular state. After all, more gamblers mean more revenue for the website, even if those gamblers are outside the state where the gambling is supposedly legal. This issue is even more troubling if state-run lotteries are involved. While states might credibly enforce the law against private gambling websites, will state lotteries really police themselves as effectively? It doesn't seem likely. Nor does it seem likely, given the Department of Justice's legal opinion, that the federal government can be counted on to police state-run lotteries and keep them from luring out-of-state gamblers.

In sum, all signs point to widespread gambling of all types across the United States—regardless of individual states’ policy decisions with respect to gambling—if Congress does not restore the Wire Act. Currently, two states do not allow gambling of any sort, and eight states do not have lotteries. Most states prohibit some types of gambling. However, with Internet gambling, states that have adopted restricted gambling policies will be powerless to maintain them because people within their borders will be able to go online to gamble. Longstanding objections to Internet gambling from states like Utah, Virginia, and others will be rendered moot as people gamble from wherever they like. Failing to restore the Wire Act will directly and inescapably undercut states’ rights to set their own limits on gambling within their borders. And no part of any state – including houses of worship and schools – will be off-limits to people gambling on smartphones, tablets and similar devices.

Internet gambling is not necessarily a win-win for lottery states either. Inevitably, as lottery players are able to play whichever lottery they choose from wherever they are, some states will be winners and some will be losers. Money will flow to favored state lotteries and

away from less popular state lotteries. States' lottery revenue will be at significant risk as people become able to spend their money in other states without having to travel outside their homes to do so.

IV. Public Policy Problems with Internet Gambling

Gambling on the Internet presents a number of public policy problems. For NACS members, putting state lotteries online not only moves gambling into people's homes and offices as well as public places, it also makes the states direct sellers of gambling activities to individual consumers. That is not the role the states play today. Making states direct sellers and putting them in competition with the private sector is something new. This type of government competition will hurt the private sector and reduce tax revenues as private companies lose ancillary sales that they would otherwise earn from lottery customers coming into their stores.

But the problems with Internet gambling don't stop there. Verifying age—and thereby preventing children from gambling—is a difficult problem on the Internet. Our industry spends millions of dollars every year training clerks on how to properly check identification. Some of our members conduct their own internal sting operations to make sure employees are taking the proper steps to check IDs, and impose discipline (even firing) if they don't perform proper checks.

Our industry is uniquely qualified and equipped to perform the important function of age verification. Convenience stores check driver's licenses and other forms of identification more than any other sector in the U.S. economy. Our industry handles about 160 million transactions every day and a significant number of those are for age-restricted products. In fact, our industry checks more IDs each day than the Transportation Security Administration, which checks about 2 million IDs every day.

By contrast, it is worth noting that the history of age verification on the Internet is a woeful one. In 2008, the Court of Appeals for the Third Circuit found: “there is no evidence of age verification services or products available on the market to owners of websites that actually reliably establish or verify the age of Internet users. Nor is there evidence of such services or products that can effectively prevent access to Web pages by a minor.” *ACLU v. Mukasey*, 534 F.3d 181 (3d Cir. 2008) (quoting *ACLU v. Gonzales*, 478 F. Supp. 2d 775, 800 (E.D. Pa. 2007)). In comments submitted to the FDA in 2012 regarding non-face-to-face sale of tobacco products, the National Association of Attorneys General cited the findings of the above cases and a 2008 report issued by the Internet Safety and Technical Taskforce, which concluded: “Age verification and identity authentication technologies are appealing in concept but challenged in terms of effectiveness. Any system that relies on remote verification of information has potential for inaccuracies. For example, . . . it is never certain that the person attempting to verify an identity

is using their own actual identity or someone else's."¹ The Attorneys General then noted that, as of 2012, they had not seen anything to refute that finding.²

Internet sales of tobacco products, which have been going on for some time, provide important lessons with respect to online age verification problems. State attorneys general conducted sting operations on such sales and found that children as young as 9 years old were easily able to purchase cigarettes online.³ And a sting operation in New York found that twenty-four out of twenty-six websites allowed minors to purchase cigarettes.⁴ One study found that only 14 percent of cigarette orders placed by children online were rejected.⁵ A study published in the *Journal of the American Medical Association* found that more than 96 percent of minors aged 15 to 16 were able to find an Internet cigarette vendor and place an order in less than 25 minutes, with most completing the order in seven minutes.⁶ And a 2006 study of more than one hundred websites found that not a single one of them complied with California's requirements for age verification.⁷

For years, many tobacco-selling websites checked age by making someone click a button "verifying" that he or she was eighteen years old--and that was the full extent of age verification. It took years for Congress to pass legislation to make some impact on the problems with age verification for online tobacco sales. Allowing similar problems to flourish with respect to Internet gambling could allow children to fall into addiction and create financial debts that nobody wants them to incur. Experience overseas demonstrates that these problems will accompany online gaming. A 2009 study commissioned by the National Lottery Commission for the United Kingdom found that a fifth of schoolchildren are gambling illegally, even though online gaming companies are required to carry out stringent checks to prevent children from playing their games.

The simple fact is, proper in-person verification of age will always work better than online verification. There are inherent difficulties with confirming that a person at a computer

¹ National Association of Attorneys General, Comments to Food and Drug Administration, at 7, available at <http://www.regulations.gov/#!documentDetail;D=FDA-2011-N-0467-0110> (Jan. 19, 2012).

² *Id.*

³ Unger, JB, et al., "Are adolescents attempting to buy cigarettes on the Internet?," *Tobacco Control* 10: 360-63, December 2001 (citing Sherer, R, "States crack down on Web tobacco sales," *The Christian Science Monitor* (Nov. 8, 2000) & ABC News, "Getting smokes online: Children buying cigarettes with click of mouse," (Mar. 6, 2001)).

⁴ *Id.*

⁵ Rubin, R., et al., "Online Tobacco Sales Grow, States Lose," Forrester Research, Inc. (Apr. 27, 2001).

⁶ Jensen, JA, et al., "Availability of tobacco to youth via the Internet," *JAMA* 291(15): 1837 (Apr. 21, 2004).

⁷ Williams, RS, et al., "Internet cigarette vendors' lack of compliance with a California state law designed to prevent tobacco sales to minors," *Archives of Pediatrics and Adolescent Medicine* 160:988-989 (2006).

matches the identification being entered online. And with illegal youth gambling on the rise in the U.S., age verification is more important than ever.

Research from the Harvard School of Public Health and the Annenberg Public Policy Center shows a nearly 600% increase in gambling in post-secondary institutions between 2001 and 2005, with over 15% of students engaging in gambling each week in 2005. The reasons cited by the study are the spread of legalized casino gambling and Internet gambling. Notably, the study was conducted before UIGEA was enacted--an era to which the Department of Justice is retaking us.

Young people are often drawn to the video-game style of Internet gaming sites and, these days, are perfectly comfortable playing (and paying) online. Another study found that youths with gambling problems reported having a preference for lottery tickets compared to other forms of gambling. The study also found that purchasing lottery tickets is an addictive activity that introduces youth to the exciting properties of gambling.⁸ A Connecticut Council on Problem Gambling study found that one out of ten high school kids were compulsive gamblers, and the rate of problem gambling among high school students was more than twice the rate of adult problem gambling. The Connecticut Council study also found that lottery was among the most popular forms of gambling for these kids.⁹

Internet gambling presents a serious threat to young people and also threatens to exacerbate issues for problem gamblers. It is far easier to gamble excessively in the privacy of one's home, office, or car than it is to go to a store (in the case of lottery tickets) or travel to a casino in order to gamble. Gambling in the brick-and-mortar context entails some inherent social and logistical limitations, which can be helpful in reducing the amount of problem gambling. There are virtually no impediments to problem gambling on the Internet, especially once payment information is stored electronically and gambling requires—literally—the touch of a button on a phone or computer.

According to the 2014 annual report of the Problem Gamblers Help Network of West Virginia, from 2000 to 2013, 7,819 people called the gambling help hotline and reported problems with lottery gambling (including lottery tickets and lottery video terminals), compared to 1,517 who reported problems with slot machines, 129 with poker, 121 with horse races, 100 with cards, and 16 with roulette.¹⁰ Additionally, allowing online gambling (especially lotteries) would have a disproportionate impact on lower income families. The annual amount spent, or per capita play, by gamblers is highest for lower income households (\$597 per year), exceeding any other income category and more than double the amount spent on gambling by the highest earners (\$289 per year, on average). In addition, households earning just \$10,000 spend twice the

⁸ Jennifer Felsher, Jeffrey Derevensky, Rina Gupta, "Lottery participation by youth with gambling problems: are lottery tickets a gateway to other gambling venues?," *International Gambling Studies*, Vol. 4 (Nov. 2004).

⁹ Rani A. Desai, et. al., "Gambling Behavior among High School Students in the State of Connecticut," CT Council on Problem Gambling (May 15, 2007).

¹⁰ Annual Report, The Problem Gamblers Help Network of West Virginia, *available at* <http://www.1800gambler.net/data.html> (2014).

amount on gambling as households earning \$90,000. Put another way, the lowest-earning households spend about 10.8 percent of income on gambling, versus 0.7 percent of income for the highest earners.¹¹

While some will cynically argue that nothing can be done to reduce gambling online, the facts show otherwise. A survey published by the Gambling Commission, for example, found that one-third of gambling websites allowed underage betting. UIGEA, however, reduced the prevalence of youth gambling. In fact, one year after the passage of UIGEA, the University of Pennsylvania found that Internet gambling among college students significantly declined.¹² Unfortunately, the Department of Justice, with a single ill-constructed legal opinion, has undermined UIGEA and several other acts of Congress, and opened the doors to widespread and unchecked Internet gambling.

Proponents of Internet gambling tend to ignore all of these serious policy problems. They also tend to overstate (and sometimes invent) any benefits associated with Internet gaming. For example, proponents of putting lotteries online commonly emphasize the importance of Internet gaming for education funding. However, as a general rule, lotteries do *not* boost state spending on education. In September 2007, CBS News investigated 24 states that dedicate lottery funds for education and found that the percentage of state spending on education was down or flat in 21 of those states. CBS News also found that “even when proceeds are earmarked for education, lotteries generally cover only a fraction of state education spending”¹³ Similarly, in 2007, the *New York Times* found that lotteries accounted for less than 1 percent to 5 percent of the total revenue for K-12 education in the states that use lottery revenue for schools.¹⁴

Evidence suggests that non-lottery states are actually better off in terms of education spending than lottery states. States without lotteries, however, increase their spending over time and end up spending 10 percent more of their budgets, on average, on education compared to lottery states.¹⁵ Furthermore, running a lottery can cause long-term budget imbalances for education and other public services. According to the Nelson A. Rockefeller Institute of Government, while lottery revenues increase almost every year, revenue growth has been trending downward since 1986. Therefore, expenditures and demands on education and other public programs grow faster than gambling revenue over time. And spending on lottery tickets is

¹¹ National Center for Policy Analysis Task Force on Taxing the Poor, "Taxing the Poor" (June 22, 2007).

¹² "Card Playing Down Among College-Age Youth: Internet Gambling Also Declines," Annenberg Public Policy Center of the University of Pennsylvania (Oct. 18, 2007).

¹³ "Is the Lottery Shortchanging Schools?," CBS News, *available at* <http://www.cbsnews.com/news/is-the-lottery-shortchanging-schools/> (Sept. 17, 2007).

¹⁴ "For Schools, Lottery Payoffs Fall Short of Promises," *New York Times*, http://www.nytimes.com/2007/10/07/business/07lotto.html?_r=0 (Oct. 7, 2007).

¹⁵ McAuliffe, Elizabeth, "The State Sponsored Lottery; a Failure of Policy and Ethics," ASPA, 2006, *available at* <http://stoppredatorygambling.org/wp-content/uploads/2012/12/The-State-Sponsored-Lottery1.pdf>.

not stable over time, so it is not a dependable source of revenue for vital social programming like education.¹⁶

The fact is, lotteries spend most of their money keeping their games running. Across lottery states, on average, only 34 cents of every dollar spent on a lottery ticket goes to public programs after the lottery pays administrative and advertising expenses, and winner pay-outs.¹⁷

According to the New York Times, “most of the money raised by lotteries is used simply to sustain the games themselves, including marketing, prizes and vendor commissions. And as lotteries compete for a small number of core players and try to persuade occasional customers to play more, nearly every state has increased, or is considering increasing, the size of its prizes — further shrinking the percentage of each dollar going to education and other programs.”¹⁸

In the end, the only real winners with Internet gaming are vendors seeking to boost their bottom line. Given the significant small-business and social policy concerns surrounding Internet gaming, a few vendors’ profits simply are not sufficient reason to undo 50-plus years of sound law and policy under the Wire Act.

* * *

For all of the foregoing reasons, the time for Congress to do something about this problem is now--before the problem grows out of control. The window for Internet gambling, opened by the Department of Justice’s 2011 opinion, must be closed.

¹⁶ *Id.*

¹⁷ “Why State Lotteries Never Live up to Their Promises,” Think Progress, *available at* <http://thinkprogress.org/economy/2014/02/25/3326421/state-lottery-education/> (Feb. 25, 2014).

¹⁸ “For Schools, Lottery Payoffs Fall Short of Promises,” New York Times, http://www.nytimes.com/2007/10/07/business/07lotto.html?_r=0 (Oct. 7, 2007).

