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INTERNET GAMBLING PROHIBITION ACT OF 1999

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE, AND CONSUMER PROTECTION

OF THE

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

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INTERNET GAMBLING PROHIBITION ACT OF 1999

THURSDAY, JUNE 15, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 11 a.m., in room 2123, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Oxley, Stearns, Gillmor, Cox, Largent, Cubin, Shimkus, Fossella, Ehrlich, Markey, Gordon, Rush, Eshoo, Luther, Green, and McCarthy.

Staff present: Justin Lilley, majority counsel; Cliff Riccio, legislative assistant; Andrew W. Levin, minority counsel; Brendan Kelsay, minority investigation; and Chris G. Ernst, minority staff.

Mr. TAUZIN. The subcommittee will please come to order. We will ask our guests to take seats and catch the doors so we have some quiet in the hearing room. Thank you.

This morning we will consider legislation that the Speaker referred to this committee because of our historical experience in dealing with matters that affect interstate and foreign communications. In particular, we are here today to consider H.R. 3125, the Internet Gambling Prohibition Act, which is sponsored by Mr. Goodlatte, who will be testifying on the matter.

The Congress has spent much of its time harrowing the promise of the Internet. Just yesterday, the House provided overwhelming support that an initiative sponsored by Mr. Bliley will help to establish a key foundation in the digital economy, namely, electronic signatures, and Mr. Dingell and Mr. Markey and Mr. Oxley were key components of the effort to work that bill through the House/Senate conference and through the floor vote yesterday, for which I want to thank my friends and colleagues.

They also provided strong support for the idea that the Internet should remain tax free, or at least until State and localities dramatically simplify their patchwork of sales and use tax structures. The promise of the Internet is indeed real. What we all know is, promise always bring with it some risk and, in some cases, real and identifiable problems, such as spam, which the committee addressed yesterday through legislation, to protect consumers against this nuisance and sometimes very troubling and inefficient aspect of the Internet.

Also, on-line pharmacies have come up for some discussion because we have learned that on-line pharmacies have the potential of preying on senior citizens.

In addition to the prevalence of obscenity and pornography, the Internet's darkest side, rears the issue of Internet gambling. There is no mistaking the threat that Internet gambling poses to society, children in particular. We will hear firsthand evidence today. We will also hear evidence of how strong Internet gambling's future is unless Congress decides to act.

As complicated as the problem is, the solution is no less complex. We will hear testimony today from numerous experts in the area of the law and policy, some in support of this bill and some in strong opposition. I note in particular that some resist the idea that a bill that is indeed intended to prohibit Internet gambling creates exemptions, which could have the effect of promoting some forms of gambling on the Internet. But we all know sports-related and casino-style gambling account for most of the gambling on the Internet. The bill that would allow State lottery will clearly bar such gambling in the future.

I want to commend the work of Mr. Goodlatte and his colleagues at the Judiciary Committee. They have worked long and hard to try to craft a bipartisan solution. We have to begin the process so this important legislation can be refined further. We look forward to the testimony of this morning's witnesses, and I yield to my friend and colleague, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman. I want to commend you for calling this hearing on legislation that proposes certain new regulations on the Internet, in this case, dealing with the subject of gambling.

The legislation broadly proposes making gambling over the Internet illegal, providing criminal penalties for violations, authorizing civil enforcement proceedings by State and Federal authorities, as well as establishing regulations on how Internet service providers will terminate and block access to material or activity, which violates the gambling prohibition.

On the other hand, the legislation contains provisions which might have made the late great Claude Rains blush. A number of exceptions to the general prohibitions on Internet gambling that permit, under certain circumstances, fantasy sports leagues, gambling on horse races, gambling on jai alai, and gambling on greyhound racing. The legislation also permits intrastate purchase of lottery tickets, but only if they are made in a public facility, which presumably means that you can't buy a lottery ticket from home over the Internet. This "on the one hand, on the other hand" approach to Internet gambling reminds me of the story of Father Murphy, who goes up into the pulpit on Sunday morning and says on Wednesday night in the church hall, Father Murphy lectures on the evils of gambling. Thursday night in the church hall, bingo.

Ladies and gentlemen, there is no question that our society has a schizophrenic attitude toward this issue. Gambling can be very additive, a compulsion that many citizens struggle with gambling daily. It can poison professional and amateur athletics. It is opposed by many religious organizations. On the other hand, many otherwise pious people hop on flights every year to visit the modern

day gambling mecca of Las Vegas or Atlantic City or to the Babylon on the Bayou, now that Louisiana has gambling.

There are now casinos on Indian reservations and on river boats all over this country. And in the east, we have a button-down version that we call Wall Street. But we don't call that gambling, we call that capital formation. We will prohibit wagers on the Web unless, of course, it is a bet on the biotech stocks where the bookie isn't in the local bar but on the big board or on-line at Ameritrade, where you can place your bets for only $8 and double your bet if you are willing to play chicken with the office coffee boy named Stuart.

How do we choose which type of gambling to ban? Should we place them all on a spinning roulette wheel and see where it lands? I know that I strongly opposed organized gambling on college athletics, but on the other hand, March madness, how much does it cost to join that pool in your office? H.L. Mencken once said that the definition of a puritan was someone who had the haunting fear that somewhere, someone, somehow was having a good time. And much of what we are talking about here is how ordinary people gamble, not on Wall Street or some new Internet company that they are putting $100,000 on, but they have no idea what the company does because somebody whispered this tip. Did I grow up in a community with two minds on gambling, in a word, bingo? I think we all did. That is why this subject is so complex, and it is going to require a lot of thought on our part before we craft rules that are going to be binding for a good long time on the American public.

Mr. TAUZIN. Rock on, Mr. Markey.

If the gentleman yields a second, a real story, I was calling bingo once at my church in New Orleans and I called the wrong number, and in the day when people were using corn to cover the number on their cards. I had to ask the audience to look under all of their corn and to remove that and put the corn on the right number. There was a lot of grumbling in the audience. I said I made a mistake, which everybody does, and that is why we had erasers on the back of pencils. And some guy in the back of the room yelled up yeah, Billy, that's why we have elections now and then, too.

[The prepared statement of Hon. Edward J. Markey follows:]

PREPARED STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Good Morning. I want to commend Chairman Tauzin for calling this hearing today on legislation that proposes certain new regulations for the Internet, in this case dealing with the subject of gambling.

The legislation broadly proposes making gambling over the Internet illegal, providing criminal penalties for violations, authorizing civil enforcement proceedings by Federal and State authorities, as well as establishing regulations on how Internet service providers will terminate and block access to material or activity that violates the gambling prohibition. On the other hand, the legislation contains provisions that might have made the late, great Claude Rains blush: a number of exceptions to the general prohibition on Internet gambling that permit under certain conditions, fantasy sports leagues, gambling on horse races, jai lai, and greyhound racing. The legislation also permits *intra*-state purchase of lottery tickets but only if such purchases are made in a public facility, which presumably means you can't buy a lottery ticket from home over the Net.

This "on the one hand, on the other hand" approach to Internet gambling reminds me of the story of the Catholic priest, who at the end of the Mass, announces upcoming parish functions by saying to the parishioners, "Please note that on Wednes-

day evening in the parish hall, Father Murphy will lecture on the evils of gambling. And don't forget: on Thursday in the parish hall, 'Bingo.'"

There's no question that our society has a schizophrenic attitude toward this issue. Gambling can be a very addictive, debilitating compulsion that many citizens struggle with daily. It can poison professional and amateur athletics. It is strongly opposed by many religious organizations.

On the other hand, many otherwise pious people hop on flights every year to visit the modern day gambling Mecca of Las Vegas—or they go to Atlantic City or to the "Babylon of the Bayou" now that Louisiana has gambling. There are now casinos on Indian reservations and on riverboats.

And in the East, we have a buttoned-down version that we call "Wall Street"—but we also don't call that "gambling", we call it "capital formation." We will prohibit wagers on the Web. Unless, of course, it's a bet on biotech stocks where the bookie isn't in the local bar but on the Big Board, or online at Ameritrade where you can place your bets for only 8 dollars—(and double your bet if you're willing to play chicken with the office copy boy named "Stuart.")

How do we choose which type of gambling to ban? Should we place them all on a spinning roulette wheel and see where it lands? I know that I strongly oppose organized gambling on college athletics—but on the other hand . . . March Madness, how much to join the pool?

H.L. Mencken once said that the definition of a Puritan was a person who was fearful that someone, somewhere, somehow might be having a good time. I grew up in a socially conservative, blue collar community that the Puritans might have liked—but it was within two miles of the dogs at Wonderland and the ponies over at Suffolk Downs.

Did I grow up in a community with two minds on gambling?

In a word: "Bingo."

I look forward to hearing the testimony from our witnesses.

Mr. TAUZIN. The Chair is pleased to recognize the gentleman from Oklahoma, Mr. Largent, next.

Mr. LARGENT. Thank you, Mr. Chairman. I wanted to thank you for holding this hearing on H.R. 3125, the Internet Gambling Prohibition Act. There is no dispute that there has been an explosive growth of Internet gambling over the past few years. The National Gambling Impact Study reports that Internet gambling revenues have doubled every year for the past 3 years. One study indicates that on-line gambling revenues have grown from $300 million in 1998 to $651 million in 1999. It is expected that revenues will go to $2.3 billion by 2001. There is dispute, however, if this legislation is sufficient to address the problem of Internet gaming. We will hear testimony today from some of the witnesses who believe that H.R. 3125 strikes the proper balance between curbing the growth of on-line gaming, but allow otherwise lawful wagering on animal races, Indian gaming and jai alai.

We will also hear from others who believe that H.R. 3125 is a special interest bonanza and if we are to prohibit on-line gaming, we need to prohibit all Internet gambling, and I look forward to hearing the pros and cons associated with H.R. 3125, and I yield back the balance of my time.

Mr. TAUZIN. I thank the gentleman.

The gentleman from Texas, Mr. Green is recognized.

Mr. GREEN. Thank you, Mr. Chairman.

Like my colleagues, I am glad you called this hearing on the bill although I am confused by the legislative intent. Just recently, our subcommittee held a hearing on obscenity available over the Internet, and the tenor of that hearing was trying to prevent the spread of this destructive material to adults and children. I am quite surprised when I read H.R. 3125 that we are going to legalize gambling over the Internet. It is just as addictive as drugs and alcohol,

and the passage of this bill would allow residents of Texas to bet on horse and dog races in other States.

Mr. Chairman, we already share our financial resources in Texas with the casinos in Louisiana, and we don't want to share anymore. That is one of the disturbing aspects of it. I can sit in my home and flush my family's financial security down the disk drive without anyone knowing about my actions until it is too late. The legislation would be a boon to compulsive gamblers, even if your State prohibits it. We should rename this legislation the "Breakup the Family Act" because I don't know what would happen if my wife came in at 10:30 at night and I said we lost our savings and our children's savings because I lost a horse race.

Any bill dealing with gambling has the greed factor and this one is truly amazing. I didn't support gambling in the Texas legislature when I was there, and after I left, the citizens of Texas voted for a State lottery, and that lottery now provides over a billion dollars a year for our Texas public schools. I didn't vote for it during the referendum, and I would surely be concerned about allowing Internet gambling on horse racing and dog racing outside the State of Texas because the voters did not approve that type of gambling. It would have little benefit to the individual States.

At least the lottery provides a billion dollars to the Texas public schools. My concern is States that have a lottery. We are supposed to support allowing horse and dog track owners in other parts of the country to have Internet gambling, and yet the lotteries would not be able to do that. I don't want to have to sell this vote back home in Texas. Texas has changed in the last few years. We now allow horse racing and dog racing gambling actually at our tracks on races around the country, but that still is to the benefit of the folks in Texas. Gambling, no matter what forms it comes in, needs to be decided on the State level, and I am sure that I am not the only member here today who feels that we are going to trample on the rights of our States by regulating gambling within their borders.

I am interested to hear the panel discussion today, and particularly on improvements in the legislation. I have a suggestion. We could actually ban Internet gambling. Gambling in any form over the Internet should be illegal. For the sites that currently exist outside the borders of this country, hopefully the Justice Department could use its resources to shut them down. The subcommittee has spent a lot of time exploring the weaknesses of human behavior and how the telecommunications revolution affects it. Let's not pass legislation which would encourage something that would devastate people and their families, whether gambling or pornography.

Mr. TAUZIN. The gentlewoman, Mrs. Cubin, is recognized.

Mrs. CUBIN. Thank you, Mr. Chairman for holding this hearing on H.R. 3125, so that we can learn more about Internet-based gambling, how it has grown and how it is regulated, or, in most cases, unregulated, and what role the Federal Government should take to ensure that certain abuses don't occur.

I understand fully why some argue that Federal legislation is needed. The Internet is unique and, as such, gaming over the Internet is also unique. The fact that one State could allow Internet gambling when it is prohibited by its neighboring States dem-

onstrates some need for a Federal role. However, I have always been a States' rights advocate. The State of Wyoming is not much of a gaming State compared with other States. The revenue brought to the State just last year from one horse racing track is over $6 million.

More significant are the 232 full-time and part-time jobs that that racetrack supports. I believe it is important, as we continue this debate, that we take into account the States and their rights to allow or to prohibit gaming within their borders. Equally important is the enforcement of current laws that prohibit fraudulent activities over the Internet, such as credit card fraud and underage gambling. I took a particular interest in the Department of Justice's testimony and its concerns with the bill expanding gambling opportunities instead of prohibiting them. In a way, I agree with the Department of Justice's read of this legislation.

If it is the intent of the bill's author to prohibit gambling over the Internet, why should we allow certain types of gambling and not allow others? Furthermore, I agree that permitting gambling in one medium and prohibiting it in that same form of gambling in another medium just doesn't make a lot of sense to me.

Instead of prohibiting gambling in certain forms of Internet, which I stated, doesn't seem workable, it is as if this bill is bolstering an already established brick-and-mortar gambling industry. I want to become educated with this entire issue, and it is my hope that the witnesses we have here today will be able to shed some light on the points that I have made. The fact that a number of people have been prosecuted by the Department of Justice for online gaming shows me that maybe the laws are already on the books, that they just need to be enforced, and those that violate the laws should be sought more aggressively.

Again, Mr. Chairman, I have brought many of my concerns forward and I hope by the time this hearing is over today, we will have a lot better understanding as to how we should proceed with this legislation. Thank you for allowing me to speak.

Mr. TAUZIN. I thank the gentlelady. The gentlelady from California, Ms. Eshoo, is recognized.

And let me say again, we thank the gentlelady for her important work on the digital signature bill, an important bill that moved yesterday.

Ms. ESHOO. Thank you, Mr. Chairman. As partners in a previous Congress, I think we brought a very important issue to our colleagues and it really matches where we are in the beginning of this century. I also appreciate, Mr. Chairman, and Full Committee Chairman, Mr. Bliley, for making sure that we have a hearing on this legislation. I think the bill has serious implications for e-commerce and the whole issue of regulation of the Internet, so I think it is important that we have a chance to review these issues.

I want to compliment Mr. Goodlatte and our colleagues for their efforts to attempt to protect society from the dangers of gambling and the abuses that are sometimes associated with it. It can be a corrosive agent and it is frequently a manifestation of addictive behavior. But I do think that the bill is deeply flawed. I want to make some comments about where and how I think it is flawed.

It prohibits some types of gambling, and it actually expands other kinds. It puts an inappropriate burden in my view on high technology companies, and it also interferes with civil liberties of the American people. I think the legislation is rife with loopholes, which appear to be the result of special interest lobbying. Betting on horses and dogs is okay, sports and casino style games are out. Jai alai is in, State lotteries are out. It is a patchwork of prohibitions and exemptions which seem to be based on the degree of power of a particular interest group rather than good public policy. After all, if gambling on the Internet is wrong, then gambling on the Internet is wrong, period. So I think that we have a long ways to go to fill these gaps.

I am going to be a little harsh here, but I am still going to express my disappointment with the NCAA and the NFL on their strident views on this issue. I hear a lot of concern about the threat that Internet gambling would pose to the values of young athletes and the integrity that sports have, but it seems to me that there are other practices that are tolerated by collegiate and professional sports organizations that pose a far greater risk of failing to instill the kinds of values that we want to instill in young people.

Today, big-time college athletes are given special dorms. They eat at training tables. They are allowed to preregister for courses, and they frequently enjoy relaxed academic standards, and some even fail to graduate.

If we are going to broaden the lens here, we need to take all of it and really be honest about it as we approach it. I know that the NFL is here today to testify to the threat of Internet gambling for young people, but I think they need to look within their ranks and really take a good hard look at what they can do with some of their players.

Finally, the bill seeks to put regulatory boundaries on the Internet, and I think we have to take a look at whether these views are shortsighted, and also take into consideration civil liberties. The notice and the take-down provisions, in my view, are overly broad. They are too burdensome for ISPs, and I think they give the government too much power. The blocking provisions in the legislation intrude on individual privacy. They attempt to put artificial boundaries on the Internet when the Internet is designed specifically to transcend boundaries.

So Mr. Chairman, I think that we have got a lot of work to do. I think that we have some miles to go and some places to see. I think that the bill has a long ways to go, and I think that we have a lot of work to do.

I welcome the witnesses and I look forward to hearing their testimony, and I thank you and the chairman of the full committee for making sure that we have a hearing on the bill. I yield back the balance of my time.

Mr. TAUZIN. Thank you.

Mr. LARGENT. Will the gentlelady yield? First of all, professional athletes don't have special dormitories. Second of all, student athletes graduate as a percentage far greater.

Ms. ESHOO. Are there special floors in dorms for athletes?

Mr. LARGENT. No, there are not.

Ms. ESHOO. Thank you.

Mr. TAUZIN. The gentlelady's time has expired. The gentleman from Illinois, Mr. Shimkus, is recognized.

Mr. SHIMKUS. I am not going to wax philosophically, but I join my colleague, Mr. Markey, in claiming that I am schizophrenic on this issue of gambling, and that is the importance of the hearing. I do have a question for the chairman. It is a question on seniority of committee assignments. Is Bob Goodlatte senior to me? It seems that he attends these hearings even more than members of the committee.

Mr. TAUZIN. He has commerce envy.

Mr. SHIMKUS. I am looking forward to a time when we have a hearing on a bill when he does not show. I want to welcome him, and I yield back the balance of my time.

Mr. TAUZIN. Mr. Stearns is recognized.

Mr. STEARNS. Mr. Chairman, thank you for holding this hearing on H.R. 3125, the Internet Gambling Prohibition Act. I would like to thank my colleague, Mr. Goodlatte, for being here again. The commercial event of the Internet affords a consumer household a flood of resources. A couple of keystrokes and mouse clicks, one can track local weather, listen to music as well as make on-line purchases. Previously, one would have to travel to Las Vegas or Atlanta City to partake in gambling and games of chance. Now it is a matter of a couple of clicks and the Web surfer can stroll through a virtual cyber casino. Every home with on-line access now is also a home with a casino.

Mr. Chairman, I would like to read from the National Gambling Impact Study Commission. Internet gambling is "the newest medium offering a game of chance." Furthermore, the report states that the "previously small number of operations has grown into an industry practically overnight." Last year alone, the Commission came across more than 250 on-line casinos, 64 lotteries, 20 bingo games and 139 sports books providing gambling over the Internet. Additionally, the FBI reported growth in Internet gambling from $300 million in 1998 to $651 million in 1999. And Bear Stearns estimates that Internet gambling Web sites generated more than $1.2 billion last year, and that number will grow to $3 billion within the next 2 years.

Regulation of gambling has been traditionally left to the States. However, due to the nature of the Internet, no single State or collection of States can adequately address the growing problem of on-line gambling. While I am generally cautious about posing regulations, thereby possibly strangling the growth of the Internet, I believe this bill brings the law up to date with Internet technology by clarifying Federal law that operating an Internet gambling business is illegal, all the while recognizing States' leadership role in regulating gambling within their borders. Additionally, this legislation does not prohibit legitimate businesses, which rely on legal gambling, from going on-line.

Horse racing, for example, is a legal activity that is closely regulated in my home State of Florida. They have a $2.2 billion annual impact on Florida's economy and employs more than 27,000 people in Florida. This bill obviously is not a perfect bill, but it is a step in the right direction, and I look forward to the testimony today and thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman. Are there any further opening statements?

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. MICHAEL G. OXLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Thank you, Mr. Chairman, for holding this timely hearing. I want to welcome our witnesses, including the gentleman from Virginia, who really ought to give up the pretense of being a member of the Judiciary Committee and formally come over to the Committee on Commerce.

The issue before us is one we have confronted before and one we will undoubtedly encounter repeatedly in the coming years. That is the need to update federal law to apply it to the realities of the Internet society.

In the case of gambling, you have a situation where state restrictions on gambling are being undermined by individuals operating outside of those jurisdictions, or even outside of the United States altogether. It is not unlike the effort against Internet pornographers, an effort to which I have devoted considerable effort.

As with pornography, I reject the suggestion that we should throw up our hands in frustration at the scope of the problem, simply resigning ourselves to the negative impact on our children and on our society.

I support the idea of a general prohibition on online gambling, and I commend Senator Kyl and Congressman Goodlatte for taking the issue on. Gambling is a habit forming obsession for many individuals, bankrupting and breaking up families. And easy access to on-line gaming by minors raises questions about the impact on young people during their formative years. I saw a quote from Senator Kyl recently, where he said that with online gambling kids could "wager with Mom's credit card, click the mouse and bet the house."

As we all know, gambling has traditionally been regulated by the States, and this tradition has served us fairly well.

At the same time, when you are dealing with a national and international medium—a medium that is subverting state prohibitions on casino-style gambling, for example—it does become a federal matter. And when you are addressing matters of interstate commerce and interstate communications networks, as we clearly are here, such matters fall under the jurisdiction of the Committee on Commerce and this Subcommittee.

I wrote an individual letter to Speaker Hastert on May 3rd asking that the Commerce Committee be granted a sequential referral of this legislation making this very point. I am pleased that we have received that referral, although I was a little surprised at the abbreviated length of the referral.

While I support the premise behind the legislation before us, I do have questions about the drafting. As I read it, under this measure an individual sitting at his home computer in Van Buren, Ohio could legally place a wager on a dog race in Pensacola, but he couldn't buy a ticket for the Ohio Lottery. Indeed, you have rather broad exemptions for parimutuel wagering and Indian gaming, but since the Judiciary Committee markup and the passage of the Pease amendment, rather restrictive provisions pertaining to State lotteries.

I have to tell you, this seems backwards to me. 38 States have established lotteries, in many cases by ballot measure, and they draw revenue from a broad base of voluntary participants, with the proceeds dedicated to various public projects. Obviously, the citizens of these States have decided that lotteries are an innocuous form of gaming.

My staff did a little research on the prevalence of lotteries in the States represented by Members of this Committee. Of the 53 Members of the Committee on Commerce, all but seven come from States with a legally authorized lottery. In most of our States, lottery proceeds are dedicated to educational purposes, although in a few they are used for seniors programs, transportation funds, conservation efforts, or general revenues. In Ohio, the beneficiaries are primary, secondary, vocational, and special education.

While many States have parimutuel gambling and even off-track betting parlors, others don't, and several explicitly prohibit such activities. Obviously, those States have decided that there is something undesirable about parimutuel wagering, and while we are free to agree or disagree with that assessment, we do need to be respectful of the prerogative of the States.

So, while I support the thrust of the gentleman's legislation, I'm troubled by the inconsistencies. Either we're respecting States' rights, or we're not. Either we're pro-

hibiting Internet gambling, or we're not. I don't think we should try to have it both ways.

With that, Mr. Chairman, I yield back.

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Mr. Chairman, thank you for holding this hearing on the Internet Gambling Prohibition Act.

Because this legislation seeks to regulate Internet service providers and the interstate services they provide to subscribers, this legislation falls within the scope of this Committee's jurisdiction over interstate and foreign commerce.

The Judiciary Committee lent its considerable experience in criminal law to this bill. Now this Committee will examine the implications of this bill on interstate and foreign communications, and in particular, the impact of this bill on the Internet.

I share the goals that the sponsors of this bill have, including my friend and colleague, Mr. Goodlatte . . . who is with us once again today. Like him, I am troubled by the ills that gambling visits on our society. And I am especially troubled by the implications of Internet gambling . . . including its impact on children and those with compulsive gambling habits.

Having said that, I come to this hearing with an open mind as to whether this bill, as reported by the Judiciary Committee, is the most effective means of addressing what we all agree is a serious problem. I am interested to learn more how the exemptions in this bill for horse racing and other forms of gambling can be explained as consistent with a bill designed to *prohibit* gambling.

Moreover, I believe it is important that we hear from those who sought—but were ultimately denied—similar exemptions from the bill's prohibition . . . such as the state lotteries and charitable organizations.

I am particularly curious to learn more about the bill's enforcement provisions. More to the point, I note that the bill would require any and all interactive computer services to essentially act as surrogates for federal and state prosecutors. I intend to explore further this issue of using the private sector as a means of implementing criminal law.

Mr. Chairman, this is a distinguished panel of witnesses, and I look forward to learning more from them about this important issue, and this legislation.

Thank you, and I yield back my time.

PREPARED STATEMENT OF HON. KAREN MCCARTHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Thank you Mr. Chairman for holding this hearing on H.R. 3125, The Internet Gambling Prohibition Act of 1999. 1 look forward to the testimony of our witnesses, especially Greg Ziemark of the Kansas State Lottery Commission—it is always nice to see individuals from my area. I welcome all of you and look forward to the discussion that will follow.

From the privacy of your home, you can instantly find more than 800 casinos on the Web. One can find electronic slot or poker machine, blackjack, or a sports bookie who will take wagers 7 days a week, 24 hours a day.

Fueled by the explosion of the Internet and acceptance of casino gambling as mainstream entertainment worldwide, online egambling is growing at a rapid rate.

One would never know by the discussion we are having here today that on-line gambling is already illegal. In Section 1084 of The Wire Act, enacted in 1961, betting or wagering via a wire communication facility in interstate or foreign commerce was made illegal. My fear is that the bill before us today, if enacted, would create two inconsistent gambling prohibitions. One prohibition that applies to gambling over the Internet and the other prohibition, already in effect, that applies to gambling over wire communication facilities, which already includes the Internet.

My home state of Missouri currently prohibits all Internet gambling based on The Wire Act of 1961. However, if HR 3125 were to pass, Missouri would have to allow the certain types of gambling that are permitted in HR 3125, gambling such as horse and dog races and fantasy sports leagues. It is hard to believe that this bill, titled the Internet Gambling Prohibition Act of 1999 actually expands gambling in my home state. If we are going to prohibit on-line gambling we need to do it without exemptions and we need to do it in technological neutral terms.

Laws that are technology specific can lead to overlapping and cumbersome legal standards . . . this brings me to my next point. How are we going to regulate this gambling prohibition once it is in effect? The Internet is global in nature and that's why it is often hard to wrap our hands around, but if we are going to make laws

prohibiting certain activities over the Internet, we need to be prepared to actually carry out the law without violating state rights.

I fear that the overlap in statues will complicate the role of law enforcement at both the state and Federal levels.

It is my hope we could simply amend existing gambling laws instead of creating a new technology specific law.

I want to once again thank our witnesses and I yield back the remainder of my time.

PREPARED STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Thank you, Mr. Chairman, for recognizing me, and I commend you for holding this important hearing today. I must note at the outset, however, that I have a strong sense of deja vu as we begin this debate about Internet gambling.

Over the past few years this Committee has held numerous hearings on the issue of Internet tax policy. The primary point of contention in those hearings was whether Internet sales should be taxed in the same way as traditional sales in the off line world. This was not an easy question to decide. Some groups argued for a consistent policy; others advocated for special Internet exceptions.

In 1998, Congress wisely chose a cautious route, and created a blue-ribbon commission to investigate the matter and report back its recommendations. The commission itself had difficulty reaching a consensus, and just last month Congress once again deferred this question by extending the moratorium for an additional five years.

Now we are faced with a similar policy dilemma: how should we treat online gambling? Should we maintain the same rules that apply in the offline world, or are special Internet exceptions the better answer? After all, some would argue, the Internet is a burgeoning new economy that should not be saddled with old world constraints.

Unfortunately, the bill before us today is a fine example of the schizophrenia underlying Congressional attempts to formulate sound Internet policy. While the legislation is titled the "Internet Gambling *Prohibition* Act," it could just as well be called the "Internet Gambling *Enhancement* Act."

The legislation starts out sensibly enough—true to its title—making clear that the existing offline ban on interstate gambling should apply to the Internet. But from there, the bill is literally off to the races, making it perfectly legal to bet across state lines on everything from horses and dogs to jai alai and fantasy sports, so long as the wagering is transacted over the Internet.

Fortune magazine may have chosen the most fitting title for its June 12th article on the subject of H.R. 3125. The headline read, and I quote, "Wanna Bet This Bill Is Really Strange?" The article continues by stating, and I quote again:

> "If you need further proof that Congress works in weird ways, here it is. Lawmakers are now considering a bill called the Internet Gambling Prohibition Act. Common sense says that such legislation would, well, prohibit gambling on the Internet. But common sense is as fleeting in Washington as the cherry blossoms. So while the bill would ban some forms of Web gambling—mostly casino-style games of chance—it would encourage others. Because of a little-noticed exception in the fine print, the legislation would actually expand parimutuel betting—wagers placed on the outcome of competitions like horse and dog racing and jai alai."

Frankly, I must agree with this article that the intent of the legislation is baffling. Particularly since the 104th Congress passed a sensible bill, sponsored by Rep. Wolf of Virginia, that created the National Gambling Impact Study Commission. After performing an intensive two-year study, the Commission issued its report. It found that the number of Internet gamblers in the United States had more than doubled in just one year—to 14.5 million people in 1998—and that the annual revenues from Internet gambling would reach a staggering $2.3 billion by 2001.

The Gambling Commission issued a clear recommendation to the President and Congress that, and I quote, "the federal government should prohibit, *without allowing new exemptions* . . . Internet gambling not already authorized within the United States . . ."

Clearly, Internet gambling is a complex issue, and one that should be handled with extreme care by this Committee and the Congress. Statistics show that compulsive gambling is on the rise. Common sense suggests that increasing the ease of access to it, particularly through the Internet, will greatly exacerbate the problem.

Mr. Chairman, I understand the Committee's referral on this legislation is short, but I hope these issues can be deliberated thoroughly and with great care. The stakes are simply too high to rush this bill in its current form through the Commerce Committee—we are literally gambling with our children's future, and I hope the majority will seek an extension if necessary to process this bill in a fully informed manner.

Thank you, again, for holding this hearing.

Mr. TAUZIN. Then the Chair is pleased to welcome our colleague and friend from the Judiciary Committee, Mr. Bob Goodlatte of the great State of Virginia, the author of the legislation. We appreciate your testimony today.

STATEMENT OF HON. BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. GOODLATTE. Thank you very much, Mr. Chairman. It is indeed a pleasure to be back before the Commerce Committee. I would say to the gentleman from Illinois that I do introduce these bills in other committees—they all wind up visiting the Commerce Committee as well.

Mr. TAUZIN. You realize that doesn't help you before this committee.

Mr. GOODLATTE. Some of them I introduce here as well. But I do welcome the opportunity to speak about this legislation, which I believe is very important legislation. I do have a written statement that I would ask be made a part of the record.

Mr. TAUZIN. The written statements of all members as well as all of our witnesses will be introduced into the record. Without objection, so ordered. The gentleman may summarize his statement.

Mr. GOODLATTE. I would like to focus my remarks on statements made during the opening statements of the members of the committee. I am respectful of the issues raised and I want to take some time to address those. To the gentlewoman from California, I very much respect her interest in and love of the Internet. She serves with me on the Congressional Internet Caucus. She represents the heart of Silicon Valley and has a deep abiding interest in promoting the growth of the Internet. I think she knows, and I would say to her, I share that desire. We have worked together on many bills to promote the public's access to the use of the Internet through the use of encryption to protect their privacy on the Internet and a number of other things.

The Internet, however, also has its seamier sides, just as society as a whole does. We have problems with child pornography on the Internet, and I think we have a serious problem with gambling on the Internet. It is something that different people will have different philosophical views on in general. I am opposed to gambling in general. Every State regulates it in different ways. But it is basically illegal unless regulated by the States and the Internet poses a very considerable challenge to that.

