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108TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPT. 108–51 Part 2

UNLAWFUL INTERNET GAMBLING FUNDING PROHIBITION ACT

MAY 22, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 21]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 21) to prevent the use of certain bank instruments for unlawful Internet gambling, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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19–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Unlawful Internet Gambling Funding Prohibition Act".

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) Internet gambling is primarily funded through personal use of bank instruments, including credit cards and wire transfers.

(2) The National Gambling Impact Study Commission in 1999 recommended the passage of legislation to prohibit wire transfers to Internet gambling sites or the banks which represent them.

(3) Internet gambling is a major cause of debt collection problems for insured depository institutions and the consumer credit industry.

(4) Internet gambling conducted through offshore jurisdictions has been identified by United States law enforcement officials as a significant money laundering vulnerability.

SEC. 3. PROHIBITION ON ACCEPTANCE OF ANY BANK INSTRUMENT FOR UNLAWFUL INTERNET GAMBLING.

(a) IN GENERAL.—No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling—

(1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

(2) an electronic fund transfer or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of the other person;

(3) any check, draft, or similar instrument which is drawn by or on behalf of the other person and is drawn on or payable at or through any financial institution; or

(4) the proceeds of any other form of financial transaction as the Secretary may prescribe by regulation which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of the other person.

(b) DEFINITIONS.—For purposes of this Act, the following definitions shall apply:

(1) BETS OR WAGERS.—The term "bets or wagers"—

(A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of greater value than the amount staked or risked in the event of a certain outcome;

(B) includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

(C) includes any scheme of a type described in section 3702 of title 28, United States Code;

(D) includes any instructions or information pertaining to the establishment or movement of funds in an account by the bettor or customer with the business of betting or wagering; and

(E) does not include—

(i) any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) for the purchase or sale of securities (as that term is defined in section 3(a)(10) of such Act);

(ii) any transaction conducted on or subject to the rules of a registered entity or exempt board of trade pursuant to the Commodity Exchange Act;

(iii) any over-the-counter derivative instrument;

(iv) any other transaction that—

(I) is excluded or exempt from regulation under the Commodity Exchange Act; or

(II) is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act or section 28(a) of the Securities Exchange Act of 1934;

(v) any contract of indemnity or guarantee;

(vi) any contract for insurance;

(vii) any deposit or other transaction with a depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act); and

(viii) any participation in a simulation sports game or an educational game or contest that—

(I) is not dependent solely on the outcome of any single sporting event or nonparticipant's singular individual performance in any single sporting event;

(II) has an outcome that reflects the relative knowledge and skill of the participants with such outcome determined predominantly by accumulated statistical results of sporting events; and

(III) 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.

(2) BUSINESS OF BETTING OR WAGERING.—The term "business of betting or wagering" does not include, other than for purposes of subsection (e), any creditor, credit card issuer, insured depository institution, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or any participant in such network, or any interactive computer service or telecommunications service.

(3) DESIGNATED PAYMENT SYSTEM DEFINED.—The term "designated payment system" means any system utilized by any creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, or money transmitting service, or any participant in such network, that the Secretary, in consultation with the Board of Governors of the Federal Reserve System and the Attorney General, determines, by regulation or order, could be utilized in connection with, or to facilitate, any restricted transaction.

(4) INTERNET.—The term "Internet" means the international computer network of interoperable packet switched data networks.

(5) INTERACTIVE COMPUTER SERVICE.—The term "interactive computer service" has the same meaning as in section 230(f) of the Communications Act of 1934.

(6) RESTRICTED TRANSACTION.—The term "restricted transaction" means any transaction or transmittal involving any credit, funds, instrument, or proceeds described in any paragraph of subsection (a) which the recipient is prohibited from accepting under subsection (a).

(7) UNLAWFUL INTERNET GAMBLING.—The term "unlawful Internet gambling" means to place, receive, or otherwise transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State in which the bet or wager is initiated, received, or otherwise made.

(8) OTHER TERMS.—

(A) CREDIT; CREDITOR; AND CREDIT CARD.—The terms "credit", "creditor", and "credit card" have the meanings given such terms in section 103 of the Truth in Lending Act.

(B) ELECTRONIC FUND TRANSFER.—The term "electronic fund transfer"—

(i) has the meaning given such term in section 903 of the Electronic Fund Transfer Act; and

(ii) includes any fund transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

(C) FINANCIAL INSTITUTION.—The term "financial institution" has the meaning given such term in section 903 of the Electronic Fund Transfer Act.