EXHIBIT A

MEMORANDUM

TO: Co-Chairs, Coalition to Stop Internet Gambling

FROM: Darryl Nirenberg
David Fialkov

DATE: December 6, 2014

RE: *Legal Analysis of the Department of Justice’s Reinterpretation of the Wire Act*

I. OVERVIEW

This memorandum analyzes Section 1084(a) of the Wire Act and concludes – based on well-accepted canons of statutory construction and on the legislation’s purpose and history – that the Department of Justice, in its memorandum reversing its long-standing interpretation of that law, was wrong in concluding the Act proscribes sports-related wagering only, and thereby erred in opening the door for the introduction into the United States of licensed Internet gambling.

In December 2011, the Department of Justice’s Office of Legal Counsel (“OLC”) made public an opinion concluding the Wire Act covered only gambling pertaining to a sporting event or contest (referred to hereinafter as the “Opinion”). The Opinion effectively reversed the Department of Justice’s long-standing interpretation that found the statute covered *all* types of bets or wagers – an interpretation based largely on the statute’s language, purpose, and legislative history.

The Opinion was signed by the head of the Office of Legal Counsel, who subsequently stated that “it is just that – an opinion.”¹ Nevertheless, the Opinion has had significant consequences. Three states have enacted legislation authorizing non-sports gaming over the Internet, and others have waded into the offering online of lotteries.² Reportedly, as a result of the OLC opinion, the Justice Department (“DOJ” or “Department”) and the Federal Bureau of Investigations (“FBI”) have “ceased cracking down on online gambling.”³

In America’s constitutional scheme, Congress enacts laws which are interpreted by the Judiciary and implemented by the executive branch. The Opinion, then, having emanated from the executive branch, does not carry the force of law. The courts could, based on the Wire Act’s language,

¹ Goodman, Leah McGratch, “How Washington Opened the Floodgates to Online Poker, Dealing Parents a Bad Hand.” *Newsweek*, August 14, 2014, available at <http://www.newsweek.com/2014/08/22/how-washington-opened-floodgates-online-poker-dealing-parents-bad-hand-264459.html>.

² New Jersey, Delaware and Nevada have authorized non-sports gambling over the Internet. Minnesota, Illinois and Georgia have authorized online lotteries.

³ Goodman, Leah McGratch, “How Washington Opened the Floodgates to Online Poker, Dealing Parents a Bad Hand.” *Newsweek*, August 14, 2014, available at <http://www.newsweek.com/2014/08/22/how-washington-opened-floodgates-online-poker-dealing-parents-bad-hand-264459.html>.

purposes, and legislative history (as set forth herein), conclude the Wire Act proscribes all forms of gambling over the Internet. This state of affairs leads to substantial uncertainty.⁴ As such, the Wire Act is likely to remain in limbo unless the DOJ restores its traditional interpretation of the statute, or until Congress or the courts act to clarify the Act's reach.

This memorandum provides background information on the OLC opinion and its practical and policy consequences. It analyzes the Wire Act's history and purpose, as well as the text of the operative subsection of the statute, employing several fundamental canons of statutory construction, leading to the conclusion that the Act should be read and interpreted as it had for 50 years leading up to the Opinion – as covering all forms of wagering; sports and non-sports alike.

This memorandum does not address other federal statutes which may proscribe certain forms of online gambling aside and apart from the Wire Act.⁵ It also is not intended to serve as, and should not be relied upon as, a “formal legal opinion” for the purposes of engaging in transactions or litigation.

II. BACKGROUND

In December 2011, the OLC⁶ issued an opinion that reversed the Department's position on the application of Section 1084(a) of the Wire Act to gambling that does not relate to a “sporting event or contest.”⁷ Prior to the Opinion's issuance, the DOJ had interpreted Section 1084(a) to cover to all forms of gambling. As a practical matter, this operated as a barrier to widespread gambling, including on lottery and casino games, over the Internet in the United States. The Opinion reversed this position and narrowly interpreted the Wire Act as covering gambling that pertains to a sporting event or contest only.

Armed with this assurance that the DOJ no longer considers online gambling for non-sports related wagers as violating the Wire Act, several states have acted to authorize forms of Internet gaming, while others are actively considering following suit. The presence of state-regulated and illegal unregulated gaming sites online could well proliferate in coming months in the face of reports that the DOJ has “ceased cracking down on online gambling and will leave it up to the states.”⁸

⁴ For example, the Opinion does not necessary shield payment processors from processing “bets or wagers” that are prohibited under the Unlawful Internet Gambling Enforcement Act; only Congress and the courts can determine what conduct is prohibited under that law.

⁵ Indeed, the Interstate Transportation of Wagering Paraphernalia Act of 1961 (18 U.S.C. 1953(a)) bars Internet lotteries. See *U.S. v. Baker*, 241 F. Supp. 272 (M.D. Pa. 1965), *aff'd* 364 F.2d 107 (3d Cir. 1966); *U.S. v. Fabrizio*, 385 U.S. 263 (1966); *U.S. v. Stnebben*, 799 F.2d 225 (5th Cir. 1986); *U.S. v. Norberto*, 373 F. Supp. 2d 150 (E.D.N.Y. 2005); *FTC v. World Media Brokers*, 415 F.3d 758 (7th Cir. 2005).

⁶ The DOJ's Office of Legal Counsel provides “authoritative” or “controlling” legal advice to the President and all executive branch agencies. Legal Counsel's opinions do not have the force of law, but they are generally considered binding on the executive branch, including the President.

⁷ See Section 1084(a) of the Wire Act, *codified at* 18 U.S.C. 1084(a).

⁸ Goodman, Leah McGratch, “How Washington Opened the Floodgates to Online Poker, Dealing Parents a Bad Hand.” *Newsweek*, August 14, 2014, *available at* <http://www.newsweek.com/2014/08/22/how-washington-opened-floodgates-online-poker-dealing-parents-bad-hand-264459.html>.

III. THE WIRE ACT'S HISTORY AND PURPOSE

A. Section 1084(a) of the Wire Act was Enacted to Curb Gambling Activity Conducted by Organized Criminal Enterprises

The DOJ Opinion is deficient in that it examines the Wire Act's legislative history without examining the statute's "purpose." The statute's purpose, both as Congress explicitly stated in the legislative history and when analyzed in the historical context in which it was enacted, indicates that it was designed to target *all* gambling activity utilized by organized crime entities.

The purpose language in the Wire Act's House committee report states:

*The purpose of the bill is to assist various States and the District of Columbia in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses and to aid in the suppression of organized gambling activities by prohibiting the use of wire communication facilities which are or will be used for the transmission of bets or wagers and gambling information in interstate and foreign commerce.*⁹

The DOJ Opinion contradicts this language stating the purpose of the bill. The purpose language is not limited to "bookmaking." Instead, it includes "gambling" and "like offenses." If the Opinion were correct, the references to "gambling" and "like offenses" would be inaccurate statements of the purpose of the bill. The reference in the purpose language to "organized gambling activities" also supports a broader reading of the bill than the Opinion allows. As documented in Senate hearings in the 1950s and 1960s, "organized" gambling activities came in many forms – including those unrelated to sporting events. The Committee report, then, strongly supports the conclusion that the Wire Act covers all forms of gambling – not just gambling on sporting events.

Viewing the Wire Act in the historical context in which it was enacted also supports the conclusion that it covers all forms of gambling. Prior to enacting the Wire Act, various congressional committees – specifically, the "Kefauver Committee" in the early 1950s, the "McClellan Committee" in the late 1950s, and the Senate Permanent Subcommittee on Investigations in the early 1960s – had conducted exhaustive hearings into, and reviews of, the tactics and illicit activities of organized crime in the United States.¹⁰ While the McClellan Committee was primarily focused on mob infiltration into labor unions, these committees spent substantial amounts of time investigating gambling, specifically on horseracing, sports, and "numbers" (which operated like lotteries), the role such gambling played in providing essential revenues to organized crime entities, and the impact gambling had on citizens – especially on the most vulnerable. The Wire Act was designed to combat the evils these committees uncovered.¹¹

⁹ H.R. Rep. No. 967, 87th Cong. 1st Sess. (1961).

¹⁰ The Kefauver Committee and the McClellan Committee were named after their respective chairmen: Senators Estes Kefauver (D-TN) and John L. McClellan (D-AR).

¹¹ See also Attorney General's Conference on Organized Crime, Department of Justice, February 15, 1950, at 78 for an early instance of a recommendation for federal legislation prohibiting the use of telephone, telegraph, or radio facilities for illegal gambling purposes. While discussion of telecommunications in the report focused on their use for illegal betting on horseracing, the Conference and its report were focused on means to combat organized crime, a fundamental stated purpose of the Wire Act.

i. *The Kefauver Committee*

In late 1949, numerous articles in newspapers and magazines warned that a national crime syndicate was gaining control of many American cities by corrupting local government officials. Cities requested federal assistance to combat organized crime, only to find that federal law offered few weapons against this form of criminal activity.¹²

In 1950, the United States Senate Special Committee to Investigate Organized Crime in Interstate Commerce, commonly known as the Kefauver Committee, was formed to study and investigate "whether organized crime utilizes the facilities of interstate commerce or otherwise operates in interstate commerce in furtherance of any transactions which are in violation of the law . . . and, if so, the manner and extent to which, and the identity of the persons, firms, or corporations by which such utilization is being made."¹³

The Kefauver Committee issued four reports, concluding that nationwide organized crime syndicates did exist and that they relied largely on revenue generated through gambling operations, including numbers games. For example:

The committee lately exposed another interstate gambling empire of impressive proportions, which has grown up in defiance of the old lottery law by decentralizing its operations and attenuating its interstate ties: The Treasury balance lottery racket.

The committee's survey of conditions in the area of Scranton, Pa., included some investigation in nearby Wilkes-Barre and Hazleton. The committee concentrated on the ramifications of a multi-million-dollar Treasury-balance lottery

The Treasury-balance lottery, according to testimony obtained by the committee, operates in most of the Eastern States and in sections of the Midwest. Tickets are sold for 25 cents and 50 cents, with occasional "specials" during the year selling for \$1. The last five figures of the daily balance issued by the United States Treasury determine the winners. The ticket plays for 5 days, and top prize in most instances is \$3,000. The odds against the betters are extremely heavy, and the profit of the racketeers who run the lottery is enormous.

*A special service of the Western Union Telegraph Co. speeds the number daily from Washington to 51 subscribers who have been identified either as the principals or chief agents in the operation of the racket throughout the East...*¹⁴

¹² "Records of Senate Select and Special Committees, 1789-1988," Guide to Federal Records in the National Archives of the United States: Bicentennial Edition, National Archives and Records Administration, 1989. Available at <http://www.archives.gov/legislative/guide/senate/chapter-18-1946-1968.html#18E-2>.

¹³ *Id.*, quoting S. Res. 202, 81st Congress.

¹⁴ See, U.S. Senate Special Committee to Investigate Organized Crime in Interstate Commerce, Section E. See also Section VII(C)(c) (detailing the complex lottery scheme requiring the use of the wires of which famed mobster Louis Cohen was believed to be the ruler).

In light of these and other findings related to the use of interstate telecommunications by organized crime for gambling purposes, the Kefauver Committee ultimately recommended Congress pass a law prohibiting use of the wires to facilitate gambling. Notably, the report did not qualify this recommendation to limit its application to sports-related wagers.¹⁵

As discussed below, when the Senate Judiciary Committee held hearings on the Wire Act in 1961, Senator Kefauver expressed consternation that the proposed Wire Act as initially introduced – specifically its subsection 1084(a) -- was expressly limited to sports-related wagers and appeared not to cover “numbers” games. The Committee, during markup, struck the subsection flagged by Kefauver (other than language establishing sanctions for violations), and replaced it with the broader language which remains the law today.¹⁶

ii. *The McClellan Committee*

The United States Senate Select Committee on Improper Activities in Labor and Management, commonly known as the “McClellan Committee” studied the extent of organized crime’s infiltration in the field of labor-management relations (*i.e.*, unions) in the United States. While the panel’s findings and recommendations were largely focused on labor-management relations, testimony was received related to the continuing use by organized crime of gambling activities as a means to obtain revenue.

Also of note is that the Chief Counsel of the panel was Robert F. Kennedy, who would go on to serve as Attorney General when the Wire Act was enacted. Kennedy served as counsel to this panel from 1957 to 1960 and concluded that the criminal underworld was “a vast and malicious beast that threatened the United States even more than Communist aggression.”¹⁷ He subsequently wrote a book on the McClellan’s Committee’s findings (“The Enemy Within”) and as Attorney General of the United States, considered defeating organized crime a top priority of his office.¹⁸ “[F]or Kennedy, the Wire Act wasn’t really about betting on horses or football. It was instead intended to strike at organized crime. To fight the enemy within, America would have to federalize criminal statutes previously enforced by states.”¹⁹

After the McClellan Committee’s original mandate expired, Senator McClellan and others pushed for the Senate to expand the jurisdiction of other Senate committees to, among other things, continue the Senate’s investigations into organized crime. The Senate ultimately granted jurisdiction to the Committee on Government Operations.²⁰ That committee’s Permanent Subcommittee on Investigations began investigating matters pertaining to organized crime, and held hearings on the topic in August, 1961, as Congress was debating – and acting upon – the Wire Act.²¹

¹⁵ *Id.* at Section III-A. (“[T]ransmission of gambling information across State lines by telegraph, telephone, radio, television, or other means of communication or communication facility should be regulated to as to outlaw any service devoted to a substantial extent on providing information used in illegal gambling.”)