For example, in my State of Virginia, we do not allow casino gambling, but virtually anybody in Virginia who is on-line can have access to more than 700 cyber casinos in their family room, bedroom or whatever part of their home. These operations are not regulated. In fact, I can't see how it would be possible for individual States to regulate them the way casinos are regulated in Nevada or New Jersey, and so on.

So to me, the solution here is a ban on gambling on the Internet. Now, if I could roll back everything that has taken place thus far, I would do so, but I don't believe that this legislation has the capability to do that. But a couple of years ago, the National Association of Attorneys General, the State organization, experienced increasing frustration with having to deal with various types of gambling coming into their States, came to Senator Kyl and myself and asked us to introduce legislation. This legislation has twice passed the Senate. This Congress it has passed unanimously in the Senate, and it recently passed through the Judiciary Committee, and is supported by a wide array of organizations.

The gentleman from Oklahoma made reference to the National Collegiate Athletic Association and the NFL. Their concern stems from the large percentage of gambling taking place on the Internet that is coming from betting on sports, particularly the NFL and college sports, and they are very concerned about this.

I think the committee will hear from witnesses later on this morning about the problem of people being able to bet on-line, children, and so on, in a totally unsupervised atmosphere. We heard testimony in the Judiciary Committee about teenagers who lost thousands and thousands of dollars of their family's money betting on-line. In addition to the attorneys general and the sporting associations, the legislation is also supported by a number of organizations opposed to gambling, including the National Coalition Against Gambling Expansion, but also the Family Research Council, Focus on the Family, Christian Coalition, and once one be concerned this is only conservative religious organizations that are opposed to this, the National Council of Churches endorses this legislation as does the governing body of the Presbyterian Church.

There are consumers groups which are supportive of this legislation, as is the National Gambling Impact Study Commission, a commission established by the Congress a couple of years ago under legislation introduced by Congressman Frank Wolf. So the effort here is to stop gambling. Now there have been some who have suggested that there are exceptions. I would suggest to you that we have stopped the advent of efforts to move into additional areas of gambling, but we are not expanding gambling on the Internet with this legislation. That charge seems to come from the provision in the bill that recognizes, under very limited State-regulated circumstances, you can have a closed-loop system for pari-mutuel betting on horses, dogs and jai alai.

That is something that is already taking place on the Internet in a number of States and in recognition of that, we have stopped there. There are those who would like to have the legislation go further and authorize that for State lotteries. The fact of the matter is that there is not one State lottery in the country that is offering the sale of lottery tickets on-line at this time, and it seems to me to be very appropriate, given the problems of unsupervised circumstances where children can go on-line and buy lottery tickets from their homes, that the current system is a far better one. This legislation, which would ban casino-type gambling and which would impose other limitations on gambling in the country, is the properly balanced legislation that is now before the Commerce Committee.

We have worked very carefully on the remedies available in this legislation as well, and we have worked very carefully with Internet service providers, one of whom I spoke to just moments before the hearing, and they have been very much involved and are very much satisfied with the language in this legislation, which provides for a set of circumstances very similar to the Digital Millennium Act. Upon violation of the Act, the Internet service provider is called upon to assist in taking down a Web site or disabling access to a Web site.

Mr. Chairman, I would be pleased to answer questions of the committee.

[The prepared statement of Hon. Bob Goodlatte follows:]

PREPARED STATEMENT OF HON. BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Thank you, Mr. Chairman, for allowing me to testify at this hearing. I very much appreciate the opportunity to set the record straight on my bill, the Internet Gambling Prohibition Act, and to stress the importance of passing this very important legislation during this legislative session. It is obvious from the overwhelming interest in this legislation that the issue we discuss today is of profound importance to the American people and to American ideals: the growing need for legislation to address the problem of illegal Internet gambling.

One of the main reasons that the Internet has not reached its true potential as a medium for commerce and communication is that many folks view it as a wild frontier, with no safeguards to protect children and very few legal protections to prevent online criminal activity. The ability of the World Wide Web to penetrate every home and community across the globe has both positive and negative implications—while it can be an invaluable source of information and means of communication, it can also override community values and standards, subjecting them to whatever may or may not be found online. In short, the Internet is a challenge to the sovereignty of civilized communities, States, and nations to decide what is appropriate and decent behavior.

Gambling is an excellent example of this situation. It is currently illegal in the United States unless regulated by the States. With the development of the Internet, however, prohibitions and regulations governing gambling have been turned on their head. No longer do people have to leave the comfort of their homes and make the affirmative decision to travel to a casino—they can access the casino from their living rooms.

The negative consequences of online gambling can be as detrimental to the families and communities of addictive gamblers as if a bricks and mortar casino was built right next door. Online gambling can result in addiction, bankruptcy, divorce, crime, and moral decline just as with traditional forms of gambling, the costs of which must ultimately be borne by society.

Current law already prohibits gambling over telephone wires. However, because the Internet does not always travel over telephone wires, these laws, which were written before the invention of the World Wide Web, have become outdated. My legislation simply clarifies the state of the law by bringing the current prohibition against wireline interstate gambling up to speed with the development of new technology.

H.R. 3125 is similar to legislation sponsored by Senator Kyl and passed by the Senate by Unanimous Consent last Fall. This legislation has been carefully drafted over several years to address the recent explosion of Internet gambling and to respect the existing realities of lawful industries. The goal of the legislation is to hold the line—by not rolling back any activity that is currently legal but also not expanding what is currently lawful. Internet gambling is an extremely lucrative business and there is a lot of money that stands to be lost if this legislation is enacted. Therefore, the opponents of H.R. 3125 who would like to expand Internet gambling have attacked the legislation from both sides arguing at the same time that the bill does too far in curbing Internet Gambling and that the bill does not go far enough, a hypocritical position meant to confuse the intent of the bill.

First, we have heard that the legislation has become a "magnet of favors for the gambling industry" in the form of "exceptions." This is incorrect. The legislation prohibits gambling on the Internet; there are no exceptions from this blanket prohibition. Betting on horse and dog racing, and betting on jai alai and by Indian tribes,

are permitted only to the extent that they are currently lawful and only on closed-loop subscriber-based systems, not on the open Internet. H.R. 3125 does not expand the current scope of legally permissible activity.

Second, we have heard that the bill would "expand gambling opportunities" for the parimutuel industry. It does not. Even a cursory reading of the bill reveals that it only permits what is "otherwise lawful." The Judiciary Committee Report on the bill reinforces this by explaining that the parimutuel provision "does not expand the current scope of legally permissible parimutuel wagering activity, but simply makes clear that the bill does not restrict that which is already legal."

At the very same time we are hearing complaints that the bill would prevent the states from selling lottery tickets in the home over the Internet. The legislation maintains the status quo by limiting such sales to places open to the general public, such as convenience stores where lottery tickets are already sold. This limit advances the goals of avoiding participation in lotteries by children, reduces the dangers of compulsive gambling, and diminishes the potential for fraud.

The bill also maintains a hands-off policy toward Internet Service Providers by granting them protection from liability and ensuring that they do not have to police their networks for illegal activity. It would protect those ISPs whose facilities are used by another person to engage in Internet gambling, provided that the material is transmitted by a person other than the provider and through an automatic process. In addition, the liability protection is contingent on the provider responding expeditiously to a notice from law enforcement that illegal gambling is occurring on their network by removing or disabling access to the site containing the illegal activity. This language is similar to the liability provisions for copyright violations included in the Digital Millennium Copyright Act enacted in 1998.

This legislation reflects careful and thorough consideration of the views of every affected interest. The result is a strong bill that prohibits Internet gambling and grants no interests or advantages. As you know, an aggressive lobbying campaign has been mounted by pro-gambling interests that want to defeat the bill. That is why action to prohibit Internet gambling may well be impossible if legislation is not enacted this year.

Mr. Chairman, online gambling is currently a $600 million per year business, and could easily grow to $1 billion business in the next few years. There are more than 700 existing Internet gambling websites that could be taken down after the enactment of H.R. 3125. It is time to shine a bright light on Internet gambling in this country, and to put a stop to this situation before it gets any worse. The Internet Gambling Prohibition Act, which will keep children from borrowing the family credit card, logging on to the family computer, and losing thousands of dollars all before their parents get home from work, will do just that. I want to again thank you for holding this hearing and for allowing me to testify before the Subcommittee.

Mr. TAUZIN. I thank the gentleman.

The Chair will first recognize himself and then the members in order.

Mr. Goodlatte, I am trying to understand the way that the bill, as it comes from the Judiciary Committee, treats these closed loops or subscriber-based services or these Intranet activities in gambling.

As it applies to horse track betting and I think jai alai and dog racing, the bill provides for closed-loop, subscriber-based service betting, but does not require that those wagers be placed in a facility that is open to the general public; is that correct?

Mr. GOODLATTE. That's correct.

Mr. TAUZIN. So the criticism the bill is receiving from the administration and from others, that it would permit people to bet on those forms of gambling on the Internet in their homes is accurate?

Mr. GOODLATTE. I would say that the criticism is accurate, but the statement that it is a different treatment is correct, and the reason is because it is already taking place in some States.

Mr. TAUZIN. I want to make sure. I didn't mean to make judgment.

Mr. GOODLATTE. I understand.

Mr. TAUZIN. What I am asking, is the statement correct in the administration's criticism of this bill, that the bill permits gaming on these forms of gambling in a person's home on a computer that might exist in a children's bedroom; is that correct?

Mr. GOODLATTE. For pari-mutuel betting, it is my understanding that that is correct, but as I say, that is already taking place. And the point that I would make to you regarding that is simply we would love to roll back gambling as far as possible, but this is where we think that we can draw the line.

Mr. TAUZIN. But this provision would allow States that do not yet permit closed-loop, subscriber-based gambling to occur from home computers to do so, does it not? It allows the expansion of this form of gambling in States that currently don't allow it; is that correct?

Mr. GOODLATTE. No, it does not allow the expansion. It is already taking place under certain circumstances.

Mr. TAUZIN. Suppose it is not taking place in a State, under this provision, can a State allow it?

Mr. GOODLATTE. Under current law, the State can do that. When the Justice Department says we are expanding gambling by changing the law, we disagree with that.

Mr. TAUZIN. You say you are not changing the current law that permits that to occur, but the fact is that it doesn't yet occur in many jurisdictions. So by not changing the law, at least in a practical sense, that form of gambling may expand in those jurisdictions, but it could so under the current law?

Mr. GOODLATTE. That's correct. In some States that have State-regulated horse racing, that takes place, and in other States it does not. This brings clarity to the law.

Mr. TAUZIN. When it comes to lotteries, on the other hand, there was a big carveout for lotteries in the original draft. The Judiciary Committee changed that provision. As I now read it, it now permits purchasing lottery tickets in a wholly intrastate situation, where there could be a closed-loop interactive computer service, subscriber-based service form of purchasing, but you impose on lotteries the condition that those bets, those purchases must be made at a facility that is open to the general public.

So if I understand this correctly, the bill treats horse racing, jai alai and dog racing in a way that would permit the placing of bets on home computers. But when it comes to lotteries, I would say that you have to go to a public place to access the computer closed loop or Intranet system; is that correct?

Mr. GOODLATTE. That is accurate, and the reason for that is the States do not at this point, not one of them, have a service that offers the sale of lottery tickets in homes.

Mr. TAUZIN. Could you give us information as to which States currently allow these closed-loop systems to be used on home computers to gamble on horse racing, jai alai and dog racing?

Mr. GOODLATTE. Mr. Chairman, my understanding is that there are seven such States. I don't have them here.

Mr. TAUZIN. If you would please submit that for the record.

The Chairman's time has expired. The gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

As has been noted over and over again, the bill allows for betting on horse racing and dog racing and jai alai, but not on lotteries online. The policy judgment on the horses and the dogs is essentially that it is regulated, it is by the closed-loop restricted system, and it is already in place, although in a small number of States.

Lottery tickets, however, are not going to be given the same option, although you could set up closed loop for lottery ticket purchases, so you can protect against children betting.

Mr. GOODLATTE. You can try. I would say that there are going to be problems. If it were a situation where you could enact legislation that perfectly reflected my point of view, I would have none of this. But that is not the political reality that we are faced with.

Mr. MARKEY. If the primary goal is to protect children and the closed loop does not work with dogs and horses, we need to legislate inside this bill on what we are going to require every racetrack to provide as an additional protection? If it does work, then we should not say that it cannot work for the lottery as well. We have a problem one way or the other. We have to tighten up legally what the requirements are.

Mr. GOODLATTE. If I might respond, my effort is to halt gambling on the Internet as much as possible. Horse racing is a very small percentage of the overall amount of gambling that takes place in the United States today. So we are saying that this halts 95 percent of the gambling on the Internet.

Mr. MARKEY. But it is the only thing that is permitted so it is bound to grow. You are carving out an exception on something that is still in a limited number of States, but it is bound to grow if gambling is going to be the phenomenon.

I guess the problem that I have is that the money from horse racing, dog racing, jai alai, it goes into the pockets of racetrack owners, jockeys, trainers. The money for lotteries goes for schools and police and fire. If you can justify gambling, you know, and limit its reach, then I think honestly, I would be more inclined to look at horse racing and dog racing. But at the end of the day we need a standard. You need to give to us a standard. What is the test that we are using to determine which gambling is appropriate and which gambling is inappropriate?

Mr. GOODLATTE. The test that we have is to hold the line where we have it right now. There is no State that has said "Wouldn't it be great if you could buy lottery tickets at home?" This is the time and place to stop that from happening. That has not taken place in the other area, and therefore, we regard this to be consistent with the current state of the law.

And I would also add, Mr. Markey, that the dog tracks in or near your district in Massachusetts pay a lot of taxes to the State of Massachusetts. They exist under the supervision of the State because the State derives a lot of revenues from those facilities as well as it does from the sale of lottery tickets.

Mr. MARKEY. Well, the bulk goes to the owners of the racetrack, which is fine. That is the private sector.

Mr. GOODLATTE. But there are carrying costs.

Mr. MARKEY. But there is a pure opportunity for the government to collect revenues out of the lottery and it goes directly into those

earmarked pockets, mostly for local communities across the country.

It seems to me that we are going to be making these distinctions based upon categories, the bases of which are our favorite domestic indicated animals, and those will be permitted. This we seem to have a closed loop over here that works for them, but we can't set up something over here that has a closed loop over here for lottery, for money as raised is going to be directed toward societal needs.

I think we need a uniform way of dealing with this, others, those that are grandfathered, even though they are new to this, and we are catching up with this, but I don't think that Congress should catch up with new technologies by saying those that figured out how to exploit it before anybody else, we are going to grandfather them. I think we need a uniform set of guidelines that we are all going to use right down the line with an articulated philosophy that we are applying, otherwise we wind up with a discriminatory system.

It is one thing for baseball in 1920 to ban the spitball and grandfather everyone in that was throwing it up until then, so they could throw it until the end of their careers because you knew that was going to end in 6 or 8 or 10 years. Here we are going to say one whole group of people can do it in perpetuity. At the end of the day we are going to have a standard that we can explain to everyone, or we are not going to have a standard at all. It is a nonstandard standard which this legislation now has at its core, and I don't think that is going to be acceptable.

Mr. TAUZIN. The gentleman's time has expired. The gentleman from Oklahoma, Mr. Largent.

Mr. LARGENT. Thank you, Mr. Chairman.

I have been reading the dissenting view of the bill. In the first paragraph it says, H.R. 3125 not only expands gambling over the Internet, it arbitrarily favors certain forms of gambling over others. First of all, how can the dissenters of this bill from the Judiciary Committee claim that this bill would expand gambling over the Internet?

Mr. GOODLATTE. Thank you, Mr. Largent.

The fact of the matter is that if you take action now against more than 700 cyber casinos doing more than a billion dollars in gambling on the Internet, if you take action to restrict new forms of gambling on the Internet, like the sale of lottery tickets, if you address probably the largest problem of all, sports betting on the Internet, this is going to be a substantial halt to a very, very rapidly and dramatically growing problem.

You can just see it in what has taken place in a very short period of time growing from when I introduced this legislation, about 20 or 30 cyber casinos, to now more than 700, and the amounts being in the tens of millions of dollars instead of in the billions of dollars, how urgent it is, and we are talking about gambling, we are definitely talking about money here, and what is happening is that those people who are hoping to profit from this, to sell these services to State lotteries, for example, or to continue to expand this are going to grow larger and larger, and their reach greater and greater. Unless we take action on this legislation in this Congress, it is going to be difficult to continue to pursue it.

So no, this legislation is a very strong effort to stop the growth of gambling on the Internet. It is not responsible for any expansion of gambling on the Internet. It does recognize one existing form of gambling and permits that regulated by the States in a closed-loop system where they can use the Internet to share information to exist. But that is not the same thing at all as in any way expanding the Internet.

Mr. LARGENT. When we talk about a closed-loop system, when we say that pari-mutuel betting is legal over the Internet, aren't we expanding that closed loop?

Mr. GOODLATTE. No, because—well, obviously it depends upon the legal niceties of that issue, but those who have examined this closely, including myself, believe that that is already legal, and it is simply the one small thing that we have not made illegal by this act.

Mr. LARGENT. How many States are like the State of Oklahoma where we don't have anything beyond class 2 gaming in the State of Oklahoma? We don't have a lottery. There are no casinos. We do have bingo that is legalized on—our Native Americans have bingo parlors. How many States are like that?

Mr. GOODLATTE. I don't have the number for you. I would be happy to get that.

Mr. LARGENT. In Oklahoma, you said all gambling is illegal unless regulated by the States.

Mr. GOODLATTE. Right.

Mr. LARGENT. So in the State of Oklahoma, there is nothing beyond class 2 gambling, bingo, but yet over the Internet, you essentially can do everything in Oklahoma that you can do in Las Vegas?

Mr. GOODLATTE. That's right. The sovereignty of the State of Oklahoma and its citizens is being impinged by the fact that the Internet is a massive way around that.

Mr. LARGENT. So is it illegal in Oklahoma? Class 3 gaming is illegal in Oklahoma, and yet it is coming in through the Internet. Is that illegal?

Mr. GOODLATTE. Some State attorneys general—Mr. Chairman, if I might, I would ask to be made a part of the record a letter from the National Association of Attorneys General and a statement by the attorney general of the State of Wisconsin. They were not able to get a witness to the committee in time for the hearing.

Mr. TAUZIN. Without objection, so ordered.

[The information referred to follows:]

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE
June 15, 2000

The Honorable BOB GOODLATTE
United States House of Representatives
2240 Rayburn House Office Building
Washington, D.C. 20515

H.R. 3125—The Internet Gambling Prohibition Act

DEAR REPRESENTATIVE GOODLATTE: I write both to express appreciation for your ongoing efforts to ensure enactment of the Internet Gambling Prohibition Act and to underscore the ongoing support of the state Attorneys General for this legislation. State Attorneys General have been working on the serious law enforcement issues posed by Internet gambling since 1995.

Gambling has traditionally been a state issue, and the individual states' laws reflect the diversity of the states and the key policy decisions made by and for their residents. The Internet threatens to disrupt each state's carefully crafted choice on gambling policy. Its ability to cross boundaries and make technological advances available to everybody has provided great benefits, but it has also led to the development of some of the problems addressed by the proposed Internet Gambling Prohibition Act. Without attempting to reach out and tackle these issues, individual state laws will have an uneven and minimal effect on the growth of this industry as a whole.

Senator Jon Kyl has worked closely with my office and the National Association of Attorneys General for several years on this issue. After working closely with all of the parties affected by this legislation, he has been able to craft a bill which generally prohibits at-home gambling, while allowing existing licensed and regulated gambling enterprises to utilize technology to continue operating their own ongoing businesses. The strength of this legislation is that it allows states to continue to make their own decisions on what is legal and acceptable within their own borders, honoring their state laws and regulatory structures, while providing a complete prohibition on at-home gambling via the Internet. This is something that no individual state's law could assure.

Federal legislation can help combat this activity. In spite of its continued illegality, the vast majority of the world's Internet gambling players are right here in the United States. The reach of the federal courts goes well beyond each state's borders. The tools for injunctive relief provide much-needed preventative measures. The clarification of the criminal measures provides real penalties for the businesses taking advantage of the perceived vacuum in the current wire act—a vacuum created by new technologies and their ability to allow new forms of gambling to occur over the wires.

Once this legislation is enacted, we look forward to working with the Internet service providers to ensure that it is appropriately implemented. Over the years, we have developed a productive relationship with the wire communications carriers in implementation of the Interstate Wire Act, 18 U.S.C. § 1084. In using that law, we have worked *with* the carriers, not against them. Likewise, it is not our intent to target the Internet service providers. Rather, we look forward to working jointly with them to ensure that the laws are respected and utilized with the least burden placed upon them.

All of the amazing benefits of the Internet could be lost if we do not make serious efforts, like those reflected in this bill, to prevent illegal activities such as online gambling from running roughshod over state laws. The wire act is just not doing the job in preventing the wide variety of gambling activities available on the Internet. This is one of those unique situations where a federal prohibition will actually assure the continuation of states' abilities to control what occurs within their own borders.

Sincerely,

JAMES E. DOYLE
Attorney General

cc: Senator Jon Kyl

Mr. GOODLATTE. That is in support of the legislation.

To respond to the gentleman from Oklahoma, the attorneys general have experienced frustration in attempting to operate under existing State laws and the existing Wire Act in terms of enforcement, and that is why they have sought this essentially modernization of Federal laws, and it is important, Mr. Chairman, for the committee, I think, to be aware that this is not new for the Congress to step in and regulate in this area.

Congress has passed legislation prohibiting the use of the U.S. mails for the sale of lottery tickets. In the 1960's we passed the Wire Act, and now because the Wire Act deals with copper wires and we are communicating in a whole host of new ways, this legislation modernizes the Federal Government's prohibition against gambling and gives the States new tools to fight it if they do not want it in their State.

Mr. LARGENT. I yield back the balance of my time, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman. The Chair recognizes Ms. Eshoo, the gentlelady from California.

Ms. ESHOO. Thank you, Mr. Chairman.

I would like to explore the whole area of the closed loop, because as I read through parts of the bill, there is a heavy emphasis indeed somewhat of a promise of what the closed loop system will do and who it will protect. First, tell me what the purpose of the closed-loop system is relative to the bill?

Mr. GOODLATTE. The purpose of the closed-loop system is to recognize the fact that such States are using such a system now and for the purpose of allowing the State to regulate these industries that they have traditionally regulated, horse racing, dog racing and jai alai.

Ms. ESHOO. How would it work? Walk us through—I can't help of—I think of AOL as an example. It doesn't differ from that in terms of the disk. How would an adult or anyone else make use of this closed-loop system?

Mr. GOODLATTE. Well, I think they would become a subscriber to the system and then——

Ms. ESHOO. They would request of whom a subscription?

Mr. GOODLATTE. They must subscribe with the State.

Ms. ESHOO. With the State. So they request of the State. Do they make application to the State for essentially a disk?

Mr. GOODLATTE. They would have to have a way to access the closed loop, that's correct.

Ms. ESHOO. How is the State going to verify age, eligibility, et cetera?

Mr. GOODLATTE. I cannot speak for the ones that are operating now, but there would be ways that you can do that, and obviously you would do things like issue a PIN number or rely on some type of access code to enable it.

Ms. ESHOO. I think these provisions are placed in the bill to protect minors, but I think there is a huge loophole in the closed-loop system, most frankly. Are we going to send them to individual's homes to verify? Are you going to do fingerprints? Are you going to have driver's licenses? I don't know how you are going to enforce this relative to verification. I mean, I agree with you about protecting minors relative to gambling. I hate gambling. The closest I have ever come to it is to buy the scratches for my mother. She likes the $2 tickets instead of the dollar tickets. She wins. I pay, she wins. I am the one who loses the 2 bucks, so it is quite a system.

What I question is how this actually works. I applaud your efforts and what you are trying to do. I think it falls short. I don't know how you can guarantee that people are going to, with this closed-loop system, how it is going to work, how you enforce it.

Mr. GOODLATTE. To answer your first two questions, the definition of the closed-loop, subscriber-based service is on page 37 of the bill, and it leaves to the State the means by which it conducts that verification.

Ms. ESHOO. Where does the bill require the consumer to apply to the State for the disk to subscribe to the gambling operation?

Mr. GOODLATTE. Again, it is subject to the regulations that the State would provide.

Ms. ESHOO. Do all States have regulations on this?

Mr. GOODLATTE. No, only the States that have this system in place.

Ms. ESHOO. You imagine or you know?

Mr. GOODLATTE. I can get you the details. Some may work better than others.

Ms. ESHOO. Would they apply to the racetrack for the disk?

Mr. GOODLATTE. Again, it is up to the State government to determine how that works. As to the ones that are working now, I would be happy to get you some information about that.

Ms. ESHOO. If it is already working in the States, what are we doing here, if they have a closed-loop system and they apply to the State? The States enforce, the States verify in the cases where this——

Mr. GOODLATTE. Ms. Eshoo, we are not here because of the one section, but because of the 700 cyber casinos, the sports betting, the effort——

Ms. ESHOO. But they are not legal in a closed-loop system in the bill.

Mr. GOODLATTE. They would not be legal at all if this bill were passed into law, but they are now, and that is the problem.

Mr. TAUZIN. The gentlelady's time has expired.

Ms. ESHOO. I would just conclude that I don't think it is workable. I think the goal is a good one, but I think you can drive a Peterbilt truck through this. I don't know how many kids in my district or other places in the country could just get this disk. They are the smartest—and is it an unfunded mandate?

Thank you, Mr. Chairman.

Mr. TAUZIN. Let me suggest that Mr. Goodlatte has a small problem with a foot injury. We are going to take a 15 minute recess to allow Mr. Goodlatte to go vote.

[Brief recess.]

Mr. TAUZIN. The subcommittee will please come back to order.

Let me ask our guests to take seats.

The Chair now recognizes the gentlelady from Wyoming, Mrs. Cubin, for a round of questions.

Mrs. CUBIN. Thank you, Mr. Chairman.

Mr. Goodlatte, part of the written testimony that we had received, and then some of the discussions today have indicated that maybe we don't need this legislation because there are Federal laws already in place that take care of the issue, and in my opening statement, I cited some prosecutions which have taken place under the Wire Act, Racketeer Influenced and Corrupt Organization Act, RICO. There are many others.

In this day of technology, you can get the Internet over the air, wireless, and you can get the Internet through cable television. Would it be your opinion that those are areas where there is not current Federal law to prevent gambling?

Mr. GOODLATTE. That's correct, Mrs. Cubin.

The initial push for this legislation came from the attorneys general of the States who were frustrated dealing with existing laws. The Wire Act was written in the 1960's. Communications have changed very dramatically since that time, and they felt that this legislation was needed as an update to those circumstances. That

is why we have pushed forward. We are simply trying to deal with how we have attempted to regulate, and frankly on the Federal level, make illegal gambling in a new era.

Mrs. CUBIN. And with technology changing, who knows what might come next. I think that there is a place for this legislation. In Wyoming, we don't allow gambling for the most part, and I would like to keep it that way.

Will this bill do anything to prevent this from happening to prevent, you know, gambling coming into the homes really? How are we going to enforce it?

Mr. GOODLATTE. There are a number of provisions. First of all, there are criminal penalties, fines and penalties in the legislation for the violation of the law. So if someone in Wyoming, or more likely because it is indeed the Internet, somewhere elsewhere in the United States or somewhere outside the United States, violates the law, they become subject to this Federal law. If they are then entering the United States, and a great many of these offshore cyber casinos are actually owned by U.S. citizens who will presumably want to come and go from the United States, they can be apprehended and prosecuted.

In addition, the legislation provides for a notice and take-down procedure where the attorney general for the State of Wyoming or Federal prosecutors can work with Internet service providers to either take down the site or to work with them, so that people in your State or wherever the action is taken from, cannot get access to the violator of the law.

Obviously, if they are outside the United States, we don't have the ability to prohibit them from doing business. If they want to offer gambling in France and they are outside the jurisdiction of the United States, that is outside the purview of our law.

In addition, I would note that Congressman Leach, the chairman of the Banking Committee, is going to hold hearings on a critical component here, and that is the only way that you can gamble online is to extend your financial credit to that other location, and eliminating the ability to use credit cards and other means of transferring funds would be a major part of this as well. Many States make it an unenforceable debt to have a gambling obligation, and so some of the credit card companies are already backing away from cooperating with some of these sites. His bill is designed to enhance that, and I think that is a major tool in making sure that people cannot operate from anywhere in the world and have a gambling site in your home in Cheyenne, Wyoming.

Mrs. CUBIN. Thank you. I yield back the balance of my time.

Mr. GOODLATTE. One of the questions raised by Ms. Eshoo related to the procedures that would be followed by the States in terms of the verification of the closed-loop system.

I have a statement from the Oregon Racing Commission, Stephen Walters, who is, I believe, the chairman, and it is five pages long. It goes into minute detail how the State of Oregon handles this very set of circumstances right now, and I ask that it be made a part of the record.

Mr. TAUZIN. Without objection, so ordered.

[The information referred to follows:]

OREGON RACING COMMISSION
April 3, 2000

Honorable BILL MCCOLLUM
Chairman, Crime Subcommittee
House Committee on Justice
U.S. House of Representatives
Washington, D.C. 20515

Re: H.R. 3125

DEAR CHAIRMAN MCCOLLUM: This letter is submitted to support the exceptions for pari-mutuel racing set forth in the Internet Gambling Prohibition Act (H.R. 3125). In particular, I write to support the distinction the bill makes between the Internet and the "closed-loop, subscriber-based system" required in the exceptions for pari-mutuel racing.

I am the Chairman of the Oregon Racing Commission, the only state regulatory body that has authority and actively regulates the operation of two closed-loop, subscriber-based pari-mutuel wagering systems and multi jurisdictional wagering totalizator hubs. In Oregon, wagering by electronic means via a closed-loop, subscriber based system is currently legal and has been ongoing since September 1999.

It is common knowledge that, when the general public thinks of the Internet, they are referring to the World Wide Web and specifically to the ability to insert a URL address code via a browser and connect to a specified website or to browse randomly via a search engine and select content from millions of available sites. This is characteristic of the open nature of the World Wide Web environment that the closed-loop, subscriber-based system is designed to prevent.

There are important distinctions between a wide-open and readily available gambling site on the World Wide Web, which Oregon opposes, and the subscriber-based system required by the Internet Gambling Prohibition Act, which is consistent with Oregon law. The World Wide Web is a quintessentially open environment that allows anyone with a server to pay a modest amount to purchase a domain name and go into any business, including the gambling business. Conversely, a closed-loop subscriber-based system, by definition, precludes businesses or entities not licensed and regulated by state governments from operating under the Internet Gambling Prohibition Act.

In Oregon, for example, the Commission has broad statutory discretion over the licensing and operation of a closed-loop subscriber-based system. A pari-mutuel wagering operator must file an application for a license with the Oregon Racing Commission that includes, among other things, proof of corporate financial ability and the posting of a surety bond, background checks on all corporate officers and wagering hub personnel, a detailed plan of operation that includes very specific details about the operating systems and the required certification of any electronic wagering technology by the Commission to ensure compliance with state mandates. The operator also must maintain a proactive program to ensure responsible wagering by adults over the age of 21. Even after issuing a license, the Commission maintains an onsite office at each facility and conducts ongoing quality assurance and audit procedures with state government personnel. Through comprehensive state regulation and enforcement, we are confident that wagering operators in Oregon adhere to the letter of state law, the spirit of the current language of the Internet Gambling Prohibition Act, and the Interstate Horseracing Act.

Operationally, someone casually surfing the Web or using an online search engine has no access to regulated pari-mutuel wagering opportunities on a state licensed closed-loop subscriber-based system. Access is controlled by an electronic account sign-up process with age and residency verification and limited to subscribers of a state-sanctioned pari-mutuel system through account and personal identification authorization procedures. To become a subscriber of such a system, a person must supply verifiable proof of identity, age and residency—thereby limiting the possibility that a minor or a resident of a state where wagering is prohibited can use the online service. A non-subscriber to the service would have no access to the site or would not be able to proceed past a secure login page requiring account number and PIN security information. This process is consistent with advanced procedures in the financial industry for online trading and banking as well as ATM operation.

There are other devices available to ensure the security of a closed-loop subscriber based system. Secure Sockets Layered Internet Security Technology—identical to technology used by financial institutions, service providers and brokerages (all state and/or federally regulated) to conduct e-commerce—further restricts access to pari-mutuel wagering via the Internet. Also, currently available Internet filter technologies such as Cyber-patrol and others can be employed to completely block access to state-regulated pari-mutuel wagering systems.