(D) MONEY TRANSMITTING BUSINESS AND MONEY TRANSMITTING SERVICE.—The terms "money transmitting business" and "money transmitting service" have the meanings given such terms in section 5330(d) of title 31, United States Code.

(E) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(c) CIVIL REMEDIES.—

(1) JURISDICTION.—The district courts of the United States shall have original and exclusive jurisdiction to prevent and restrain violations of this section by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under this section.

(2) PROCEEDINGS.—

(A) INSTITUTION BY FEDERAL GOVERNMENT.—

(i) IN GENERAL.—The United States, acting through the Attorney General, may institute proceedings under this subsection to prevent or restrain a violation of this section.

(ii) RELIEF.—Upon application of the United States under this subparagraph, the district court may enter a preliminary injunction or an injunction against any person to prevent or restrain a violation of this section, in accordance with Rule 65 of the Federal Rules of Civil Procedure.

(B) INSTITUTION BY STATE ATTORNEY GENERAL.—

(i) IN GENERAL.—The attorney general of a State (or other appropriate State official) in which a violation of this section allegedly has occurred or will occur may institute proceedings under this subsection to prevent or restrain the violation.

(ii) RELIEF.—Upon application of the attorney general (or other appropriate State official) of an affected State under this subparagraph, the district court may enter a preliminary injunction or an injunction against any person to prevent or restrain a violation of this section, in accordance with Rule 65 of the Federal Rules of Civil Procedure.

(C) INDIAN LANDS.—

(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), for a violation that is alleged to have occurred, or may occur, on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act)—

(I) the United States shall have the enforcement authority provided under subparagraph (A); and

(II) the enforcement authorities specified in an applicable Tribal-State compact negotiated under section 11 of the Indian Gaming Regulatory Act shall be carried out in accordance with that compact.

(ii) RULE OF CONSTRUCTION.—No provision of this section shall be construed as altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act.

(3) EXPEDITED PROCEEDINGS.—In addition to any proceeding under paragraph (2), a district court may, in exigent circumstances, enter a temporary restraining order against a person alleged to be in violation of this section upon application of the United States under paragraph (2)(A), or the attorney general (or other appropriate State official) of an affected State under paragraph (2)(B), in accordance with Rule 65(b) of the Federal Rules of Civil Procedure.

(4) LIMITATION RELATING TO INTERACTIVE COMPUTER SERVICES.—

(A) IN GENERAL.—Relief granted under this subsection against an interactive computer service shall—

(i) be limited to the removal of, or disabling of access to, an online site violating this section, or a hypertext link to an online site violating this section, that resides on a computer server that such service controls or operates; except this limitation shall not apply if the service is subject to liability under this section pursuant to subsection (e);

(ii) be available only after notice to the interactive computer service and an opportunity for the service to appear are provided;

(iii) not impose any obligation on an interactive computer service to monitor its service or to affirmatively seek facts indicating activity violating this section;

(iv) specify the interactive computer service to which it applies; and

(v) specifically identify the location of the online site or hypertext link to be removed or access to which is to be disabled.

(B) COORDINATION WITH OTHER LAW.—An interactive computer service that does not violate this section shall not be liable under section 1084 of title 18, except this limitation shall not apply if an interactive computer service has actual knowledge and control of bets and wagers and—

(i) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

(ii) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

(5) FACTORS TO BE CONSIDERED IN CERTAIN CASES.—In considering granting relief under this subsection against any payment system, or any participant in a payment system that is a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, or money transmitting service, or a participant in such network, the court shall consider the following factors:

(A) The extent to which such person is extending credit or transmitting funds knowing the transaction is in connection with unlawful Internet gambling.

(B) The history of such person in extending credit or transmitting funds knowing the transaction is in connection with unlawful Internet gambling.

(C) The extent to which such person has established and is maintaining policies and procedures in compliance with regulations prescribed under subsection (f).

(D) The feasibility that any specific remedy prescribed in the order issued under this subsection can be implemented by such person without substantial deviation from normal business practice.

(E) The costs and burdens the specific remedy will have on such person.