¹⁶ See fns. 44-46 *infra* and accompanying text.

¹⁷ Schwartz, David G. “Not Undertaking the Almost-Impossible Task: The 1961 Wire Act’s Development, Initial Applications, and Ultimate Purpose.” *Gaming Law Review and Economics*, Vol. 14, No. 7 (2010).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Senate Extends Rackets Inquiry: McClellan Gains 10-month Stand-By Authority but His Budget Is Slashed.” *The New York Times*, April 12, 1960.

²¹ See timeline in **Appendix C**.

iii. *Senate Permanent Subcommittee on Investigations*

The Senate Permanent Subcommittee on Investigations held hearings on organized crime over the course of four days in late August, 1961 – during the period immediately after the Senate had received the House-passed version of the Wire Act and before the Senate took up the bill and voted to send it to the President.²² These hearings confirmed the continued widespread use of the wires by organized crime syndicates in the United States for the purpose of engaging in a wide range of illicit gambling; including in the form of lottery and numbers games.

To summarize a relevant portion of those hearings, the Subcommittee received testimony from Judge Goodman A. Sarachan, a commissioner of the New York State Crime Commission, who relayed how the numbers racket was a “serious type of gambling” throughout New York, and that it relied upon use of the wires.

Judge Sarachan added that the numbers games were overseen by organized crime syndicates and were played in a variety of ways, noting, for example, how horserace results often served as the source for a popular numbers game: “They take the numbers of the horses that win and combine them together...for example, if No. 2 horse wins the first race, No. 5 the second, and No. 7 the third, you either bet that your number will be 257, or you bet that your number will be any combination of that, like 527, and so on.”²³ This scheme is very similar to the Treasury balance lottery ticket scheme that the Kefauver Committee discovered the previous decade.²⁴

After hearing Judge Sarachan describe these numbers rackets, Senator Karl Mundt (R-SD) expressed his support for legislation to counteract the numbers rackets. “It seems to me that there is just something entirely incongruous about the fact that we set up a great communications system that tends to become a monopoly of the crime syndicate,” Sen. Mundt said.²⁵ (**Appendix A** to this memorandum contains a longer excerpt from this discussion at the hearing.) Within days, the Senate would take up and pass the Wire Act, sending it off to President Kennedy for his signature.

As with the Robert Kennedy’s role with the McClellan Committee, Jerome Alderman’s position as the Subcommittee on Investigation’s Chief Counsel is noteworthy. Mr. Alderman previously served with Robert Kennedy as counsel to the McClellan Committee.²⁶ Through his role on the McClellan Committee and then for the Permanent Subcommittee on Investigations when it received testimony on organized crime, Mr. Alderman was undoubtedly aware of organized crime’s use of the wires for a wide range of illicit gambling – including on numbers games. He also presumably played a key role in enacting the Wire Act. Less than one month after hearing Judge Sarachan’s testimony before the Subcommittee on Investigations, Mr. Alderman attended the White House signing ceremony where President Kennedy signed the Wire Act. (He was the only congressional staffer in attendance. *See* photograph in **Appendix B** to this memorandum.)

²² *See generally* Hearing Transcript, “Gambling and Organized Crime,” Permanent Subcommittee on Investigations of the Committee on Government Operations, United States Senate. Aug. 21-25, 1961.

²³ *Id.*

²⁴ *See supra* n. 14 and accompanying text.

²⁵ Hearing Transcript, “Gambling and Organized Crime,” Permanent Subcommittee on Investigations of the Committee on Government Operations, United States Senate. Aug. 21-25, 1961.

²⁶ *See also*, “Lawyer with Innocent Smile Helps McClellan Plan Inquiry,” *The Toledo Blade*, October 1, 1963, *available at* <http://news.google.com/newspapers?nid=1350&dat=19631001&id=U7FOAAAAIIBA1&sjid=PQEEAAAAIIBA1&pg=7241,5858751>.

iv. *The Wire Act was one piece of a package of bills that the Kennedy-led DOJ developed targeting organized crime.*

After Robert Kennedy was sworn in as Attorney General, the DOJ developed a package of bills targeting organized crime. In addition to the Wire Act (targeting transmission of betting information across state lines), this package also included the Travel Act (targeting those who travel across state lines to advance their illegal enterprises) and the Gaming Paraphernalia Act (targeting those who ship gambling devices across state lines). Congress considered these bills contemporaneously with one another, and President John F. Kennedy signed them into law at a single ceremony on September 13, 1961.

The Travel Act²⁷ and Gaming Paraphernalia Act²⁸ both cover non-sports-wagers because it was well known, and was revealed during the Senate hearings of the 1950s, that organized crime engaged in the movement across state lines of individuals and equipment involved in non-sports gaming (such as lotteries). Viewed in this light, it would make no sense to conclude that the Wire Act, which was viewed as an integral piece of this trio of anti-organized crime legislation, did *not* cover numbers games and other non-sports wagers.

There is no reason for Kennedy's Justice Department to advocate for a *narrower* universe of prohibited conduct under the Wire Act (sports gambling) compared with the broader scope of the Travel Act and the Gaming Paraphernalia Act (which encompassed numbers and casino-style gambling in which organized crime was extensively involved).

Kennedy was undoubtedly well-versed in the Kefauver and McClellan Committee's conclusions and recommendations, including those pertaining to organized crime activity in numbers games and rackets. Indeed, Kennedy was focused on "bookmaking (dominated by horserace betting and wire transmissions of the same) *and numbers games* . . ."²⁹

As Attorney General, Kennedy authored an article about the threats posed by gambling published in *The Atlantic* six months after enactment of the Wire Act. While the article discussed in detail how organized crime conducted illegal sports betting, it also described the operations and ills of "policy games" and the "numbers racket."³⁰

"A man purchases a ticket with three numbers on it, paying a dollar for the ticket," Kennedy wrote. "Since there are 999 such numbers, he should reasonably expect the odds to be 998 to 1. The numbers bank usually pays 600 to 1 on such a wager—or less—so you can see that the only gambler in this situation is the man who makes the bet. The operator pockets forty cents of every dollar bet – that is, if the game is run honestly. . . . [But] if the play is too high on any one number, they manage through devious means to ensure that a number on which the play has been small will be the winner."³¹ Such gambling activities finance corruption and racketeering, Kennedy wrote, which "are

²⁷ 18 USC 1952(b)(1) (covering any "gambling" activity).

²⁸ 18 USC 1953(a) (covering bookmaking, wagering pools with respect to a sporting event, and "a numbers, policy, bolita, or similar game. . .")

²⁹ Schwartz, David G. "Not Undertaking the Almost-Impossible Task: The 1961 Wire Act's Development, Initial Applications, and Ultimate Purpose." *Gaming Law Review and Economics*, Vol. 14, No. 7 (2010).

³⁰ Robert F. Kennedy, "The Baleful Influence of Gambling," *The Atlantic*, April 1962, *available at* http://www.theatlantic.com/magazine/archive/1962/04/the-baleful-influence-of-gambling/304909/?single_page=true.

³¹ *Id.*

weakening the vitality and strength of this nation.”³²

The Attorney General wrote of the Kennedy’s Administration success in securing enactment by Congress of a package of legislation authorizing “the Justice Department for the first time to deal with gambling activities.”³³ The three bills, he explained, made it federal crimes “for any person to move in interstate travel to promote or participate in a racketeering enterprise,” or “to transmit bets and wagers between states by wire or telephone or to transport wagering paraphernalia to another state.”³⁴ Seeing that the Attorney General possessed a firm grasp of, and wrote of, the prevalence of numbers games, and the societal ills such games generated,³⁵ undermines any conclusion that he and his Justice Department intended or envisioned that one of three bills they pushed through Congress – the Wire Act – would somehow be limited to cover only sports bets and *not* cover numbers games.

IV. STATUTORY ANALYSIS

A. Section 1084(a) of the Wire Act Contains Two Broad Clauses

Section 1084(a) of the Wire Act states:

*Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.*³⁶

This provision contains two broad clauses. The first clause bars anyone engaged in the business of betting or wagering from knowingly using a wire communication facility “for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest.”³⁷ The second clause bars anyone engaged in the business of betting or wagering from knowingly using a wire communication facility to transmit communications that either (a) entitle the recipient to “receive money or credit as a result of bets or wagers” or (b) provide “information assisting in the placing of bets or wagers.”³⁸

Whether the Wire Act applies to gambling for non-sports-related wagers hinges on the following

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ See also The Attorney General’s Program to Curb Organized Crime and Racketeering: Hearings before the Committee on the Judiciary Committee, United States Senate, 87th Congress 101-102, statement of Roger Burgess, Associate General Secretary, General Board of Christian Social Concerns of the Methodist Church (stating to the Congressional committee drafting the Wire Act that gambling and the rackets are degrading to individuals and an economic parasite on the society, adding that “much of this money is coming from the pockets of those unable to sustain financially such economic losses....”

³⁶ 18 U.S.C. 1084(a).

³⁷ *Id.*

³⁸ *Id.*

question: Does the phrase “on any sporting event or contest” modify both the first and second clause in Section 1084(a), or does the phrase only modify the first clause in Section 1084(a)? The DOJ Opinion concluded the term modifies *both* clauses, and thus that the Wire Act only covers gambling on sports-related contests.

The conclusion is incorrect and the manner in which it was reached is flawed. When analyzed both on its face and in the contexts in which this law was enacted and has been enforced, it is clear the first clause of Section 1084(a) applies to sports-related wagers, and the second clause of Section 1084(a) applies to *all* wagers.

B. The First Clause in Section 1084(a) is Limited to Sports-Wagers; the Second Clause Applies to All Wagers

To properly read Section 1084(a), it is helpful to divide the clauses into different subsections, as follows:

“Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for:
(a) the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest; or
(b) the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers,
shall be fined under this title or imprisoned not more than two years, or both.

Read in this manner, it becomes clear that Section 1084(a)’s first clause applies to bets or wagers “on any sporting event or contest,” and the second clause applies to all “bets or wagers,” with no qualification. This reading is supported by both the historical context in which the Wire Act was enacted as well as traditional canons of statutory construction.

- i. *Interpreting Section 1084(a) as applying to non-sports wagers is consistent with the historical context in which the Wire Act was enacted and has been enforced.*

Bifurcating Section 1084(a) in this manner – where the first clause outlines the universe of prohibited conduct for *sports-related wagers* and the second clause outlines the universe of prohibited conduct for *all wagers* – makes sense in light of the differences between those two types of gambling at the time of enactment.

In the 1950s, and early ‘60s, sports-related wagers, particularly for horseracing, could be – and usually were – placed from afar. They were rarely placed at the precise location at which the contest occurred. This made the telephone and/or wire services indispensable to placing actual wagers on sporting events.³⁹

By contrast, non-sports bets (such as traditional casino games or numbers games) were commonly placed in-person and not remotely. For these types of wagers, the wires were not generally used to *place* bets; rather, they were used simply to transmit information regarding the outcome of bets and

³⁹ See The Attorney General’s Program to Curb Organized Crime and Racketeering: Hearings before the Committee on the Judiciary Committee, United States Senate, 87th Congress 284, statement of Herbert Miller, Assistant Attorney General. (“The type of gambling that a telephone is indispensable to is wagers on a sporting event or contest.”)

to facilitate payments. For example, the U.S. Senate Special Committee to Investigate Organized Crime in Interstate Commerce detailed in its report issued in 1951 how a typical “numbers” racket utilized a “special service of the Western Union Telegraph Co.” to speed transmission of winning lottery numbers to “subscribers.”⁴⁰

It is logical therefore that the first clause of Section 1084(a) (covering sports-wagers) prohibits both *transmitting information* pertaining to a wager (e.g., informing a prospective gambler of the point-spread in a football game or the latest odds in a horserace) as well *actually placing* a wager. It is also logical that the second clause (covering *all wagers*) does not prohibit *placing* bets (since wires were not generally used to place non-sports-wagers), but does prohibit using the wires to *facilitate* placing bets (such as transmitting information regarding the winning numbers in a lottery game and facilitating payments).⁴¹

The DOJ until late 2011 interpreted the Wire Act in precisely this manner. Indeed, it was widely understood contemporaneously with Act’s enactment that the Wire Act was not limited to only sports gambling. Congressional Quarterly’s 1961 “Congressional Almanac,” for example – widely regarded as the definitive contemporaneous account of Congress’s annual activities – characterized the Wire Act as outlawing “use, supplying and maintenance of wire communications to aid betting...on races and other sports *as well as numbers games...*”⁴²

Although there are limited examples of the Department using the Wire Act to prosecute non-sports gambling in the pre-Internet era (largely due to the fact that other federal laws – such as the Racketeer Influenced and Corrupt Organization (“RICO”) statute and money laundering laws – better facilitated such prosecutions), the advent of the Internet made the Wire Act a useful tool in targeting non-sports gambling. Indeed, beginning in the late 1990s, the Department had on multiple occasions declared unequivocally that the Wire Act prohibits *all* forms of online gambling, and also confirmed that it had long held this view.⁴³

⁴⁰ See generally U.S. Senate Special Committee to Investigate Organized Crime in Interstate Commerce, Section VII(C)(c) (detailing a typical “numbers” racket whereby a “special service of the Western Union Telegraph Co. speeds the [winning lottery] numbers daily from Washington to 51 subscribers who have been identified either as the principals or chief agents in the operation of the racket throughout the East.”).