This regulatory framework is effective in controlling access to wagering services operating in the state based on age, residency and the geographic location of a user. With on-site state personnel audit procedures in place, authorities have the ability to validate the age and residency of every accountholder with a licensed Oregon-based firm. The Internet Gambling Prohibition Act (H.R. 3125) imposes regulatory requirements on the states similar to those already enacted in Oregon. It provides that a "closed-loop, subscriber-based system" must:

- Be expressly authorized and operated in accordance with the laws of the state for placing, receiving or otherwise making a bet or wager;
- Include an effective customer and age verification system, operated in accordance with the laws of the state to ensure that all federal and state regulatory requirements for lawful gambling are met;
- Include appropriate data security standards to prevent unauthorized access by any person who has not subscribed or who is underage; and
- Require the account holder to take the affirmative steps to subscribe, to be registered by name, address, billing information and to be physically located in the state.

In addition to these requirements, account wagering operators licensed in Oregon impose additional proactive standards designed to ensure that only adults of legal age have access to personal wagering accounts and wager responsibly at all times. These include:

- Age Verification Procedure—A comprehensive identity and age verification process at the time the account is set up. If a potential subscriber's age is not verified, the subscriber is required to submit a photocopy of his/her driver's license or another official form of photo-identification. An account will not be activated until verification of age is received in a notarized writing. This verification system ensures that only adults are able to open a personal wagering account.
- Blind Confirmation Letter—An account confirmation letter is sent in a non-descript envelope to each new subscriber. The letter ensures that each has authorized his/her name and address to be used to open a wagering account. In the event that an individual has not given their authorization, the account will be immediately disabled.
- Account Number and Pin Authorization Procedures—A thorough identification system involving an account number and a confidential Personal Identification Number (PIN) is used to ensure that only the subscriber of record can access his or her account.
- The "Sleep-On-It" Policy—Next-day-deposit availability is designed to help each subscriber manage his or her account in a responsible manner. When funds are deposited into a wagering account, the money will not be available for wagering purposes until the next day.
- Credit Card Policy—A one-time credit card deposit from a customer in the initial subscription phase is permitted in order to establish an account over the telephone is accepted. Beyond this initial deposit, credit card deposits from subscribers are not accepted.

The Internet Gambling Prohibition Act, in its enforcement provisions, also contains the ultimate safeguard. If any state regulated pari-mutuel operator does not comply with federal or state mandates, the government can protect the public and enforce the law through the termination of access to the site by interactive service providers. The closed-loop subscriber-based system maintains the government's ability to enforce this law. Private networks, or "Intranet" wagering systems, however, do not require interactive service providers, circumventing the scope of proposed federal enforcement procedures.

As written, the requirements in H.R. 3125, in addition to those that will be imposed by a state pursuant to the mandate in the legislation, are sufficient to ensure the safety and integrity of the system and to permit the continued offering of such personal wagering accounts by state-regulated and licensed domestic pari-mutuel operators.

In sum, we must not forget that it is the authority of the states, consistent with the intent of the proposed federal legislation, to impose and enforce any mandates and requirements on the system in use that is the controlling and overriding factor in this discussion. Similar to the justification for the Federal Wire Act of 1961, the Internet Gambling Prohibition Act is intended to assist states in enforcing their own gaming laws. The bill, in its current form accomplishes the goal of enhancing the states' longstanding and successful regulation of legal, state sanctioned gaming such as domestic pari-mutuel wagering.

If you have any questions, please contact me.

Very truly yours,

STEPHEN S. WALTERS
Chairman, Oregon Racing Commission

Mr. TAUZIN. But with the gentleman's consent, I would also like to make a part of the record Web site documents for capital—RTB Racing 2000, it looks like. It contains information on Off Track Betting information requirements in New York, which is quite different from Oregon. We ought to see both of those. Without objection, that will be made a part of the record.

The gentleman from Texas, Mr. Green, is recognized.

Mr. GREEN. Thank you, Mr. Chairman.

I wasn't here for part of your testimony where you talked about, under certain circumstances, you can have a closed loop. For example, in Texas we have horse racing, and off track, but you have to be at a local site, so I guess we get part of the revenue. Is it legal for me to have a closed loop to bet whether it be horse races or dog races?

Mr. GOODLATTE. If the State of Texas were to permit that under those circumstances, the answer would be yes. If they did not, the answer would be no. Different States have different laws relating to this, and that is the reason why we have the provision in the bill that makes recognition of the States' rights to have these kinds of systems where you are dealing with a closed-loop system, which is defined in the bill and which requires verification of who it is that you are dealing with.

Mr. GREEN. And that is up to the States?

Mr. GOODLATTE. It is totally up to the States. The State of New York has a different system than the State of Oregon, and so on.

Mr. GREEN. Could a State under current law do that now?

Mr. GOODLATTE. To my knowledge, yes. That is why we don't feel that we are doing anything that enhances gambling on the Internet which is one of the attacks of some of our critics. We believe that we are rolling back 95 percent of all gambling on the Internet, and we are leaving in place this State-regulated area.

Mr. GREEN. Could a State now allow interstate and not just intrastate?

Mr. GOODLATTE. That is one of the things that we made clear in the law, that you cannot do that unless the other State agrees to that. If the State of Texas had a system and they wanted to extend that loop into Virginia and Virginia did not agree with that, did not make it lawful statutorily, they could not do this under this legislation. If they did, they could.

Mr. GREEN. Without this legislation that we are discussing here today, could the State of Texas allow for interstate gambling from Texas citizens to Louisiana under current Federal law?

Mr. GOODLATTE. If it is totally lawful in both States.

Mr. GREEN. If it is lawful in both States?

Mr. GOODLATTE. Right.

Mr. GREEN. Mr. Chairman, obviously you would want us from Texas to drive over to Louisiana——

Mr. TAUZIN. Not necessarily, it would depend who you are.

Mr. GREEN. Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. TAUZIN. I want to follow up. In the New York case, the only thing required to bet on-line, the on-line information you need to post is your name and your e-mail address. They have forms where you can put an address and theoretically you can put any address. It requires a check on the document that I am 18 years old. What is to stop me just listing an address in Texas or just putting an e-mail address?

Do you follow what I am saying? In other words, you are saying that the bill says that only if the two States agree. But if the citizens of Texas, which may not agree to gamble on-line in Louisiana, if they can get on-line and claim a Louisiana address or no address at all and put an e-mail address, is it enforceable?

Mr. GOODLATTE. I believe it is because I believe there are a number of ways that you can verify where you are doing business from. Not being familiar with the details of the current New York system, this bill would actually enhance that. This would require greater steps be taken in order for them to continue that system because it does require more verification than what you described under the current system in New York.

Mr. TAUZIN. The gentleman's time has expired. The gentleman from Illinois, Mr. Shimkus, is recognized.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Bob, is there any way to technologically prohibit someone within the continental United States from using a casino Web site in Barbados or—and prohibiting that access in that gambling venue?

Mr. GOODLATTE. Yes. There are several things. We talked about the enforcement provisions of the bill, but obviously they are directed at the offeror of the service. If they are in the jurisdiction of the United States or extradited to the United States, they can be prosecuted under law. But in terms of technologically being connected, yes. The provisions in this bill that relate to keeping people from doing business where they shouldn't be doing business, where they are prohibited from doing business are based upon the provisions in the Digital Millennium Copyright Act that Congress passed related to copyright violations where someone has a Web site up somewhere and they are giving away free copyrighted material that is in violation of the law.

And that bill and this bill have a provision called a notice and take-down provision where in that case the owner of the copyright, in this case the law enforcement agency—the attorney general of the State, can notify the Internet service providers through which access is gained to these different sites around the world that this site is in violation of U.S. law and that the site either can be taken down or access to the U.S. be restricted.

Second, I mentioned just a few moments ago to Mrs. Cubin that there is legislation in the Congress introduced by Congressman Leach, the chairman of the Banking Committee, to increase dramatically the difficulty with which you could use credit. It is not like going into a casino, you take cash out of your pocket and put it on the table. If you have to transfer funds in order to gamble, measures can be taken, not in this legislation but hopefully in legislation to follow, that would make that more difficult.

Mr. SHIMKUS. Just to follow up, suppose I have my Internet access here with our server here at the Capitol and then I go and get

on AOL and then I use AOL to get Microsoft and I use—and you can go from Internet provider to Internet provider to the gambling site. Who is held accountable?

Mr. TAUZIN. Which Microsoft did you use?

Mr. SHIMKUS. I am not sure which one yet. That is coming later on.

Mr. GOODLATTE. The court could issue an injunction under the circumstances requiring that those sites act accordingly. If a State is attempting to take action against a site, they are going to contact all of the leading Internet service providers. Could somebody find some way going through a lot of loopholes to do it, I am sure that there is going to be a technological escalation of warfare on that issue.

Mr. SHIMKUS. Actually, I would predict some conniving, entrepreneurial gambler to make it easy to not only go through the Internet providers here, but then to go offshore and then go back in.

Mr. GOODLATTE. Even if the server is outside of the United States, the backbone of the Internet into the United States can be utilized to block these.

Mr. SHIMKUS. Thank you, and I yield back the balance of my time.

Mr. TAUZIN. Thank you. The gentleman from Tennessee, Mr. Gordon.

Mr. GORDON. Thank you, Mr. Chairman. I think these questions demonstrate why we have this hearing. We have to try to make room for this next panel. They have been waiting for a long time. So I am just going to say that I have learned more about this closed loop. I came in late. If Billy's scenario of what goes on in New York is part of that closed loop, then clearly I would suggest to you, Bob, that you need to be looking for some type of an addendum to this legislation. I don't think that we can leave it to the States. There will need to be some kind of uniform security that closed with this closed loop or it looks like there is no security.

Mr. GOODLATTE. Except that I would add that the legislation itself is stronger than what is provided for in New York. By passing this legislation, you would require States, and I don't want to speak for New York, but if they have a lax system, they would be required—and I will read just briefly—what it requires is well beyond that—"a device or combination of devices expressly authorized and operated in accordance with the laws of the States exclusively for placing, receiving or otherwise making a bet or wager described in subsection (F)(1)(b) by which a person located within any State must subscribe and be registered with the provider of the wagering service by name, address and appropriate billing information, be authorized to place, receive or otherwise make a bet or wager and must be physically located within that State in order to be authorized to do so and be an effective customer verification and age verification system expressly authorized and operated in accordance with the laws of the State in which it is located to insure that all applicable Federal and State legal and regulatory requirements for lawful gambling are met and appropriate data security standards to prevent unauthorized access by any person who has not subscribed or who is a minor."

Mr. GORDON. Is there an enforcement vehicle or penalty that goes with that?

Mr. GOODLATTE. Basically the answer is they meet the requirement or they do not qualify under the law for being allowed to offer a closed loop system.

Mr. GORDON. I think there needs to be a penalty for falsification or against the States for not abiding by it.

Mr. TAUZIN. Would the gentleman yield? The problem that the gentleman points out is if you leave it up to the States to define what is legally required under the standard, and second to enforce that standard, it may not provide protections for the citizens of other States who have made different decisions. The concern that the gentleman makes in regard to that is perhaps that needs to get some attention.

Mr. GORDON. The fundamental problem is any kind of electronic transaction in terms of establishing venue, establishing age, whether it is pin numbers and somebody steals it, you are a part of the problem that this whole new era of electronic commerce has brought to us, but we have to be looking for, I think, whatever continuity we can provide as well as looking for technology to try to help it.

Mr. TAUZIN. The gentleman's time has expired. We have a member who has to catch a plane. I want to ask you on one criticism that the Justice Department has made of your bill, that it is not technologically neutral. If, for example, the bill only applies to Internet gambling and therefore sets up new restrictions or laws or conditions upon gambling on the Internet, but does not change and leaves in place current law on gambling of a wire communications facilities, so if I make a bet on a telephone, I am covered by one kind of law. If I make a telephone call on the Internet, under this bill I would be affected by a different set of laws. So that the Justice Department is saying in effect, you are writing a bill that is designed for a particular technology when it may create inconsistent legal treatment, depending on whether you use the phone or you used Internet telephony to make the same bet. What is the answer?

Mr. GOODLATTE. Mr. Chairman, that is exactly what the Wire Act was in the first place. It created a separate form of treatment for the telephone. This technology is different than the telephone. We have had this philosophical debate.

Mr. TAUZIN. So it does treat them differently?

Mr. GOODLATTE. It is a procedural difference. I think the end result is very similar, if not the same, in terms of the substantive result. And I would point out, for example——

Mr. TAUZIN. If I can, if you can do something on a phone that you can't do on the Internet, isn't that a substantive difference? Isn't somebody subject to a different perhaps criminal violation depending on whether you used the phone or the Internet and do you really want to do that, particularly when the Internet is going to have voice communications on it more and more? Internet telephony is upon us.

Mr. GOODLATTE. Mr. Chairman, I am not sure that I am aware of any substantive difference. The Wire Act makes illegal these types of bets in interstate——

Mr. TAUZIN. The Justice Department thinks so.

Mr. GOODLATTE. The Justice Department has had a different approach. They want us to take a current section of the Wire Act and amend that instead of creating a separate section. We feel that the technology is so different——

Mr. TAUZIN. Can I bet on jai alai right now on the phone?

Mr. GOODLATTE. I don't know about jai alai, but my understanding is that you can for——

Mr. TAUZIN. Can I bet on dogs and horses on the phone?

Mr. GOODLATTE. Horses you can.

Mr. TAUZIN. Under your bill, I can't on the regular phone?

Mr. GOODLATTE. If you can pick up the phone and place a bet on horses, you can under a State regulated closed loop system.

Mr. TAUZIN. I think you are right. I think you can make a phone call and place a bet on a horse. In many States, at least seven and perhaps with loopholes many States you can make a bet on the Internet on a horse.

Can you pick up the phone and make a bet on a dog race or jai alai today? I think the answer is, no. I think the answer is, no.

Mr. GOODLATTE. Very similar to what the bill says. If you are in the State and participating in a closed loop, pin number type system, yes, you can do that. That is why we think that our bill is compatible with current law and consistent and it is not an expansion.

Mr. TAUZIN. But your closed loop system for jai alai betting on the Internet is interstate. It need not be intrastate.

Let me try to summarize. If I read it right, you are saying with a closed loop system, people can use the Internet to bet interstate on jai alai and dogs?

Mr. GOODLATTE. Only if the other State participates in the closed loop system.

Mr. TAUZIN. But you can bet interstate on the Internet on jai alai and dogs in your bill. The current law does not allow you under the Wire Communications Act to bet on dogs and jai alai interstate on the phone, and the Justice Department is questioning whether or not that creates a real problem when I pick up the telephone on the Internet, telephone telephony, and I can do something that is not permitted on the telephone. Is that a real criticism or not?

Mr. GOODLATTE. No, it is not. Right now on the telephone, interstate bets of the nature we described are taking place.

Mr. TAUZIN. On dogs and jai alai?

Mr. GOODLATTE. Dogs, horses, jai alai.

Mr. TAUZIN. I think there is some dispute about that.

Bob, thanks so much. You have given us a lot of your time. Thank you.

We will introduce the next panel and let me make a request that we take one of the witnesses out of order who has a problem with time, Mr. Ziemak, Executive Director of the Kansas Lottery. Let me bring the second panel up, which includes Kevin Di Gregory, Deputy Assistant Attorney General, Criminal Division, DOJ; Ms. Lisa Dean, Free Congress Foundation; Mr. Michael Bowman, Family Research Council; Ms. Anne Poulson, Virginia Thoroughbred Association; Daniel Nestel, NCAA; Reverend Louis Sheldon, Traditional Values Coalition; Greg Ziemak; Gerard Waldron of Cov-

ington & Burling; and Richard Williams, Chairman, Lac Vieux Desert Band, Lake Superior Chippewa Indian Tribe. Welcome.

We want to welcome you all and we will start, with the permission of all of the other witnesses, with Mr. Ziemak of the Kansas lottery in Topeka, Kansas. Please don't read your testimony to us. Think about the highlights.

STATEMENTS OF GREGORY ZIEMAK, EXECUTIVE DIRECTOR, KANSAS LOTTERY; KEVIN V. DI GREGORY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE; LISA DEAN, VICE PRESIDENT, TECHNOLOGY POLICY, FREE CONGRESS FOUNDATION; MICHAEL BOWMAN, VICE PRESIDENT, GOVERNMENT RELATIONS, FAMILY RESEARCH COUNCIL; ANNE POULSON, PRESIDENT, VIRGINIA THOROUGHBRED ASSOCIATION; DANIEL NESTEL, ASSISTANT DIRECTOR OF FEDERAL RELATIONS, THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION; REVEREND LOUIS SHELDON, TRADITIONAL VALUES COALITION; GERARD J. WALDRON, PARTNER, COVINGTON & BURLING; AND RICHARD WILLIAMS, CHAIRMAN, LAC VIEUX DESERT BAND, LAKE SUPERIOR CHIPPEWA INDIAN TRIBE

Mr. ZIEMAK. Good afternoon. My name is Greg Ziemak. I am the President of the North American Association of State and Provincial Lotteries. NASPL are a nonprofit, professional organization to which every sanctioned U.S. lottery and Canadian lottery belong in addition to Puerto Rico, the Virgin Island and Jamaica. I am also the Executive Director of the Kansas Lottery. I have been professionally involved in the U.S. Lottery industry for over 25 years, and I appreciate the opportunity to testify before you regarding H.R. 3125, Internet Gambling Prohibition Act.

For as long as Congress has been in existence, never has it attempted to regulate the methods on which States govern gaming within their borders. NASPL and its members oppose passage of H.R. 3125 on the grounds that it violates the right of the Nation's Governors and State legislators to authorize gaming within their borders. We urge you to reject this language unless there are provisions admitted back into the bill which protect the State's right to govern its own lottery. In the current form, H.R. 3125 allow for limited benefit gaming, those forms of gaming whose profits benefit only a limited group of individuals, horse racing, greyhound racing and jai alai, to be played from a public or private venue. Under this legislation, limited benefit gaming operators will be required to operate their on-line system using what is known as a closed loop subscriber based service, which we have been discussing already, and verify the eligibility of the individual placing the wager to engage in such activity. For public benefit gaming, defined as State lotteries, whose profit benefits programs such as primary and secondary education, programs for the elderly, the environment, property tax relief, the situation is quite different. Under the provisions of the current bill, State Governors and legislatures would only be allowed to authorize Internet State lottery games that could be played from a public venue using a private network, in reality providing Federal regulation of State obligations.

In its original form, H.R. 3125 offered language that would at a minimum protect the State's right to offer Internet games on a level playing field with private benefit gaming through the use of a closed loop subscriber based service. As you know, this language was removed in the Judiciary Committee after strong protest from anti-lottery groups. The opponents of State lotteries said it would be dangerous to children to allow State lottery games to be played on the Internet because the technical security would not be sufficient to protect minors. They stated that lottery games would be an expansion of gaming. I would be doing a disservice to the Americans who benefit from lottery programs if I did not discuss the truth on these issues.

First of all, it is interesting to point out that the closed loop subscriber based service that would be used by State lotteries is the same type of system used for limit benefit gaming interest. So if the technology is not secure enough for State lotteries, why is it secure for select benefit gaming interests where the wagers are much greater? It is a fact that security standards for State lottery games have been proven to be some of the most stringent in the world, and it is in our best interest to keep it that way if we are to maintain the level of public trust we have gained from our players and taxpayers of our lottery jurisdictions.

Second, I would like to point out that you can purchase lottery tickets over the telephone and in fact in some States retailers are developing systems that allow you to purchase lottery tickets when they buy their groceries on-line. It is my understanding that has not been implemented yet, but there are some out in the West that are looking at that. It is assumed that by allowing Governors and State legislatures the right to continue controlling the way their State lotteries operate means that all State lotteries will begin to offer Internet products, and this is simply not true. There are several members of our organization, and our organization includes all sanctioned lotteries in the United States, 38 lotteries, 37 States plus the District of Columbia, and there are some members in our organization that feel strongly about this and would oppose any attempt by their State legislature to authorize such games. But there are States that feel that there may come a time when their governments feel it is appropriate to offer these games.

I make this point to urge—even though the members of NASPL may not agree on the value of Internet lottery games, and there is some disagreement, we are united in the belief that the Federal Government has no place in determining the way in which State lotteries operate or the games they offer—I would urge the committee to amend H.R. 3125 to include the strongest language possible to protect the State's right to control gaming within its borders.

Before concluding, there is a second issue that, while not as fundamental as the States rights argument, is still worth mentioning. Because the language of H.R. 3125 would mandate that public benefit gaming would be limited to public arenas only, State lotteries would be put at a competitive disadvantage to other participants in the industry.

Here is a little scenario I would like to give the committee. Saturday afternoon, it is raining. You have a choice, walk or drive to

the local convenience store to purchase a lottery ticket or remain in the comfort of your own home and wager a larger sum of money on horse, greyhound race or jai alai game from a personal computer. The potential revenue lost to State lotteries and the programs they fund could potentially be staggering.

Mr. Chairman, I have attached to my statement a detailed State by State list of where lottery profits are used in each State, and I ask you to allow this information to be entered into the record along with my statement. I would like to ask the committee to take a strong stand in support of States rights by either amending the original lottery provisions back into the bill or removing the special privileges for special benefit gaming interests.

[The prepared statement of Gregory Ziemak follows:]

PREPARED STATEMENT OF GREG ZIEMAK, PRESIDENT, NORTH AMERICAN ASSOCIATION OF STATE & PROVINCIAL LOTTERIES, DIRECTOR, KANSAS STATE LOTTERY

Good morning Mr. Chairman, my name is Greg Ziemak and I am the President of NASPL—North American Association of State & Provincial Lotteries as well as Director of the Kansas State Lottery. I have been professionally involved in the US lottery industry for over twenty-five years and I appreciate the opportunity to testify before you this morning regarding your work on H.R. 3125—The Internet Gaming Prohibition Act. For as long as the Congress has been in existence never has it attempted to regulate the method in which states govern gaining within their borders. NASPL and it's members oppose passage of H.R. 3125 on the grounds that it violates the right of the nation's governors and state legislators to authorize gaming within their borders. We urge you to reject this language unless there are provisions amended back into the bill that would protect a state government's right to govern its own lottery.

In its current form H.R. 3125 would allow for "limited benefit gaming"—those forms of gaming whose profits benefit only a limited group of individuals—horse racing, greyhound racing and Jai Alia—to be played either from a public or private venue. Under this legislation, limited benefit gaining operators would be required to operate their online systems using what is known as a closed-loop subscriber based service that would verify the eligibility of the individual placing the wager to engage in such activity.

For "public benefit gaming"—whose profits benefit programs such as primary and secondary education, programs for the elderly, the environment and property tax relief—state lotteries—the situation would be quite different. Under the provisions of the current bill, state governors and legislatures would only be allowed to authorize Internet state lottery games that could be played from a *public venue using a private network*. In reality providing Federal regulation of state obligations.

In its original form, H.R. 3125 offered language that would, at minimum protect a state's right to offer Internet games on a level playing field with private benefit gaming through the use of the same closed-loop subscriber based service. This language was removed in the Judiciary committee after strong protests from anti-lottery forces. The opponents of state lotteries said that it would be dangerous to children to allow state lottery games to be played on the Internet because the technical security would not be sufficient to protect minors. In addition, opponents of state lotteries stated that Internet lottery games would be an expansion of gaming. I would be doing a disservice to the millions of Americans who benefit from lottery funded programs if I did not set down the truth on these issues.

It is interesting to point out that the closed-loop subscriber based service that would be used by state lotteries is the same type of system that would be used for limited benefit gaming interests. If the technology isn't secure enough for state lotteries, why is it secure for select benefit gaming interests—where the wagers and payoffs are much greater? It is a fact that security standards for state lottery games have been proven to be some of the most stringent in the world and it is in our best interest to keep it that way if we are to maintain the high level of public trust we have gained from the taxpayers of our states.

Second, it is important to point out that under current law, you can purchase lottery tickets over the telephone and, in fact, in some states retailers are developing systems that would allow residents to purchase lottery tickets when they by their groceries online.

It is assumed that by allowing Governors and state legislatures the right to continue to control the way their state lotteries operate, it is means that all state lotteries will begin to offer Internet products. This is simply not true.

In fact, there are several members of NASPL who are opposed to offering state lottery games online. They feel strongly about this and would oppose any attempt by their state legislature to authorize such games. But there are states who feel that there may come a time when their governments feel it is appropriate to offer such games. I make this point Mr. Chairman to illustrate that even though the members of NASPL may not all agree on the value of Internet lottery games, we are united in the belief that the Federal government has no place in determining the way in which state lotteries operate or the games they offer.

Mr. Chairman, I would, again, urge the committee to amend H.R. 3125 to include the strongest language possible to protect a states right to control gaming within its borders.

Before concluding, there is a second issue that, while not as fundamental as the states rights argument, still is worth mentioning. Because the language of H. R. 3125 would mandate that public benefit gaming would be limited to public arenas only, state lotteries would be put at a competitive disadvantage to other participants in the industry. Let me paint this picture for you. It's Saturday afternoon and it is raining. You have a choice, put on your coat and walk/drive in the rain to a local convenience store to purchase a lottery ticket, or remain in the comfort of your own home and wager a larger sum of money on a horse or greyhound race or a Jai Alai game from your lap top. The potential revenue loss to state lotteries and the programs they fund could, potentially, be staggering. Mr. Chairman, I have attached to my statement a detailed state-by-state list of where lottery profits are used in each state and I ask that you allow this information to be entered into the record along with my statement.

Mr. Chairman, I ask that the committee take a strong stand in support of states rights by either amending the original lottery provisions back into the bill or removing the special privileges for special benefit gaming interests.

Thank you.

Mr. TAUZIN. Thank you.

We will start with Mr. Di Gregory. Again, we thank you for your attendance.

STATEMENT OF KEVIN V. DI GREGORY

Mr. DI GREGORY. Thank you, Mr. Chairman. It is indeed a pleasure to be before your committee. And Mr. Chairman, members of the committee, it has been discussed already and I will make the point very briefly that of course proliferation of Internet gambling opportunities is well documented and the proliferation of these opportunities concerns the Department of Justice, most particularly those in the Department of Justice who are concerned with enforcing current Federal law, the Criminal Division of the Department and the United States attorneys around the country, and we are troubled for three reasons.

We are troubled because of the potential for fraud by Internet gambling operators. The potential is far greater than for traditional gambling because the Internet of course is instantaneous and anonymous, which means that we would have difficulty as prosecutors, as enforcers of the law, in tracking those perhaps responsible for perpetrating fraud through Internet gambling.

Second, we are concerned about opportunity and availability. Anyone who has access to the Internet can at any place and at any time, this includes compulsive gamblers, place a bet and wreak financial devastation possibly upon themselves and their families.

Third, we are concerned about anonymity and availability, and we are concerned that anonymity and availability may equal an inability to ensure that minors will not gamble. We do not think that there currently exists a technological way to grant any of us any

such assurances, but we welcome any industry representatives to come in and talk with us at the Department of Justice and tell us how it is that they can technologically assure us that minors will not have access to Internet gambling.

Despite these problems, Mr. Chairman and members of the subcommittee, we have made enforcement inroads and some references were made to those this morning. I would specifically note in the Southern District of New York an offshore sports betting operation run by Jay Cohen, which used both the telephone and the Internet, was prosecuted recently and Mr. Cohen was found guilty after a trial of violating current Federal law, 18 United States Code 1084.

18 United States Code 1084, which I have a copy with me today, prohibits the interstate transmission of bets or wagers over a wire communication facility. It also prohibits the transmission of information assisting bets or wagers interstate over wire communications facilities with a single exemption of allowing such transmission of information assisting bets or wagers between two States where such betting or wagering is legal. It prohibits gambling businesses from transmitting that information, Mr. Chairman.

Now, to talk about H.R. 3125, first and foremost, we believe at the Department of Justice that H.R. 3125 does indeed expand gambling opportunities. Pari-mutuel wagering is exempted. It allows not only the horse racing industry but dog tracks and jai alai frontons to do over the Internet what Federal law prohibits them from doing on the phone.

Not only is H.R. 3125 inconsistent with current Federal law, its inconsistency exposes another what we believe to be a significant weakness. It is not technologically neutral. It would apply specific and different rules to the Internet. We would encourage Members of this body, Members of Congress, to legislate based on conduct and not on the medium used to perpetrate that conduct.

In considering whether the operation of interstate gambling businesses should be prohibited, we recommend amending existing law, most specifically 18 United States Code 1084, and I mentioned what it prohibits. Currently it prohibits the transmission of bets or wagers on sporting events or contests over wire communications facilities interstate. It also prohibits the transmission of information assisting in the placing of bets or wagers on sporting events or contests interstate over wire communications facilities.

We urge you to consider a proposal that we have made, and I will highlight what that proposal would do.

It would clarify that 18 United States Code 1084 applies to all betting and not just betting on sporting events or contests. Our proposal would update 18 United States Code 1084 so that it applies to the use of any, not just wire communications facilities. Our proposal would also ensure that existing protection from liability given common carriers who deny services to gambling businesses upon notice by law enforcement, it ensures that protection would be provided to any person, including Internet service providers, who are required by that notice to terminate a customer service.

Our proposed amendment, Mr. Chairman and members of the committee, would not prohibit any gambling currently permitted nor would our proposal permit anything that is currently prohibited.

I believe that our draft proposal has been attached to my written statement. I thank you for allowing my written statement to be added to the record and later on I will try to answer any questions that you may have.

[The prepared statement of Kevin V. Di Gregory follows:]

PREPARED STATEMENT OF KEVIN V. DI GREGORY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, UNITED STATES DEPARTMENT OF JUSTICE

Thank you, Mr. Chairman and Members of the Subcommittee, for providing me this opportunity to provide the Subcommittee with the Department of Justice's views on Internet gambling and H.R. 3125, the "Internet Gambling Prohibition Act of 2000."

The growing availability of emerging technologies has had a prolific effect on gambling. The Internet and other new technologies have made possible types of gambling that were not feasible a few years ago. For example, a U.S. citizen can now log on from his living room and participate in an interactive Internet poker game operated from a computer located in Antigua. Not only have the Internet and other new technologies brought gambling into the home, they have made it anonymous and readily available to virtually anyone at any time and at any place where there is an Internet hookup. As a result, the number of Internet gambling sites operating illegal betting and wagering businesses online has increased at an alarmingly rapid rate. The Department is deeply troubled by this proliferation of gambling on the Internet for three reasons.

First, since the Internet allows virtually instantaneous and anonymous communication that is difficult to trace to a particular individual or organization, the potential for operators of Internet gambling sites to successfully defraud their customers is significantly greater than with traditional casino-style gambling. Fraudulent activities can range from credit card fraud to the manipulation of gambling odds. Of course—and as the Deputy Attorney General noted before the Subcommittee on Crime of the House Committee on the Judiciary on February 29, 2000—we recognize that there are legitimate reasons to allow anonymity in communications networks. A whistleblower or a member of a battered woman's support group, for example, may understandably wish to use the Internet and other new technologies to communicate with others without revealing his or her identity. Nonetheless, such admittedly legitimate uses for anonymity on the Internet involve legal activities and are inapplicable in connection with gambling on the Internet, which is illegal.

Second, because the Internet provides people with virtually unfettered access to the opportunity to gamble at any time and from any place, Internet gaming presents a greater danger for compulsive gamblers and can cause severe financial consequences for an unsuccessful player.

Last, because the Internet is both anonymous and widely available, it is much more difficult to prevent minors from gambling. Currently, Internet gambling businesses have no reliable way of confirming that gamblers are not minors who have gained access to a credit card and are gambling on their web sites.

Despite the proliferation of Internet gambling, the Department is optimistic about its ability to combat this form of illegal gambling. On February 28, 2000, a jury in federal district court in New York found Jay Cohen, the owner of an Internet gambling site in Antigua, guilty of violating 18 U.S.C. § 1084, a statute that makes it illegal for a betting or wagering business to use a wire communication facility to transmit bets or wagers in interstate or foreign commerce. Several of the counts for which Mr. Cohen was found guilty solely involved his Internet operations. That is not to say that section 1084, as written, will apply in every case. As I will explain later in my testimony, the Department believes that the statute may need to be amended to assist us in our efforts against gambling and organized crime.