(6) NOTICE TO REGULATORS AND FINANCIAL INSTITUTIONS.—Before initiating any proceeding under paragraph (2) with respect to a violation or potential violation of this section by any creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, or money transmitting service, or any participant in such network, the Attorney General of the United States or an attorney general of a State (or other appropriate State official) shall—

(A) notify such person, and the appropriate regulatory agency (as determined in accordance with subsection (f)(5)) for such person, of such violation or potential violation and the remedy to be sought in such proceeding; and

(B) allow such person 30 days to implement a reasonable remedy for the violation or potential violation, consistent with the factors described in paragraph (5) and in conjunction with such action as the appropriate regulatory agency may take.

(d) CRIMINAL PENALTY.—

(1) IN GENERAL.—Whoever violates this section shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

(2) PERMANENT INJUNCTION.—Upon conviction of a person under this subsection, the court may enter a permanent injunction enjoining such person from placing, receiving, or otherwise making illegal bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

(e) CIRCUMVENTIONS PROHIBITED.—Notwithstanding subsection (b)(2), a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, or money transmitting service, or any participant in such network, or any interactive computer service or telecommunications service, may be liable under this section if such creditor, issuer, institution, operator, business, network, or participant has actual knowledge and control of bets and wagers and—

(1) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

(2) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

(f) POLICIES AND PROCEDURES TO IDENTIFY AND PREVENT RESTRICTED TRANSACTIONS IN PAYMENT FOR UNLAWFUL INTERNET GAMBLING.—

(1) REGULATIONS.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Board of Governors of the Federal Reserve System and the Attorney General, shall prescribe regulations requiring any designated payment system to establish policies and procedures reasonably designed to identify and prevent restricted transactions in any of the following ways:

(A) The establishment of policies and procedures that—

(i) allow the payment system and any person involved in the payment system to identify restricted transactions by means of codes in authorization messages or by other means; and

(ii) block restricted transactions identified as a result of the policies and procedures developed pursuant to clause (i).

(B) The establishment of policies and procedures that prevent the acceptance of the products or services of the payment system in connection with a restricted transaction.

(2) REQUIREMENTS FOR POLICIES AND PROCEDURES.—In prescribing regulations pursuant to paragraph (1), the Secretary shall—

(A) identify types of policies and procedures, including nonexclusive examples, which would be deemed to be "reasonably designed to identify" and "reasonably designed to block" or to "prevent the acceptance of the products or services" with respect to each type of transaction, such as, should credit card transactions be so designated, identifying transactions by a code or codes in the authorization message and denying authorization of a credit card transaction in response to an authorization message;

(B) to the extent practical, permit any participant in a payment system to choose among alternative means of identifying and blocking, or otherwise preventing the acceptance of the products or services of the payment system or participant in connection with, restricted transactions; and

(C) consider exempting restricted transactions from any requirement under paragraph (1) if the Secretary finds that it is not reasonably practical to identify and block, or otherwise prevent, such transactions.

(3) COMPLIANCE WITH PAYMENT SYSTEM POLICIES AND PROCEDURES.—A creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, or money transmitting service, or a participant in such network, meets the requirement of paragraph (1) if—

(A) such person relies on and complies with the policies and procedures of a designated payment system of which it is a member or participant to—

(i) identify and block restricted transactions; or

(ii) otherwise prevent the acceptance of the products or services of the payment system, member, or participant in connection with restricted transactions; and

(B) such policies and procedures of the designated payment system comply with the requirements of regulations prescribed under paragraph (1).

(4) NO LIABILITY FOR BLOCKING OR REFUSING TO HONOR RESTRICTED TRANSACTIONS.—A person that is subject to a regulation prescribed or order issued under this subsection and blocks, or otherwise refuses to honor, a restricted transaction, or as a member of a designated payment system relies on the policies and procedures of the payment system, in an effort to comply with this section shall not be liable to any party for such action.

(5) ENFORCEMENT.—This subsection shall be enforced by the Federal functional regulators and the Federal Trade Commission under applicable law in the manner provided in section 505(a) of the Gramm-Leach-Bliley Act.

SEC. 4. INTERNET GAMBLING IN OR THROUGH FOREIGN JURISDICTIONS.

(a) IN GENERAL.—In deliberations between the United States Government and any other country on money laundering, corruption, and crime issues, the United States Government should—

(1) encourage cooperation by foreign governments and relevant international fora in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes;

(2) advance policies that promote the cooperation of foreign governments, through information sharing or other measures, in the enforcement of this Act; and

(3) encourage the Financial Action Task Force on Money Laundering, in its annual report on money laundering typologies, to study the extent to which Internet gambling operations are being used for money laundering.