⁴¹ *Id.*

⁴² Congressional Quarterly, 1961 CQ Almanac at pg. 383 (emphasis added).

⁴³ For example, in 2003, John G. Malcolm, Deputy Assistant Attorney General, testified before Congress that “The Department of Justice has long held, and continues to hold, the position that 18 USC 1084 applies to *all types of gambling, including casino-style gambling, not just sports betting.*” Unlawful Internet Gambling Funding Prohibition Act And The Internet Gambling Licensing And Regulation Commission Act: Hearing Before The Subcommittee On Crime, Terrorism, And Homeland Security of The House Judiciary Committee (April 29, 2003) (emphasis added).

Also in 2003, the Department advised the National Association of Broadcasters that media businesses were likely “aiding and abetting” violations of federal law when they circulated advertising on gambling sites. The letter noted that with very few exceptions federal laws prohibit internet gambling within the United States, and that “Notwithstanding their frequent claims of legitimacy, Internet gambling and offshore sportsbook operations that accept bets from customers in the United States violates [the Wire Act and other federal laws]”. DOJ Letter to NAB, June 11, 2003, available at http://www.igamingnews.com/articles/files/NAB_letter-030611.pdf; see also Letter from Assistant Attorney General Chertoff to Wayne Stenebjem, March 7, 2005 (“As set forth in prior Congressional testimony, the Department of Justice believes that federal law prohibits gambling over the Internet, *including casino-style gambling.* While several federal statutes are applicable to Internet gambling, the main statutes are Sections 1084 [and others]” (emphasis added); see also Letter from Assistant Attorney General Chertoff to Dennis K. Neilander, August 23, 2002 (same).

ii. *Traditional canons of statutory construction dictate that only the first clause of Section 1084(a) is limited to sports-betting*

Three fundamental canons of statutory construction support reading Section 1084(a)'s second clause to cover non-sports wagers.

1) *The rule against surplusage*

A basic principle of statutory interpretation is that effect should be given, if possible, "to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed."⁴⁴ The modern variant is that statutes should be construed "so as to avoid rendering superfluous" any statutory language.⁴⁵

The rule against surplusage is based on the principle that each word or phrase in a statute is meaningful and useful, and thus, an interpretation that would render a word or phrase redundant or meaningless should be rejected.⁴⁶

Reading Section 1084(a) as only applying to sports-related wagers (*i.e.*, reading the term "on any sporting event or contest" as modifying both the first and second clause in Section 1084(a)) would violate the rule against surplusage. Specifically, under this interpretation both the first and second clause contains language that prohibits using a wire communication facility for "the transmission [of] information assisting in the placing of bets or wagers" on any sporting event or contest.

This would render that phrase as it exists in the second clause redundant, and thus violate the rule against surplusage. Indeed, if the second clause was intended to be limited to sporting events or contests, there would be no need to insert the phrase "or for information assisting in the placing of bets or wagers" in that clause, since that phrase would prohibit conduct that is already plainly prohibited under the first clause.

By contrast, interpreting only the first clause in Section 1084(a) as being limited to sports-related wagers provides significance to the phrase "or for information assisting in the placing of bets or wagers" as used in the second clause. Specifically, it would extend that prohibition relating to "information" beyond just sports-betting to all forms of gambling.

If confronting two plausible interpretations, courts should construe a statute in a manner that gives effect to all its provisions,⁴⁷ so that no part is inoperative or superfluous,⁴⁸ void or insignificant.⁴⁹ This rule against surplusage precludes interpreting the second clause of Section 1084(a) as being limited to sports-related wagers.⁵⁰

⁴⁴ *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883).

⁴⁵ *Astoria Federal Savings & Loan Ass'n v. Solimino*, 501 U.S. 104, 112 (1991).

⁴⁶ See generally Eskridge, William N. *et al.*, "Cases and Materials on Legislation: Statutes and the Creation of Public Policy." West Group, 3rd Edition (2001).

⁴⁷ See, e.g., *Alden v. Holder*, 589 F.3d 1040 (9th Cir. 2009).

⁴⁸ See, e.g., *Corley v. U.S.*, 556 U.S. 303 (2009).

⁴⁹ *Id.*

⁵⁰ Of course, an inevitable consequence of this interpretation is that the phrase "or for information assisting in the placing of bets or wagers" is rendered redundant in the *first* clause. Indeed, if such conduct is prohibited for *all* bets or wagers under clause two, it is redundant to prohibit it specifically for sports bets or wagers in clause one. This can be explained, however, by viewing the first clause as outlining the universe of prohibited conduct for *sports bets*, and the second clause as outlining the universe of prohibited conduct for *all bets*. (See fns 33-35 *supra* and accompanying text.) By

2) The Rule Prohibiting Implying Intent to Include Missing Terms

Closely related to the rule against surplusage is the canon that when a legislature uses a term or phrase in one provision but excludes it from another, courts do not imply an intent to include the missing term in the provision where the term or phrase is excluded.⁵¹ Instead, omission of the same provision is significant to show different legislative intent for the two provisions.⁵²

Reading Section 1084(a) as only applying to sports-related wagers (*i.e.*, reading the term “on any sporting event or contest” as modifying both the first and second clause in Section 1084(a)) would patently violate this canon of statutory interpretation. As discussed above, this reading necessarily requires inserting the phrase “on any sporting event or contest” into the second clause simply because it was included in the first clause. It is inappropriate to assume Congress intended to include this missing term in the second clause.

3) The Rule Requiring Consideration of Legislative Changes Prior to Enactment

“Where the meaning of legislation is doubtful or obscure, resort may be had in its interpretation to . . . comparison of successive drafts or amendments to the measure.”⁵³ In reviewing an ambiguous statute’s legislative history, courts should presume that “legislatures generally adopt amendments because they intend to change the original bill.” Indeed, “adoption of an amendment *is evidence that the legislature intends to change the provision of the original bill.*”⁵⁴

This widely accepted canon of statutory construction is particularly pertinent when analyzing Section 1084(a). As originally introduced, that provision would have imposed criminal penalties on anyone who “leases, furnishes, or maintains any wire communication facility with intent that it be used for the transmission in interstate or foreign commerce of bets or wagers, or information assisting in the placing of bets or wagers, on any sporting event or contest”⁵⁵ In other words, the provision would have imposed penalties on *providers* of wire communication services (rather than users), and was clearly limited to sports-related wagers.

The Senate Judiciary Committee, after conducting multiple hearings on the topic, completely struck Section 1084(a) as it was introduced (other than language establishing sanctions), and replaced it with the version that ultimately became law.⁵⁶ This re-write changed the bill in three ways:

contrast, there is no valid explanation for this phrase being repeated in the second clause if that clause is *also* limited to sports-related wagers. It should also be noted that because this phrase appears in the Section twice, no plausible reading of it could render the phrase completely non-redundant.)

⁵¹ See, e.g., *City of Columbus v. Ours Garage and Wrecker Service, Inc.*, 536 U.S. 424 (2002); see also *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438 (2002); *Chickasaw Nation v. U.S.*, 534 U.S. 84 (2001).

⁵² See, e.g., *Cox v. City of Dallas*, 256 F.3d 281 (5th Cir. 2001); see also *Zhu v. I.N.S.*, 300 F. Supp. 2d 77 (D.D.C. 2004).

⁵³ *Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke*, 300 U.S. 440, 464 fn8 (Brandeis, J); see also *U.S. v. Pfitsch*, 256 U.S. 547 (1921); *U.S. v. Great Northern Ry. Co.*, 287 U.S. 144 (1932); “Sutherland Statutory Construction,” §48:18.

⁵⁴ *Miller v. Callaban*, 964 F. Supp. 939, 949 (D. Md. 1997).

⁵⁵ S. 1656, 87th Cong. §2 (1961).

⁵⁶ See Senate Report No. 588, July 24, 1961 (striking lines 4-8 on page two and replacing with language ultimately enacted into law); see also **Appendix C**.

- First, it changed the class of covered persons from those who *provide* wire communication facilities with the intent that it be used for illicit gambling to those who *use* wire communication facilities for illicit gambling purposes.
- Second, it included a clause not found in the original version prohibiting transmissions relating to “money or credit” as a result of bets or wagers.
- And third, it added a second clause, prohibiting “*the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers,*” that on its face is not limited to sports wagering, thereby expanding the universe of prohibited conduct.

Particularly instructive in understanding how the Senate Judiciary Committee developed these three changes to the original bill is an exchange between Senator Kefauver (who had previously chaired a special Senate committee investigating organized crime and was arguably the Senate’s foremost expert on organized crime) and then-Assistant Attorney General Herbert Miller.⁵⁷ During that exchange – which is reproduced in **Appendix D** of this memorandum – Senator Kefauver expressed three concerns to Mr. Miller:

- First, Senator Kefauver expressed concern that communication companies could be unduly vulnerable to criminal liability.⁵⁸
- Second, Senator Kefauver opined that the legislation should be expanded to include transmissions of money or credit.⁵⁹
- And third, Senator Kefauver expressed concern that the bill as introduced was limited to sports betting and did not include other, non-sports wagers.⁶⁰

In other words, the Senate Judiciary Committee struck the original version of Section 1084(a) and replaced it with language addressing all of the concerns that Senator Kefauver expressed in this exchange with Mr. Miller at the Committee’s hearing examining the legislation.

The DOJ Opinion points to this exchange – specifically where Mr. Miller states that the legislation is limited to sports gambling – to support its claim that the Wire Act proscribes only sports gambling. However, in so doing, the Opinion deletes a relevant portion of the exchange and also fails to mention that the provision which Mr. Miller contended limited the bill to sports betting never became law – that it was struck by the Committee after the hearing and replaced with the broader language subsequently enacted into law.

(Previously in his testimony, Mr. Miller stated that the bill would hold telecommunications

⁵⁷ The Attorney General’s Program to Curb Organized Crime and Racketeering: Hearings before the Committee on the Judiciary Committee, United States Senate, 87th Congress 284, at pgs. 275-279.

⁵⁸ *Id.* at 276-277.

⁵⁹ *Id.* at 278 (“Why should not S. 1656 be expanded to include transmission of money? Money is frequently sent by Western Union is it not?”).

⁶⁰ *Id.* at 277, 278 (“Why do you not apply the bill to any kind of gambling activities, numbers rackets, and so forth? . . . In 1951 we had quite an investigation . . . where a lot of telephones were used across State lines in connection with policy and the numbers games up there . . . I can see that telephones would be used in sporting contests, and it is used quite substantially in the numbers games, too.”)

companies criminally liable for violations of the Act; surely the DOJ would not argue that this supports reading the current statute as applying to telecommunications companies, since it was *subsequently re-written* to apply those who *use* communications facilities rather than those who *supply* them. The same principal applies to non-sports gambling.)

The DOJ Opinion states that “[N]othing in the legislative history of this amendment suggests that...Congress intended to expand dramatically the scope of prohibited [conduct].”⁶¹ This statement is contradicted by the record. Senator Kefauver made clear during the hearing his concern about limiting the bill to sports gambling. The Judiciary Committee rewrote Section 1084(a) to address that concern -- as it did with other sections of the bill about which the Senator raised concerns. Courts frequently look to such indicia for clues as to how to interpret a statute.⁶² The DOJ failed to do the same.

The DOJ Opinion also fails to recognize that the Judiciary Committee did not simply *revise* Section 1084(a), it *struck and re-wrote* that provision’s core.⁶³ In analyzing the Section 1084(a), as it was reported by the Judiciary Committee and enacted into law, the DOJ Opinion argued that the commas around the phrase “or information assisting in the placing of bets or wagers” were deleted.⁶⁴ It then claims that because the legislative history does not specify that removing those commas was intended to broaden the bill’s scope to include non-sports betting, that this could not have been the Committee’s intent.⁶⁵

The DOJ’s analysis is based on the assumption that the Committee made minor “style” edits to the legislation. However, as evidenced in the reproduction of the Wire Act as reported by the Senate Judiciary Committee (reproduced in **Appendix C**), the Committee did not “delete commas”, but rather rewrote the subsection -- striking all of Section 1084(a), other than provisions related to sanctions, and replacing it with the version of Section 1084(a) found in current law.

4) Reenactment Doctrine

The reenactment doctrine is a principle of statutory construction that when “reenacting” a law, Congress implicitly adopts well-settled judicial or administrative interpretations of the law. “In addition to the importance of legislative history, a court may accord great weight to the longstanding interpretation placed on a statute by an agency charged with its administration. This is especially so where Congress has reenacted a statute without pertinent change. In these circumstances, congressional failure to revise or repeal the agency’s interpretation is persuasive evidence that the interpretation is one intended by Congress.”⁶⁶

This doctrine comes into play for purposes of the Wire Act’s application to non-sports gambling in light of Congress’s passage of the Unlawful Internet Gambling Enforcement Act of 2006 (“UIGEA”). UIGEA does not criminalize gambling activities; rather, it incorporates existing laws defining illegal gambling activities – including the Wire Act – and prohibits acceptance of payment

⁶¹ DOJ Opinion at 6.

⁶² See, e.g., *Bindezyck v. Finucane*, 342 U.S. 76, 83 (1951); *FTC v. Raladam Co.*, 283 U.S. 643, 648 (1931); *U.S. ex rel Bayarsky v. Brooks*, 154 F. 2d 344, 346-47 (3rd Cir. 1946); *First America Financial Life Insurance Company v. Sumner*, 212 F. Supp.2d 1235, 1240-41 (D. OR. 2002).