Before I discuss that, however, let me say that the Department has reviewed H.R. 3125 in great detail and is very concerned about how it proposes to deal with Internet gambling. The Department is most concerned about the following three issues.

First, the Department is concerned that the bill does not really prohibit Internet gambling, but rather facilitates certain types of gambling from the home and, therefore, arguably expands gambling opportunities. Specifically, the Department recognizes that H.R. 3125 exempts parimutuel wagering from the prohibition against Internet gambling. The result is that people will be able to bet on horse racing, dog racing, and jai alai from their living rooms. While the bill provides that such gambling must be done on a "closed loop subscriber based service," the definition of that term is extremely broad. I could receive a free disk in the mail, load it on my com-

puter, connect through my regular Internet service provider, and start betting on horse racing from my living room. Additionally, if my children have access to that same computer, they may also be able to get online and bet and wager on parimutuel activities.

Simply stated, the Department does not understand why the parimutuel wagering industry should be allowed to accept bets from people in their homes, when other forms of gambling have rightly been prohibited from doing so. The same concerns that we have expressed about children and compulsive gamblers having unfettered access to gambling via the Internet is true whether the betting is on horse races or on casino games.

Related to this point is the Department's second concern that the passing of H.R. 3125 will allow gambling online that currently is not allowed in the physical world. For example, currently a gambling business that accepts bets on horse races cannot accept interstate bets on the races over the telephone. Yet, H.R. 3125 would allow them to place the same such bets over the Internet. It is hard for the Department to understand why conduct previously deemed unacceptable in the physical world and over the telephone should now be legal when carried out in cyberspace.

Third, H.R. 3125 is not technology-neutral, but applies only to Internet gambling while leaving the existing prohibition on gambling over "wire communication facilities" in general unchanged. While the Department is generally concerned about legislation designed for particular technologies such as the Internet, it is specifically troubled here by the creation of two inconsistent gambling prohibitions - one expressly for the Internet and a different one for the use of wire communication facilities (which includes the Internet).

Indeed, any effort to distinguish Internet transmission from other methods of communication is likely to create artificial and unworkable distinctions. For example, we expect digital Internet telephony to grow in popularity over the next few years. How would we deal with gambling that occurred over this technology, which would use the Internet or other packet-switched networks for pure voice communications? Would it be under the proposed section 1085, which is designed specifically for the Internet, or under section 1084, which deals with wire communications in general (but also includes the Internet)? This is especially problematic, as section 1084 and the new section 1085 proposed by H.R. 3125 would have different standards and punishments.

The Department urges Congress to identify the conduct that it is trying to prohibit and then to prohibit that conduct in technology-neutral terms. The fact that gambling has gone high-tech and can now be done through the Internet, is no reason to pass new laws that specifically target the Internet for regulation. Passing laws that are technology-specific can create overlapping and conflicting laws prohibiting the same activity, but with different legal standards and punishments. This will be the result if H.R. 3125 is enacted in its current form. We will have both section 1084, which we've used to prosecute Internet gambling, and a new section 1085 which would prohibit some, but not all, types of Internet gambling. This overlap in the statutes can only complicate law enforcement's efforts on the Internet gambling front.

The Department encourages Congress, especially as it encounters more traditional crimes online, to ensure that existing laws are sufficient and technology-neutral in their approach and do not single out the Internet for regulation. If existing laws are deemed insufficient, please consider legislation, whether prohibitive or permissive, which focuses on specific conduct and not on the specific medium employed to perpetrate that conduct.

Moreover, the Department believes that any Internet gambling legislation should not repeal or amend the rights or privileges secured tribes under IGRA. Of course, to the extent that Indian Tribes seek to offer gaming to citizens of various states, where such gaming does not take place solely on Indian lands and is not otherwise authorized by law, there is no compelling reason to exempt Indian Tribes from the otherwise generally applicable provisions of the legislation for such off-reservation gambling.

For all of the reasons I've discussed, the Department urges Congress to amend existing gambling laws, rather than create a new technology-specific statutory scheme.

As I noted earlier, section 1084 criminalizes those betting and wagering businesses that transmit bets or wagers on sporting events or contests over the Internet. The Department recognizes, however, that section 1084, which was enacted almost forty years ago, may need to be amended to bring it into the 21st Century. The Department believes that this can be done through the following actions:

(1) Amending section 1084 so that it clearly applies to all betting or wagering and includes the transmission of bets or wagers over any communications facilities.

Such an amendment would eliminate any doubt about whether section 1084 only applies to bets or wagers on sporting events and contests. It would also ensure that future technologies that are not wire-based communication facilities are covered by section 1084.

(2) Adding several definitions to 18 U.S.C. § 1081. For example, we would recommend adding the following definitions for "transmission," "bets or wagers," and "information assisting in the placing of bets or wagers."

(3) Amending section 1084 to specifically cover those individuals in the betting and wagering business who are located outside the territorial jurisdiction of the United States, when those individuals knowingly facilitate or aid in unlawful betting and wagering by transmitting a bet or wager to or from an individual located within the United States. While the current statute includes those transmissions involving interstate and foreign commerce, it is unclear whether the statute would cover someone on a boat in the middle of the Atlantic Ocean who is using a cellular phone to take bets or wagers from a U.S. citizen located in Miami.

(4) Requiring any person, not just a common carrier, that provides a facility to an individual in the business of betting and wagering to disconnect service when served with proper lawful process by law enforcement agencies. We would also extend the same protections against liability contained in the existing statute for common carriers to these persons.

(5) Clarifying that section 1084 does not repeal or amend the rights or privileges secured tribes under IGRA.

(6) Clarifying that section 1084 does not prohibit how states are currently legally using communication facilities in the operation of multi-state lotteries.

The Department of Justice believes that if section 1084 were to be amended in these ways, many of our concerns, as well as the concerns that led to the introduction of Internet gambling bills, would be addressed. We would be happy to work with Congress towards this goal. We have prepared a draft bill that incorporates our recommendations. A copy of our draft bill is attached for the Subcommittee's convenience.

I want to thank the Subcommittee again for asking me to present the Department's views on Internet gambling. I would now be pleased to answer any questions you may have.

Mr. TAUZIN. Mr. Di Gregory, thank you very much.

Ms. Lisa Dean, the Vice President of the Free Congress Foundation here in Washington, DC, is recognized for your statement.

STATEMENT OF LISA DEAN

Ms. DEAN. Thank you very much, Mr. Chairman, and thank you for hearing my testimony today. The Free Congress Foundation is a nonprofit, conservative based think-tank, and we do not endorse gambling or encourage gambling in any way. However, we have problems with H.R. 3125.

One of the problems is of course mentioned—was mentioned earlier, States rights, and we believe that H.R. 3125 takes the power away from the States to regulate their own lotteries as a usurpation by the Federal Government to usurp one of the most fundamental rights of States, the right to self-governance.

Also, this legislation is inconsistent. It says that Internet gambling should be prohibited except in cases where gambling takes places on horse racing and dog racing and similar activity.

Third is the issue of government regulation, and that is where our strongest opposition lies. It has been discussed earlier, the issue of enforcement, how will this bill be enforced if passed into law. Will the Federal Government propose to enforce nearly unenforceable legislation, which is what H.R. 3125 is? Will they begin to monitor everyone's e-mail, and will they create a list of banded sites that Internet service providers must block? Will it stage dead of night raids to seize the hard drives of unsuspecting individuals?

Frankly, we hope not. But it is difficult to see how, short of using tactics like these, that this legislation could be enforced and effective in shutting down an industry which is legal in countries all over the world.

Also, by suggesting who can and cannot place bets on-line, it divides the Internet up by geography, which is exactly what those who would tax the Internet need. As such, we believe it is not inconceivable that passage of this legislation could be the first nail in the coffin of a tax-free Internet.

The taxation is only one potential problem. When we use the term "gambling," we are referring to casinos, horse racing, lotteries and other games of chance. The definition is rather narrow, but for those seeking the opportunity to regulate the Internet, they would likely use this legislation to expand the definition of gambling to include perhaps on-line auction or even day trading, and from there it is not much of a stretch to include other industries as well which Washington may not like.

I realize that this is not the intent of the sponsors of H.R. 3125, but rather the intent of those who seek to control an industry that is young and inexperienced in the world of Washington politics. Nevertheless, it is a stark reality, and this legislation would give the green light to those who wish to regulate this new medium and marketplace and for those reasons the Free Congress Foundation opposes H.R. 3125.

I thank you for allowing me to speak today.

[The prepared statement of Lisa Dean follows:]

PREPARED STATEMENT OF LISA DEAN, VICE PRESIDENT FOR TECHNOLOGY POLICY, FREE CONGRESS FOUNDATION

Mr. Chairman, members of the Committee, thank you for allowing me the opportunity to present testimony on H.R. 3125, the Internet Gambling Prohibition Act. My name is Lisa Dean. I am the Vice President for Technology Policy at the Free Congress Foundation, a Washington, DC based think-tank focusing on the culture of American conservatism and our Constitutional liberties.

The Free Congress Foundation strongly opposes H.R. 3125 because we believe it flies in the face of conservative principles of federalism, individual responsibility, and limited government.

As you may know, we are deeply concerned about the speed with which gambling has spread from Las Vegas across the country and into American living rooms. However, of much greater concern to us is the speed with which the long arm of the federal government has spread from Washington, DC, into American living rooms.

When balancing the possible benefits of this legislation with its certain costs, the ledger ends up in the red. H.R. 3125 represents a major step backward in the fight against the creeping assault on individual liberty.

There are some who would stop the spread of gambling at any cost. We are not among them. In this case, in fact, we believe the costs are much too high.

H.R. 3125 puts several critical components of American democracy at risk.

First, this legislation makes a mockery of States' rights and the Tenth Amendment to the United States Constitution. Throughout the history of this country, gambling has wisely been dealt with as a state issue. Community standards differ from state to state, and from region to region. Imposing a one-size-fits-all policy from on high in Washington, DC, is at best, misguided, and at worst, dangerous. We strongly believe that gambling in cyberspace, like gambling in the real world, should be dealt with at the state level, not at the federal level.

In addition, this legislation represents a blatant disregard for the principles of federalism on which this country was founded. Nowhere is that disregard more evident than in the way the bill deals with gambling on State lotteries. Taking the power away from states to regulate their own lotteries is an arrogant usurpation by the federal government of one of the most fundamental rights of states—the right to self-governance.

Second, this legislation represents the worst kind of government-enforced industrial policy. The bill essentially says that all Internet gambling should be prohibited—except gambling on horse racing, dog racing, and similar activity. While some might suggest that the broad carve-outs contained in this legislation exist to preserve states' rights, why is there no carve out for state lotteries? Or for state-run blackjack games? Or for state-run video poker?

We believe that allowing some gambling over the Internet while outlawing others is nothing more than the federal government picking winners and losers in the marketplace, and question where the federal government gets the moral or legal authority to say that a bet on the Kentucky Derby is acceptable, but a bet on the Superbowl should be outlawed.

Third, and perhaps most important, is the issue of government regulation of the Internet. How does the federal government propose to enforce this nearly unenforceable legislation? Will it begin to monitor everyone's email? Will it create a list of federal-government-banned sites that Internet Service Providers must block? Will it stage dead-of night raids to seize the hard drives of unsuspecting individuals? Frankly, we hope not. However, it is difficult to see how, short of tactics like these, that the government could be at all effective in shutting down an industry that is legal in countries all over the world.

We believe that the issue of Internet gambling is very much like the issue of smoking. While many of us abhor smoking, would never do it, and teach our children to stay away from cigarettes at all costs, we do not want the government to step in and tell us whether or not we are allowed to smoke. Because if the federal government can tell us whether we can smoke, or whether we can gamble, eventually it is going to try to tell us what we can read and where we can worship.

We also believe that this legislation represents the first major threat by the federal government to impose a wide-ranging regulatory scheme on the Internet. This regulatory scheme is a true slippery slope. By suggesting who can and cannot place bets online, it divides the Internet up by geography—which is exactly what those who would tax the Internet need. As such, we believe it is not inconceivable that passage of this legislation could be the first nail in the coffin of a tax-free Internet.

But taxation is only one potential problem. When we use the term "gambling", we are referring to casinos, horse racing, lotteries and other games of chance. The definition is a rather narrow one but for those who are seeking the opportunity to regulate the Internet, they would likely use this legislation to expand the definition of gambling to include online auctions or even day trading. From there, it is not much of a stretch to include other industries as well which Washington doesn't like.

I realize that this is not the intent of the sponsors of H.R. 3125 but rather the intent of those who seek to control an industry that is young and inexperienced in the world of Washington politics, nevertheless, it is a stark reality and this legislation would give the green light to those who wish to regulate this new medium and marketplace.

This bill is also one of those pieces of legislation that separates those who are willing to have the federal government step in no matter what from those who truly believe in a limited federal government, and are leery of Washington stepping in to try to achieve goals that are best accomplished by the states or the private sector.

For these reasons, we strongly urge the Committee to reject the approach taken by H.R. 3125.

Thank you for allowing me to testify. I would be happy to answer any questions you may have.

Mr. TAUZIN. Thank you, Ms. Dean.

Next we hear from Mr. Michael Bowman, of Family Research Council here in Washington, DC.

STATEMENT OF MICHAEL BOWMAN

Mr. BOWMAN. I am Michael Bowman, Vice President of the Family Research Council. This has been a tough bill for us. Let me just say, we sympathize with you working through this, and there are some strange alliances here today on both sides.

Mr. TAUZIN. That is the understatement of the day.

Mr. BOWMAN. Let me just say that we, like you, think that the Internet is an amazing technology for a lot of good, but we also know that there is a lot of amazing things that are not so good, such as child obscenity, slave trade, drug trafficking, things that

clearly undermine State and Federal sovereignty. We are talking about an international technology crashing on the boundaries of our laws.

We are strongly in support of the bill, knowing that it is slightly what we call flawed. We would like to see some of the—we don't support any form of gambling, but when you look at the amount of gambling today that is going on, we believe that this bill takes the heart out of an industry that is just about ready to flourish. We have seen such quotes from the Las Vegas Sun that the casino industry will launch next year on the Internet. Right now they are not on-line.

How are we to come next year before this committee with the full force of the casino industry, the pari-mutuel industry, the lotteries who have States like Ohio which are planning to go on-line. Let me make clear that the lottery is not just tickets. There is nothing—they are talking about in South Dakota blackjack and video poker. They are talking about all games of chance, and that is nationalism and we are going to have the States run the business, and if we do that, we might as well do cigarette companies and HMOs and gun manufacturers because those are also controversial issues.

So when you look at this, we need a place to start and we see this as an incremental purist approach with some understandings of some existing realities that are already happening.

I have submitted a more lengthy testimony, but this gets to the heart of the issue. Let me just say this. This would prohibit and give the way for the attorneys general, and we have not been satisfied with the Department of U.S. Justice in its prosecution of gambling sites. One site out of 750, that to us is not a glowing record. We can give you sites just doing a Yahoo search and find how many sites you can put up with a $2 bet.

So H.R. 3125 gives a take-down measure for the State attorneys general to be able to enforce the law if the Presidential level does not. This bill also prohibits all lotteries from being on-line. Let me just say Family Research Council does believe there are worst forms of gambling and lotteries in our judgment, as in the judgment of the Gambling Commission, but electronic type convenience gambling is far the worse. It is accessible at the home. Forcing someone to go to a destination and casino, not that we support that, is far different than going into your bedroom and having the availability to go on-line.

Finally, this bill also prohibits sports betting, which is clearly the largest type of betting that is going on-line. We are talking about NCAA fixing in colleges. We have worked aggressively with the NCAA as well. We are trying to prohibit gambling through in and throughout.

Finally, the attorneys general at the State level will now be able to have a mechanism to enforce the law if the Federal Government will not. Thank you.

[The prepared statement of Michael Bowman follows:]

PREPARED STATEMENT OF MICHAEL BOWMAN, VICE PRESIDENT OF GOVERNMENT RELATIONS, FAMILY RESEARCH COUNCIL

Mr. Chairman and Honorable Members of the Subcommittee on Telecommunications, Trade and Consumer Protection. My name is Michael Bowman and I serve as the Vice President for Government Relations at Family Research Council. I thank

you for the opportunity to discuss our support for HR 3125, the Internet Gambling Prohibition Act, sponsored by Bob Goodlatte.

Family Research Council believes the Internet should remain a forum of lawful ideas, a medium of information, entertainment, and commerce. The Internet is clearly a remarkable technology that allows tremendous access to information never before dreamed of. The Internet and telephone, for example, can be used for unlimited good. As we have learned with child molesting, obscenity, and drug trafficking, however, both the telephone and Internet can also be used for illegal gains. FRC does not believe the Internet should be able to undermine state or federal laws that are designed to protect the safety and general welfare of its citizens.

FRC is concerned about the prolific growth and expansion of the gambling industry in America. This bill does not solve all the problems; it does however, provide a powerful framework to prevent gambling from illegally entering millions of homes in America via the Internet. Let me reiterate we are opposed to the expansion of all forms of gambling, and are especially concerned about the easy accessibility of gambling of state lotteries, and other forms of convenience gambling, such as video poker and keno, and above all, the Internet. Much of our future focus on the gambling issue will be at the state level. We will continue our fight but Congress will enable the states to make these decisions with credibility if this legislation becomes law.

Are some forms of gambling worse than others? The answer is clearly yes. Family Research Council strongly opposes state-sponsored gambling. The National Gambling Impact Study Commission states, "The Commission recommends to state governments and the federal government that states are best equipped to regulate gambling within their own borders with two exceptions—tribal and Internet gambling." The federal government is involved in this issue because of the ability of the Internet to transcend state boundaries. No single state can adequately address this problem, so the federal government must intervene and strengthen federal law in this area.

According to Tim Kelly, former executive director of the National Gambling Impact Study Commission, "states spend more than $400 million annually promoting their lotteries with often misleading and deceptive advertising." Currently, state lotteries are exempt from the Federal Trade Commission truth-in-advertising standards. It is clear that themes such as, "Answers to your dreams", are at best misleading if not outright lies. The most common theme in advertisements is enticing people with the size of the jackpot, yet never posting, educating or alerting people to the actual odds of winning. In contrast, private companies must post odds for simple sweepstakes. What is even worse is the message gambling sends to children: "luck" is the ticket to success, not hard work. These types of ads also target those who can little afford to purchase tickets.

Family Research Council is greatly concerned about the lack of consumer protection from an industry that has created 7.5 million adult problem or pathological gamblers. The 1997 National Gambling Commission study also estimated there are 7.9 million adolescents who are problem or pathological gamblers and all evidence shows that these numbers are continuing to rise. The National Academies of Science found that, "pathological gamblers engage in destructive behaviors: they commit crimes, they run up large debts, they damage relationships with family and friends, and they kill themselves." People have lost their entire life savings in a single night due to gambling addictions. In fact, one 16-year-old boy attempted suicide after losing $6,000 on lottery tickets!

Additionally, the provisions in the bill that allow the pari-mutuel industry to continue its activities on the Internet is unfortunate but does nothing to expand existing realities. This bill provides a strong incremental approach to banning all forms of gambling on the Internet. Many groups support H.R. 3125, including: Focus on the Family, Christian Coalition, the FBI, the National Association of Attorneys General, the National Football League, the National Collegiate Athletic Association, the National Council of Churches, Jerry Falwell Ministries, and the Presbyterian Church (USA). Please be aware, however, that FRC will oppose the bill if any additional exceptions are listed, including any provision that would allow for state lotteries to sell tickets or any type of lottery game over the Internet.

We applaud Congress for taking a serious look at how Internet gambling has crept into our homes and lured many, even children, to become desperate addicts. With the stroke of a pen, it should be banned, just as fast as it now can be accessed with a click of a mouse.

Finally, I would like to close with a quote from the Gambling Commission report. The report stated, "The central issue is whether the net increases in income and well-being are worth the acknowledged social costs of gambling." Members of the

Committee, the social costs are simply too high. I urge you to pass H.R. 3125 and help protect American families.

Mr. TAUZIN. Thank you.

We will next hear from Anne Poulson.

STATEMENT OF ANNE POULSON

Ms. POULSON. Thank you, I appreciate this opportunity to present the views of the horse industry on H.R. 3125. I am testifying today in my capacity as President of the Virginia Thoroughbred Association. In addition to my oral testimony here today, I would like to include the more detailed written testimony submitted to the committee yesterday for the record.

We strongly support the legislation which would prohibit gambling on the Internet or through interactive computer service. Without this legislation, our industry is threatened by a proliferation of unregulated offshore gambling activities conducted on the Internet. There are provisions that grandfather activities now being offered by legitimate, licensed and regulated gaming operators, including pari-mutuel horse racing and dog racing. With regard to horse racing the bill permits interstate simulcast wagering and account wagering on live pari-mutuel horse racing on a closed loop system, already discussed, under strict requirements, including the Interstate Horse Racing Act of 1978. The racing provisions ensure that the legislation does not have the unintended effect of prohibiting pari-mutuel activities that have been conducted for many years by allowing State licensed racing facilities to continue to operate on an interstate basis pursuant to the restrictions and limitations set out in the bill.

Importantly, the bill does not expand pari-mutuel wagering on horse racing but instead preserves the existing rights of individual States to determine what types of wagering occur within their borders. Nothing in this bill legalizes any wagering that is illegal today. Horse racing is a sport that can be legally wagered on in the U.S. Pari-mutuel racing is the only wagering activity for which a Federal law, the Interstate Horse Racing Act of 1978, was passed to ensure its interstate activities were encouraged and regulated and, further, which requires industry and State regulatory approvals. This protect the States, the industry and the public and ensures that all revenue involved in these activities is shared with each, as required by State law or contractual obligations.

The racing industry has been offering interstate simulcast wagering since 1968, and interstate merging of wagering pools; that is, combined money wagered at each location into one pool, for a decade under the Interstate Horse Racing Act, State licensing and regulation. Indeed, interstate simulcast wagering pools is now commonplace and represents over 80 percent of the amount wagered on horse racing in the U.S. Racing has a long record of interstate account wagering which has been offered and successfully regulated in Connecticut, Kentucky and Pennsylvania for 20 years and in New York through a State-owned off-track betting system for nearly 30 years.

The Internet Gambling Prohibition Act respects State laws in this area and does not override any State requirements or prohibitions. Without the current racing provisions, this legislation would

prohibit what racing has been doing legally on an interstate basis for many years. The result would be catastrophic for the $34 billion racing and breeding industry, the 40-plus States that rely on it for significant tax revenue, and the 500,000 jobs it supports.

In my home State of Virginia, for example, the horse industry supports 25,000 full-time jobs and has an annual economic impact of $1 billion on the State's economy, making it the fifth largest agribusiness in the State. While the legal and commercial issues being debated in this bill are of great importance to Congress, State legislators and law enforcement officials, the racing and breeding industry I am a part of has an additional perspective. People in my home State have been breeding horses to race for more than 300 years. There are hundreds of farms in Virginia today ranging from multi-million dollar show places to the more numerous mom and pop operations where people go out each day at the crack of dawn to care for their horses and prepare them for their careers in the racing world. To them, to me this is a sport, a business and a way of life.

Horse racing is built upon a foundation that includes those farmers and their employees and many thousands of owners, trainers, jockeys, track employers and yes, customers who come to the track or use off-track facilities to legally bet on their favorite sport, thus providing the revenue strain to support this great infrastructure.

As you heard me state earlier, racing has been able to utilize the advances in telecommunications to facilitate customer transactions and was a highly competitive entertainment and gaming marketplace. Ultimately, the industry's purpose in taking these steps has been to protect and enhance its product, that of live horse racing, which, in turn, supports the economy for those thousands of people whose livelihood and way of life are centered around the horse.

What House bill H.R. 3125 does is to let our industry continue to do what it does best, blending agriculture and entertainment for millions of industry participants and racing fans, and perpetuating a tradition that is deeply rooted in my home State and in most of the States which you represent.

Let me close by saying that the raising provisions in the bill are carefully crafted to ensure that what racing has been offering for decades with respect to interstate simulcast wagering, merging pools and account wagering is maintained. It is not an expansion of those activities. Rather, it is a congressional recognition that with respect to those activities, that a State approves and regulates particularly in the area of gambling that has traditionally been licensed and regulated by States, the Federal Government should continue to not interfere.

We urge the members of this committee to support the bill as reported by the House Judiciary Committee. Thank you so much for your time.

[The prepared statement of Anne Poulson follows:]

PREPARED STATEMENT OF ANNE POULSON, PRESIDENT, VIRGINIA THOROUGHBRED ASSOCIATION

I appreciate this opportunity to present the views of the horse industry on H.R. 3125, the "Internet Gambling Prohibition Act."

I am testifying today in my capacity as President of the Virginia Thoroughbred Association, which represents the owners and breeders of Thoroughbred horses in

the State of Virginia. In my home state of Virginia, the horse industry supports 25,000 full-time jobs and has an annual economic impact of over $1 billion on the State's economy.

THE PARI-MUTUEL RACING AND BREEDING INDUSTRY

Pari-mutuel horse racing, including off-track and inter-track wagering is legal in 43 states and involves the racing of Thoroughbreds, Standardbreds, Quarter Horses, Arabians, Appaloosas and Paints. There are over 175 racetracks in the U.S. Racing and racehorse breeding is a widespread and diverse industry that includes gambling, sport, recreation and entertainment, and is built upon an agricultural base that involves the breeding and training of the horses.

Economic Impact

According to the study of the Economic Impact of the Horse Industry in the United States done by Barents Group, LLC, the economic and fiscal consulting unit of KPMG Peat Marwick LLP, for the American Horse Council Foundation, racing and racehorse breeding have a total economic impact in the U.S. of $34 billion and generate 472,800 total full-time-equivalent jobs. There are 941,000 people and 725,000 horses involved in the racing industry,

Wagering on horse racing is permitted in 43 states and there is an active horse breeding and training business in all 50 states. In many, the economic contribution of the racing and breeding industry to state and local economies is substantial and the industry ranks among the state's most significant economic entities. For example, in Florida, it involves 37,000 horses, has a $2.1 billion economic impact and generates 27,300 full-time equivalent jobs; in California it involves 69,000 horses, has a $4.1 billion economic impact and generates 52,000 FTE jobs; in Illinois, it involves 52,000 horses, has a $2 billion economic impact and generates 30,700 FTE jobs; in Ohio, it involves 40,000 horses, has a $1.3 billion economic impact and generates 17,000 FTE jobs; and in Texas, it involves 74,000 horses, has a $1.8 billion economic impact and generates 27,900 jobs.

Pari-mutuel racing generates over $500 million annually in direct state and local revenue from pari-mutuel taxes, track licenses, occupational licenses, admission taxes and miscellaneous fees.

Racing as a Sport

Racing is an activity that attracts many fans who appreciate it and follow it as a sport and who enjoy the excitement of the race and the athletic ability of the horses. The Triple Crown races are considered among the most important sporting events conducted in the United States each year and are widely reported in the sports media. Over 130 additional hours of top Thoroughbred races are broadcast on national television each year, including the Breeders' Cup and the NTRA Champions on Fox Series. The national championships of Standardbred and Quarter Horse racing are also televised nationally and widely covered by the media. In addition, most major U.S. newspapers cover racing and print the results of the races at their local tracks on a daily basis, much like they print the box scores of other sports.

The Pari-Mutuel System

While horseracing is a sport on which one can gamble, it would be erroneous to assume that pari-mutuel wagering is the same as other forms of gambling. Unlike most other forms of gambling, horseracing uses the pari-mutuel system in which bettors wager against one another instead of against the "house." Of the total amount wagered on a particular race, approximately 80% is returned to winning bettors. The other 20%, called the "takeout," is shared between the state government, the racetrack and the horsemen who race at the track. Takeout rates, which vary from state to state, are published in track programs, which are available at race tracks and at simulcast wagering sites away from the track, so that fans know the rates and how they might affect their wagering.

Wagering computations are accomplished by a totalisator machine, a computer, which adds bets over and over again during the course of betting. Every 30 to 60 seconds the "tote" flashes new betting totals and odds for each horse. The machines contain a number of features designed to minimize the potential for pari-mutuel fraud or machine malfunction. These features include coded ticket paper and duplication of all critical functions by two computers working independently of one another.

I point this out because the pari-mutuel system and the published information available ensures that the public has easy access to data regarding their true chances of winning. There is little chance of manipulating the odds and therefore

the payouts. The use of the tote machine allows bettors to determine their chances of winning every 30 to 60 seconds. In addition, the race upon which the wager is made, and paid, is a public event, watched by fans at the track or off-track facility, often viewed by others on television or cable, and always overseen by the stewards at the track itself and the state racing commission to ensure the integrity of the race.

In 1998, over 30 million people attended the races and wagered over $14 billion, approximately 80% of which was returned to the winning players.

FEDERAL AND STATE POLICIES ON GAMBLING

Gambling, including that conducted on horseracing, has always been of concern to the federal and state governments. Throughout American history, the prohibition or legalization and regulation of gambling has primarily been a function of the states. The only time that the federal government has become involved has been when one or more states could not solve a problem without federal intervention. But even in these instances, for the reasons discussed above and others, pari-mutuel racing has often been either treated differently or specifically considered under federal gambling laws. The racing industry has developed to its current status under a regulatory framework of state law and regulation and the Interstate Horseracing Act of 1978 (discussed below). If racing and breeding hopes to continue to compete in today's economy, it must be able to continue to do so under these same statutes.

State Regulation—A Long History

Pari-mutuel racing has been conducted in the United States under state authority and regulation for over 75 years. In every state that has allowed legalized wagering on horseracing, strict state oversight and regulation has accompanied its introduction and growth. In each state the pari-mutuel industry is regulated by an agency most commonly known as the state racing commission. Among commission prerogatives are the licensing of track and horse owners, trainers, jockeys, drivers and all others involved in the pari-mutuel sport, and the promulgation and enforcement of the specific regulations under which the industry must operate. All matters pertaining to the operation of pari-mutuel racing, including wagering, are regulated by these agencies on behalf of the governors and state legislatures.

Over the years the states have consistently acted on the perceived need to closely regulate legal wagering and protect the public's interest in pari-mutuel sports. The actions of state legislatures and the racing commissions which carry out their policies have been predicated on the desire to: (1) maintain the integrity of the events on which the public is allowed to wager; (2) oversee the state's tax-related and economic interest in that wagering; (3) ensure that licensees meet specific standards of qualification; and (4) control any unsavory elements which may attempt to associate with the wagering aspects of the sport.

The Interstate Horseracing Act of 1978

In 1978, Congress enacted a federal statute that specifically deals with interstate gambling on horseracing. The Interstate Horseracing Act of 1978 ("IHA") made clear that a racetrack controlled wagering on its races in interstate and international commerce and provided for industry and regulatory approvals before betting was permitted between Jurisdictions where the wagering was legal.

In the findings to the IHA, Congress said that states have the primary responsibility for determining what forms of gambling may take place within their borders, but that the Federal government should prevent interference by one state with the gambling policies of another. In the IHA Congress provided that with respect to the limited area of interstate off-track wagering on horse racing:

> There is a need for Federal action to ensure that States will continue to cooperate with one another in the acceptance of legal interstate wagers.

Importantly, in passing the IHA, Congress specifically recognized that "pari-mutuel horseracing is a significant industry which provides substantial revenue to the States" and that "properly regulated and properly conducted interstate off-track betting may contribute substantial benefits to the States and the horseracing industry."

Consistent with these findings, Congress stated as a matter of congressional findings and policy that:

> It is the policy of Congress in this chapter to regulate interstate commerce with respect to wagering on horseracing, in order to further the horse racing and legal off-track betting industries in the United States.

The combination of state statutes and regulations and the IHA have provided the racing industry with a workable regulatory framework for over two decades that has allowed the industry to develop its current activities within clear parameters and guidelines.

CURRENT ACTIVITIES OF RACING

The dissemination of information about racing, simulcasting, off-track and intertrack wagering, common pool wagering and account wagering have been initiated, operated and expanded under the IHA and state approval, licensing and regulation.

Information

Communication today is very complicated in the highly complex and ever-changing technological world. In this environment new industries have sprung up virtually overnight forcing existing industries to adapt and change practices in order to compete for the public's support. This is particularly true in the areas of wagering and entertainment.

Like others, the horseracing industry has had to adapt and change dramatically in the face of exploding competition and new technology. An example of that is that many racetracks, horsemen's associations and private businesses are now advertising and offering information on the sport through various media, both traditional and more technological state-of-the-art, including the Internet.