(b) REPORT REQUIRED.—The Secretary of the Treasury shall submit an annual report to the Congress on the deliberations between the United States and other countries on issues relating to Internet gambling.

SEC. 5. AMENDMENTS TO GAMBLING PROVISIONS.

(a) AMENDMENT TO DEFINITION.—Section 1081 of title 18, United States Code, is amended—

(1) by designating the five undesignated paragraphs that begin with "The term" as paragraphs (1) through (5), respectively; and

(2) in paragraph (5), as so designated—

(A) by striking "wire communication" and inserting "communication";

(B) by inserting "satellite, microwave," after "cable,"; and

(C) by inserting "(whether fixed or mobile)" after "connection".

(b) INCREASE IN PENALTY FOR UNLAWFUL WIRE TRANSFERS OF WAGERING INFORMATION AND CONFORMING AMENDMENT.—Section 1084(a) of title 18, United States Code, is amended—

(1) by striking "two years" and inserting "5 years"; and

(2) by striking "wire" each place it appears.

PURPOSE AND SUMMARY

Under current Federal law, it is unclear that using the Internet to operate a gambling business is illegal. H.R. 21, the "Unlawful Internet Gambling Funding Prohibition Act," is intended to provide State and Federal authorities with the means to enforce current statutes and clarify that those statutes make gambling over the Internet illegal. This bill creates a new crime—accepting financial instruments, such as credit cards or electronic fund transfers, for debts incurred in illegal Internet gambling. Because the perpetrators of this crime are off-shore and beyond the reach of U.S. law enforcement tactics, the bill enables State attorneys general and Federal enforcement authorities to request that injunctions be issued against any party, including financial institutions, Internet service providers, and computer software providers, to assist in the prevention or restraint of this crime. Finally, this bill allows Federal bank regulators to create rules requiring financial institutions to use designated methods to block or filter illegal Internet gambling transactions.

BACKGROUND AND NEED FOR THE LEGISLATION

Over the last few years, gambling websites have proliferated on the Internet. What was once a cottage industry has become an extremely lucrative and large business. The Internet gambling industry's revenues grew from $445 million in 1997 [1] to an estimated $4.2 billion in 2003 [2]. Industry analysts estimate that it could soon easily become a $10 billion a year industry.

On-line casino operators envision the day when the Internet will provide access to a "virtual-strip"—where gamblers who are tired of one casino can simply "walk" down the virtual boardwalk to a different casino. There are currently over 1,800 gambling sites on the Internet, offering everything from sports betting to blackjack. Most of these virtual casinos are organized and operated from tropical off-shore locations, where the operators feel free from both State and Federal interference. Among the most popular locales are Antigua, St. Martin, and Costa Rica.

This legislation brings the current law up to date with Internet technology by clarifying Federal law so that there is no question that operating an Internet gambling business is illegal. It does not, however, supersede the traditional leadership roles of States in enforcing gambling laws within their borders. It addresses a growing problem that no single State, or collection of States, can adequately

[1] National Gambling Impact Study Commission, Final Report, 5–1, (1999).

[2] Testimony of Deputy Assistant Attorney General John G. Malcolm before the House Subcommittee on Crime, Terrorism, and Homeland Security on April 29, 2003, page 2.

address. Because of the uniquely interstate and international nature of the Internet, H.R. 21 is necessary. At the same time, H.R. 21 provides the States and the Federal Government with the needed tools to limit and regulate Internet gambling.

Since the founding of our country, the Federal Government has left gambling regulation to the States. In 1996, Congress created the National Gambling Impact Study Commission (NGISC) to examine the issue of gambling in America. The NGISC concluded that States are best equipped to regulate gambling within their own borders, and recommended that Congress continue to defer to the States in this respect.[3]

The Federal Government has largely deferred to the authority of States to determine the type and amount of gambling permitted. For over 100 years, Congress has acted to assist States in enforcing their respective policies on gambling when development in technology, such as the Internet, have compromised the effectiveness of State gambling laws.

State attorneys general have been frustrated in their attempts to prevent Internet gambling from permeating their borders. Some have attempted to charge Internet gambling providers with violations of State consumer fraud laws, but jurisdictional issues and other problems have thwarted these efforts. Attorneys general report that citizens often are unaware that gambling on the Internet is illegal, even if those same persons are aware that their home State does not allow gambling.