⁶³ See *supra* n.50 an accompanying text.

⁶⁴ DOJ Opinion at pgs 6-7.

⁶⁵ *Id.*

⁶⁶ *N.L.R.B. v. Bell Aerospace Co. Div. of Textron, Inc.*, 416 U.S. 267, 274-75 (1974).

for those activities.

In passing UIGEA, Congress understood the Wire Act to apply to non-sports gambling, based largely on the DOJ's repeated, longstanding interpretation of the Act as applying to non-sports gambling. Indeed, leading up to enactment of UIGEA, the Department had previously written numerous letters and testified to Congress stating that the Wire Act applied broadly -- to non-sports, and sports betting alike.⁶⁷ In addition, the UIGEA Conference Report makes clear that Congress understood non-sports gambling over the wires to be illegal:

*The safe harbor would leave intact the current interstate gambling prohibitions such as the Wire Act, federal prohibitions on lotteries, and the Gambling Ship Act so that casino and lottery games could not be placed on websites and individuals could not access these games from their homes or businesses.*⁶⁸

Thus, the reenactment doctrine supports interpreting the Wire Act to apply to non-sports gambling because Congress passed subsequent legislation under the belief – based on DOJ's longstanding interpretation of the Wire Act – that the Wire Act covered such conduct.

V. CONCLUSION

To understand the Wire Act, its purposes, its reach, and how it should be interpreted, it is essential to review how and why it was enacted into law, and to utilize traditional legal canons of statutory interpretation. It is not clear whether, or the extent to which, the OLC engaged in such an analysis. The Opinion fails on these fronts.

The Wire Act was enacted as a part of a package of anti-crime legislation developed by Congress over the course of a decade during which hours upon hours of testimony was received on the operations of organized crime and its reliance on revenues derived from illegal gaming operations, including both sports and non-sports wagering, for which interstate telecommunications were utilized.

It was pushed through Congress after that decade of consideration by an Attorney General who, as Chief Counsel to one of the Senate Committees charged with investigating organized crime, had sat through hours of those hearings and who, as Attorney General, promoted the package of legislation as necessary to deprive criminal syndicates of needed revenues.

Fundamental canons of statutory construction support interpreting the Wire Act as covering all forms of gambling. Indeed, to interpret the statute to only apply to sports gambling, one would have to disregard several well-accepted tools that courts have long used to interpret ambiguous statutes.

The Wire Act, as enacted, reflects a rewrite of the relevant provisions of the Act crafted in the Senate Judiciary Committee to broaden the law's scope – modifications made after hearings in which the Chairman of one of the Senate Committees which had investigated organized crime,

⁶⁷ See *supra* n.37.

⁶⁸ *Conference Report on H.R. 4954, Safe Port Act*, 152 CONG. REC. H8026, H8029 (Sept. 27, 2006) (statement of Rep. Leach).

raised concerns that the legislation as introduced applied to sports-related bets only and shared with the Judiciary Committee how he had previously received evidence of use of the wires for “numbers” games.

While the Wire Act was the product of a different time and era, its fundamental purpose remains the same to this day: To serve as a tool for federal prosecutors to combat gambling activities operating or otherwise advanced through activities occurring across state lines.

The present-day iteration of this activity is Internet gaming, and it is questionable how illegal offshore gaming websites can be effectively fought until the Wire Act is restored, especially in light of published reports suggesting federal law enforcement actions against such sites have ceased since the OLC Opinion was issued.

A thorough review of the Wire Act, its construction, its purposes, and its reach, demonstrate the deficiencies of the OLC Opinion. As such, the Opinion should not be allowed to stand.

APPENDIX A

PERMANENT SUBCOMMITTEE ON
INVESTIGATIONS of the COMMITTEE
ON GOVERNMENT OPERATIONS
United States Senate

Hearing Excerpt – August 22-25, 1961.

you have that—if you don't have it, you may prepare it and submit it, if you will.

Mr. SARACHIAN. Senator, in connection with this report, we have certain recommendations, but we were thinking primarily, of course, in our report, in terms of State laws. What, with your indulgence, we would prefer, would be to give us a little time to confer.

The CHAIRMAN. I didn't expect you necessarily to do it today. But you have been in this thing, you have experienced it, you have studied it, you know what the problem is from direct contact, so to speak. I don't know. Maybe a lot of other Members of Congress don't know. But we need counsel from people like you who have had to deal with it and live with it and try to work with it in your State. If you will do that, it will be very much appreciated. We will reserve some space in the record for you to submit a formal recommendation, if you will.

Mr. SARACHIAN. We will be more than happy to do that.

The CHAIRMAN. Thank you very much.

(At this point Senator McClellan withdrew from the hearing room.)

Senator ERVIN. Senator Mundt?

Senator MUNDT. Judge, you haven't said anything this morning about a type of gambling which we read about in the paper a great deal called the numbers racket, or something like that. Is that a serious type of gambling?

Mr. SARACHIAN. Yes.

Senator MUNDT. Would you dilate on that subject?

Mr. SARACHIAN. We have gone into a great deal of study of every type of professional gambling. On the numbers or policy racket, as it is sometimes called, we devote a considerable part of our report to it. The numbers racket is the type of gambling that is indulged in by people to whom \$2 is too much to bet at one time.

The minimum you can bet with a bookie is \$2 on a horse race. So there is this widespread activity, and it runs into millions of dollars, but it starts with pennies, particularly in poor sections of the larger cities. For example, in the city of Buffalo, we had witnesses, one witness after another got up and say that there isn't anybody in that particular neighborhood, which is the poorest in the city, that doesn't buy a numbers ticket every single day, for 10 cents, 25 cents, 50 cents is a big ticket.

The numbers game is played in a large variety of ways, as we described. Frequently it is based on the results of the first three races, for example, in a particular track. They take the numbers of the horses that win and combine them together, and you can either bet on the exact—for example, if No. 2 horse wins the first race, No. 5 the second, and No. 7 the third, you either bet that your number will be 257, or you bet that your number will be any combination of that, like 527, or 752, and so on. Your chances of winning are 1,000 to 1, and you pay on the basis of 300 to 1. That means that for every \$300 that is bet, the professional gambler gets \$1,000 and makes a profit of \$700. You can realize what that can run into, if it is done by thousands of people every day in one single city.

We find that to be—well, there isn't much of that in the smaller towns in our State, but in every large city that is, in many ways, the most tragic kind of gambling because it is indulged in by people who can't afford to spend a quarter or 50 cents every day.

Senator MUNDT. You say that sort of prey is upon the poor?

Mr. SARACHAN. That is right.

Senator MUNDT. At the other end of the structure, is it operated by little two-bit gamblers, or is it part of the operation in which the syndicate is involved?

Mr. SARACHAN. No; this is definitely operated by the syndicate, because all of the money eventually finds its way into what is called the bank, and the fellows who run the bank are the fellows who get all of the income from all of the various sources, and they are the ones who pay off to the winners. Lots of times they don't even pay off when you win, because frequently the numbers are fixed. They not only operate on the basis of horse race results.

Senator MUNDT. They are not satisfied with the 700 percent profit but sometimes they take it all?

Mr. SARACHAN. No; they want more. And we find that true all along the line, except, as I indicated before, the one exception, and it struck me very, very forcibly that the syndicate never will hedge. But as far as cheating is concerned, they never hesitate to do it, because they can get away with it.

Senator MUNDT. I think I misunderstood your testimony on hedging. I thought that this layoff that you were talking about was a form of hedge.

Mr. SARACHAN. Maybe I am misunderstanding the word "hedge."

Senator MUNDT. Maybe I am misunderstanding the word "layoff." In the grain trade you buy on both sides so you can minimize your loss.

Mr. SARACHAN. That is the purpose of the layoff. I didn't mean by hedging. I meant refusing to pay the winner. That is what I meant. They never refuse to pay the winner, even though they take a big loss. I misunderstood the way in which you used the word "hedge."

Senator MUNDT. Senator Curtis meant the kind of hedging you employ to minimize your losses.

Mr. SARACHAN. The purpose of the layoff is if a man has too much on one horse, so to speak, and he is afraid that if that horse should win it will break him, he will lay it off with the man higher up and that man will lay it off with the man higher up and so on.

Senator MUNDT. That is, I expect, part of the established modus operandi of the gamblers.

Mr. SARACHAN. That is just as much a part of the hierarchy as any part you can think of.

Mr. GRUMET. And the numbers game operates wide open. Senator Curtis said it wouldn't take much to detect these people. It wouldn't. It wouldn't take much if you had local law enforcement, but they operate with the cooperation of the police.

Senator MUNDT. The last time I read about the numbers game in the newspapers it was being operated in the Pentagon in Washington.

Mr. SARACHAN. It operates in almost every large factory in every large city in New York State. As a matter of fact, our agents, when we were investigating the police department in the city of Buffalo and gambling there, our agents walked into grocery stores, drug stores, cigar stores, every kind of little retail business, and there were the policy slips or number slips openly on the counters being sold to every-

Mr. LANE. I don't know whether you could charge it to that, Senator. I think in New York we have such a large population, and it is a heterogeneous population, of close to 9 million people in the city of New York, I think that has a great deal to do with it. Of course, we have a lot of poor people. Some of the figures also showed that the greater proportion of these narcotic addicts were in the lower income brackets, way down. Over 52 or 53 percent were people who I think were troubled by a lack of income.

Senator MUNDY. I would like to add my words of encouragement to those of Senator Ervin, as far as wiretapping legislation is concerned. It seems to me that there is just something entirely incongruous about the fact that we set up a great communications system that tends to become a monopoly of the crime syndicate. They can use it and the law enforcement officials cannot use it. I remember when I was in the House of Representatives where we spend a lot of time, the committee of which I was a member, working out evidence on espionage. I remember the Judith Coplon case, where she was caught redhanded. It was a question of actually catching the people passing the secret documents to the Russians. They let the whole case out of court because someplace along the line she had received a telephone call which had been listened to. It is just inconceivable that those conditions would continue.

I rather suspect that back of all these difficulties that you gentlemen have, back of the problem with the chief of police in Ithaca, N.Y., who wouldn't arrest the people in gambling who were not close to the Cornell University campus, and in back of these very small, insignificant penalties fixed by the courts, back of it all is a failure, somehow, for the public to alert itself to the necessity of doing something about wiretapping, doing something about the stepping up of these crimes, doing something about insisting that the police officers don't look the other way when crimes are committed. It is a great contribution your commission must be making when they let people realize, for example, that when you have legalized bingo you have brought in the racketeer. Some of them overlook something like that. They will not overlook any other opportunity to get a fast, dirty dollar.

Mr. SARACIAN. I agree that the fundamental nub of the problem is the public misinformation or at least lack of information, and that is something we are trying very hard in our State to overcome. The police officer, for example, wouldn't dream of accepting a bribe in connection with a rape case or a narcotics case or something like that, but seems to think "Well, this is only gambling," so he doesn't hesitate. That has been the opinion of the public and the opinion of the judges. That is what we are trying awfully hard to overcome.

Senator MUNDY. I want to congratulate you gentlemen not only on the very helpful testimony you have given this committee, but the very constructive job you are doing for the great State of New York. I think that certainly the public there must be coming closer and closer to a realization of the significance of this whole syndicated criminal operation. Since the reports that you issue are pretty widely distributed, they must know.

Mr. SARACIAN. They go to every law enforcement officer in the State, every district attorney, chief of police, and so on. They go

APPENDIX B.

Photograph of Wire Act bill signing.



Description: President John F. Kennedy signs S. 1656, S. 1657, and S. 1653 (bills to combat organized crime and racketeering) in the Oval Office, White House, Washington, D.C. Looking on (L-R): Senator Everett Dirksen of Illinois; Senator Olin Johnston of South Carolina; Senator Sam Ervin of North Carolina; Chief of the Organized Crime Section in the Department of Justice, Edwyn Silberling (partially hidden); Senator Kenneth Keating of New York; Director of the Federal Bureau of Investigation (FBI), J. Edgar Hoover; Attorney General Robert F. Kennedy; Chief of the Legislation and Special Projects Section of the Criminal Division in the Department of Justice, Harold D. Koffsky; Deputy Chief of the Legislation and Special Projects Section of the Criminal Division, Edward T. Joyce; **Chief Counsel of the Senate Judiciary Committee, Jerry Adlerman**; Assistant Attorney General for the Criminal Division, Jack Miller; Assistant Deputy Attorney General, William A. Geoghegan; Vice President Lyndon B. Johnson.

SOURCE: <http://www.jfklibrary.org/Asset-Viewer/Archives/JFKWHP-1961-09-13-A.aspx>

APPENDIX C

- Timeline of Congressional Consideration of the Wire Act
- Comparison of the different versions of the Wire Act from time of introduction through time of enactment.