The process of betting on horse racing and selecting the winner is called "handicapping." It is a cerebral process for serious bettors who spend a great deal of time at the track, and elsewhere, pouring over information that will help them select the winners of races. For students of the sport this is not a random selection. The "handicapping" information used in this process has been available in written forms since racing began and is similar to the statistical information available for other sports.

The racing industry is presently offering a great deal of this type of "handicapping" information in publications, on-the-wire, over toll-free numbers and over the Internet in the form of advertisements for state-licensed and regulated race tracks, information and "how-to" sites, "tout" sheets, past performance information, betting lines and similar information, that will market the racing product to new fans and allows existing patrons to participate more successfully.

This continued flow of this information is critical to the racing business and we submit should not be affected by any changes to current law.

Simulcasting and Common Pool Wagering

Prior to 1970, legal pari-mutuel wagering on racing was limited to those at the track where the race was run. In 1970, the New York legislature approved off-track wagering. As an aside, at that time the computerized system operated by New York OTB (Off-Track-Betting) was one of the first real-time, on-line computer systems in the U.S. Since then, many states, and the federal government under the Interstate Horseracing Act, have authorized racetracks to simulcast or transmit signals of their races off-track into other states and jurisdictions under applicable law.

With the continued development of technology, by the early 1980s racing was able to make its product better for its patrons again. Additional technological changes allowed the linking of pari-mutuel wagering pools among tracks in separate jurisdictions, called 14 commingled pools," so that payouts could better reflect the size and wagering behavior of the entire betting public.

The racing industry's continuing utilization of state-of-the-art technology has resulted in the ability of the industry to survive and offer its patrons a better product. In fact, today over eighty percent of the money wagered on racing is bet at facilities or locations other than where the race itself is run. Again, all with the approval and regulation of the states involved.

Account Wagering

Another process for pari-mutuel wagering on racing that has expanded over the two last decades is account wagering, primarily telephone betting. Currently, nine states, including Connecticut, Kentucky, Louisiana, Maryland, Nevada, Ohio, Oregon, Pennsylvania and New York, have enacted legislation specifically authorizing the acceptance of account wagers by licensed facilities within those States and a number of others are considering similar legislation. For example, California is currently considering legislation that would allocate the proceeds from account wagering by California residents among the California pari-mutuel industry.

Account wagering is not a new activity in the United States. Telephone account betting has been offered in New York for over 25 years by New York City Off Track Betting and upstate New York Off Track Betting entities—all state agencies. These entities have accepted wagers from residents of New York and other states who had established accounts in New York.

In order to keep pace with modem technological advances, the horseracing industry needs to be able to continue these activities, provided that such activities are conducted in accordance the IHA and applicable state laws or regulations.

In summary, the IHA and individual state statutes and regulations, under the supervision of state racing commissions. combine to form a very capable regulatory system for pari-mutuel racing.

THE INTERNET GAMBLING PROHIBITION ACT OF 1999—H.R. 3125

The Internet Gambling Prohibition Act of 1999, H.R. 3125, is a natural response to the current changes in technology. The regulated and licensed pari-mutuel horse racing industry agrees with the intent of this legislation, as characterized by Congressman Bob Goodlatte when he introduced a previous version of H.R. 3125 in 1997:

> ...this legislation does not preempt any state laws, does not cover online news reporting about gambling, and does not apply to transactions that are legal in both the State in which they originate and the state in which they are received.

The regulation of gambling is essential to protect state policies and revenues, the racing industry's ability to control its own product and the integrity of racing. Our industry is opposed to any unregulated or unauthorized gambling, particularly on racing.

As you know, this legislation, as reported out of the Judiciary Committee would prohibit gambling on the Internet or through an interactive computer service.

There are provisions in the bill that grandfather in activities now being offered by legitimate, licensed and regulated American gaming operators, including pari-mutuel horse racing, dog racing, lotteries, casinos and fantasy sports leagues.

With regard to horseracing, the bill permits interstate simulcast wagering and merging wagering pools. It also permits interstate wagering on live pari-mutuel horseracing provided it is (1) expressly authorized and licensed or regulated by the state in which the wager is received, (2) placed on a closed-loop, subscriber-based service, (3) initiated from and received in a state in which wagering on horse racing is lawful, (4) made in accordance with the requirements of the state in which the bet originates, and (5) made in accordance with all the requirements of the Interstate Horse Racing of 1978. The closed-loop system must include an effective customer and age verification process to ensure that all federal and state requirements for lawful gambling are met and appropriate data security standards to prevent unauthorized use by a minor or nonsubscriber. (Attached is an April 3, 2000 letter from Stephen Walters, Chairman of the Oregon Racing Commission, further describing the racing provisions and clarifying the distinctions between the Internet and the closed-loop system required under the current bill.)

The racing provisions ensure that the legislation does not have the unintended effect of prohibiting pari-mutuel activities that have been conducted for many years by allowing state-licensed racing facilities to continue to operate on an interstate basis pursuant to the restrictions and limitations set out in the bill.

This legislation involves very complicated legal and technical issues. We believe the provisions in the current legislation that allow horseracing to continue to conduct its existing activities are fair and consistent with existing law and practice under which horseracing has operated for decades. We are concerned, however, about any changes to the current legislation that may adversely impact what racing is doing now under state regulation and the IHA with respect to the dissemination of information, common pooling and account wagering.

The worst possible result for all concerned would be to enact legislation that would restrict licensed and regulated entities from conducting their current business using modem technology with the result being that many of those who wish to wager on horseracing will be forced to deal with unlicensed and unregulated vendors, either off-shore or operating illegally within the United States. This would open the door to consumer fraud and result in significant decreases in revenues for the licensed operators, purses (which are directly derived from licensed wagering revenues) and tax revenues for the Federal and State governments.

It is critical to the future of the racing industry, the agribusiness it supports, the state revenue and employment it generates, the sporting and the entertainment benefits it provides to countless fans, that all distribution mechanisms of racing information and its product be available, so long as they continue to meet regulatory criteria established by state governments and comply with the IHA. It is also critical that the racing industry have the opportunity to take advantage of any and all technological advancements in the future distribution of its information and products in order to successfully compete against other forms of gambling, sport and entertainment.

Because of the unique status of pari-mutuel racing and the present regulatory structure applicable to it, we believe that the purposes of this legislation and the particular needs of racing have been accommodated by this legislation without infringing on federal or state public policies, abrogating strict regulation or lessening the current protections of the public.

Justice Department Comments

In the context of the above remarks, we would also like to address the comments submitted by the Justice Department to the House Judiciary Subcommittee on Crime in March during its consideration of the Senate version of the Interstate Gambling Prohibition Act and similar comments recently submitted to the New York State Racing and Wagering Board.

These comments can be summarized as questioning the legality under the Wire Act (18 U.S.C. 1084) of the current practices of interstate simulcasting, commingling of pools and account wagering and opposing exemptions to the Internet Gambling Prohibition Act that would allow racing to continue to conduct these activities using modem technology. We believe this is an extreme and incorrect interpretation of the Wire Act that disregards the specific purpose behind the Wire Act of combating organized crime, the passage by Congress of the Interstate Horseracing Act of 1978, and the reality that State sanctioned and licensed businesses have been conducting these activities in compliance with existing State and federal laws for over twenty years.

The Wire Act is undeniably directed at illegal gambling and bookmaking conducted by organized crime. It was enacted 1961 as part of a package of bills directed against organized crime and racketeering. *See The Attorney General's Program to Curb Organized Crime and Racketeering,* Hearings before Committee on the Judiciary, U.S. Senate, 87th Cong., 1st Sess. (1961).

In its report accompanying the Wire Act, the House Committee on the Judiciary wrote that:

> "The purpose of the bill is to assist the 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 . . ."

Any fair reading of the Wire Act and the Congressional record accompanying the Act makes clear that the Wire Act is not directed at nor intended to make illegal licensed state regulated activities.

The Wire Act was enacted in 1961. Seventeen years later, Congress enacted the Interstate Horseracing Act of 1978 for the express purposes of ensuring proper regulation of "Interstate off-track betting" and "furthering the horseracing and legal off-track betting industries in the United States." The interpretation of the Wire Act currently propounded by the Justice Department would appear to disregard Congress' enactment of the IHA and the supporting Congressional record.

Lastly, although the Wire Act was enacted almost 40 years ago and interstate simulcasting and account wagering have been conducted in this country since the early 1970s, neither the Justice Department nor any federal prosecutors have ever used the Wire Act to prosecute any state licensed and regulated entities for conducting interstate simulcasting, commingling of pools or account wagering. The reasons for this should be clear. The legislative history of the Wire Act, coupled with the passage of the IHA and the existing framework of extensive state regulation leads to the inescapable conclusion that the Wire Act simply does not apply to the licensed regulated sport of horseracing.

Stated another way, the logical conclusion of the Justice Department's current position would render criminally illegal interstate wagering on legal, state-regulated horseracing that currently provides hundreds of millions of dollars in annual tax revenues, supports hundreds of thousands of jobs, and has been an ongoing state-sanctioned activity for decades.

In conclusion, the current form of H.R. 3125 has been carefully crafted to allow the sport of horseracing to continue to conduct its business in the same way it has been operating for the last two decades. The bill does not in any way expand wagering, but instead preserves the status quo. We appreciate the opportunity to present these comments on this important legislation and would be happy to respond to any questions.

Mr. TAUZIN. Thank you, Ms. Poulson.

Next will be Mr. Daniel Nestel representing the NCAA here in Washington, DC.

Mr. Nestel.

STATEMENT OF DANIEL NESTEL

Mr. NESTEL. Thank you for the opportunity to testify on behalf of the National Collegiate Athletic Association in support of H.R. 3125. My primary role here today is to introduce videotape testimony from a college student who got heavily involved in sports gambling on the Internet. However, before I do, I would like to briefly discuss why the NCAA is so concerned about this activity. Believe me, Mr. Chairman, I received your marching orders and I sure you these are the highlights.

The NCAA has long opposed sports gambling because of its potential to jeopardize the integrity of the intercollegiate athletics contests and to threaten the welfare of student athletes. Despite Federal and State laws that prohibit sports gambling in nearly every State, this activity remains a growing problem on college campuses. In recent years, NCAA institutions have suffered damaging point shaving scandals, have witnessed the spread of bookies on college campuses, and have taken notice of a growing consensus of research that reveals rates of pathological and problem gambling among college students that are three times higher than the adult population.

Clearly, sports gambling is not a victimless crime. Now, along comes the Internet and Internet gambling. It should not be surprising that Internet gambling presents a multitude of new potential dangers for young people. College students are, perhaps, the best wired group in America. They can surf the Web in their school library, in the computer lab or in the privacy of their dorm room. Now, with the emergence of Internet gambling, students can wager behind closed doors in virtual anonymity. This new industry not only increases the ease for participation in illegal game fixing schemes, but it also is highly attractive to college students.

In a moment you will hear a videotaped account of a college student who, in just a few months, lost $10,000 gambling on sports over the Internet. Unfortunately, his story is not unique. It is representative of the types of problems that are occurring with more frequency on college campuses. This student contacted the NCAA after watching an ESPN segment on Internet gambling. After months of discussion, the student agreed to tell his story and a number of NCAA seminars held for athletic administrators. This videotape was filmed at one of these sessions. The student has asked the subcommittee to keep his identity unknown, after all, he is graduating soon and is looking toward a bright future.

Before we roll the tape, I have one final message to deliver. Internet gambling is growing at a rapid pace. Agreements have already been made with equipment manufacturers to bring Internet gambling to wireless hand-held devices. Imagine students placing Internet bets on their cell phones. Nevada officials are already warning that if Federal legislation fails, U.S. casinos will likely enter the marketplace. You can bet that Internet gambling will really take off if casinos like Harrah's were to establish its recognized brand name in cyberspace.

The House sponsors of H.R. 3125 have worked several years on trying to craft a bill that addresses the areas of concern and that has the best chance of passage. The NCAA urges Congress not to let this opportunity slip away. If legislation is not enacted by the

end of this legislative session, it is likely that Congress will not be able to check the explosive growth of Internet gambling in the future. With that, I would like to roll the videotape.

Mr. TAUZIN. Let's see if we can get some lights too, thank you. By the way, have you been watching the University of Lafayette Cajuns in Omaha and LSU? Isn't that amazing? Awesome, awesome.

[Video played.]

Mr. TAUZIN. Let me suggest you put a mike or something by it because we can't really hear it. Pause it for a second.

Ms. ESHOO. Can we start again, Mr. Chairman, because we can't see it.

Mr. TAUZIN. Let's stop it for a second, pause it, back it up, let's get a mike on those speakers so that, if you don't mind, I want everybody to hear it, otherwise this won't work. Let's get it all going. We will try again. Get your volume up.

[Video played.]

Mr. TAUZIN. The Chair will ask that the demonstration—let me ask the demonstration be halted. I am hearing from members that they can't understand it. Can you halt it. We can't understand it. If we are going to do a demonstration my apologies to the presenter, we can't hear it. We can't understand it. And let me ask if you would submit a written transcript of the gentleman's testimony at this event.

And let me apologize for the sound in this room, but we are wasting I think valuable time when we can't understand the young man on that mike. I will do my best whenever I have that capacity to make sure this room is high-teched by the time we do more demonstration.

Mr. Nestel, if you would kindly submit to us a transcript of his testimony. And basically, I think I understood he started betting, he won the first time, he got to betting more and more, and personality change, messed up his life real bad, and he lost 10 grand. Is that about it? Thanks very much.

[The prepared statement of Daniel Nestel follows:]

PREPARED STATEMENT OF DANIEL NESTEL, SENIOR ASSISTANT DIRECTOR, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify on behalf of the National Collegiate Athletic Association (NCAA) in support of H.R. 3125, the "Internet Gambling Prohibition Act of 1999." The NCAA is a membership organization consisting of nearly 1,000 universities and colleges and is devoted to the regulation and promotion of intercollegiate athletics for over 330,000 male and female student-athletes.

The NCAA has long opposed sports gambling because of its potential to jeopardize the integrity of intercollegiate athletics contests and to threaten the welfare of student-athletes. Despite federal and state laws that prohibit sports gambling in nearly every state, this activity remains a growing problem on college campuses nationwide. Over the past several years, point shaving scandals on the campuses of Northwestern University and Arizona State University have received widespread media coverage. The impact of these cases must not be minimized. Several of the student-athletes involved were indicted and sentenced to serve time in federal prisons. Coaches and teammates were betrayed and the two schools involved have seen their reputations tarnished. It is clear that sports gambling is not a victimless crime.

A growing consensus of research reveals that the rates of pathological and problem gambling among college students are three times higher than the adult population. This fact surely did not go unnoticed when the National Gambling Impact

Study Commission recommended a federal ban on Internet gambling nearly one year ago today.

As you can see, there is reason to be concerned about the impact of gambling on today's youth. Therefore, it should not be surprising that Internet gambling presents a multitude of new potential dangers for young people. College students are perhaps the most wired group in this country. They can surf the Web in their school library, in a computer lab or in the privacy of their dorm room. Now, with the emergence of Internet gambling, students can wager behind closed doors, in virtual anonymity. This new industry has raised the fears of those concerned about the threat of sports gambling. Three years ago, there were 50 Internet gambling sites, now there are 750. Today, the possibility exists for student-athletes to place wagers over the Internet and then attempt to influence the outcome of the contest while participating on the court or playing field.

However, the impact of Internet gambling on campus is not a problem that is limited to athletics. If left unchecked, the growth of Internet gambling could be fueled by college students. Today, you will hear a video taped account of a college student who, in just three months, lost $10,000 gambling on sports over the Internet. This student contacted the NCAA after watching an ESPN segment on Internet gambling. After months of discussion, the student agreed to tell his story at a number of NCAA seminars held for athletic administrators. This video tape was filmed at one of these sessions.

Please be assured that this student's experience is not unique. The NCAA has heard from others with similar stories and the media is widely reporting on this emerging problem among young people. The reality is that students have the means to participate freely in this activity. Studies reveal that over 70% of students have credit cards and 20% have four or more cards. They are being aggressively solicited by credit card companies who are awarding cards with up to $5,000 credit limits to students who have no jobs and little, if any, credit history.

For students, the question of whether Internet gambling is legal has caused great confusion. Visit an Internet gambling site's Web page and you will find misleading statements like the one from Diamond Sportsbook International (DSI). It reads: "DSI is a fully licensed offshore race and sports book,. . . founded as an alternative to the illegal bookmaking operations found within the U.S." DSI conveniently fails to mention that its sports gambling operations are, in fact, illegal in the U.S. But perhaps the best explanation of why there is such uncertainty surrounding the legal status of these gambling sites among students is that many of them conclude that "if it is on the Internet it must be legal."

Federal legislation is desperately needed and we are running out of time. Internet gambling is growing at a rapid pace. Agreements have already been made with equipment manufactures to bring Internet gambling to wireless handheld devices. Imagine students placing Internet bets on their cell phones. A Nevada legislator has already warned that if federal legislation fails, U.S. casinos will enter the marketplace. You can bet that Internet gambling will really take off if casinos like Harrah's work to establish its recognized brand name in this industry. The House sponsors of H.R. 3125 have worked several years on trying to craft a bill that addresses the areas of concern and that has the best chance of passage. The NCAA urges Congress not to let this opportunity slip away. If legislation is not enacted by the end of this legislative session, it is likely that Congress will not be able to check the explosive growth of the Internet gambling in the future.

Thank you.

Mr. TAUZIN. The next witness will be the Reverend Louis Sheldon of the Traditional Values Coalition here in Washington DC.

Reverend Sheldon.

STATEMENT OF REVEREND LOUIS SHELDON

Mr. SHELDON. Thank you, Mr. Chairman, and thank you for holding this hearing today and giving us the opportunity to testify and express our viewpoints on behalf of our 43,000 member churches that comprise the Traditional Values Coalition. I want to make it as clear as possible our strong opposition to H.R. 3125, as the bill has been reported out of the Judiciary Committee. And Mr. Chairman, I would like to speak candidly to you and the members of the committee, because I am very passionate about this issue. I know the members of the committee have worked very hard to

present this bill. But there is an angle here that we must seriously consider, and that is, this angle of these exemptions and some of these statements that have been given to us: 95 percent of gambling is included.

I call that into question and I'd like to have those statistics really substantiated in front of us. And furthermore, I think it is important to realize that in the home, once you invade the home, once you have the right and I give you the key to my house, and I gave you a lease to come into my house, children, parents, friends, anybody, people are then going to become very vulnerable. They are going to find that something is happening that they can not control. As the Congressman from Texas, Mr. Green, mentioned about his own home this morning, and as the Congresslady from California stated very clearly these things.

Protecting children from addictive gambling is very important. It is our moral responsibility. Gambling tempts people for the quick fix, for the quick wealth. And yet, the holy scriptures teach us that the only wealth that is going to last is that wealth which has come by the sweat of the brow. It may be ingenious, it may be intellectual, it may be labor work, but that is the only wealth that is going to have endurance, and it is going to have benefit for the full community.

Gambling, too, often leads people to become dominated with other kinds of characteristics in their life that are not necessarily acceptable or appropriate. It causes them to abandon their commitment to family and to the community and even to God. And that is why I cannot stand and understand really how my dear friends are particularly supporting this bill. And I am on the phone to Pat, I am on the phone to Jerry, I want to find out it they know are these exceptions in this bill. And already I have spoken to their senior staff in both of those offices, and they are saying they don't know.

So we are going to find out exactly what is happening at this level. Mr. Chairman, it is true that a wolf sometimes comes dressed in sheep's clothing but this is a wolf itself. Everyone knows that certain gambling interests have gutted the bill. They know it. Let's face it. The horse racing, dog racing, jai alai lobbies obtained the exemptions and that's their right.

I support free enterprise. I like horses, I like dogs. I don't race with them. We know that these loopholes will increase gambling. We know that. It was stated by, I think Mr. Markey, very well. He said earlier to Mr. Goodlatte, hey, you have given the exemptions to the people that have been the most crafty in getting around the law. So therefore, now you have given out, you carved these out, everyone knows that this is going to happen. I think it is very important that Justice Department has said very clearly in the case with Mr. Cohen, they have the ability to prosecute, but they haven't prosecuted enough. Fine. That is another case.

The Congress maybe should do a resolution to Mrs. Reno, they should do a resolution to encouraging her, you know, she comes before the committees for budget and for money, hey, put the screws on it there. Get it done. We at TVC are not ignorant of the give and take that is required to pass legislation. We know the perfect

can not become the enemy of the good. And we do not want it to become the enemy of the good.

With all due respect, Mr. Chairman, what criteria has been used for this decision to carve out these exemptions? Is it the size of the wealth of the lobbies fighting the ban or is it the risk of the harm posed by the conduct? We see how the gambling interests have used their influence to gut this well-intentioned bill. And I would like to submit to the record two very simple things, The Washington Post on "gambling bill of Web industry favors," the other article is by the Wall Street Journal called, "Click place or show: Playing the ponies in your underwear."

The story makes clear the horse racing lobby is exciting at the prospect of bringing betting into the home. I want to read you a brief passage from the Wall Street Journal, "Still things are looking up lately for online racing fans. A bill working its way through Congress would ban most forms of Internet gambling, but excludes an exemption for horse racing. It continues for track operators and horse trainers. It is critical to keep bettors playing with officially sanctioned companies, because these concerns share revenue with tracks, supporting big money, purses for the horses."

I would ask the members of the committee, is that what this is all about? Big money purses? Do you want to use your vote here in Congress to create officially sanctioned companies? That can bring gaming into our homes. Certainly this can't be the case.

Now, I do not want to question the motives of my good friend, Mr. Goodlatte, or intentions of the sponsors of the bill. I know they are trying to do the right thing. I know the members of the committee and the Congress want to do the right thing. But here's the problem: We are taking what is illegal, there are five laws now on the books that say that this kind of gambling is illegal, the five laws, and we are now taking what is illegal and we are making it legal with these exceptions.

Mr. Chairman, I hope this bill will have a markup next week. I hope you will plead with Mr. Bliley to let that, and I hope this bill will not go to the floor unless these exemptions are removed. Thank you.

[The prepared statement of Reverend Louis Sheldon follows:]

PREPARED STATEMENT OF REV. LOU SHELDON, CHAIRMAN, TRADITIONAL VALUES COALITION

Mr. Chairman, and members of the committee, I am Rev. Lou Sheldon, Chairman of the Traditional Values Coalition. I appreciate the opportunity to testify before you today on behalf of Traditional Values Coalition's 43,000 member churches.

This bill, the Internet Gambling Prohibition Act, has become the Internet Gambling Expansion Act. That which is illegal according to the wire act, is now made legal in the current version of H.R. 3125.

Like gun violations, the Justice Department has *chosen not to prosecute* Internet gambling until recently. However, they recently indicted 21 people for illegal Internet sports gambling. It's a good (albeit late) start. More should follow.

Internet gambling is *already* illegal under federal law, as we have said. The Congressional Research Service has noted that Internet gambling operators are criminally liable under at least five existing **federal** laws:

1. *The Wire Act*, 18 USC sec. 1084 (use of wires for sports gambling is a federal crime)
2. *The Travel Act*, 18 USC sec. 1952 (use of any facility of Interstate commerce to break state gambling laws is a federal crime)
3. *The Crime Control Act*, 18 USC sec. 1955 (it is illegal under federal law to own any share of a gambling business that operates illegally under state law)

4. *Racketeering Influenced and Corrupt Organizations (RICO) Act*, 18 USC sec. 1964 (it is illegal to conduct a criminal enterprise that involves a collection of an unlawful debt OR a pattern of activity in which state gambling laws are broken)
5. *Amateur and Professional Sports Protection Act*, 28 USC sec. 3702 (making it illegal to promote or accept wagers on sporting events)

This bill, H.R. 3125, has been hijacked and pushed by horse racing, dog racing, jai alai, and sports betting companies. It would allow for *in-home gambling via the Internet* when it would otherwise be illegal.

According to the testimony of Deputy Assistant Attorney General Kevin Di Gregory, March 9, 2000, before the House Crime Subcommittee, "H.R. 3125 *exempts* parimutuel wagering from the prohibition against Internet gambling. The result is that people will be able to bet on horse racing, dog racing, and jai alai *from their living rooms*."

This bill does not merely preserve current law . . . it expands in-home gambling opportunities.

1. There is *nothing* in current law to allow for in-home gambling on jai alai or dog racing. Nevertheless, under H.R. 3125, *in-home gambling on dog races and jai alai matches would be legal.*
2. In a letter to Sen. Patrick Leahy on June 9, 1999, Acting Asst. Attorney General Jon Jennings stated, "The Interstate Horse Racing Act does not [currently] allow for [interstate horse] gambling, and if a parimutuel wagering business currently transmits or receives interstate bets or wagers (as opposed to intrastate bets and wagers on the outcome of a race occurring in another state), it is violating federal gambling laws."
3. H.R. 3125 also contains a broad carve-out for so-called "fantasy sports." While some of these fantasy sports leagues are legitimate recreation, we are concerned that gambling interests will structure their wagers so that they fall under the fantasy sports exemption.

   For instance, the language in the legislation exempts "any otherwise lawful bet or wager that is placed, received, or otherwise made for a fantasy sports league game or contest, and defines such a contest as one that "is not dependent solely on the outcome of any single sporting event or non-participant's singular individual performance in any single sporting event; has an outcome that reflects the relative knowledge and skill of the participants; and offers a prize or award to a participant that is established in advance of the game or contest and is not determined by the number of participants or the amount of any fees paid by those participants."

   There is no harm in individuals competing against each other, trying to pick which athletes are going to perform best in their real-life leagues. However, the existing fantasy sports carve-out in the hands of gambling interests could be a dangerous loophole.
4. H.R. 3125 would require a "closed loop, subscriber based system" for pari-mutuel gambling. We have already seen the success of such a system—America Online. AOL WOULD MEET EVERY TEST FOR THE "CLOSED LOOP, SUBSCRIBER BASED SYSTEM" under H.R. 3125.

The companies that would benefit from these exemptions have already broken the law. They should not be rewarded with legislation that gives them new opportunities for in-home gambling.

1. Youbet.com—the company that already conducts in-home gambling on horse races using the Internet—was prosecuted by the California Attorney General Bill Lockyer last year. **Passing H.R. 3125 would lift a consent decree that currently bars Youbet.com from taking California wagers.**
2. Youbet.com and others like it are waiting in the wings to aim their marketing toward compulsive gamblers.
   a. Youbet's Internet page attracts gamblers by loudly claiming: **"Make the bet, Feel the rush, All on Line."**
   b. H.R. 3125 contradicts the National Gambling Impact Study Commission's statement that horse racing has the *highest incidence of compulsive gambling.* This bill allows for these compulsive gamblers to place bets from the convenience of their own home.
   c. In that same report, the National Gambling Impact Study Commission called on Congress to pass a "clean" Internet gambling ban—one that does so "without allowing for new exceptions, or expanding current exemptions in federal law." NGISC Recommendation 5-1. Again this bill ignores the commission's recommendation.

This bill is a *Trojan horse* for the horse racing, dog racing, jai alai, and sports betting companies. If federal prosecutors already have laws on the books to pros-

ecute Internet casinos, why pass a bill that does nothing but allow new companies to push another form of gambling into our homes?

If we need to pass legislation to wake up America, we should pass a sense of the Congress bill that calls on Janet Reno to prosecute Internet gambling businesses with the tools she already has in her arsenal.

I have been told that the Justice Department is planning to recommend a veto of this bill because it expands gambling. Does Congress want to pass a bill that the American people will see as an expansion of gambling?

In conclusion, please remove all exemptions to H.R. 3125 so that the bill will be able to accomplish its original intent. With the demonstrated problems gambling inflicts upon communities and families, these exemptions will only exacerbate the problems. Until they are removed Traditional Values Coalition will oppose the bill. Thank you for your consideration of Traditional Values Coalition's concerns.

Mr. TAUZIN. Thank you very much, Reverend.

And next we will hear from the NFL represented by Mr. Gerard Waldron, a partner of Covington & Burling here in Washington DC.

STATEMENT OF GERARD J. WALDRON

Mr. WALDRON. Thank you, Mr. Chairman, and members of the committee. My name is Gerry Waldron. I represent the National Football League. And let me start off by saying that I think the exaggerations have overwhelmed and swept over the core principle underlying this bill. The problem that the NFL sees, along with the NCAA and the other sports leagues, is essentially, technology is being used to repeal the fundamental laws against sports gambling in our country. That those laws have been on the books for many years. They were recently updated in 1992 in the form of PASPA, and that the Internet is essentially repealing with technology this fundamental law against sports gambling.

The nature of the legislative process and the nature of hearings, and I certainly appreciate that, is to the focus on maybe the 10 percent of the bill that people have issues with. Well, what I am here to tell you is that 90 percent of the bill that goes after the issue of sports gambling is a comprehensive and complete solution to the problem of sports gambling on the Internet. It is an issue of sports gambling on the Internet, which frankly is the dominant part of Internet gambling. And let's be clear about that. The statistics Reverend Sheldon alluded to came from the Nevada Gambling Commission. I testified before the Nevada Gambling Commission, along with the Attorney General from Wisconsin 2 months ago, and it was that body that came forward, and that is certainly consistent with it. So the lion's share of gambling on the Internet is on sports, and frankly the lion's share of sports gambling is on professional football.

So that is why the NFL, frankly, is so concerned about this issue, and we think that any bill that gives significant enforcement mechanisms to the Justice Department is a step forward.

I want to underscore what we heard from the Justice Department today. What we heard is that they agree that the current law is not adequate. Mr. Di Gregory referred to the prosecution of Jay Cohen in New York. The fact is that Jay Cohen used telephone wires just like people have been using telephone wires for years. And Mr. Di Gregory also said that the Justice Department supports changes to current laws because the mechanism doesn't work.

Imagine you have a betting parlor at 101 Main Street. Law enforcement officer discovers that there is a bettor parlor there. What do they do? They call up Bell Atlantic and they say cut the wire to 101 Main Street. The betting parlor is out of business. That has been on the book since 1961, it works very well. Take it in 2000, what happens when they discover that a Web site is operating a gambling operation? They call Bell Atlantic and they say cut the wire to AOL? No that would annoy 22 million people, and that would be a stupid thing to do. There is no enforcement.

Prosecution, frankly, is not a very effective step in dealing with this issue. There are 700 Web sites. The Justice Department has prosecuted one. We don't expect they have important crimes to chase after, it takes a lot of resources, we do not expect them to spend all their prosecutorial time prosecuting gamblers. What we do want, however, is an effective enforcement mechanism such as there is certainly now with section 1084. That is what Mr. Di Gregory underscored, that we need an update of the law in order to give law enforcement those kinds of tools. And that is what is contained in section 3125.

Let me also address a point that Mr. Markey and Mr. Shimkus both raised about the sort of schizophrenia. And I was a son of St. Josephs and I also had—for me it was Saturday night. And certainly the clean and pure way, the perfect way, if you will, would be to have a one sentence bill. All gambling is prohibited on the Internet. Period. The problem is that—and frankly, I think some of the sponsors started out with the one sentence bill.

The problem is that our land-based laws on gambling are a lot more complicated than that. We have an interstate Horse Racing Act of 1978. We have interstate lotteries that are permitted. We have the sharing of horse racing and power balls that are permitted with compacts. We have the Indian gaming, and there is a whole Federal Indian Gaming Regulatory Act. Actually, our existing land base laws are fairly complicated. And so, the one sentence bill that this started out with, unfortunately, frankly from the NFL's perspective, got complex. And that is, as this subcommittee knows well, the nature of the legislative process.

But I do also want to just, finally, underscore that the enforcement mechanism came directly from the provisions that this subcommittee wrote into the WIPO bill, and it is a notice and take down provision. They were carefully negotiated over months with the Internet service providers and their trade associations. The bill, and I want to make sure to address the point that Ms. Eshoo and others raised, the bill explicitly disclaims any obligation on Internet service providers to monitor usage. The bill gives anyone who has been disconnected an automatic right to get reconnected.

So the civil liberties of users have been balanced in here. And that it is important to recognize that the notice and take down provision in the copyright works well. Just to finish up, I am essentially—sports and gambling do not mix. Gambling threatens the integrity of the game. And we do not want our players used as poker chips on-line or off-line. We think the bill accomplishes that goal. We urge it to be adopted.