In addition, the Department of Justice recently testified that Internet gambling serves as a vehicle for money laundering activities and can be exploited by terrorists to launder money. On-line casinos are a particularly inviting target because, in addition to using the gambling that on-line casinos offer as a way to hide or transfer money, on-line casinos offer a broad array of financial services to their customers, such as providing credit accounts, fund transmittal services, check cashing services, and currency exchange services.

HEARINGS

The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held a legislative hearing on H.R. 21 on April 29, 2003. The Subcommittee also heard testimony on a related bill, H.R. 1223, at those hearings. Testimony was received from four witnesses. The witnesses were: Rep. James A. Leach; Mr. John G. Malcolm, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice; Mr. Jeffrey A. Modisett, former Indiana State Attorney General; and Mr. William Hornbuckle, President & Chief Operating Officer, MGM Mirage Online.

COMMITTEE CONSIDERATION

On May 6, 2003, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered favorably reported the bill H.R. 21, by a voice vote, a quorum being present. On May 14, 2003, the Committee met in open session and ordered

[3] National Gambling Impact Study Commission, Final Report, 3–1, (1999).

favorably reported the bill H.R. 21 with an amendment by a recorded vote of 16 to 15, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that the following rollcall votes occurred during the Committee's consideration of H.R. 21.

1. An amendment was offered by Mr. Cannon to strike language in the bill which states that a bet or wager does not include "any lawful transaction with a business licensed or authorized by a State." The amendment was agreed to by a rollcall vote of 16 to 15.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus		X	
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake			
Mr. Pence		X	
Mr. Forbes			
Mr. King		X	
Mr. Carter		X	
Mr. Feeney		X	
Mrs. Blackburn	X		
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler		X	
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff		X	
Ms. Sánchez	X		
Mr. Sensenbrenner, Chairman	X		
Total	16	15	

2. Final Passage. The motion to report favorably the bill, H.R. 21, as amended, was agreed to by a rollcall vote of 16 to 15.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde			

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Coble	X		
Mr. Smith			
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Jenkins	X		
Mr. Cannon		X	
Mr. Bachus	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Ms. Hart	X		
Mr. Flake		X	
Mr. Pence	X		
Mr. Forbes			
Mr. King	X		
Mr. Carter	X		
Mr. Feeney	X		
Mrs. Blackburn	X		
Mr. Conyers		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren	X		
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt			
Mr. Wexler		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Ms. Sánchez		X	
Mr. Sensenbrenner, Chairman	X		
Total	16		

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 21, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 16, 2003.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed revised cost estimate for H.R. 21, the Unlawful Internet Gambling Funding Prohibition Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for Federal costs), who can be reached at 226–2860, and Cecil McPherson (for the impact on the private sector), who can be reached at 226–2940.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 21—Unlawful Internet Gambling Funding Prohibition Act.

SUMMARY

H.R. 21 would prohibit gambling businesses from accepting credit cards, checks, or other bank instruments from gamblers who illegally bet over the Internet. The bill also would require financial institutions to take steps to identify and block gambling-related transactions that are transmitted through their payment systems. The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) would enforce the provisions of H.R. 21 as they apply to financial institutions.

CBO estimates that implementing this legislation would result in no significant cost to the Federal Government. The bill could affect direct spending and revenues, but CBO estimates that any impact on direct spending and revenues would not be significant.

H.R. 21 would create no new intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments. The bill would impose a private-sector mandate, but CBO estimates that the direct costs of the mandate would fall well below the annual threshold established in UMRA ($117 million in 2003, adjusted annually for inflation) in any of the next 5 years.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO estimates that the Government would incur no significant costs under H.R. 21. CBO estimates that implementing H.R. 21 would increase administrative costs of the Department of Justice, but any such costs would be negligible. The bill also would have a small effect on the operating costs of the FDIC and the Federal Reserve System. Finally, the bill would have a negligible effect on the collection and spending of criminal penalties.

BASIS OF ESTIMATE

The bill would have only minor budgetary effects, as described below.

Spending Subject to Appropriation

Because H.R. 21 would establish new Federal crimes relating to Internet gambling, the Federal Government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects, however, that most cases would be pursued under existing State laws. Therefore, we estimate that any increase in Federal costs for law enforcement, court proceedings, or prison operations would not be significant. Any such additional costs would be subject to the availability of appropriated funds.