TIMELINE OF CONGRESSIONAL CONSIDERATION OF THE WIRE ACT

- April 18, 1961 -Introduced in the Senate as S. 1656.
 - *See pg. 24 within in this Appendix C.*
- June/July 1961 – Senate Judiciary Committee Hearings. (note: Kefauver-Miller exchange occurred on June 20, 1961).
 - *See Appendix D.*
- July 24, 1961 – Reported with Amendment [Senate Report 588]
 - *See pg. 26 within this Appendix C.*
- July 28, 1961 – Passed Senate with Report's amendments.
 - *See pgs. 27-30 within this Appendix C for redlined documents showing changes made by Senate Judiciary Committee to the legislation as introduced.*
- July 31, 1961 – Referred to House Committee on the Judiciary.
- August 17, 1961 – Reported with amendment August 17, 1961 [House Report 967]
 - Minor technical amendments; no changes to § 1084(a).
- August 21, 1961 – Passed House, as reported.
- August 22-25, 1961 – House Permanent Subcommittee on Investigation Hearings on Gambling and Organized Crime.
- August 31, 1961 – House amendment agreed to by Senate.
- September 1, 1961 – Sent to President.
- September 13, 1961 – Signed into law by President John F. Kennedy. [PL 87-216].
 - *See pg. 31 within this Appendix C.*
- September 13, 1994 – Pub. L. 103-322 enacted. Substituted "fined under this title" for "fined not more than \$10,000". This is the only change to §1084(a) since enactment of Wire Act in 1961.

87TH CONGRESS
1ST SESSION

S. 1656

IN THE SENATE OF THE UNITED STATES

APRIL 18, 1961

Mr. EASTLAND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 50 of title 18, United States Code, with respect to the transmission of bets, wagers, and related information.

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

3 That section 1081 of title 18 of the United States Code is
4 amended by adding the following paragraph:

5 "The term 'wire communication facility' means any and
6 all instrumentalities, personnel, and services (among other
7 things, the receipt, forwarding, and delivery of communica-
8 tions) used or useful in the transmission of writing, signs,
9 pictures, and sounds of all kinds by aid of wire, cable, or
10 other like connection between the points of origin and recep-
11 tion of such transmission."

I

10

1 SEC. 2. Chapter 50 of such title is amended by adding
2 thereto a new section 1084 as follows:

3 “§ 1084. **Transmission of wagering information; penalties**

4 “(a) Whoever leases, furnishes, or maintains any wire
5 communication facility with intent that it be used for the
6 transmission in interstate or foreign commerce of bets or
7 wagers, or information assisting in the placing of bets or
8 wagers, on any sporting event or contest, or knowingly uses
9 such facility for any such transmission, shall be fined not
10 more than \$10,000 or imprisoned not more than two years,
11 or both.

12 “(b) Nothing in this section shall be construed to pre-
13 vent the transmission in interstate or foreign commerce of
14 information for use in news reporting of sporting events or
15 contests.

16 “(c) Nothing contained in this section shall create im-
17 munity from criminal prosecution under any laws of any
18 State, territory, possession, or the District of Columbia.”

19 SEC. 3. The analysis preceding section 1081 of such title
20 is amended by adding the following item:

“Sec. 1084. Transmission of wagering information; penalties.”

Calendar No. 560

87th CONGRESS }
1st Session }

SENATE }

REPORT
No. 588

PROHIBITING TRANSMISSION OF BETS BY WIRE COMMUNICATIONS

July 24, 1962.—Ordered to be printed

Mr. McCLELLAN (for Mr. EASTLAND), from the Committee on the
Judiciary, submitted the following

R E P O R T

[To accompany S. 1636]

The Committee on the Judiciary, to which was referred the bill (S. 1636) to amend chapter 50 of title 18, United States Code, with respect to the transmission of bets, wagers, and related information, having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

AMENDMENTS

On page 1, in line 7, strike the word "and" and insert in lieu thereof the word "or".

On page 2, strike all of lines 4, 5, 6, 7, and 8, and down to the word "shall" in line 9 and insert in lieu thereof the words:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers,

Calendar No. 560

87TH CONGRESS
1st Session

S. 1656

[Report No. 588]

IN THE SENATE OF THE UNITED STATES

April 18, 1961

Mr. EASTLAND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 24, 1961

Reported by Mr. McCLELLAN (for Mr. EASTLAND), with amendments

[Omit the part struck through and insert the part printed in *italics*]

A BILL

To amend chapter 50 of title 18, United States Code, with respect to the transmission of bets, wagers, and related information.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 1081 of title 18 of the United States Code is
- 4 amended by adding the following paragraph:
- 5 "The term 'wire communication facility' means any and
- 6 all instrumentalities, personnel, and services (among other
- 7 things, the receipt, forwarding, and *or* delivery of communi-
- 8 cations) used or useful in the transmission of writing, signs,
- 9 pictures, and sounds of all kinds by aid of wire, cable, or
- 10 other like connection between the points of origin and recep-
- 11 tion of such transmission."

87TH CONGRESS
S. 1656

1 Sec. 2, Chapter 50 of such title is amended by adding
2 thereto a new section 1084 as follows:

3 “§ 1084. **Transmission of wagering information; penalties**

4 “(a) Whoever leases, furnishes, or maintains any wire
5 communication facility with intent that it be used for the
6 transmission in interstate or foreign commerce of bets or
7 wagers, or information assisting in the placing of bets or
8 wagers on any sporting event or contest, or knowingly uses
9 such facility for any such transmission, *Whoever being*
10 *engaged in the business of betting or wagering knowingly uses*
11 *a wire communication facility for the transmission in inter-*
12 *state or foreign commerce of bets or wagers or information*
13 *assisting in the placing of bets or wagers on any sporting*
14 *event or contest, or for the transmission of a wire communi-*
15 *cation which entitles the recipient to receive money or credit*
16 *as a result of bets or wagers, or for information assisting in*
17 *the placing of bets or wagers, shall be fined not more than*
18 \$10,000 or imprisoned not more than two years, or both.

19 “(b) Nothing in this section shall be construed to pre-
20 vent the transmission in interstate or foreign commerce of
21 information for use in news reporting of sporting events or
22 contests.

23 “(c) Nothing contained in this section shall create im-
24 munity from criminal prosecution under any laws of any
25 State, territory, possession, or the District of Columbia.”

1 “(d) When any common carrier, subject to the juris-
2 diction of the Federal Communications Commission, is noti-
3 fied in writing by a Federal, State, or local law enforce-
4 ment agency, acting within its jurisdiction, that any facility
5 furnished by it is being used or will be used for the pur-
6 pose of transmitting or receiving gambling information in
7 interstate or foreign commerce, it shall discontinue or refuse,
8 the leasing, furnishing, or maintaining of such facility, after
9 reasonable notice to the subscriber, but no damages, penalty
10 or forfeiture, civil or criminal, shall be found against any
11 common carrier for any act done in compliance with any
12 notice received from a law enforcement agency. Nothing in
13 this section shall be deemed to prejudice the right of any
14 person affected thereby to secure an appropriate determina-
15 tion, as otherwise provided by law, in a Federal court or in
16 a State or local tribunal or agency, that such facility should
17 not be discontinued or removed, or should be restored.”

18 SEC. 3. The analysis preceding section 1081 of such title
19 is amended by adding the following item:

“Sec. 1084. Transmission of wagering information; penalties.”

APPENDIX C

Wire Act as introduced in 1961:

"§1084. Transmission of wagering information; penalties

" (a) Whoever leases, furnishes, or maintains any wire communication facility with intent that it be used for the transmission in interstate or foreign commerce of bets or wagers, or information assisting in the placing of bets or wagers, on any sporting event or contest, or knowingly uses such facility for any such transmission, shall be fined not more than \$10,000 or imprisoned not more than two years, or both."

Wire Act as reported out by Senate Judiciary Committee:

"(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than \$10,000 or imprisoned not more than two years, or both."

Redlined to reflect changes made by Senate Judiciary Committee:

"§1084. Transmission of wagering information; penalties

" (a) Whoever leases, furnishes, or maintains any being engaged in the business of betting or wagering knowingly uses a wire communication facility with intent that it be used for the transmission in interstate or foreign commerce of bets or wagers; or information assisting in the placing of bets or wagers; on any sporting event or contest, or knowingly uses such facility for any such transmission for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

Public Law 87-216

AN ACT

To amend chapter 50 of title 18, United States Code, with respect to the transmission of bets, wagers, and related information.

September 13, 1961
(S. 1656)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1081 of title 18 of the United States Code is amended by adding the following paragraph:

Wagering information.
Transmission.
63 Stat. 97.
"Wire communication facility."

"The term 'wire communication facility' means any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission."

Sec. 2. Chapter 50 of such title is amended by adding thereto a new section 1084 as follows:

18 USC 1081-1083.

§ 1084. Transmission of wagering information; penalties

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State where betting on that sporting event or contest is legal into a State in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

Sec. 3. The analysis preceding section 1081 of such title is amended by adding the following item:

"Sec. 1084. Transmission of wagering information; penalties."

Approved September 13, 1961.



APPENDIX D

EXCHANGE BETWEEN SENATOR KEFAUVER AND ASSISTANT ATTORNEY GENERAL MILLER

*The Attorney General's Program to Curb
Organized Crime and Racketeering:
Hearings before the Committee on the
Judiciary Committee, United States Senate,
87th Congress 284, at pgs. 275-279.*

Is there any other case besides national security?

Mr. MILLER. I do not know of any.

Senator CARROLL. Then Congress, itself, has not in the field of labor-management relations extended itself this power.

I am glad to get the record clear on this point. So congress has moved in the national security field and so has the Federal Government, has it not?

Mr. MILLER. That is correct.

Senator CARROLL. And you have indicated some others that you are going to furnish for the record?

Mr. MILLER. Yes, the administrative agencies.

Senator CARROLL. I thank you very much, Mr. Miller. We will stand in recess until 2 o'clock.

(Whereupon, at 12:20 p.m., the hearing was adjourned, to reconvene at 2 p.m., of the same day.)

AFTERNOON SESSION

(Present at this point: Senator Kefauver (presiding).)

Senator KEFAUVER. The committees will come to order.

I believe that we had gotten down to S. 1656 to amend chapter 15 of title 18, United States Code, with respect to the transmission of bets, wagers, and related information.

STATEMENT OF HERBERT MILLER, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE—Resumed

Mr. MILLER. Senator, as I listened to the comments which were made primarily by Mr. Marsh on behalf of the United States Independent Telephone Association, I think probably we can boil the objections down to two.

One, the communications common carriers feel that there should be an exemption from this proposed legislation, or there should be a bill whereby the common carrier, upon advice by a State or Federal official that the communications equipment is being utilized in violation of the law, could remove it and that the telephone company would be held harmless in the statute for any damages suffered.

The Department opposes both of these ideas for this reason. Senate 1656 prohibits the leasing or furnishing of communications facilities, and it also prohibits the use thereof, so there is, in fact, a burden on the telephone company that if it knowingly finds—if it finds that this equipment is being used for unlawful purposes, and it intentionally continues to furnish this communications service after that time, then they would be subject to the penalties.

Now, the stock answer of the telephone companies under these circumstances is that, "We are not policemen. We furnish facilities, and, therefore, we should merely be permitted to rely on a notification by a law enforcement official, and then be held harmless if the communications equipment is removed."

The difficulty with that position, as I see it, is this, Senator. To deprive a man of telephone service is, of course, a very serious blow to perhaps his profession, if he is a doctor, a stockbroker, or in any one of a number of businesses.

The loss of his telephone can inflict severe pecuniary damages. Therefore, I feel that if the telephone company does wrongfully take out the man's telephone, he should have some place to turn to recover damages which he has suffered and which, of course, would be the telephone company.

Now, as a practical matter, telephone companies have regulated rates. They are public utilities and they are required to furnish service, so that if there were any damage suits, these damage suits would, in effect, be prorated over the cost of their rate base and it would be like an insurance policy; it would be borne by all the subscribers, instead of the damage falling on just this one individual.

The second thing is there is no reason why the telephone company, if it should determine that the facilities are, in fact, being used in violation of law, that they should continue to provide this service.

Now, the other aspect would be, if the telephone company ascertained that the telephone service was being provided and used unlawfully, they try to cut off service, and if the individual receiving service went to the State regulatory body and got an injunction or a stay order from the regulatory body prohibiting the telephone company from taking out the telephone.

I would say that, very clearly, this would not be a violation of our proposed bill, S. 1656, because there the telephone company would be prohibited by an order of a regulatory State commission or by a court from removing the service.

The other question that I have down here that was raised—

Senator KEFAUVER. That is not provided in the bill?

Mr. MILLER. Sir?

Senator KEFAUVER. I say there is no exclusion, there is no exemption of that kind in 1656; that is, you do not say here:

Provided, however, if the telephone company is prohibited from removing the telephone by order of the court or by order of a utility board, that they will not be guilty of a violation?

Mr. MILLER. Senator, we believe that the language of subsection (a) covers this very clearly, because it says:

"Whoever leases, furnishes, or maintains any wire communications facility with intent that it be used for the transmission in interstate commerce," and I think it is very clear; I do not think there is any room for argument, Senator, that if the telephone company is enjoined from removing that facility by action of a State court or State regulatory body, they are outside the scope of this statute, and it would be impossible to bring any successful criminal prosecution based on a violation of the statute, because they are acting under duress, if you will, from an outside source.

Senator KEFAUVER. Mr. Miller, how would this alternative strike you?

Suppose you provide that the communication company shall be required to exercise diligence to ascertain if any of its facilities were being used for the purpose of transmission in interstate commerce of bets or wagers, and that, upon having such information, it shall be required to notify the Department of Justice and the appropriate State enforcement officials. Upon notifying the State officials, then provide that the State or Federal official may request that service be discontinued and they shall have to discontinue it, and then exempt them from liability.