[The prepared statement of Gerald J. Waldron follows:]

PREPARED STATEMENT OF GERARD J. WALDRON ON BEHALF OF THE NATIONAL FOOTBALL LEAGUE

Mr. Chairman and members of the Subcommittee, my name is Gerry Waldron, and I represent the National Football League. I appreciate the opportunity to express the NFL's strong support for the Internet Gambling Prohibition Act of 1999. The NFL strongly supports this bill because it would strengthen and extend existing prohibitions on gambling on sports events. The bill comprehensively addresses the most popular form of gambling on the Internet, which is sports gambling. If the lion's share of gambling on the Internet is sports gambling, the lion's share of sports gambling is on professional football. Thus, the NFL has a special concern on this matter, and we believe that a bill that addresses sports gambling with enhanced enforcement tools tailored to the Internet helps a great deal to arrest this growing problem. We join the State Attorneys General and other sports leagues in urging adoption of this important legislation.

Simply put, gambling and sports do not mix. Sports gambling threatens the integrity of our games and all the values our games represent—especially to young people. We don't want our players used as poker chips--on-line or off-line.

For this reason, the NFL has established strict policies relative to gambling in general and sports betting in particular. The League also has been an active proponent of federal efforts to combat sports gambling. We strongly supported the passage of the Professional and Amateur Sports Protection Act of 1992. This law, known as PASPA, prohibits states from legalizing sports betting. Like PASPA, the proposed legislation is a logical and appropriate extension of existing Federal law and policy.

The Internet Gambling Prohibition Act is a necessary and appropriate federal response to a growing problem that, as the State AGs have testified, no collection of states can adequately address. Ten years ago, a gambler might have used the telephone to call his bookie. Today, he or she simply logs on. Gambling businesses around the country—and around the world—have turned to the Internet in an obvious attempt to circumvent the existing prohibitions on gambling contained in the Wire Act and PASPA. Many offshore gambling businesses provide betting opportunities over the Internet, effectively beyond the reach of federal and state law enforcement authorities.

The bill is needed because it updates our laws to reflect new technology. The problem of Internet gambling is significant—and growing. The League is aware of numerous sites that offer U.S. citizens a chance to gamble on NFL games and other sports. And that is just part of the problem. According to recent publications, the Justice Department has estimated that Internet gambling generated $600 million in revenue in 1997 alone. A recent cover story in USA Today predicts that Internet betting will grow to $2.3 billion by 2001. Some scholarly articles and Wall Street reports expect Internet gambling revenue to grow even faster, up to $10 billion by the year 2003.

Internet gambling is successful largely because so little effort is required to participate. Unlike traditional casinos, which require gamblers to travel to the casino and place their bets at that location, Internet gambling allows bettors to access online wagering facilities twenty-four hours per day, seven days a week, from the comfort of their home or office. No airfare or lengthy travel time is required. In short, Internet gambling is quick, easy, anonymous, but not painless.

Internet gambling sites are easily accessible and offer a wide range of gambling opportunities from all over the world. Any personal computer can be turned into an unregulated casino where Americans can lose their life savings with the mere click of a mouse. Many of these gambling web sites have been designed to resemble video games, and therefore are especially attractive to children. But gambling—even on the Internet—is *not* a game. Studies have shown that sports betting is a growing problem for high school and college students, who develop serious addictions to other forms of gambling as a result of being introduced to "harmless" sports wagering. As the Internet reaches more and more college students and schoolchildren, the rate of Internet gambling among young people is certain to rise unless Congress addresses this problem early and effectively.

This legislation is needed because prosecutors lack adequate tools under current law to curb Internet gambling. Asserting jurisdiction over offshore gambling businesses that use the Internet can be problematic. More significantly, the Wire Act does not include direct and effective mechanisms for ensuring termination by Internet service providers of access to online gambling sites. That is why the bill contains carefully negotiated provisions that use a "notice-and-take down" system borrowed from the WIPO bill that this Subcommittee helped write last Congress. The "notice and take down" regime has protections built into it for ISPs. In fact, this bill care-

fully balances the needs of law enforcement with the efficient operation of Internet service providers. Moreover, the bill makes explicit that ISPs have no duty to monitor usage and if they comply with requests of law enforcement, they will not be subject to prosecution.

Just as Congress enacted the Wire Act to prohibit the use of the telephone as an instrument of gambling, so Congress should now adopt specific legislation to prohibit the use of the Internet as an instrument of gambling. And just as the Wire Act provides an effective mechanism for terminating telephone service to gambling businesses, so the Internet Gambling Prohibition Act, through its injunctive relief provisions, would provide an effective mechanism for terminating or blocking access to gambling sites. In our view, an effective mechanism for terminating or blocking access to illegal gambling sites is critical to the success of Internet gambling legislation.

Left unchecked, Internet gambling threatens to expand exponentially the amount of legalized gambling in our country. Its effects on the integrity of professional and amateur sports and the values they represent are pernicious. Just as Congress intervened to stem the spread of legalized sports gambling in 1992, so it must intervene to stem the spread of Internet gambling today.

In conclusion, we urge this Subcommittee to support the bill as currently drafted. The Internet Gambling Prohibition Act will strengthen the tools available to federal and state law enforcement authorities to prevent the spread of Internet gambling on sports and casino games into every home, office and schoolhouse in this country. It also will send the vital message—to children and adults alike—that gambling on the Internet is wrong. We strongly support the passage of this bill.

Thank you.

Mr. TAUZIN. Thank you.

We have time to hear a final witness. Here's our plan: We will hear from Mr. Williams for his 5 minutes. That will give us time to get to the floor, and we are also going to recess for about 40 minutes when we do recess. Give you a chance to all go, you know, and take care of some lunch, whatever you need to do. We will come back after we hear Mr. Williams testimony and take rounds of questions.

Let me introduce Mr. Richard Williams, chairman of the Lac Vieux Desert Band, Lake Superior Chippewa Indian Tribe.

Mr. Williams.

STATEMENT OF RICHARD WILLIAMS; ACCOMPANIED BY ROBERT ROSETTE, COUNSEL

Mr. WILLIAMS. It is indeed an honor to be in front of you today representing the Lac Vieux Desert Band of Lake Superior Chippewas. We achieved the sovereignty issue with the Federal Government in 1988, September 1988. And also ironically, the Indian Gaming Regulatory Act became effective in October 1988. The testimony I present to you today I would hope that you would allow me to reserve 1 minute of that testimony so that my counsel could speak on some of the legal complexities of the testimony. And I also thank you for acknowledging the government-to-government relationships between the United States and Indian tribes.

My testimony also carries with it resolutions from the oldest largest and respected Indian organization, the National Congress of American Indians, and also two other smaller organizations, the Midwest Alliance of Sovereign Tribes, United South and Eastern Tribes. So we do have a diverse geography that the Indian people are being made aware of the Goodlatte bill.

We ourselves would support an outright prohibition of all gaming on the Internet. Such a blanket prohibition would be fair to everybody. As of right now, language in the Kyle bill and the Goodlatte bill puts us back on our reservations. We have come a long ways.

It has been quite a struggle in many cases, but we are here. We want to be a part of this world. We need to be a part of the Internet world. We have created a game, we spend a lot of money on it. We have invested millions of dollars presenting the world with a game of integrity. And what we would like to see inserted as far as language into the bill, any otherwise lawful wager for class 2 or class 3 gaming as defined in section 4 of the Act of October 17, 1988. This is the Indian Gaming Regulatory Act. That is where we took our lead from. That is where we did our research from.

This Congress and this government gave us the authority to go forward and use technological advancements to produce and rosette our audience. And I believe that is what we did in compliance with the law.

Now, this bill will take everything that is legal and put it on the site. Even though they do say we protect your rights, but if you want to exercise your rights, you stay out on your reservation and do it. I, Mr. Chairman, live off the reservation. I cannot even play this game because I live off my reservation.

So in conclusion, I would like to present my counsel, Robert Rosette, just for a brief minute of your time so that he can explain some things.

Mr. TAUZIN. You have got about a minute and a half, sir.

Mr. ROSETTE. Thank you. As counsel for the tribe and a member of the Chippewa tribe as well——

Mr. TAUZIN. Give your name for the record.

Mr. ROSETTE. My name is Robert Rosette. As you heard, the chairman, he was discussing a legal class 2 bingo game that the tribe operates completely and entirely on the Indian reservation. Very quickly, the tribe did say that they would support this legislation if it was a blanket prohibition for all of gambling interests. However, in this case, the Indian tribal provisions are inadequate for three reasons. The first of which is it may violate the Equal Protection clause of the United States Constitution. The second, it makes this otherwise class 2 bingo game illegal. And third, it doesn't consistently apply a criteria for granting carveouts for these other gambling interests as it would for class 2 bingo.

Very quickly, on the due process issue, that can best be illustrated by giving you an example. Many tribes have compacted with their States through tribal State compacts to conduct simulcast wagering. This legislation puts these tribes at an extreme competitive disadvantage because while their company counterparts or their United States business counterparts can offer these games in home now, tribal governments are still required that the players be physically located on the Indian reservation. That means that the tribes cannot market or conduct in-home gambling simulcast wagering, which is both sanctioned by the State and by the Indian Gaming Regulatory Act, simply because of their status that they are an Indian tribe and the companies are not.

Second, the class 2 bingo game that the chairman is talking about is legal. They use the Indian Regulatory Act to design it. They took careful attention in designing it. As we heard today, the intent to some of these carveouts was to sort of stop the line at what is legal and ongoing. Well, not in this case, because we see this game as legal, yet they are taking away from the tribes, and

at the same time, extending the law to provide these companies their games.

Finally, I would just ask if you didn't look at the Indian Gaming Regulatory Act or the constitutional due process or equal protection implications, that you would look at this from a policy standpoint, this game from a policy standpoint, and you would see that it compares more to the carveouts than it does the games they are trying to prohibit. For example, the class 2 gaming is regulated, it is allowed in the State, and our amendment that we are offering would not allow tribes to conduct any form of class 3 gaming, it would not allow tribes to do anything else. All it is is a paramutual game just like horse racing.

[The prepared statement of Richard Williams follows:]

PREPARED STATEMENT OF RICHARD WILLIAMS, CHAIRMAN, LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

I. INTRODUCTION

My name is Richard Williams, and I am the elected Chairman of the Lac Vieux Desert Band of Lake Superior Chippewa Indians. I first would like to respectfully request that I reserve five minutes of my time so that my counsel, Robert Rosette, may address you as to some of the legal complexities of my testimony.

As you know, H.R. 3125, the Goodlatte Bill, which is intended to prohibit Internet gaming, is steadily progressing through the House process, and Indian tribal leaders have had *no* opportunity to testify as to the negative effects of H.R. 3125 on Indian Nations or the Indian Gaming Regulatory Act (IGRA). Therefore, I am thankful that the Sub-committee has the fairness and fortitude to acknowledge the government-to-government relationship that exists between the U.S. and Indian tribes, and grant my Tribe this opportunity to testify before you today.

That being said, I have attached a resolution from the oldest, largest and most respected Indian organization, the National Congress of American Indians, which fully supports what I present to you today. I have also attached resolutions from the Midwest Alliance of Sovereign Tribes and the United South and Eastern Tribes to demonstrate my support from the broad spectrum of Indian Country.

It should be first noted that H.R. 3125's sponsors in the House have made an effort to address some of the concerns of Indian Country by enacting language that negatively amends the IGRA. The Goodlatte amendment that was added to H.R. 3125 at the full Judiciary Committee mark-up, which purports to protect Indian Gaming, is in fact a roll back of current federal law and is fundamentally unfair to Indian tribes. As such, it is unacceptable as a compromise in the present legislation.

Specifically, the Goodlate amendment is inadequate for three reasons, to wit: i) It may violate the Equal Protection Clause of the Constitution; ii) It makes otherwise legal games under federal policy and the IGRA illegal, thus representing a fundamental departure from the delicate balance struck by tribes, states and the federal government under the IGRA; and iii) It does not consistently apply policy considerations for granting carve-outs for certain types of special interests.

II. H.R. 3125 MAY VIOLATE EQUAL PROTECTION FOR TRIBES

It is the Tribes contention that carve-outs within H.R. 3125 will be available to the private sector but the exact same carve-outs are not available to legitimate Indian tribal government gaming. For example, H.R. 3125 includes a novel carve-out for pari-mutual horse and dog racing. At the same time, however, the Goodlatte amendment has a very strict blanket prohibition against Indian tribes lawfully conducting these same games, even though many tribes have secured the right to legally conduct pari-mutual horse and dog racing through the IGRA, and accordingly, Tribal-State Compacts.

For example, many Tribal-State Compacts allow tribes to offer simulcast wagering to horse and dog racing enthusiasts, which is the same privilege as other U.S. horse racing simulcast and gaming companies within the same states. These tribes are now at a tremendous competitive disadvantage because they can not utilize the Internet to expand player participation like their non-tribal counterparts. For example, pursuant to H.R. 3125, U.S. companies like YouBet and Ladbrooke can offer simulcast horse wagering to a player in the player's own home via the Internet.

Meanwhile, tribes can not market to these same players or enjoy the same in-home wagering benefits because players for the tribes must be "physically located on Indian lands".

Therefore, H.R. 3125 does not treat tribes equally because while it expands in-home gambling opportunities for U.S. companies, it restricts tribes from legally conducting the very same in-home opportunities solely because they are Indian tribes and the U.S. companies are not.

III. H.R. 3125 MAKES OTHERWISE LEGAL CLASS II BINGO ILLEGAL FOR TRIBES

Even though H.R.3125 expands currently illegal in-home wagering for horse, dog, and jai-alai wagering for U.S. companies, it at the same time takes away existing legal Internet Class II Bingo from Indian tribal governments. For example, my Tribe invested millions of dollars and countless hours developing a Class II Bingo game that utilizes Internet technology to expand its audience. My Tribe legally developed this game based on IGRA, and with the encouragement of Congress. (Please see the attached legal analysis, which provides a detailed legal description of the Tribe's Class II Bingo game). We developed this game because we are located in the Upper Peninsula of Michigan, which is very rural, and in order to provide for our future. We carefully developed the game so that it fell squarely within the purview of existing law.

As you know, Congress contemplated the use of technological aids to link participating individuals to play Bingo from remote locations in order to increase player participation for Tribes when it enacted IGRA. It is clear the use of telecommunication devices, including the Internet, are technological aids available to Class II Bingo operations on Indian lands. My Tribe's Class II Bingo game is designed so that all elements of the game are played entirely on the Reservation. In summary, when applying Class II Internet Bingo to the language, design, and object of IGRA, the statute clearly demonstrates that Class II Internet Bingo is protected by the preemptive effect of IGRA.

What is most disappointing is that the Goodlatte amendment is deliberately taking away this otherwise legal Class II Bingo from tribes, but at the same time, H.R. 3125 is expanding illegal in-home Internet gambling for other U.S. gaming interests by allowing gambling on-line that is not currently allowed in any other medium.

IV. H.R. 3125 AVOIDS POLICY CONSIDERATIONS FOR CLASS II BINGO

Notwithstanding the Equal Protection and IGRA implications set forth above, the Tribe respectfully requests that you analyze our Class II Bingo game from the same policy perspective that you analyzed the carve-outs. With the special interest carve-outs in H.R.3125, the legislation creates two groups: i) gaming that is prohibited on the Internet (such as off-shore video slots and black-jack), and ii) gaming that is allowed on the Internet (such as horse and dog racing). An analysis of the characteristics of these respective groups demonstrates that Indian Class II Bingo better fits into the group that is granted carve-outs.

For example, off-shore gaming interests are either unregulated, or are regulated within questionable jurisdictions outside of the U.S.. Due to this inadequate regulation, most companies offer illegal games in many states such as video slot machines and video blackjack. Many Internet gaming companies receive bets from minors or fraudulent credit cards. The U.S. also can not adequately protect consumers from the unscrupulous business practices of these off-shore companies.

Class II Bingo, however, avoids these problems and has similar characteristics to the carve-out games that receive an exception under H.R 3125. Like horse and dog racing for example, Class II Bingo is regulated by the federal government, which ensures the integrity of the game, and further, protects consumers from unscrupulous operators. Second, Class II Bingo must be played pursuant to state laws and is only offered in those state jurisdictions where it is legal to play. Third, Class II Bingo is pari-mutual, meaning the players play against each other trying to win a portion of a money pool, rather than against a machine. And finally, like the carve-outs, Class II Bingo is conducted live, whereby players may witness results.

In analyzing these respective groups from a policy perspective, I ask you one simple question: Which group does Indian Class II Bingo best belong? Clearly, the answer is that it better fits with the carve-outs under H.R. 3125. Therefore, if Congress prohibits the Tribe's Class II Bingo game—even in light of its similarities to the carve-outs—then we respectfully request that the House provide rationale for placing Class II Bingo in the prohibited group and not the carve-out group. It is extremely unfair and unjustifiable that Indian tribal governments are not granted the same protection as other gaming interests, especially because the Class II Bingo

game developed by the Tribe falls squarely within the statutory regulations of state and federal laws.

V. CONCLUSION

Since H.R. 3125 treats Indian tribal governments unfair, prohibits tribes from conducting gaming that it allows to other U.S. companies, and prohibits many tribally operated games that are currently legal under IGRA, I would like to recommend language as an Amendment to H.R. 3125:

Insert the following new section and renumber accordingly:

SEC. 4. INDIAN GAMING REGULATION ACT

"...any otherwise lawful wager for Class II or Class III gaming as defined in Section 4 of the Act of October 17, 1988 102 Stat. 2467, conducted by an Indian Tribe on Indian lands."

This Amendment prohibits tribal governments from conducting internet gambling that is not allowed by Tribal-State compacts or that is not allowed by H.R. 3125. Thus, this language would enable Tribes to enjoy the same benefits that H.R. 3125 confers upon other private sector companies such as simulcast horse racing, and also preserves current legal gaming so long as the gaming is allowed pursuant to a Tribal-State Compact and legal under H.R. 3125. The Amendment also requires that Indian gaming *occur entirely on Indian lands,* which means for example, that tribes could **not** offer any Class III (Las Vegas style) gaming over the Internet. Also, the amendment recognizes the carefully constructed regulatory framework that IGRA provides for states and the federal government. The Congressionally approved framework of IGRA is the best vehicle to regulate Indian gaming.

Because my testimony is legally complex, I would encourage you and your legislative counsels to review the attached legal analysis before coming to any conclusions about prohibiting Class II gaming. If you have any questions or comments, please do not hesitate to contact me or Robert Rosette at (916) 441-2700. Thank you for your time and consideration.

MONTEAU & PEEBLES, L.L.P.

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Legal Analysis to Supplement the Testimony of:

RICHARD WILLIAMS, CHAIRMAN
LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

Before the:

106TH CONGRESS'
TELECOMMUNICATIONS, TRADE AND CONSUMER PROTETION
SUB-COMMITTEE OF HOUSE COMMERCE COMMITTEE

Hearing on Internet Gaming

June 15, 2000

As General Counsel for the Lac Vieux Desert Band of Lake Superior Chippewa Indians ("Tribe"), we have been requested to provide a legal opinion to the Telecommunications, Trade and Consumer Protection Sub-Committee of House Commerce Committee regarding the legal status and operation of the Tribe's Class II Bingo game played with the assistance of the Internet. Accordingly, this analysis is limited to the legality of conducting Class II Bingo on Indian lands with the assistance of the Internet. As a matter of background, the Tribe is a federally recognized Indian tribe and operates a Class II and Class III gaming facility pursuant to a Tribal/State Compact in accordance with the Indian Gaming Regulatory Act, 25 U.S.C. § 2701et. seq. The Tribe sought legal opportunities to increase player participation in its gaming facility and further expand revenues and its economy. After very much legal research, the Tribe devised a legal Class II Bingo game that utilizes the Internet ("Game") to increase player participation. Below, is a comment that is limited to the use of the Internet with the operation of a Class II Bingo game as defined in IGRA (25 U.S.C. § 2703(7)(A)(i)).

A. IGRA Generally

Congress found that existing federal law did not provide clear standards or regulations for the conduct of gaming on Indian lands (25 U.S.C. § 2701(3)); that a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; 25 U.S.C. § 2701(4), and that Indian tribes have the exclusive right to regulate gaming on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a state which does not, as

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a matter of criminal law and public policy, prohibit such gaming activity. 25 U.S.C. § 2701(5).

The Congressional policy behind the enactment of IGRA was to provide a statutory basis for the operation of gaming by Indian tribes as a means for promoting tribal economic development, self-sufficiency, and strong tribal government; 25 U.S.C. § 2702(1); to provide a statutory base for the regulation of gaming by Indian tribes adequate to shield it from organized crime and other corrupting influences to ensure that the Tribe is the primary beneficiary of the gaming operation, to assure that the gaming is conducted fairly and honestly by both the operator and the players (25 U.S.C. § 2702(2)); and to establish an independent federal regulatory authority for gaming on Indian lands (25 U.S.C. § 2702(3)).

B. Defining Class II Bingo

IGRA categorizes gaming into three (3) classes. Class I gaming is defined as social games solely for prizes of minimal value or traditional forms of gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations. 25 U.S.C. § 2703(6). The term Class II gaming is defined as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith).[1] Class II games also include, if played at the same location, pull-tabs, lotto, punch boards, tip jars, instant bingo, and games similar to bingo as well as non-banking card games not specifically prohibited by state law, explicitly authorized by State law or not explicitly prohibited by State law and are played at any location in the state but only if the card games are played in conformity to those laws and regulations (if any) of the state regulating hours or periods of operation or limitation on wagers or pot sizes; and card games played in Michigan, North Dakota, South Dakota, and Washington that were actually operated in the state by a tribe on or before May 1, 1988. 25 U.S.C. § 2703(7)(C). Class III gaming is defined as all forms of gaming that are not Class I or Class II gaming. 25 U.S.C. § 2703(8). Class III gaming includes all banking card games, casino games, electronic or electromechanical facsimiles of any game of chance on slot

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[1] The Indian Gaming Regulatory Act does not define "electronic, computer or technologic aid". However, the regulations promulgated pursuant to IGRA provide at 25 C.F.R. § 502.7 provide:

> Electronic, computer or technologic aid means a device such as a computer, telephone, television, satellite or bingo blower and that, when used:
>
> (a) Is not a game of chance but merely assists the player or the playing of the game;
>
> (b) Is a readily distinguishable means of device such computer, telephone, cable, television, satellite, or bingo blower that when used: (i) is not a game of chance but merely assists the player or the playing of the game; (ii) is readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile; or
>
> (c) Is operated in accordance with the applicable federal communications laws.

machines of any kind.[2] Neither IGRA nor the regulations promulgated pursuant thereto define what constitutes a slot machine.[3]

Class I gaming on Indian lands is within the exclusive jurisdiction of the tribe and is not subject to the provisions of IGRA. 25 U.S.C § 2710(a)(1). A tribe may engage in Class II gaming on Indian lands, within the tribe's jurisdiction, if such gaming is located within a state which permits such gaming for any purpose by any person, organization or entity and the governing body of the tribe adopts an ordinance or resolution which is approved by the Chairman of the National Indian Gaming Commission ("NIGC"). 25 U.S.C. § 2710(b)(1). Class III gaming is lawful on Indian lands if the Class III gaming activities are authorized by an ordinance or resolution adopted by the governing body of the tribe having jurisdiction over the lands, the ordinance or resolution meets the requirements set forth in 25 U.S.C § 2710(b) and is approved by the Chairman of the NIGC, and the gaming is conducted in a state that permits such gaming for any purpose by any person, organization or entity and is conducted in conformance with a tribal-state compact entered into by the tribe and the state. See 25 U.S.C. 2710(d).

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[2] The Code of Federal Regulations at 25 C.F.R. 502.8 defines "electronic or electromechanical facsimile" as "any gaming device as defined in 15 U.S.C. § 1171(a)(2) or (3)." 15 U.S.C. § 1171(a)(2) provides:

> (a) The term "gambling device" means--
>
> (1) any so-called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or
>
> (2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

15 U.S.C. § 1171(a)(3) provides:

> (3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

The regulations set forth at 25 C.F.R. § 502 were upheld in Cabazon Band of Mission Indians v. National Indian Gaming Commission, 827 Fed. Supp. 26 (D.D.C. 1993) (affirmed 14 Fed. 3d 636 (D.D.C. Cir. 1994)).

[3] However, Scarne's New Complete Guide to Gambling, published by Simon and Shuster, Fireside Edition 1986, defines a slot machine as "The slot machine is essentially a cabinet housing three or more narrow cylindrical drums, commonly called reels, which are marked with symbols. Vertically disposed on a common axis, the reels are caused to revolve freely when a player activates the machine and pulls a leverlike handle affixed in the side of the cabinet. Awards or payoffs, which are generally paid automatically, are usually based on the horizontal alignment of symbols, when the spinning reels come to a position of inertial rest."

IGRA authorized the use of electronic, computer and other technologic aids in conjunction with Class II Bingo (25 U.S.C. § 2703(7)(a)), (25 C.F.R. § 502.3(a)) and arguably exempted gaming conducted pursuant to IGRA from 18 U.S.C. §§ 13, 371, 1084, 1305 - 1307, 1952 - 1955, and 1961 - 1968; 39 U.S.C. § 3005 and 15 U.S.C. § 1171 - 1178. The Report of the Senate Select Committee on Indian Affairs on the Indian Gaming Regulatory Act provided:

> The phrase "not otherwise prohibited by Federal Law" refers to gaming that utilizes mechanical devices as defined in 15 U.S.C. 1175. That section prohibits gambling devices on Indian lands but does not apply to devices used in connection with bingo and lotto. It is the Committee's intent that with the passage of this act, no other Federal statute, such as those listed below, will preclude the use of otherwise legal devices used solely in aid of or in conjunction with bingo or lotto or other such gaming on or off Indian lands. The Committee specifically notes the following section in connection with this paragraph: 18 U.S.C. section 13, 371, 1084, 1303-1307, 1952-1955, and 1961-1968; 39 U.S.C. section 3005; and except as noted above, 15 U.S.C. 1171-1178. However, it is the intention of the Committee that nothing in the provision of this section or in this act will supersede any specific restriction or specific grant of Federal authority or jurisdiction to a State which may be encompassed in another Federal statute, including the Rhode Island Claims Settlement Act (Act of September 30, 1978, 92 Stat. 813; P.L. 95-395) and the Maine Indian Claim Settlement Act (Act of October 10, 1980; 94 Stat. 1785; P.L. 96-420.

C. Specific Exemption from U.S. Anti-Lottery Statutes.

IGRA provides a specific exemption from the anti-lottery statutes. IGRA at 25 U.S.C. 2720 provides, "Consistent with the requirement of this chapter, sections 1301, 1302, 1303 and 1304 of Title 18 shall not apply to any gaming conducted by an Indian tribe pursuant to this chapter." The anti-lottery statutes prohibit the interstate transportation of tickets, shares or interest in a lottery, gift enterprise or similar scheme. The use of the mail to deliver lottery or gift enterprise related materials, and the broadcasting on radio or television the advertisement of or information concerning any lottery, gift enterprise or similar scheme. Clearly, by exempting tribal gaming from the anti-lottery statutes, Congress not only provided the legal authority for, but also encouraged tribes to expand their player base beyond the exterior boundaries of tribal reservations.[4] Bingo, as defined in IGRA, requires the "holder" of the cards, as opposed

[4] The anti-lottery statutes set forth at 18 U.S.C. § 1301 provide as follows:

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, offering prizes dependent in whole or in art upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or, being engaged in the business of procuring for a person in 1 State such a ticket, chance, share, or interest in a lottery, gift, enterprise or similar scheme conducted by another State (unless that business is permitted under an agreement between the States in question or appropriate authorities of those States), knowingly transmits in interstate or foreign commerce information to be used for the purpose of procuring such a ticket, chance, share, or interest; or knowingly takes or receives any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall be fined under this title or imprisoned not more than two years, or both.

18 U.S.C. § 1302 provides as follows:

Whoever knowingly deposits in the mail, or sends or delivers by mail:

Any letter, package, postal card, or circular concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

Any lottery ticket or part thereof, or 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 offering prizes dependent in who or in part upon lot or chance;

Any check, draft, bill, money, postal note, or money order, for the purchase of any ticket or part thereof, or any share or chance in any such lottery, gift enterprise, or scheme;

Any newspaper, circular, pamphlet, or publication of any kind containing any advertisement of any lottery, gift enterprise, or scheme of any kind offering prizes dependent upon lot or chance, or containing any list of the prizes drawn or awarded by any means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes;

Any article described in section 1953 of this title --

Shall be fined under this title or imprisoned not more than two years, of both; and for any subsequent offense shall be imprisoned not more than five years.

Section 1303 provides as follows:

Whoever, being an officer or employee of the Postal Service, act as agent for any lottery office, or under color of purchase or otherwise, vends lottery tickets, or knowingly sends by mail or delivers any letters, package, postal card, circular, or pamphlet advertising any lottery, gift enterprise, or similar scheme, offering prizes dependent in who or in part upon lot or chance, or any ticket, certificate, or instrument representing any chance, share, or interest in or dependent upon the event of any lottery, gift enterprise, or similar scheme offering prizes dependent in who or in part upon lot or chance, or any list of the prizes awarded by means of any such scheme, shall be fined under this title or imprisoned not more than one year, or both.

Section 1304 provides as follows:

Whoever broadcasts by means of any radio or television station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement of or information

to the player, to cover the numbers or designations with objects similarly numbered or designated or drawn or electronically determined. The description of "holder" is more fully developed in Section E below.

D. Class II Bingo and the Use of Technological Aids such as the Internet.

IGRA specifically authorizes the use of electronic, computer, or other technologic aids in conjunction with bingo and lotto. 25 U.S.C. § 2703(7)(A)(i); 25 C.F.R. § 502.3. The game of bingo is defined at 25 U.S.C. § 2703(7)(A)(i) as follows:

> The game of chance, commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) (i) which is played for prizes, including monetary prizes, with cards bearing numbers or

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concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined under this title or imprisoned not more than one year, or both.

Each day's broadcasting shall constitute a separate offense.

Section 1307 provides as follows:

1307. Exceptions relating to certain advertisements and other information and to State conducted lotteries:

(a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to--
  (1) an advertisement, list of prizes, or other information concerning a lottery conducted by a State acting under the authority of State law which is--
    (A) contained 'in a publication published in that State or in a State which conducts such a lottery; or
    (B) broadcast by a radio or television station licensed to a location in that State or a State which conducts such a lottery; or
  (2) an advertisement, list of prizes, or other information concerning a lottery, gift enterprise, or similar scheme, other than one described in paragraph (1), -that is authorized or not otherwise prohibited by the State in which it is conducted and which is--
    (A) conducted by a not-for-profit organization or a governments] organization; or
    (B) conducted as a promotional activity by a commercial organization and is clearly occasional and ancillary to the primary business of that organization.

(b) 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.

(c) For the purposes of this section (1) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and (2) "foreign country" means any empire, country.. dominion, colony, or protectorate, or any subdivision thereof (other than the United States, its territories or possessions).

> other designations (ii) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and (iii) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards.

Congress recognized that technologic aids could be used to expand the number of participants in tribally conducted bingo.[5] The Senate Select Committee on Indian Affairs Report on the Indian Gaming Regulatory Act provided:

. . .

> [T]he committee intends in section (8)(A)(i) that tribes have maximum flexibility to utilize games such as bingo and lotto for tribal economic development. The Committee specifically rejects any inference that tribes should restrict class II games to existing game sizes, levels of participation, or current technology. The Committee intends that tribes be given the opportunity take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility. In this regard, the Committee recognizes that tribes may wish to join with other tribes to coordinate their class II operating and thereby enhance the potential of increasing revenues. For example, linking participant players at various reservations whether in the same or different States, by means of telephone, cable, television, or satellite may be a reasonable approach for tribes to take. Simultaneous games participation between and among reservations can be made practical by use of computers and telecommunications technology as long as the use of such technology does not change the fundamental characteristics of the bingo or lotto games and as long as such games are otherwise operated in accordance with applicable Federal communications law. In other words, such technology would merely broaden the potential participation levels and is readily distinguishable from the use of electronic facsimiles in which a single participant

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5 The Code of Federal Regulations at 25 C.F.R. § 502.3 defines bingo as:

Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when players:

(1) Play for prizes with cards bearing numbers or other designations;
(2) Cover numbers or designations when object, similarly numbered or designated are drawn or electronically determined ; and
(3) Win the game by being the first person to cover a designated pattern on such cards;

> plays a game with or against a machine rather than with or against other players.

The use of computers, technologic aids, cable, television, and satellites in bingo was clearly contemplated by Congress through the enactment of IGRA. Congress contemplated the use of technologic aids to link participating bingo gaming facilities and individuals to play bingo games from remote locations in order to increase player participation in the bingo game so long as the gaming occurs entirely on Indian lands. It is clear that the use of telecommunication devices, including the Internet, are technologic aids available to the Tribe on Indian lands.

E. How the Tribe's Game Is Played Entirely on Indian Lands.

First, the express language of IGRA does not require that a *player* of Class II Bingo be physically located on Indian lands. While IGRA does anticipate that *gaming* conducted by a Tribe occur entirely on Indian lands, see 25 U.S.C. § 2701(5), 2702(3), 2710(a)(1), (b)(2), (d)(1), Class II Bingo conducted with the use of the Internet can occur entirely on Indian lands, even though the player is not physically located on Indian lands. In order to demonstrate this premise, we must identify the activities that must occur on Indian lands. The definition for Gaming or "gambling" has been broadly defined as including any game containing the elements of (i) consideration, (ii) chance and (iii) prize. *Black's Law Dictionary*, 611 (5th Ed. 1979); See, F.C.C. v. American Broadcasting Co., 347 U.S. 284, 290 (1954). Therefore, in order for the Game to be legal, all three elements of consideration, chance and prize must occur on Indian lands.

The regulations implementing IGRA define bingo as a game played for prizes with cards bearing numbers, players cover the numbers drawn, and players win by being the first to cover a designated pattern on such cards. (25 C.F.R. Sec. 502.3). "There is nothing in IGRA or its implementing regulations that requires a player to independently locate each called number on each of the player's cards and manually 'cover' each number independently and separately. The statute and the implementing regulations merely require that a player cover the numbers without specifying how they must be covered." United States v. 103 Electronic Gambling Devices, 1998 WL 827586, 827592 (M.D. Cal. Nov. 23, 1998). Indeed, IGRA provides that the player need not even participate directly in the game, but rather a "holder", which acts as the player's agent, play the game for the player. (25 U.S.C. § 2703(7)(a)(i)(II)).

The National Indian Gaming Commission has ruled that a "holder" can play Class II bingo for players so long as the holders perform the functions of the player and are located on Indian lands. See Letter from Harold Monteau, Commissioner, National Indian Gaming Commission to Larry Montgomery, July 26, 1995. Furthermore, Class II bingo games that utilize technological "holders" to play the game in behalf of the player have been held to fall under the terms and conditions of IGRA. See United States v. 103 Electronic Gambling Devices, 1998 WL 827586 (M.D. Cal. Nov. 23, 1998)(holding that video bingo player-stations which permit players at remote locations to participate in a common bingo game do have the effect of broadening player participation, and thus

constitute class II electronic aids); See United States v. 162 MegaMania Gambling Devices, 1998 U.S. Dist. LEXIS 17293 (N.D. Okla., Oct. 23, 1998); July 27, 1997 NIGC Advisory Opinion regarding MegaMania. Indeed, U.S. courts have held that the holder of Class II bingo games does not even need to be human, but instead may legitimately be identified as a technological device aiding the increase of player participation for Class II Bingo. See Id.

In order to more fully explain how the elements of consideration, chance and prize occur entirely on Indian lands, a brief example of how the Tribe developed its Game is warranted.

First the Tribe will market Internet bingo among many different mediums including posting links on the World Wide Web ("WWW")[6] various web sites. The Tribe will also use traditional forms of advertising mediums such as magazine advertisements or brochures given to patrons at their land based casinos.

The Player will then access the advertised web site by entering the Tribe's address on the Internet browser or by locating the site via the use of a commercial search engine. When the Player logs on to the Tribe's web site, the Player is accessing a computer server ("Server"), located on-Reservation, which will relay various information to the Player from the Reservation. This information is called the Tribe's Homepage, which will contain among other things, a summary of the Tribe's history, culture and traditions. The Tribe's Home page will also provide detailed rules of how to set up an account and play the Game.

If the Player decides to play the Game, the Player will proceed to give the Tribe's Server directions to set up an on-Reservation account. At this point, the Player is required to enter demographic information regarding their name, address, e-mail address, telephone number, age, occupation, etc.

The Code of Federal Regulations at 25 C.F.R. § 502.7 defines electronic, computer or other technologic aid as:

> . . . a computer, telephone, cable, television, satellite or bingo blower and that when used —
> (a) Is not a game of chance but merely assists a player or the playing of the game;
> (b) Is readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile; and
> (c) Is operated according to applicable Federal communications law.

[6] The WWW allows users to search for and retrieve information stored in remote computers, as well as in some cases to communicate back to the designated sites. In concrete terms, the web consists of a vast number of documents stored in different computers all over the world. Some of these documents are simply files containing information. However, more elaborate documents, commonly known as web "pages" are also prevalent. Each has its own address — rather like a telephone number. Web pages frequently contain information and sometimes allow the viewer to communicate with the page's (or "site's") author. See Reno v. American Civil Liberties Union, 64 U.S.L.W. 2794 (June 26, 1997).

Once the Tribe reviews the information provided by the Player, the Player's account is either accepted or rejected by the Tribe through the on-Reservation computer.[7] If the account is rejected, the Player cannot play the Game and is disconnected from the Tribe's Server. If the Player's account is accepted, the Player then provides the Holder on the Reservation with his/her preferences for playing the Game, such as how many cards to buy and what games to play.[8]

The Player's account and balance information is maintained by the on-Reservation Server. The Player's account is credited and debited by the on-Reservation Server. The physical location of the Tribe's master banking account (which will hold the real money), is with on the Reservation. Although the cash is physically located at an off-Reservation bank, all the Game's monetary transactions are handled by the on-Reservation Server.

Once the Player's account is established, he/she is ready to play the Game. The Holder on the Reservation then acts as the Player's agent and selects which bingo games to play, determines how many cards to purchase, and purchases bingo cards according to the preferences of the Player. Thus, the element of consideration occurs on Indian lands.

Once the time has expired, the Game begins. The Game is conducted live by the Tribe in accordance with the regulatory requirements of Class II Bingo as defined by IGRA and the regulations promulgated pursuant thereto. The numbers are pulled from a standard Bingo ball blower and announced by a caller. The Bingo hall blower and caller are viewed live by the Player on the computer screen through Internet broadcast technology. At the same time, there is integration from the Bingo game to the Server so that the instant a ball is pulled, the number drawn is broadcast instantaneously to the Player via the Internet.

While the Players are witnessing the progress of the game, they are not physically participating in the Game itself. Instead, the Holders will automatically cover the Player's bingo cards when their numbers are called. In this case, the Holder is particular software within the Server. Thus, the element of chance is occurring on Indian lands.

The Game is continued until a Holder declares Bingo for a Player. The on-Reservation Server will know when there is a winner, but the winning Player will not be acknowledged until the Holder declares Bingo. The Holder will then notify the on-Reservation Server and the Player that he/she is a winner.

Once a Holder has declared Bingo, the losing Holders will be immediately informed and a graphic display that the game is over will appear to each Player on their

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[7] Access to Internet resources is proved via a system of request and reply; when an on-line user attempts to access information or services, per local computer requests such access from the remote server computer where the desired [information] is housed. The remote machine may grant or deny the request, based on its programmed criteria; only if the request is granted does the server tender the information to the user's machine. See Federalism in Cyberspace, 28 Conn. L. Rev. 1095 (1996).

[8] In a single bingo game, there can actually be several different variations of bingo leading up to one final bingo game. For example, a player may prefer to play "four corners" while leading up to "blackout".

computer screen that there is a winner, who the winner is, and in some instances, how many winners there are. The losing Player's cards are now deleted. The Holders of each Player's wager transfers the wager to the Tribe's database into the Tribe's account by the on-Reservation Server.

After the Holder(s) declares Bingo, the Holder is immediately confirmed a winner. The Holder will immediately notify the Player by a graphic display on the computer screen. The Holder will then collect for the Player by receiving the winnings into the Player's on-Reservation account by the on-Reservation Server.

The winning Player may then collect his winnings by four (4) options:

1) The Player may instruct the Holder to keep his winnings maintained in his on-Reservation account;
2) The Player may instruct the Holder to credit his/her credit card directly by the on-Reservation Server;
3) The Player can request the Holder to collect from the Tribe directly, and the Holder will wire transfer the winnings directly into the Player's bank account via the Tribe's bank account; or
4) The Player can request the Holder to collect directly from the Tribe and send a check or money order from the on-Reservation account.

As demonstrated, the element of prize occurs on Indian lands.

Given the express language of IGRA as well as the broad policies to expand player participation as well as not limiting Indian bingo to the current technology, it is clear that the Tribe's Game does not require the Player to be physically present on an Indian reservation, provided that the Holder performs all functions of the Player on Indian lands as set forth above.

F. Distinguishing Couer D' Alene

As you are probably aware, the US District Court in Idaho held that IGRA is not applicable to the Couer D'Alene Tribe's lottery, which can be played via toll-free interstate telephone service. AT&T Corp. v. Coeur D'Alene Tribe, US District Court, Case No. CV97-392-N-EIL, (Idaho, Dec. 17, 1998) ("Coeur D'Alene"). Specifically, the Court found that because the 800 telephone service allowed a player to directly purchase a lottery chance off the reservation, the gaming is considered to be held off Indian lands and therefore, the lottery does not fall under the provisions of IGRA.[9]

The Coeur D'Alene case, however, is clearly distinguishable from tribally conducted Class II bingo via the Internet. The distinction is that Coeur D'Alene's lottery is a Class III game under the terms and conditions of IGRA while bingo is a Class II game. Id. at 9. This distinction is important for two reasons already discussed above at great length, to wit: i) IGRA specifically contemplates the expansion of Class II bingo

participation through the use of technology and telecommunications such as the Internet and does not provide for that same expansion for Class III gaming; and ii) in light of the intended participation expansion, IGRA provides Class II bingo with a "Holder" to purchase the Class II bingo chances for the Player as opposed to Class III gaming.

First, the use of computers and technological aids in conjunction with bingo is specifically provided for in IGRA. 25 U.S.C. Sec. 2703(7)(A)(i); 25 C.F.R. Sec. 502.3. "In this regard, Congress considered the possibility that gaming activities might occur in more than one location, 'in the same or different States' and be linked together 'by means of telephone, cable, television or satellite." Coeur D'Alene, Case No. CV97-392-N-EIL, at 11; See Also, Sycuan Band of Mission Indians v. Roache, 54 F.3d 535, 542 (9th Cir. 1994)(citing Senate Committee Report), cert. denied, 116 S. Ct. 297 (1995). Congress clearly noted that this class II bingo use of technology to expand player participation is distinguished from Class III gaming when it stated, ". . . [class II] technology would merely broaden the potential participation levels and is readily distinguishable from the use of electronic facsimiles [class III] in which a single participant plays a game with or against a machine rather than with or against other players." S. Rep. No. 446, 100th Cong., 2d Sess. 9 (1988). As demonstrated, Congress contemplated the use of technologic aids to link participating bingo gaming facilities and individuals to play bingo games from remote locations in order to increase player participation. It is clear the use of telecommunication devices, including the Internet, are technological aids available to tribal bingo operations on Indian lands.

Secondly, the express language of IGRA does not require that a *player* of Class II bingo be physically located on Indian lands. In the Coeur D'Alene case, the court's decision rested on the fact that the player directly purchased Class III lottery chances off the Reservation, and therefore the element of consideration did not occur on Indian lands as required by IGRA. This is because IGRA does not provide Class III gaming the same dynamics for increasing player participation by using technology such as the Internet. For example, if Class III gaming had been provided with a "Holder" to purchase chances as IGRA does for Class II bingo, then there could be a different result.

In summary, when applying Class II Internet bingo to the language, design, and object of IGRA, the statute clearly demonstrates that Class II Internet bingo is protected by the preemptive effect of IGRA, whereas the IGRA does not provide Coeur D'Alene's lottery with the specific intent of spreading player participation beyond the Reservation, nor does it provide the lottery with a "Holder" to purchase the Class III lottery tickets. Thus, even under the rationale applied by the court in Coeur D'Alene, the Game is legal under IGRA because the holder achieves all elements of gaming on the Reservation in behalf of the player.

G. Supporting Contract Law

The conclusion that the Game in this scenario would occur on Indian lands is supported by well-established legal precedent applied in similar contexts, including conflicts of law and contracts principles.

A commercial Website has been held to be the equivalent of an advertisement in a national publication. Hearts v. Goldberger, *supra*. Fundamental tenets of contract law establish that an advertisement constitutes an invitation to make an offer. Restatement (second) of Contracts § 26 Cmt. b (1979) (West, Westlaw 1998). When a remote internet bingo player links to an on-reservation computer and directs the on-reservation computer to purchase an internet bingo card, the player is making an offer to purchase. *The offer is not accepted nor is the wager placed until accepted on-reservation.*

The Tribe's Internet bingo is analogous to a contract consummated via telephone. It is well established that when an offer is relayed by telephone, the contract is formed at the place where the offer is accepted:

> The question which has arisen time and time again before the Courts has been the place at which the contract should be regarded as having been made. This has been held to be the place at which the offeree speaks the words of acceptance into the telephone transmitter. The restatement (second) [of contracts] in commentary recognizes this principle of conflict of laws. To the extent the place of making of the contract is relevant to resolving the question of which jurisdictions law governs the formation of the contract, it unequivocally accepts the principle that the contract is made in the place where the acceptance is spoken.

J. Perillo, Ed., Corbin on Contracts Section 3.25 at pages 447-48 (1993) (footnotes omitted). Accord, Perrin v. Pearlstein, 314 F.2d 863, 867 (2nd Cir. 1963); Joye v. Heuer 813 F.Supp 1171, 1173 (D.S.C. 1993); In re: Standard Financial Management Corp., 94 B.R. 231 (D.Mass. 1988); Lockwood Corp. v. Black, 501 F.Supp 261, 264 (N.D.Tex. 1980). Furthermore, it has been held that, "where an acceptance has been given by telephone, the situs of the contract is where the acceptor speaks his acceptance, and it is *that law which controls the interpretation of the contract* . . . and that state's law must apply *to all transactions between the parties*." Lockwood, *supra*, at 264 (citations omitted) (emphasis supplied).

Under established law regarding contracts and conflict of laws, the place where contract is consummated is where acceptance occurs, and the transaction is deemed to have taken place within the jurisdiction where the acceptance occurs. Furthermore, the substantive law of the situs where the contract is consummated applies to that transaction. Under the scenario of tribal internet bingo, the transaction between the remote player and the Tribe is deemed to take place on the reservation, and hence the substantive law of the Tribe thus applies to said transaction. See, White Mountain Apache Tribe v. Smith Plumbing Company, Inc., 826 F.2d 1301. (Jurisdiction over activities of non-Indians concerning transactions taking place on Indian lands presumptively lies in the Tribe.)

Courts applying conflicts of law principles have also held that a citizen of one jurisdiction may be legally bound by the terms of a contract entered into with a citizen of another jurisdiction, even though the contract is illegal or contrary to the laws of the former jurisdiction. See e.g., Rhody v. State Farm Mutual Insurance Company, 771 F.2d 1416, 1421 (10th Cir. 1985) (interpreting Oklahoma law).

The rationale underlying this principle of enforceability is an extension of principles of comity between jurisdictions -- in other words a contract which is valid where made should be enforced as a matter of comity, even in a jurisdiction where said contract would otherwise not be permitted by law. Of course, conflicts of law principles vary by jurisdiction and many jurisdiction's conflicts of law rules provide an exception where the transaction violates a strong public policy of that jurisdiction. However, the public policy exception would not apply to Tribal gaming under IGRA. In the Senate Report accompanying IGRA, the Senate Committee on Indian Affairs expressly stated that, "Federal Courts should not balance competing Federal, State and Tribal interests to determine the extent to which various gaming activities are allowed." S.Rep. No. 446, 100th Cong., 2d Sess. 6 (1988), reprinted in 1988 U.S.C.C.A.N. 3071, 3076. Likewise, the 8th Circuit recently held:

> Congress thus chose not to allow Federal Courts to analyze the relative interests of the State, Tribal and Federal governments on a case by case basis. Rather, a created affixed jurisdiction. If a State law seeks to regulate gaming, it will not be applied.

Gaming Corporation of America v. Dorsey & Whitney, 88 F.3d 536, 546-47 (1996).

It is unquestionable that states will seek to prevent the Tribe's Internet bingo within their borders under the auspices of protecting the welfare of their citizenry. Indeed, it is already occurring. See, e.g., State of Wisconsin v. Coeur D' Alene Tribe, No. 97-CV-2518-S (W.D. Wis. filed August 15, 1997); State of Missouri ex rel. Nixon v. Coeur D' Alene Tribe, Case No. 97-0914-CV-W-BD (W.D. Mo. filed June 25, 1997). However, it is highly questionable that states have the authority to regulate *any* Internet activity, let alone Tribal internet bingo conducted pursuant to IGRA.

The Commerce Clause provides that "Congress shall have power . . . [t]o regulate commerce . . . among the several states." U.S. Const., Art. I, 8, CL. 3. The term "Dormant Commerce Clause" refers to the Supreme Court's recognition that "the Commerce Clause . . . even without implementing legislation by Congress, is a limitation upon the power of the states." Edgar v. Mite Corp., 457 U.S. 624, 640 (1982) (quoting The Great Atlantic & Pacific Tea Company v. Cottrell, 424 U.S. 366, 370-371 (1976)) (citing Cooley v. Board of Wardens, 12 How. 299 (1852)). Under the Dormant Commerce Clause, "a State statute which by its necessary operation directly interferes with or burdens interstate commerce is a prohibited regulation and invalid, regardless of the purpose with which it was enacted." Edgar v. Mite Corp., *supra*, at 642.

There can be no question that regulation of internet activity constitutes direct regulation of interstate commerce, as the internet is a nationwide -- indeed worldwide -- conduit for communication transporting digitized information goods such as software, data, music, graphics, videos, as well as computerized active and interactive services. See, Dan L. Burk, Federalism in Cyberspace, 28 Conn. L.Rev. 1095, 1100 (1996). The Supreme Court has relied on two rationales for prohibiting State regulation of interstate commerce, even where Congress has not imposed regulations on such activity. The first rationale is that such regulation would directly invade powers given to Congress under the Federal Constitution. However, a second, and equally important rationale, is that the direct regulation of interstate activity by one state has the practical effect of controlling conduct beyond the boundaries of the State and invades on the sovereign authorities of other jurisdictions. See Mite v. Edgar Corp., 457 U.S. at 642-43. Indeed, "one state's power to impose burdens on the interstate market . . . is not only subordinate to the federal power over interstate commerce, but is also constrained by the need to respect the interests of other states." BMW of North America v. Gore, 517 U.S. 559, 571 (1996) (citations omitted).

The impact of one state's attempt to regulate internet communications has on conduct occurring in other jurisdictions is particularly acute in the area of internet transactions, "because the net is engineered to work on the basis of 'logical,' not geographical locations." David R. Johnson and David Post, Law and Borders -- The Rise of Law in Cyberspace, 48 Stan. L.Rev. 1367, 1374 (1996). A person that publishes a Website has no control over where that site may be accessed from. Thus, if a state seeks to prohibit certain internet communications from entering its borders, it is directly regulating the conduct of citizens completely outside of its jurisdiction. The only way for a Website owner to comply with that State's regulation would be to completely refrain from placing such information on the internet, even though such information is not proscribed by the jurisdiction in which the site owner resides, and even though such information is permitted in every other jurisdiction in the world. Thus, if one state is permitted to prohibit Tribal internet gaming, that State effectively would force the Tribe to stop all internet gaming activities, even activities that completely occur within the boundaries of that Tribe's reservation. Clearly such State regulation flies in the face of the Dormant Commerce Clause, not to mention the Indian Commerce Clause.

Despite obvious constitutional problems inherent with State regulation of Internet activity under the Dormant Commerce Clause, one need not even reach the Dormant Commerce Clause analysis to arrive at the conclusion that any state regulation of tribal internet gaming is prohibited, as Congress has expressly preempted the field of tribal gaming, including tribal internet gaming. In Gaming Corporation of America v. Dorsey & Whitney, *supra*, the Court stated:

We therefore conclude that IGRA has the requisite extraordinary preemptive force necessary to satisfy the complete preemption exception to the well pleaded complaint rule. The conclusion that IGRA completely preempts state law is reinforced when the statute is viewed in the context of Indian law. Congress has plenary and exclusive power to deal with Indian Tribes. Bryan v. Itasca County, Minnesota, 426 U.S. 373, 376 N.2 96

S.Ct. 2102, 2105 (1976). Principles of Indian sovereignty and jurisdiction have developed and changed over time, but the Supreme Court very recently reaffirmed that Indian Commerce is 'under the exclusive control of the Federal government.' Seminole Tribe of Florida v. Florida, 116 S.Ct. 1114, 1131 (1996). This line of cases demonstrates a continuing Federal concern for Tribal economic development, self-sufficiency and self-government which Congress reaffirmed in the text of IGRA. 25 U.S.C. § 2701(4). In this overall historical context, the intent of Congress that IGRA 'expressly preempted the field' is particularly compelling, and the statute can be seen to have the 'extraordinary' preemptive force required by Metropolitan Life, at 547-48 (citations omitted in part).

G. Section 1084's Applicability.

The Federal Wire Communications Act (18 U.S.C. § 1084) prohibits a person engaged in the business of betting or wagering to knowingly use 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.[10]

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[10] Specifically, 18 U.S.C. § 1084 provides:

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, of for the transmission of a wire communication which entitles the recipient to receive money or credits 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.

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

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State.

(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.

The provisions of the Federal Wire Communications Act coupled with its legislative history clearly prove that Section 1084 applies only to wagering on sporting events. Although the term "sporting event or contest" is not defined, the United States District Court for the Northern District of Illinois in Telephone News Systems, Inc. v. Illinois Bell Telephone Co., 220 F. Supp. 621 (N.D. Ill. 1963), held that the phrase "sporting event or contest" in subsection (a) modifies both "event" and "contest". Further, the different language used in § 1084(a) "bets or wagers, or ... information assisting in the placing of bets or wagers" as compared to § 1084(d) ("gambling Information") appear to be interchangeable. Accordingly, the reference to sports-related betting defines the scope of the remaining references to "bets" or "wagers" in subsections (a) and (b), and the reference to "gambling information" in subsection (d).

Section 1084 was enacted as part of a major effort against organizes crime and was "directly aimed at big-time bookies and gamblers." Attorney General Robert Kennedy, when explaining the bill, explicitly referred only to sports betting.[11] Congressman Cellar, one of the Bill's sponsors, claimed the Act "involves the transmission of wagers or bets and layoffs on horseracing and other sporting events."[12]

Congress was aware of broad scope gambling activities that existed when it adopted the statute. This is evidenced in 18 U.S.C. § 1955, which makes it a crime to conduct, finance, manage, supervise, direct, or own an illegal gambling business. In that statute, Congress defined gambling broadly to include "pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein." Congress did not specifically address each of these in § 1084. Therefore, Congress probably intended the phrase "sporting event or contest" to be interpreted narrowly thus excluding non-sport related betting.

The case law supports this conclusion. While several cases construing § 1084 involve a prosecutor charging a defendant with a violation of 18 U.S.C. § 1084 for non-sports related gambling, each of these cases were dismissed on other grounds. See, United States v. Giovanelli, 747 F.Supp. 897 (S.D.N.Y. 1989); United States v. Chase, 372 F.2d 453 (4th Cir. 1957); United States v. Manetti, 323 F.Supp. 683 (D.Del. 1971). In the cases where conviction occurred, sports betting was the only contested activity. See, United States v. Segal, 867 F.2d 1173 (8th Cir. 1989); United States v. Campagnuolo, 556 F.2d 1209 (5th Cir. 1977); United States v. Stonehouse, 452 F.2d 455 (7th Cir. 1971); Telephone News Sys., Inc. v. Illinois Bell Tel. Co., 220 F.Supp. 621 (N.D. Ill. 1963), *aff'd*, 376 U.S. 782 (1964). Thus, no reported cases have applied § 1084 to non-sports gambling.

As you can see, the Tribe has gone great lengths to design the Game with the intent of withstanding U.S. scrutiny. Indeed, the Tribe would not even attempt to offer the Game if it did not believe its chances of success in U.S. courts were excellent. If you have any questions or comments, please do not hesitate to contact our office at (916) 441-2700. Thank you for your time and consideration.

(e) as used in this section, the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States.

[11] See Senate Report, S. 1656, July 24, 1961. Mr. Kennedy explains: "This Bill carries an exception for legitimate news reporting of sporting events ... law enforcement is not interested in the casual dissemination of information with respect to football, baseball, and other sporting events between acquaintances."

[12] Congressman Cellar, House Debates on S. 1656, August 21, 1961.

Mr. TAUZIN. We have got to make a vote. So we will have to wrap. Let me thank you all. I am particularly going to be interested, Mr. Di Gregory, in some of your rebuttal to some of the statements that were made, particularly that the later law trumps the earlier law, in specific, we want to know what law rules here. We will get back to that in just about 40 minutes. We'll take a good break. We will come back at 2:45. Without objection the committee stands in recess.

[Brief recess.]

Mr. TAUZIN. The committee will please come back to order. We will ask all our guests to take seats and the members to assemble.

I apologize for being a little late. You won't believe it, but in the time we left one another we not only took votes on the floor but I went and handled another bill in another committee and got two passed. Very productive of me—multi-tasking.

Let me thank you again for your testimony. As we left, if you recall, I was really interested in the state of the current law. We have heard a lot of conversation in the morning about whether this bill codified existing law or went beyond existing law, whether it allowed things to happen that couldn't happen under current law, whether it restricted things that were happening under current law from happening in the future. And I must confess to you I am in some doubt here. I don't know who is right or wrong.

So I suggest, Mr. Di Gregory, why don't we start with that discussion? What is the state of current law as it affects—let's go through the whole range—paramutual betting, let's take Jai Alai, let's take lotteries, let's take gambling casinos, whether they are owned by corporate America or an Indian tribe. What is the state of current law? Let's see if we can debate it out and find out where it is.

Mr. DI GREGORY. The state of current law is—let me first start off by pointing out that Federal gambling law is premised on assisting State governments in the enforcement of their own gambling laws. For example, you have got 1084 which allows us an exception, as I mentioned earlier, the transmission of information assisting in the placing of bets or wagers where the placing of those bets or wagers are legal between those two States where the bets or wagers are legal.

And when you are talking about other Federal gambling statutes——

Mr. TAUZIN. Give us an example of that so we understand what that means.

Mr. DI GREGORY. Let's take Nevada and New Jersey. New Jersey and Nevada transmit line information on sports betting between the two States using telephone facilities. That is information assisting the placing of a bet or wager.

Mr. TAUZIN. So the facilities are exchanging information about the betting that is going on.

Mr. DI GREGORY. Not about the betting itself but the kinds of information which would be helpful to them in perhaps setting odds or establishing lines. You know——

Mr. TAUZIN. I gotcha.

Mr. DI GREGORY. So that is one example of information assisting in. So currently——

Mr. TAUZIN. I tell you what, I will maybe get it quicker this way. Is it legal today to get on an interstate phone call and place a bet paramutual bet?

Mr. DI GREGORY. No.

Mr. TAUZIN. No. You see, there was some confusion about that.

Ms. Poulson, do you think it is legal to do that? Is it legal today to get on the phone and make a long distance interstate call and place a paramutual bet?

Ms. POULSON. On a State-by-State basis——

Mr. TAUZIN. Between any two States? Can I call from one State to another and place a bet in that other State on the phone line—interstate long distance phone call?

Ms. POULSON. If it is regulated and approved by the two States that are involved.

Mr. TAUZIN. Do you agree with that, Mr. Di Gregory?

Mr. DI GREGORY. No.

Mr. TAUZIN. Why not?

Mr. DI GREGORY. I don't agree with it. But let me first point to the language of 1084. Section 1084, 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——

Mr. TAUZIN. Wait. Let me stop you, because we are going to get confused. I want to know what current law says. Are you reading the current law?

Mr. DI GREGORY. Current law.

Mr. TAUZIN. I am sorry if I interrupted you.

Mr. DI GREGORY. 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 in assisting in the placing of bets or wagers shall be fined under this title or——

Mr. TAUZIN. So you say that is a criminal violation to make a phone call across States lines, interstate commerce to place a paramutual bet. The language covers that you are saying, right?

Mr. DI GREGORY. For someone in the business, yes. It is a prohibition directed at the gambling business operator and not at the person placing the bet.

Mr. TAUZIN. Oh, so are you saying that I can make a phone call today—if I am not in the business of gambling, I am just a gambler, I can make a phone call and place a paramutual bet, interstate commerce today.

Mr. DI GREGORY. You can do that and avoid as a bettor Federal prosecution. You may not be able to do that and avoid prosecution under State law, depending upon what State law is.

Mr. TAUZIN. And do you agree with that Ms. Poulson?

Ms. POULSON. Let me tell what you the account wager and practices are here. Currently, we have account wager legalized in nine States, which is 20 percent of the States, that allow wagering on horse racing. You had asked earlier what those States are. They are Connecticut, Kentucky——

Mr. TAUZIN. What is account wager so we have the record clear.

Ms. POULSON. It is telephone wagering, where you set up an account between States.

Mr. TAUZIN. So how many States that allow you to make a phone call wager?

Ms. POULSON. Nine. And——

Mr. TAUZIN. Would those States allow me to do it over in interstate commerce?

Ms. POULSON. It is our understanding, yes——

Mr. TAUZIN. Okay.

Ms. POULSON. [continuing] they do. You know, clearly, our industry has a disagreement with Justice's position. And we believe that their interpretation of the Wire Act disregards the specific purpose of that act of combating organized crime and the passage of the Interstate Horse Racing Act of 1978 which federally regulates the——

Mr. TAUZIN. Did the 1978 act come after the Wire Act?

Ms. POULSON. Yes.

Mr. TAUZIN. So you are saying it came after, and it specifically says what now——

Ms. POULSON. The interstate——

Mr. TAUZIN. [continuing] with regard to interstate calls to place bets or paramutual betting?

Ms. POULSON. What the interstate regulatory framework does, it was enacted to provide a Federal regulatory structure for interstate wagering on horse racing, and it ensures that all of the interests, the States through their racing commissions, the race tracks and the horse owners, are participants in that process.

Mr. TAUZIN. But that is a special act for horse racing.

Ms. POULSON. Yes.

Mr. TAUZIN. Let me go back to the other two, Jai Alai and dog racing. Sorry.

Mr. DI GREGORY. I would like to comment on the Interstate Horse Racing Act, if I might.

Mr. TAUZIN. Please.

Mr. DI GREGORY. First of all, the Interstate Horse Racing as, was correctly stated, is a civil regulatory act. It is not a criminal prohibition. And what the Interstate Horse Racing Act does allow, it allows an interstate off track wager, but it is defined in the act as a legal wager placed or accepted in one State with respect to the outcome of a horse race taking place in the other State. So it allows an intrastate bet.

And, actually, there is nothing in 1084 which prohibits an intrastate bet. Section 1084, and I would submit to you the interstate—1084 prohibits an interstate bet from being placed. I would also like to read to you, if I may, the legislative history of 1084.

Mr. TAUZIN. So you are saying the statute passed in 1978 only permits the calling inside a State to place a bet inside that State of an event that is happening in another State?

Mr. DI GREGORY. Yes.

Mr. TAUZIN. It does not permit the calling into the other State to place a bet on the event occurring in that State. Is that your interpretation?

Mr. DI GREGORY. That is our interpretation.

Mr. TAUZIN. You disagree with that, Ms. Poulson?

Ms. POULSON. What I'd like to do, actually, is to read you how we interpret that act.

Mr. TAUZIN. Let's do that.

Ms. POULSON. Congress enacted the Federal statute specifically dealing with interstate gambling on horse racing. That act made clear that a racetrack controlled wagering on its races in interstate and international commerce and provided for industry and regulatory approvals before betting was permitted between jurisdictions where the wagering was legal.

The findings of the Interstate Horse Racing Act, Congress said that States have the primary responsibility for determining what forms of gambling may take place within their borders but that the Federal Government should prevent interference by one State with the gambling policies of another. In the IHA, Congress provided that, with respect to the limited area of interstate off track wagering on horse racing, quote, there is a need for Federal action to ensure that States will continue to cooperate with one another in the acceptance of legal interstate wagers.