Mr. MILLER. Starting with the last aspect of that first, if the telephone company discontinues service at the request of, for example, a local official of the police department, and if the man whose telephone service has been removed may not sue the telephone company for acting pursuant to this request, you very conceivably could have a situation where the man had been damaged substantially in his business. He had no chance to be heard. He had no chance to demonstrate that he was, in fact, not using the telephone facility for the transmission of wagering information, and the result would be that he would have nowhere to turn to sue for damages for compensation for the substantial business that he has lost.

Turning to the first part, namely, requiring the telephone company to use due diligence and to notify law enforcement officials, as a practical matter, by the imposition of the penal sanctions of this bill, they will, in fact, utilize due diligence to ascertain whether, in fact, their facilities are used.

Furthermore, I am sure they will have no problem in their calling it to our attention, when they find that it appears that the facilities are being used for an unlawful purpose.

I mean they have, I think, the same duty that any citizen would have in calling to the attention of law enforcement officials this information when it does come to their attention.

Senator KERATYER. There is no provision here to give the person whose telephone has been removed a procedure for judicial remedy. Is that inherent?

Would they have that, whether it is provided here or not? Could they secure an injunction or try to secure an injunction to prevent removal?

Mr. MILLER. Yes. Nothing in S. 1656 covers the removal of the equipment. I mean this just says that the utilization of it for certain prohibited purposes is a crime, or the furnishing of it.

Now, as a practical matter, individuals whose telephones are removed, or about to be removed, may resort in some States—and I am not familiar with all of the regulatory statutes of the various States—and seek an administrative remedy to have their service reinstated, if the telephone company cuts it off, and, furthermore, in court they would probably have the opportunity to seek judicial review.

In some jurisdictions, I believe the District of Columbia is one, I recall a case, *Andrews v. Potomac Telephone Company*, the man's telephone was removed at the request of the local U.S. attorney, and they went to court attempting to have service reinstated.

Senator KERATYER. The bill on page 2 seems to be limited to sporting events or contests. Why do you not apply the bill to any kind of gambling activities, numbers rackets, and so forth?

Mr. MILLER. Primarily for this reason, Senator: The type of gambling that a telephone is indispensable to is wagers on a sporting event or contest. Now, as a practical matter, your numbers game does not require the utilization of communications facilities.

The bookmaker who is without adequate communication facilities has a very difficult burden, because he not only has to get his calls by the telephone, but he has to, when necessary, contact layoff bettors in order to protect himself. Otherwise, some lucky, or unlucky for him, horserace and he would be wiped out.

And this has to be done practically simultaneously with the operation of the horserace itself. I mean there is just a certain period in here, when he takes the bets and when he finds that he has to go for the layoff bet, that he has to call and, in effect, balance his books, and this is a continuing thing, and it is this type of gambling activity that the telephone is an absolute necessity.

Senator KEFAUVER. In 1951 we had quite an investigation up in New York and in New Jersey where a lot of telephones were used across State lines in connection with policy and the numbers game up there.

Mr. MILLER. I am not familiar with that information, Senator.

Senator KEFAUVER. I can see that telephones would be used in sporting contests, and it is used quite substantially in the numbers games, too.

How about laying off bets by the use of telephones and laying off bets in bigtime gambling? Does that not happen sometimes?

Mr. MILLER. We can see that this statute will cover it. Oh, you mean gambling on other than a sporting event or contest?

Senator KEFAUVER. Yes.

Mr. MILLER. This bill, of course, would not cover that because it is limited to sporting events or contests.

Senator KEFAUVER. Do you consider a boxing match a contest?

Mr. MILLER. That is a sporting event or contest, yes, sir, normally.

Senator KEFAUVER. How about a wrestling match?

Mr. MILLER. Yes, sir.

Senator KEFAUVER. I would think that would be more of a performance than a contest.

Mr. MILLER. I do not watch them on television, but I understand that is a fact, more actor than wrestler.

Senator KEFAUVER. Why should not S. 1656 be expanded to include transmission of money? Money is frequently sent by Western Union, is it not?

Mr. MILLER. I do not believe we would have any objection to that, Senator. It was our feeling that in this bill, it was aimed at a particular situation, gambling, a specific type of gambling, and the layoff bettor.

Senator KEFAUVER. Will you consider the advisability of that when you come before us next time?

Mr. MILLER. Certainly.

Senator KEFAUVER. Mr. Eisenberg, Senator Keating has not come. Do you have any questions?

Mr. EISENBERG (assistant to Senator Keating). I know Senator Keating was planning to ask further questions, but I am sure he will be glad to wait until the meeting tomorrow.

Senator KEFAUVER. What are you going to do about private social betting? I believe Mr. Kennedy conceded that S. 1656 would apply to just an individual at home calling up to see how a horse race went and maybe calling a bookie across a State line. Is it your intention to make this applicable to private social betting?

Mr. MILLER. The answer is: It was not our intent. There were two problems that faced us when we were drafting this particular piece of legislation.

One is that one of the biggest layoff bettors in the country, who had, I believe, showed a profit of something like \$250,000 a year or two ago, when questioned about his betting activities, refers to the fact that he is merely a social bettor.

All he does is he just likes to bet a little bit now and then, and it is just that he makes big bets instead of the normal \$2 bet.

We wanted to make certain that that type of conduct, when you get into the larger bets, would be prohibited. The other factor would be the problem of trying to define what type of bet or wager should be exempt under the statute, if, indeed, there should be any exemption under the statute.

It was felt that the Department of Justice should not sponsor a bill which, in effect, condoned or permitted this type of social betting.

And so, consequently, this was the proposal that was before the committee.

SENATOR KEFAUVER. So it is a matter of how you can draft the bill to take care of what is truly a small social bettor?

MR. MILLER. That is correct.

Now I would suggest that under the tax statutes, the tax is applied to those who are engaged in the business of betting, and it might be that some type of an application of that approach to the problem would solve the social bettor problem, but would not permit the larger gambler to say that he was just a social bettor.

SENATOR KEFAUVER. Mr. Kirby calls my attention to the fact that in S. 1653 it only applies to a person who travels across the State line in furtherance of a business enterprise. Could you not write in the same concept in this?

MR. MILLER. That same concept could be placed in this bill, and, as I say, this is the concept which is used under the current internal revenue laws on the wagering Stamp Tax Act. A man has to be engaged in the business of gambling before he is required to obtain a stamp.

SENATOR KEFAUVER. Do you think that would weaken the statute much?

MR. MILLER. It would weaken the statute because we would have to prove the additional fact that the man was actually engaged in the business of gambling, but it might be an advisable change, because then the scope of the problem relating to the social bettor would be deleted.

SENATOR KEFAUVER. You will consider this?

MR. MILLER. All right, sir.

SENATOR KEFAUVER. I think the best thing to do, since other Senators do want to be here to question you further, if it is satisfactory, we will take up again at 10 o'clock in the morning in this same room.

(Whereupon, at 2:20 p.m., the hearing was adjourned, to reconvene at 10 a.m., Wednesday, June 21, 1961.)

EXHIBIT B

Internet Lotteries Remain Illegal

I. Introduction

Online lotteries are illegal under federal law. For decades, federal anti-gambling laws have been interpreted to prohibit virtually all forms of Internet gambling because of the Internet's inherent interstate nature. Members of Congress, including architects of federal anti-gambling laws, have recognized and supported this longstanding interpretation. In a letter to Attorney General Holder dated July 14, 2011, Senators Harry Reid and Jon Kyl asked the Department of Justice to reiterate its "longstanding position that federal law prohibits gambling over the Internet, including intra-state gambling (e.g., lotteries)." Further, the Senators asked the Department to avoid "open[ing] the floodgates to Internet gambling."

The Department's recent opinion on Internet gambling¹ did not address or answer the central question with regard to online lotteries – are they legal under federal law? Instead, the opinion merely concluded that the Wire Act² applies only to interstate transmissions of wire communications related to a "sporting event or contest," and the *Wire Act* does not prohibit states from using the Internet and out-of-state transaction processors to sell lottery tickets.³ The opinion did not address the legality of online lotteries under any other federal laws.

Despite the Department's opinion on the Wire Act, multiple legal barriers remain for states to operate online lotteries. A new interpretation by the Department of a single statute does not undo other federal laws or legislative history on this issue.

II. Interstate Transportation of Wagering Paraphernalia Act

¹ Memorandum Opinion for the Asst. Att'y Gen., Criminal Division, "Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transactions Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act" (Sept. 20, 2011) [hereinafter *State Lottery Opinion*].

² 18 U.S.C. § 1084 (2006).

³ *State Lottery Opinion*, at 1.

Internet lotteries are barred under the Interstate Transportation of Wagering Paraphernalia Act of 1961 (Interstate Act).⁴ The Interstate Act reads:

Whoever, except a common carrier in the usual course of business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined under this title or imprisoned for not more than five years or both.

Federal courts have interpreted “numbers, policy, bolita or similar game” to encompass lotteries.⁵ Further, federal courts and the law’s legislative history make clear that the Interstate Act applies to state-run lotteries as well as private lotteries. In *U.S. v. Fabrizio*, a case involving interstate transportation of purchase acknowledgments for a New Hampshire lottery, the Supreme Court stated, “Congress did not limit the coverage of the statute to ‘unlawful’ or ‘illegal’ activities.”⁶ The Court reasoned that an exemption for state-run gambling activities would “defeat one of the primary purposes of § 1953, aiding the States in suppression of gambling where such gambling is contrary to state policy.”⁷

The Court’s conclusion in *Fabrizio* – that the Interstate Act does apply to state-run gambling activities – is supported by the law’s legislative history. During Senate hearings on the Act, Herbert Miller, Assistant Attorney General, was asked whether the

⁴ 18 U.S.C. § 1953(a) (2006).

⁵ *U.S. v. Baker*, 241 F. Supp. 272 (M.D. Pa. 1965), *aff’d* 364 F.2d 107 (3d Cir. 1966); *U.S. v. Fabrizio*, 385 U.S. 263 (1966); *U.S. v. Stuebben*, 799 F.2d 225 (5th Cir. 1986); *U.S. v. Norberto*, 373 F. Supp. 2d 150 (E.D.N.Y. 2005); *FTC v. World Media Brokers*, 415 F.3d 758 (7th Cir. 2005).

⁶ 385 U.S. 263, 268 (1966); *see also*, *Norberto*, 373 F.Supp.2d at 158-159 (relying on *Fabrizio* to conclude § 1953 applies to lottery run by Government of Spain); *Stuebben*, 799 F.2d at 228 (concluding § 1953 applies to materials related to state-run lotteries); *but see*, *Erlenbaugh v. U.S.*, 409 U.S. 239 (1972) (case involving Travel Act, 18 U.S.C. § 1952, where Court suggested in dicta that § 1953 applies to illegal gambling but § 1952 applies more broadly to “illegal activity”).

⁷ *Fabrizio*, 385 U.S. at 269.

law (as drafted by the Department of Justice) was meant to apply to gambling activities that are legal under state law. Mr. Miller responded that the law did cover wagering paraphernalia associated with state-run gambling operations.⁸ He went on to explain: “[W]e feel that if we are going to attempt – and I hope successfully attempt – to eradicate what I think is a substantial evil in this country today by gambling, then I think that we should prohibit these items from interstate commerce, and it is the only way that it is going to be accomplished.”⁹

In *Fabrizio*, the Court read several provisions in the Interstate Act to have broad application. For instance, “whoever, except a common carrier,” according to the Court, covers quite literally everyone except a common carrier.¹⁰ As the Court noted, “Congress painted with a broad brush and did not limit the applicability of § 1953.”¹¹ Additionally, the items, devices, and other material covered under the Interstate Act are not limited. According to the Court, the law is “aimed not only at the paraphernalia of existing gambling activities but also at materials essential to the creation of such activities.”¹² And finally, the “use” provision under the Interstate Act was read broadly. The acknowledgements of purchase (functionally equivalent to a receipt for purchase) at issue in *Fabrizio* satisfied the “use” requirement, even though the acknowledgment itself was not necessary to participate in the lottery or to win.¹³ The Court found it sufficient that the acknowledgment “serves a significant psychological purpose by receipting the purchase and assuring the owner that his ticket is properly registered.”¹⁴

The law’s prohibition on carrying or sending gambling paraphernalia across state lines is not specific to any mode of transmission or transportation. For example, in *U.S. v. Norberto*, the Court applied the Interstate Act where defendants illegally sold and

⁸ *Hearing on S. 1657 Before the S. Comm. on the Judiciary*, 87th Cong. 294 (1961) (statement of Herbert Miller, Asst. Att’y Gen., Dept. of Justice).

⁹ *Id.*

¹⁰ *Fabrizio*, 385 U.S. at 266.

¹¹ *Id.*

¹² *Id.* at 267.

¹³ *Id.* at 271.

¹⁴ *Id.*

promoted a lottery run by the Government of Spain in the United States via mail and the Internet,¹⁵ and in *U.S. v. Stuebben*, the Court applied the Interstate Act where defendants were transporting gambling paraphernalia via plane and mail.¹⁶ Internet transmissions of lottery-related data, transactions, or information across state lines are sufficient to trigger the law's interstate provisions.