Mr. TAUZIN. Let me stop you there. Then I hear disagreement on the interpretation of the 1978 act. That is what I am hearing. You interpret it to say you can make the interstate calls to place a bet where the event is happening in another State if both States permit that. You are saying, no, they can only make a call inside the State, place a bet inside a State on the event that is happening in the other State. And I take it that is the best way I can describe the disagreement. Has it been tested in court?

Ms. POULSON. No.

Mr. TAUZIN. So we don't have a—have you tried to make a case, Mr. Di Gregory? Have you tried to make a case on your interpretation? Have you tried to prosecute anyone?

Mr. DI GREGORY. No, we haven't prosecuted anyone.

Ms. POULSON. You know, one of the things that we specifically like to bring up is that these activities have been highly visible—interstate simulcasting, account wagering. They have been practiced for over 20 years and in a strictly regulated——

Mr. TAUZIN. Interstate simulcasting is one thing. Watching an event in another State and placing a bet on it in the State you are watching it in is one thing. We are being told that he agrees with you. That is clearly covered by your act. What I hear the dispute on is not the simulcasting in two States of an event in one State, it is whether the bet is placed over the State line into the other State. And you seem to have a legitimate difference of opinion on that, and that is what I was trying to get.

Ms. POULSON. Again, not once in 30 years has the Justice Department or any Federal prosecutor——

Mr. TAUZIN. I just heard that, too, they never prosecuted anyone. Why haven't you prosecuted someone over all this time?

Mr. DI GREGORY. I can't answer for the last 30 years. I can only tell you that this debate that began at least a couple of years back to me—back a couple years ago for me has highlighted this issue for us at the Justice Department, and we are paying attention to it. And we are aware of at least one off track betting association

which does its mightiest to avoid taking phone calls interstate because of their belief, at least on the part of some folks, that——

Mr. TAUZIN. We are going to get to the—I want to close this out, because I really have to move. I have to give other members a chance. I want to tie this down before I move. So we don't have this settled in court. We have a dispute of interpretation, and that obviously means that maybe either a court or Congress has to settle it somewhere. That is the first thing I conclude.

But let's go to dog racing and Jai Alai racing.

Ms. POULSON. Can I make one statement?

Mr. TAUZIN. Yes, if quickly.

Ms. POULSON. The problem is the logical conclusion of what the Justice Department is saying, that it would render interstate wagering illegal on legal State-regulated horse racing, which would cripple our entire industry.

Mr. TAUZIN. That is your argument. I understand.

Ms. POULSON. But it is important.

Mr. TAUZIN. Saying that it is bad for them to do it or interpret it that way is not concluding, is not settling the question what is legal and not legal. I think what I am saying is that we have got a dispute here, very clearly. Somebody is probably going to have to settle it 1 day. Either somebody is going to get prosecuted and it gets settled or we settle it here.

Let's go to dog racing.

Mr. DI GREGORY. There is one——

Mr. TAUZIN. I want to go to the dogs.

Mr. DI GREGORY. There is one case that I am aware of that deals with the subject of the Interstate Horse Racing Act. It was not based upon a prosecution brought by the Justice Department. We didn't have a chance to argue that case. And we can get you all the information, including the copy of the case.

Mr. TAUZIN. Thank you, sir. I am going to the dogs. If you can help me with this.

Mr. WILLIAMS. Is there any way we can get bingo on the agenda, also?

Mr. TAUZIN. Yeah, we are going to talk bingo in a second. I am trying to get to bingo.

Mr. DI GREGORY. Can I make one final comment on the horses? And this applies to dogs as well.

Mr. TAUZIN. Okay.

Mr. DI GREGORY. It is in the legislative history of 1084 when they discuss the transmission of information assisting between Nevada and New York. But nothing in the exemption says the legislative history, however, will permit the transmission of bets and wagers or money by wire as a result of a bet or wager from or to any State, whether betting is legal in that State or not. That is the legislative history of 1084.

Mr. TAUZIN. Okay. That bolsters your argument.

Now, let's go to dogs and Jai Alai. We know what the new bill would propose. Tell me what the current law is. Can I place a call in interstate commerce to bet on dog racing, on Jai Alai racing? Does anybody say I can do that legally today? No. So it is illegal.

Mr. DI GREGORY. Again, depending upon the States, you can place the call. It is illegal under current Federal law to accept the betting operated business based upon the acceptance——

Mr. TAUZIN. So it is illegal to conduct betting operations through interstate calls on Jai Alai and dog racing today. Does anybody disagree with that?

Ms. POULSON. There is nobody here to represent them, but it is my understanding you can on dog racing but cannot on Jai Alai.

Mr. TAUZIN. Is there a special dog racing statute that we need to look at?

Ms. POULSON. It is my understanding through the industry—and we will be happy to provide you with that information.

Mr. TAUZIN. Do you know, Mr. Di Gregory, whether there is a special statute?

Mr. DI GREGORY. I don't think there is, and I think you can look to 3125 for some instruction on that. When 3125 talks about the exceptions for horse racing and dog racing and Jai Alai, it refers to live horse racing made in accordance with the Interstate Horse Racing Act, then live dog racing subject to regulatory consent agreements that are comparable to those required by the Interstate Horse Racing Act, and live Jai Alai subject to regulatory consent agreements that are comparable.

Mr. TAUZIN. All right. The staff is instructed, staff, to research the state of the law when it comes to both dog racing and Jai Alai racing and to provide the committee with information on that.

Ms. POULSON. We did state earlier that the Interstate Horse Racing Act is the only Federal legislation out there.

Mr. TAUZIN. It is. It is the only other law we have to deal with. I don't think there is a special dog law, but we have to check it out.

Now, let's go from those three categories to lotteries and bingos and other forms of gambling, okay.

Mr. Williams makes a claim that this bill before us would diminish his capacity to conduct his Indian gaming and bingo from the state of the current law. Does anybody dispute that? Is he correct that current law gives him more rights to conduct bingo operations than will this Internet Gaming Act that is presented to us?

Let me ask you, please, Mr. Waldron, do you want to answer that?

Mr. WALDRON. If I might just say, is the question whether he could provide—and I was not clear what position he is taking—the IGRA, which is the Indian Gaming Regulatory Act, regulates gaming on Indian lands. Whether the suggestion is that one can gamble and whether it is bingo or some other type of gaming off of Indian lands I think that is clear. The current law does not—the current—the IGRA does not permit that. I am not—can't address whether it is all on——

Mr. TAUZIN. Let me ask Justice. Can I place a long distance call—or a local call for that matter—can I use the wire to place a bet on an Indian reservation at one of its gaming institutions? We have one in Charenton, Louisiana. Can I, in Thibodaux, call Charenton and place a bet?

Mr. DI GREGORY. You can make an interstate call on an Indian reservation.

Mr. TAUZIN. How about intrastate?

Mr. DI GREGORY. If it is intrastate and the call is placed on Indian lands—it depends upon the kind of gambling that is permitted in the State and that the tribe has compacted for.

Mr. TAUZIN. So the answer is, it depends.

Mr. DI GREGORY. That is always a good answer when you don't know all the facts.

Mr. TAUZIN. Mr. Williams is pointing out that he has some rights to do that under some compacts. It may be compromised by this bill. Is that correct, Mr. Williams?

Mr. WILLIAMS. That is correct.

Mr. TAUZIN. You can perhaps get your counsel to the table. I want you to be as concise, as specific as you can. What in this new bill compromises your current rights to provide gaming opportunities to people off the reservation?

Mr. ROSETTE. Well, under the Indian Gaming Regulatory Act, it only requires that class 2 bingo be conducted entirely on Indian lands. And, at the same time, the Indian Gaming Regulatory Act exempts tribal bingo from the anti-lottery statutes which deal with the interstate transportation of tickets.

And, second, in the legislative history it specifically brings up the fact that—the legislative history of the Indian Gaming Regulatory Act brings up the fact that Congress would like to see Indian tribes in the bill itself use current technology and telecommunication devices to expand player participation between the different States.

Mr. TAUZIN. I take it in your testimony that you have those things cited?

Mr. ROSETTE. Yes.

Mr. TAUZIN. I would like if your office could examine those arguments that are made, Mr. Di Gregory, that Congress did intend them to use these new technologies to provide gaming opportunities off reservation, and if you can give us the Justice Department position on those things.

Mr. DI GREGORY. I can tell you that I do not believe that Congress intended to provide the technological opportunities for off-reservation gaming. I can tell you those opportunities were restricted to class 2 gaming, and nowhere in the Indian Gaming Regulatory Act does it say that the prohibition with respect to Indian lands or the provision that the gaming take place on Indian lands applies only to class 2 gaming.

Just very briefly, class 2 gaming refers to bingo and similar games. You are aware of that because you are from——

Mr. TAUZIN. Louisiana.

Mr. DI GREGORY. [continuing] Louisiana. Lottery is a form of class 3 gaming, and you need to enter into a compact with the State in which the reservation sits.

In order to enter into the compact, the game that you want to play must be the same kind that the State wants to play. Let me give you an example of a recent case where the issue of whether or not the game was being played on Indian lands occurred. The Coeur d'Alene tribe in Idaho wanted to operate an interstate lottery using a telephone line and also using the Internet. Thirteen State attorneys general using provision 1084 D notified AT&T that the activity that the Coeur d'Alene wished to engage in if they en-

gaged in that activity in their States, operating a gambling business in their States, would be violative of State law. AT&T denied service to the Coeur d'Alene, and they had a remedy.

The remedy was going to Federal district court to seek relief which denied them that relief. So there is an instance you see 1084 D in play.

Mr. TAUZIN. Mr. Rosette.

Mr. ROSETTE. Our position is that we clearly agree with the Department of Justice with regard to class 3 gaming, and the Coeur d'Alene game is a class 3 game. What the tribe purports to do class 2(b), which occurs entirely on Indian lands and through the legislative history of the Indian Gaming Regulatory Act, you can conduct class 2 bingo entirely on Indian lands which is distinguishable from Coeur d'Alene.

Mr. DI GREGORY. That kind of situation is distinctable.

Mr. TAUZIN. Real quick because we are going to get all of this analyzed. Where a lottery is concerned, what is the current law? Can I, under current law, use the wires to purchase lottery tickets in interstate calls?

Mr. DI GREGORY. No.

Mr. TAUZIN. Does anybody disagree with that?

Can I call Maryland and purchase a Maryland lottery ticket from Virginia? The answer is, no?

Mr. BOWMAN. We don't know because no one has tried it yet. Again, the Department of Justice says one thing and does not do it. We know we are on the verge of having multi States coming online.

Mr. TAUZIN. Are people doing that and making calls?

Mr. BOWMAN. There is not a State that is authorized yet.

Mr. DI GREGORY. I don't think that is a problem.

Mr. TAUZIN. How do you know that people are not using the telephone to buy lottery tickets?

Mr. BOWMAN. I don't think anybody is aware that that has been done.

Mr. TAUZIN. So there is nothing in the current law that permits, and you think that it is outlawed——

Mr. DI GREGORY. It would depend on 1955, which prohibits the operation of gambling business. Section 1084 applies to sports betting but not to contests like a lottery.

Mr. TAUZIN. Finally, did we have any disagreement on sports betting? Was that pretty clear from everybody here?

Mr. WALDRON. I don't think that there have been any objections raised to that.

Mr. TAUZIN. The gentleman from Tennessee, Mr. Gordon.

Mr. GORDON. Mr. Nestel, do you think that the States could do a better job of regulating this gambling on the Internet than having Federal legislation?

Mr. NESTEL. The whole reason that we got involved in this effort was in part because the national attorneys general came to Congress after throwing up their hands saying they couldn't regulate it, and once Senator Kyl and Representative Goodlatte got involved, we sought a Federal solution as the only way to go.

Mr. GORDON. Do you think that's the camel's nose under the tent and other kinds of Federal regulation as to athletics?

Mr. NESTEL. In this case, we already have a Federal law, at least when we talk about the 1992 Act, which prohibits sports gambling in 49 out of the 50 States. We are working on the 50th State.

We have circumvention when it comes to sports gambling in this country. The Federal Government has already gotten involved when it comes to sports gambling. I think this is a surgical strike when it comes to the Internet, and really, given the global communications medium that the Internet is the only way to address this problem.

Mr. GORDON. You think it is better to have a Federal legislation than State legislation then?

Mr. NESTEL. I am not a prosecutor. I can only go on what the attorneys general have been saying for the past 3½ years.

Mr. GORDON. But regarding the NCAA, it is better to have Federal legislation and continuity rather than individual State legislation?

Mr. NESTEL. The NCAA wants definitely to keep in force and in compliance with the 1992 Professional and Amateur Sports Protection Act, and this doesn't do it. Our concern is if the attorneys general are throwing up their hands, that this is the only way to do it.

Mr. GORDON. So you think that it is better to have Federal legislation rather than State legislation?

Mr. NESTEL. From what I am hearing from law enforcement, yes.

Mr. GORDON. I want to ask on a quick collateral issue. If a sports agent talks to an athlete in certain States, offers them money, a suit of clothes or whatever to sign a contract, that—under NCAA, that athlete would lose his eligibility and the school would be penalized, and oftentimes the agent would have no penalty against them, are you aware of that?

Mr. NESTEL. Absolutely.

Mr. GORDON. Why on earth when legislation was proposed on the Federal level to punish those agents and not let them get by with those few States that allow that, even though coaches supported it and the junior college equivalent of the NCAA supported it, why on earth would your organization be opposed to it saying that it was a bad precedent, it was Federal legislation and you were afraid that would lead to other Federal legislation when here, today, you are asking for Federal legislation?

Mr. NESTEL. I know when you have 1,000 members, you have varying opinions.

Mr. GORDON. This was the board. The board had discussion.

Mr. NESTEL. They looked at the problem and they felt a uniform State law was the approach to go. We have been working for 4 years to develop a uniform State law with the National Conference of Commissioners. I can't say any more than that that, except that is what our membership chose to do in terms of the approach.

Mr. GORDON. I was told it was the camel's nose under the tent, so it looks to me like the camel is already in there. I will be discussing that legislation with your board again. I hope that you will follow your members and the coaches all around the country rather than just a few board members' suggestions, and maybe try to be some help to the athletes and the schools that you represent.

Mr. NESTEL. Congressman, I thank you for being interested in this issue. We want to continue to work with you.

Mr. GORDON. We have a bill, and I would like for you to work with me. So far you have worked against me. I hope that you would like to work together on this.

Mr. Chairman, I appreciate your indulgence on this collateral issue.

Mr. TAUZIN. I thank the gentleman. Mr. Cox, the gentleman from California.

Mr. COX. Thank you, Mr. Chairman. I wonder, with Mr. Di Gregory, if I can go over some of the questions that I have about the way that the statute is put together.

It is my reading of the bill, it is not yet a statute and it may never be a statute, that it places a requirement on, at a minimum, an Internet service provider to take down a site after notice based on probable cause. Is that burden one that is imposed on Internet service providers alone or is it also imposed on search engines?

Let me tell you why I asked the question. The dissenting views from the Judiciary Committee read as follows. I need my reading glasses unfortunately, this is awfully fine print. The bill's enforcement scheme is premised on several broad notice and take-down blocking and injunctive requirements, which principally rely on so-called interactive computer service providers to act as surrogates for law enforcement.

Presumably, this would include Internet service providers such as AOL or the Microsoft Network, but potentially would include a far broader range of companies such as search engines and portals. Then there is a footnote that truly is so small I can't read it without a magnifying glass.

Mr. WALDRON. Section 1085(a)(6) defines interactive computer service, and one of the changes that was added during the Judiciary Committee process was a reference to search engines. So search engines are included in that group of Internet service providers that would both be subject to a notice and also enjoy immunity under that provision.

Mr. TAUZIN. Would the gentleman yield?

Mr. COX. Sure.

Mr. TAUZIN. If the gentleman would look at that definition with me, it also says interactive computer service means and information service or system. Could that be interpreted to mean a teleco? What does that mean? It is a new kind of definition, and one of the concerns that we've got in dissenting views was that it was so broad it could conceivably incorporate a teleco.

Mr. WALDRON. This definition was taken from the WIPO bill, and I would suggest that system modifies information system or access software provider. I think that is the better way of parsing it, and that language was borrowed directly from the WIPO bill.

Mr. COX. The copy of the bill that I have doesn't say anything in the definition of interactive computer service that I can see about search engines.

Mr. WALDRON. 6 B, the version that I have.

Mr. COX. Is engaged in the business of providing an information location tool, which means a service that refers or links users to an on-line location.

So if you are a service that links users to an on-line location, you have this obligation. I include links in my e-mails all the time. What does that make me?

Mr. WALDRON. You would not be engaged in the business of providing an information location tool.

Mr. COX. Is that because I am not in business?

Mr. WALDRON. That's correct.

Mr. COX. If I were in business, would that——

Mr. WALDRON. But you are not in the business of being a search engine. My understanding, and perhaps the Judiciary Committee staff would be better to address this, this language was suggested by the search engine members of the Internet service provider to describe the business that they are engaged in.

Mr. COX. Mr. Chairman, we don't have any members of the Internet community on this panel, but one of the reasons as I read through this with my lawyer's hat on, and I am concerned about the bill, is that it is so darn complicated. It raises enormous questions, and I would think if we were to enact the bill in its present form, we could truly say that we had enacted the first thoroughgoing regulation of the Internet, something that we have thus far been able to avoid.

The Communications Decency Act that the Senate added some years back that we in the House had an anecdote for, was struck down by the Supreme Court on first amendment grounds, but it had other problems as well, chiefly that it relied upon a government-industry partnership to try to track down the content of Web sites, and we have a similar system here that concerns me greatly.

In the DOJ formal testimony, the point is made that we would be wise to adopt a statute here that is technologically neutral, and I want to congratulate the Department of Justice for that approach because I think that is a very, very important principal in drafting legislation in this area. A few years ago, we didn't have an Internet, and it is my hope a few years from now that we won't have one either, and that we will have progressed to something that we haven't thought of right now.

If you write into legislation-defined terms that are technical in nature, such as ramaframmer, you have to have certain kind of compliance with your ramaframmer with the statute that we are writing here, what are the lawyers going to tell the techies?

They are going to say, we realize that the ramaframmer is becoming outdated, but it is referred to in the statute and we want to make sure, because it may be years before Congress can revisit this, we want to make sure that you are in compliance with the law, particularly this is a criminal statute, so we would like you to continue to have in your system a ramaframmer, because otherwise, we don't know what the statute will mean, whether the judge will allow us to draw an analogy to the son of the ramaframmer that we have invented, and as a result, our legislation, which is technologically specific, will slow down the pace of technology.

We have got to find a way to draft a bill like this without mentioning the Internet. We have to find a way to build on the statute that we already have, which, after all, for the most part, covers what we are talking about here anyway.

The laws of the 50 States for starters, and I will put this in the form of a question because I believe it to be true but I am not sure that it is. The laws of the 50 States, to a greater or lesser degree, prohibit gambling within the jurisdictions of those States. Some jurisdictions, like New Jersey and Nevada, have especially liberal regimes, but for the most part, States have treated these problems.

Then you have 18 USC 1084 and there has been a recent successful prosecution of Internet gambling under that statute, which deals with interstate and foreign problems so that we have State regulation; we have Federal regulation that collectively cover gambling by whatever means, including the Internet, within the jurisdiction of a State or conducted overseas, but somehow involving the United States.

So existing law, if I am not mistaken, without mentioning the Internet, because it was written before Al Gore invented the Internet, somehow manages to cover all of this, isn't that right?

Mr. NESTEL. If it is done through wire communication, as we mentioned, and as you read from the gambling industry, this industry is going wireless. The gambling industry has entered into agreements with Erikson to bring this to a cell phone. I believe that the current section, 1084, would not cover wireless communications.

Mr. COX. I understand that there are tweaks that are necessary and, in fact, the Department of Justice has specifically proposed legislative language to tweak section 1084. My point is that we had a prosecution of an Internet gambling case under a statute that was written before the invention of the Internet. Somehow we managed to reach that conduct with definitionally, technologically neutral language because the Congress that wrote it didn't know about the Internet. So it is possible to do. And that is my question.

Is it your view that it is possible to improve the statute to cover the new technologies that we can't even imagine yet without being technologically specific?

Mr. DI GREGORY. We believe that it can be done, absolutely. That is our proposal.

Mr. COX. We happen to agree on that, and I have given you one reason that I believe it is important. What were your reasons behind the assertion that we should be technologically neutral.

Mr. DI GREGORY. One reason was that we felt when you are legislating criminal prohibitions, you should focus on the conduct involved and not on the telephone or on the Internet or anything else, and that for consistency sake you needed to be technologically neutral.

Mr. COX. By way of analogy, we don't have a murder statute for death by knife and another one for death by gun and death by bowling pin and so on?

Mr. DI GREGORY. Except there are enhancements if you use a firearm in certain jurisdictions.

Mr. COX. Should we have a stricter penalty if you gamble by Internet?

Those are my main concerns. I appreciate the Department of Justice raising them in this hearing.

Mr. TAUZIN. The answer on the definitional section of interactive computer service, the definition that was modeled after WIPO, it

seems to me is inaccurate. So we don't know what an interactive computer system is. The only definition provided in the WIPO was a service provider in the 512 K-1 which is much narrower. So one of the concerns that those of you who are supporting the legislation should take into account is that this definition seems to be much broader than anything that we have seen before. While the notice and take-down provisions seem to be modeled after WIPO, who gets noticed and who is told to take down could be considerably broader. It could be whole systems as well as subscribers to those systems, and that could pose a substantial problem.

Mr. Markey.

Mr. MARKEY. Thank you very much, Mr. Chairman.

Ms. Poulson, I understand that there is some disagreement between you and Mr. Di Gregory over the issue of whether or not it is currently legal under the Federal Wire Act to accept telephone wagers over State lines. You say that it is legal. He says it isn't legal. Can you tell us which facilities that are part of your association, can you tell us who—Mr. Di Gregory wants to know it is—which associations that are making bets, wagers across State lines using wires?

Ms. POULSON. Who is making those?

Mr. MARKEY. Yes.

Ms. POULSON. It is a State-by-State determination on account wagering.

Mr. MARKEY. No, you say it is State by State. Mr. Di Gregory is making a point that you can't make a call from one State into a second State in order to gamble. It is possible within a State to make a bet within that State on an event outside of the State. Which of those two are you talking about? Are you saying that the first is also legal, in your opinion, that you can make a bet from across State lines?

Ms. POULSON. Yes. It is being done currently.

Mr. MARKEY. A phone call made from Massachusetts to a place in New York State?

Ms. POULSON. If the State allows it, yes.

Mr. DI GREGORY. It may be being done, but that doesn't make it legal. If you are talking about interstate telephone calls, it is illegal under 1084 for a gambling business or someone who holds himself out as a gambling business to accept a bet.

Mr. MARKEY. Can you provide the names?

Ms. POULSON. Sure. New York State does it. It has its own system set up and has, for 30 years, provided account wagering. We have the other States that have the account wagering. The whole purpose of the Interstate Horse Racing Act of 1978 which we have already discussed, followed the Wire Act, so there had to be some coordination along those lines to have one follow the other to allow this to be occurring. It has been an ongoing, highly visible system.

Mr. MARKEY. As an ongoing, highly visible, nonprosecuted illegal activity?

Ms. POULSON. It has been 30 years that this has been going on, and there hasn't been a single prosecution by the Department of Justice or Federal prosecutor of this issue. And the reason being you have the legislative history of the Wire Act, you have the Interstate Horse Racing Act.

Mr. MARKEY. Let's let Mr. Di Gregory reconcile the Interstate Racing Act and the Wire Act.

Mr. DI GREGORY. By looking to the definitions in the Wire Act, and you reconcile it by noting that the definition of interstate off track wager is defined in section 300.23 as a legal wager placed or accepted in one State with respect to the outcome of a horse race taking place in another State. And then you look to the language in 1084 and to the legislative history, which says 1084 prohibits the interstate transmission of bets or wagers on sporting events.

Mr. MARKEY. Ms. Poulson says that in New York State there has been open, continuous notorious——

Ms. POULSON. I didn't say it was notorious.

Mr. MARKEY. I am saying a highly visible engagement of that kind of activity.

We absolutely are going to need some kind of written statement from you with regard to the contact that Ms. Poulson is referring to so that we have some kind of understanding as to whether or not we are breaking new ground.

Mr. MARKEY. And if they think that it is legal already, why do we need the bill? Why do we need a bill if under the Horse Racing Act? Ms. Poulson says that they have been doing it. It is legal, and why are we wasting our time? So it seems to me that there is some reason here why we are reconciling these differences.

Ms. POULSON. From the horse racing perspective, one of the reasons that we feel that the bill is important is that the legislation deals with the unlicensed and unregulated vendors, whether they are offshore or——

Mr. MARKEY. But you don't think that you need any permission to go across State lines?

Ms. POULSON. We believe that we have been practicing it and it is allowed.

Mr. MARKEY. And Mr. Di Gregory does not believe that is already current law.

Mr. DI GREGORY. I take your point if the horse racing industry is permitted to do what it says that it is permitted to do, why do we need any exemption?

Mr. MARKEY. Right. We don't have to have them in the language of the bill at all, and I would make the amendment to delete them if it is already legal. We can deal with offshore people.

Mr. DI GREGORY. We, of course, would dispute that point.

Mr. MARKEY. We can just mention those that we don't want to be able to do it.

Ms. POULSON. We do believe that it provides an umbrella for us for the existing practices simply because of the type of thing that is coming up with Justice. I think we need to have that umbrella of the protection of the existing practices that are there. That is why we have been pushing for the provisions that are currently there in light of the Justice Department's—what we would consider a new position and not one that——

Mr. MARKEY. I understand. Much of what we have to do on this committee is to take the values of the old world and build them into this new world. The first thing that we have to do is establish what were the values of the old world. We have a significant dispute here as to what those were. This hearing has not resolved it.

We are going to have to ensure that we do so before we mark up, if we do mark up.

Mr. WILLIAMS. Also, Mr. Markey, the socially acceptable game of bingo should be held in that category because of IGRA which specifically States that we should be allowed to produce a class 2 game using technology. So therefore, bingo, I think, should be held in that same category.

Mr. MARKEY. Okay. For me this is helpful to the extent to which I understand it. There is still an atmosphere of ambiguity which characterizes this entire area that clearly was not resolved definitively in the Judiciary Committee, and I think it is the responsibility of Commerce Committee to ensure that we do understand exactly what laws we are modifying.

And I bring to this subject many visits to Wonderland and Suffolk Downs. Personal experience counts, so I think I can engage in this debate as a fully informed participant. I thank you, Mr. Chairman, and I yield back the balance of my time.

Mr. COX [presiding]. Thank you. I would ask each panel member if you are willing to get back to the subcommittee in writing your evaluation of the legislative language that was proposed by the Department of Justice. That legislative language is appended to their testimony and that testimony was distributed at this hearing. If, for any reason, you haven't been able to lay your hands on it, the subcommittee staff will be pleased to provide it to you. If you can do that within, let's say, 10 days, that would greatly facilitate our consideration of these issues because our referral is time limited.

And with respect to that language, I would ask Mr. Di Gregory if you could satisfy my curiosity on a couple of points. There is a long definition in the legislation of fantasy sport leagues or rotisserie leagues. It is exceptionally detailed. I wonder about the wisdom of making that valiant attempt for the same reasons that I was concerned about technological neutrality in writing particularly a criminal statute.

I am a bit concerned that we have gone to such great lengths in this proposed legislation that you submitted to nail these colors to the mast. I would ask, for example, what would happen if a rotisserie league awarded de minimus prizes on a quarterly basis. It would fall without the definition that you have here in the statute, and surely you didn't mean for that inconsequential detail to determine whether or not it fell within or without the definition.

Mr. DI GREGORY. We were concerned, when we put that language together, with the concept of gambling involving consideration, chance, and prize or reward. And because there were a number of fantasy sports leagues that we were aware of that did give out de minimis prizes, and one of the prizes was a hockey cap being given out on a regular basis, whether quarterly or monthly, I don't recall, and we wanted to try to eliminate the situation where someone could argue that that de minimis prize would kick in this consideration chance and reward aspect of gambling.

There is considerable debate we found in our research over whether or not fantasy sports leagues constitute gambling or whether they are simply a contest, and we tried to resolve the matter in our legislation by excluding fantasy sports leagues or actually defining bets and wagers in such a manner and defining the

fantasy sports leagues we think would be appropriately played, making sure that those leagues were outside the scope of the definition of bets or wagers.

Mr. COX. And in your description, just now you said that you were not sure whether in the example it was monthly or quarterly, but in your statute, in your proposed bill, if it were quarterly, it would fall without the definition. If would not be rotisserie. If it were monthly, it would. It seems to me that is one of the perils of trying to do it this way because you wouldn't want, I don't think, to exclude from your definition someone who is giving away de minimis prizes on a quarterly basis. What is the prosecutorial policy of the Justice Department with respect to fantasy sports leagues right now?

Mr. DI GREGORY. I don't believe that we have engaged in any prosecutions of fantasy sports leagues.

Mr. COX. Is anybody else doing that?

Mr. DI GREGORY. I know that there are laws on the books in some jurisdictions. Montana comes to mind, although I may be wrong, which prohibits fantasy sports leagues and State governments, as they have always been, are, of course, going to regulate in their own States, the kind of conduct that they consider gambling, and regulate accordingly.

Mr. COX. All right. I don't want to abuse the opportunity that I have, as the only remaining member of the committee, to ask endless questions of the panel. We appreciate your being here. This is a very complicated topic and we want to make sure that while we are doing good, we don't mess it up. We will keep the record open for the period of time between now and whenever you can submit responses in writing to that final question. If you can remain for just a minute, I am going to yield the gavel to the chairman.

Mr. TAUZIN. Ladies and gentlemen, let me thank you. Generally, at the end of a long day like this where we have a lot of questions and a lot to say, there is something that somebody wants to add to the record. If you have a final statement, the last thing that you want us to remember, Mr. Di Gregory.

Mr. DI GREGORY. Only that we believe that legislation in this area can be much more simply done by utilizing the proposal that we have submitted.

Mr. TAUZIN. Thank you.

Mr. Bowman?

Mr. BOWMAN. I would encourage the committee to address the problem this year on Internet gambling and get something done.

Mr. TAUZIN. Ms. Poulson?

Ms. POULSON. I think the horse racing industry feels the same way, that we need to move this forward and it is important to the preservation of the very cornerstone of our industry.

Mr. TAUZIN. Mr. Nestel?

Mr. NESTEL. I am just going to echo what everybody on the panel has already said. We need a bill this year and we are not going to probably get an opportunity to do anything in the future.

Mr. ROSETTE. I would like to say, while the Department of Justice and I have both agreed that class 2 bingo is conducted legally with technology, Mr. Goodlatte's bill does make that activity illegal.

Mr. TAUZIN. Mr. Williams?

Mr. WILLIAMS. I would just like to reassure you that the tribe is available to any subcommittee, and these government-to-government talks need to be upheld and continue. I thank you, Mr. Chairman.

Mr. DI GREGORY. Mr. Tauzin, I did not mean to agree that class 2 gaming can be conducted through Internet gambling. There are technological aids that are permissible, and whether or not the Internet can be used is dependent upon the circumstances and the game that the tribes are trying to play. I wanted to make that point.

Mr. TAUZIN. I would very much appreciate both of you elaborating in this area in writing because I need to fully understand the two arguments.

We ask the Department of Justice, for the record, how do you think Department of Justice would enforce the blocking provisions in the bill for offshore Web sites? You can submit it in writing. How burdensome for the 7,000 ISPs would it be to block each and every one, and how will they get the information and how frequently would they need to update that information? Those are the some of the questions that we would like you to come back to us on.

The record will stay open for 30 days. You heard a lot from each other. That is why I like big panels. If you don't mind, use the time in the next 30 days to send us new information or clarifying information that you thinks needs clarifying. I will keep the record open if members wish to submit questions to you, the record will stay open. We will have an announcement as to procedure, strategy, what is to happen with the bill, probably sometimes next week, so stand by.

We deeply appreciate your testimony and as I said, please respond in writing to whatever written questions we send you in the future. Thank you very much. The hearing is adjourned.

[Whereupon, at 4 p.m., the subcommittee was adjourned.]