Although there is no case law directly on point with regard to the Interstate Act itself, federal courts have addressed interstate Internet transmissions in the context of other federal criminal statutes. In *U.S. v. Kammersell*,¹⁷ the question was whether an instant message sent from Utah, transmitted through Virginia, and received back in Utah was an interstate communication. *Kammersell* dealt with 18 U.S.C. § 875(c), which prohibits interstate communications containing threats to kidnap or injure another person. The Court's rationale and conclusion are applicable here.

In *Kammersell*, the Court addressed defendants' argument that the law was passed when the telegraph was the primary means of interstate communication and therefore was not meant to apply to new technologies like the Internet.¹⁸ The Court found, however, that the literal meaning of the law still applies, even with dramatic technological advances.¹⁹ The Court then noted that nothing in the law requires "that the threat actually be received or seen by anyone out of state;" rather, any interstate transmission, even one that wound up back in the same state as the sender, was sufficient.²⁰

Similarly, in *U.S. v. Kelner*,²¹ the Court found that the interstate requirement under 18 U.S.C. § 875(c) was satisfied when the defendant threatened to assassinate Yasser Arafat during a TV interview broadcast to three states while both defendant and

¹⁵ *Norberto*, 373 F. Supp. 2d 150 (E.D.N.Y. 2005).

¹⁶ *Stuebben*, 799 F.2d 225 (5th Cir. 1986).

¹⁷ 196 F. 3d. 1137 (10th Cir. 1999).

¹⁸ *Id.* at 1138-39.

¹⁹ *Id.*

²⁰ *Id.* at 1139.

²¹ 534 F.2d 1020 (2d Cir. 1976).

Mr. Arafat were in New York. Ruling on the constitutionality of § 875(c) as applied to the defendant's case, the Court reasoned:

[W]e do not feel that Congress is powerless to regulate matters in commerce when the interstate features of the activity represent a relatively small, or in a sense unimportant, portion of the overall criminal scheme. Our problem is not whether the nexus of the activity is 'local' or 'interstate;' rather, under the standards which we are to apply, so long as the crime involves a necessary interstate element, the statute must be treated as valid.²²

Like § 875(c), the Interstate Act requires only "carrying" or "sending" prohibited items between states to satisfy its interstate requirement – nothing further. Nothing in the Interstate Act requires that messages or items be received, viewed, used, or otherwise acknowledged in a different state. Nor does it require analysis of the "local" or "intrastate" nature of the activity in question. Like § 875(c), all that matters under the Interstate Act is that prohibited information or items are carried or sent across state lines at some point.

Finally, the exceptions to the Interstate Act's general prohibition do not cover Internet lottery transmissions that are carried across state lines. In 1975, Congress amended the law by adding § 1953(b)(4). Section (b)(4) of the Interstate Act reads: "[section (a)] shall not apply to equipment, tickets, or materials used or designed for use within a state in a lottery conducted by that State acting under authority of State law." The Department's State Lottery Opinion suggests that § 1953(b)(4) serves as a general exemption for state-run lotteries from the law's restrictions.²³ However, federal courts have interpreted the (b)(4) exception more narrowly.

²² See also, *U.S. v. Hornaday*, 392 F.3d 1306, 1311 (11th Cir, 2004) ("The internet is an instrumentality of interstate commerce. Congress clearly has the power to regulate the internet, as it does other instrumentalities and channels of interstate commerce, and to prohibit its use for harmful or immoral purposes regardless of whether those purposes would have a primarily intrastate impact.") (citations omitted).

²³ State Lottery Opinion, at 11, n. 9.

First, courts have found that § 1953(b)(4) is not a general exemption for paraphernalia used in state-run lotteries. In *U.S. v. Stuebben*,²⁴ the Court interpreted the scope of § 1953(b)(4)'s exemption. There, the defendant was charged with violating the Interstate Act for transporting (via plane and mail) lottery betting slips for the Illinois State Lottery from Louisiana to Illinois. The defendant claimed that his actions fell within the § 1953(b)(4) exception because the materials were to be used in a legal, state-run lottery. The Court disagreed. The Court interpreted the exception and its legislative history narrowly, stating: “[T]he new law allowed the use of the mail, radio, and television within a state holding a lottery to provide information about that lottery. Then-existing restrictions were lifted, however, only to the extent necessary for *intrastate* publicity.”²⁵ The Court went on to conclude: “Transportation of these betting forms between states . . . remains a crime under § 1953(a).”²⁶

Second, the exception in § 1953(b)(4) distinguishes between the importation of materials necessary to operate a state-run lottery (e.g., lottery ticket machines, printed tickets, etc.) *into* a state that operates a lottery and the subsequent interstate transportation of lottery-related materials to customers. The language of the exception is clear – it exempts equipment and materials used or designed for use *within a state* in a lottery conducted by that state. In other words, § 1953(b)(4) of the Interstate Act allows states to buy from other states the necessary equipment and materials to operate a lottery; it does not allow states to turn around and send lottery-related materials back out into interstate commerce via the Internet or any other means.

In *U.S. v. Norberto*,²⁷ the Court addressed the scope of 18 U.S.C. § 1307(b)(2), an exception to another federal anti-gambling law that is almost identical to the § 1953(b)(4) exception. Section 1307(b)(2) reads: “The provisions of sections 1301, 1302, and 1303 shall not

²⁴ 799 F. 2d 225 (5th Cir. 1986).

²⁵ *Id.* at 227.

²⁶ *Id.* at 228. Additionally, in *U.S. v. Norberto*, 373 F. Supp. 2d 150 (E.D.N.Y. 2005), the Court applied the Interstate Act where defendants transported lottery tickets internationally via mail and the Internet for a lottery run by the Government of Spain. Despite § 1953(b)(5), which mirrors (b)(4) except it applies to foreign commerce and lotteries authorized by foreign governments, the Court found the Act applicable even though the materials were associated with a legal, government-run lottery.

²⁷ 373 F. Supp. 2d 150 (E.D.N.Y. 2005).

apply to the transportation or mailing to an addressee within a foreign country of equipment, tickets, or material designed to be used within that foreign country in a lottery which is authorized by the law of that foreign country.” In *Norberto*, Defendants claimed that the § 1307(b)(2) exception barred their prosecution because the lottery tickets being sold and transported across borders via mail and the Internet were for a legal lottery run by the Government of Spain. The Court found, however, that § 1307(b)(2) is not that broad.²⁸ The Court, citing the Second Circuit’s opinion in *U.S. Postal Service v. C.E.C. Services*²⁹ and § 1307(b)(2)’s legislative history, noted that the purpose of this section “was to allow United States manufacturers to export lottery-related materials for use in foreign countries ... not to attract players to on-going lotteries.”³⁰

The language of § 1953(b)(4) mirrors § 1307(b)(2) and the provisions were enacted at the same time. The reasoning in *Norberto* applies with equal force to both. Like § 1307(b)(2), § 1953(b)(4) allows states with legal lotteries to order and receive materials made out of state so that each state is not required to manufacture all of its own lottery equipment. The exception is not intended to relax the law’s prohibition on interstate transportation of lottery-related paraphernalia to individual consumers – which Internet lotteries plainly would do.

Given the letter of the law, federal courts’ interpretation of the law, and legislative history, the Interstate Act prohibits state-run Internet lotteries. Internet lottery transmissions are invariably routed to out-of-state processors and even if they are related to state-run lotteries, they do not fall within any of the Interstate Act’s exceptions.

III. Federal Anti-Lottery Act and Interstate Wagering Amendment of 1994

Online lotteries are also illegal under the Anti-Lottery Act and Interstate Wagering Amendment of 1994 (Anti-Lottery Act).³¹ Under the Anti-Lottery Act:

²⁸ *Id.* at 157.

²⁹ 869 F.2d 184 (2d Cir. 1989).

³⁰ *Norberto*, 373 F. Supp. 2d at 157 (quoting *C.E.C. Services*, 869 F.2d at 186, n. 1).

³¹ 18 U.S.C. § 1301 (2006).

Whoever brings into the United States for the purpose of disposing of the same, or knowingly deposits with any express company or other common carrier for carriage, or carries in interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme . . . shall be fined under this title or imprisoned not more than two years.

Like the Interstate Act, the Anti-Lottery Act broadly prohibits items associated with lotteries and lottery tickets from being carried across state lines.

Due to the Acts' similar language and structure, federal courts' interpretation of the Interstate Act and its provisions can also be applied to the Anti-Lottery Act. In fact, federal prosecutors couple charges against defendants for violation of one Act with charges for violation of the other based on the same facts.³²

As discussed above, the Anti-Lottery Act contains a similar exception to § 1953(b)(4) in the Interstate Act. Section 1307(b) under the Anti-Lottery Act reads:

The provisions of sections 1301, 1302, and 1303 shall not apply to the transportation or mailing (1) to addresses within a State of equipment, tickets, or material concerning a lottery which is conducted by that State acting under the authority of State law; or (2) to an addressee within a foreign country of equipment, tickets, or material designed to be used within that foreign country in a lottery which is authorized by the law of that foreign country.

Like the Interstate Act, this exception to the Anti-Lottery Act has not been read by federal courts as a general exemption for government-run lotteries. In *Stuebben* and *Norberto*, federal courts applied both Acts – despite their exceptions -- to cases involving government-run lotteries. Additionally, *Norberto*'s discussion of the scope and intent of § 1307(b)(2) makes clear that the exception covers the importation of manufactured goods necessary to run a state lottery into that state, but does not allow interstate transmission of lottery paraphernalia to individual consumers.

³² See, e.g., *Norberto*, 373 F. Supp. 2d 150; *Stuebben*, 799 F.2d 225.

For all of the reasons discussed above with regard to the Interstate Act, state-run online lotteries are also prohibited under the Anti-Lottery Act.

IV. Unlawful Internet Gambling Enforcement Act of 2006

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) prohibits acceptance of any financial instrument for unlawful Internet gambling.³³ UIGEA does not criminalize gambling activities; rather, it incorporates existing laws defining illegal gambling activities – like the ones discussed above - and prohibits acceptance of payment for those activities. The Department’s State Lottery Opinion expressed concern “that the Wire Act may criminalize conduct that UIGEA suggests is lawful.”³⁴ However, that concern is misplaced. UIGEA was passed with the express intent of not “altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.”³⁵ In other words, UIGEA was not passed to make certain gambling conduct legal; it aimed to preserve the status quo.

UIGEA’s language and legislative history demonstrate that Congress understood online lotteries to be “unlawful Internet gambling” and intended for them to remain classified that way with UIGEA’s passage. This was made clear in the UIGEA Conference Report:

The safe harbor would leave intact the current interstate gambling prohibitions such as the Wire Act, federal prohibitions on lotteries, and the Gambling Ship Act *so that casino and lottery games could not be placed on websites and individuals could not access these games from their homes or businesses*. The safe harbor is intended to recognize current law which allows states jurisdiction over wholly intrastate activity, where bets or wagers, or information assisting in bets or wagers, do not cross state lines. *This would, for*

³³ 31 U.S.C. §§ 5361-5367 (2006).

³⁴ State Lottery Opinion, at 3.

³⁵ UIGEA § 5361(b).

*example, allow retail lottery terminals to interact with a processing center within a state, and linking of terminals between separate casinos within a state if authorized by the state.*³⁶

Congress clearly contemplated online lotteries when it passed UIGEA and expressly did *not* legalize them or in any way suggest that they should be legalized. Congress instead relied upon the longstanding position of the U.S. Department of Justice that online lotteries were illegal. If Congress intended to override the then-existing interpretation of the Wire Act and other federal law to allow online lotteries, it could have explicitly done so. For instance, as referenced in the Conference Report excerpt above, Congress could have included online lotteries in the law's exceptions from the term "unlawful Internet gambling." However, online lotteries are not among the exceptions.³⁷ In fact, as the Conference Report indicates, "lotteries placed on websites" were intentionally excluded from the list of exceptions.³⁸

UIGEA cannot properly be used as a basis for legalizing online lotteries - the language of the law does not extend that far (to criminalize or legalize gambling activities). Such a move would directly contradict the language of the law and Congress's intent.

V. Conclusion

³⁶ *Conference Report on H.R. 4954, Safe Port Act*, 152 CONG. REC. H8026, H8029 (Sept. 27, 2006) (statement of Rep. Leach) (emphasis added).

³⁷ UIGEA's exceptions to "unlawful Internet gambling" do include a bet or wager where: "the bet or wager is initiated and received or otherwise made exclusively within a single State," the bet or wager and the method of betting or wagering is authorized under state law, the state law includes appropriate age and location verification requirements, and data security standards prevent unauthorized access to the betting or wagering. § 5362(10)(B). Intratribal transactions and activity allowed under the Interstate Horseracing Act of 1978 are also listed as exceptions. § 5362(10)(C)-(D).

³⁸ "Intermediate routing of electronic data" mentioned under UIGEA § 5362(10)(E) covers the scenario described in the Conference Report – retail terminals interacting with processing terminals within the same state. Based on the Conference Report language and the longstanding legal interpretation that the Internet is an instrumentality of interstate commerce, the term should not be read more broadly.

Online lotteries have been illegal under federal law for decades. The Department's new interpretation of the Wire Act did not make online lotteries legal. Other federal laws still bar states from operating lotteries on the Internet. Federal case law and legislative history regarding federal anti-gambling statutes support this position. Consequently, states are not allowed to use the Internet to sell lottery tickets to consumers.

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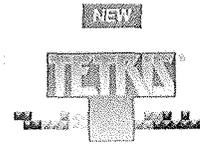
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