H.R. 21 would require the Department of the Treasury to submit an annual report on deliberations with other countries on issues related to Internet gambling. CBO estimates that preparing and completing the report would cost less than $100,000 a year, subject to the availability of appropriated funds.

Direct Spending and Revenues

The NCUA, the OTS, and the OCC charge fees to cover all their administrative costs; therefore, any additional spending by those agencies to implement the bill would have no net budgetary effect. That is not the case with the FDIC, however, which uses deposit insurance premiums paid by banks to cover the expenses it incurs to supervise State-chartered institutions. (Under current law, CBO estimates that the vast majority of thrift institutions insured by the FDIC would not pay any premiums for most of the 2004–2013 period.)

The bill would cause a small increase in FDIC spending but would not affect its premium income. In total, CBO estimates that H.R. 21 would increase direct spending and offsetting receipts of the NCUA, OTS, OCC, and FDIC by less than $500,000 a year over the 2004–2013 period.

Budgetary effects on the Federal Reserve are recorded as changes in revenues (governmental receipts). Based on information from the Federal Reserve, CBO estimates that enacting H.R. 21 would reduce such revenues by less than $500,000 a year.

Because those prosecuted and convicted under the bill could be subject to criminal fines, the Federal Government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (i.e., revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. Any additional collections are likely to be negligible because of the small number of cases involved. Because any increase in direct spending would equal the amount of fines collected (with a lag of 1 year or more), the additional direct spending also would be negligible.

ESTIMATED IMPACT ON STATE AND LOCAL GOVERNMENTS

Although H.R. 21 would prohibit gambling businesses from accepting credit card payments and other bank instruments from gamblers who bet illegally over the Internet, the bill would not create a new intergovernmental mandate as defined in UMRA. Under

current Federal and State law, gambling businesses are generally prohibited from accepting bets or wagers over the Internet. Thus, H.R. 21 does not contain a new mandate relative to current law and would impose no costs on State, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 21 would impose a new Federal mandate on the private sector. The bill would require designated payment systems to establish policies and procedures designed to identify and prevent transactions in connection with unlawful Internet gambling. Designated payment systems are defined in the bill to include any system utilized by businesses such as creditors, credit card issuers, or financial institutions to effect a credit transaction, an electronic fund transfer, or other transfer of funds. Information provided by representatives of the financial services industry indicates that such transactions can currently be identified through the use of codes. Most financial institutions are currently able to identify and block restricted transactions by using the coding system. Thus, CBO estimates that the private sector's cost to comply with the mandate would be small. There also could be direct savings to those entities subject to the mandate as the bill limits their liability arising from their compliance with the requirement. CBO estimates that the total direct costs for private-sector mandates in this bill would fall well below the annual threshold established in UMRA ($117 million in 2003, adjusted annually for inflation).

Although section 3 would prohibit gambling businesses from accepting credit card payments and other bank instruments from gamblers who bet illegally over the Internet, those provisions would not create a new private-sector mandate as defined in UMRA. Under current Federal and State law, gambling businesses are generally prohibited from accepting bets or wagers over the Internet. Thus, those provisions do not contain a new mandate relative to current law.

PREVIOUS ESTIMATE

On May 15, 2003, CBO transmitted a cost estimate for H.R. 21, as reported by the House Committee on Financial Services on March 27, 2003. The two versions of the bill are similar, and the cost estimates are identical.

Both versions of the bill contain identical private-sector mandates, for which CBO estimates that the total direct costs would fall well below the annual threshold for private-sector mandates established in UMRA.

ESTIMATE PREPARED BY:

Federal Spending: Lanette J. Walker and Mark Hadley (226–2860)
Federal Revenues: Mark Booth (226–2680)
Impact on State, Local, and Tribal Governments: Victoria Heid Hall (225–3220)
Impact on the Private Sector: Cecil McPherson (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

H.R. 21 does not authorize funding. Therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives is inapplicable.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short title

This Act may be cited as the 'Unlawful Internet Gambling Funding Prohibition Act."

Section 2. Findings

The Congressional findings note that: (1) Internet gambling is primarily funded through the use of personal banking instruments and plays a large role in the creation of ultimately uncollectible personal debt; and (2) Internet gambling is susceptible to abuse by money launderers.

Section 3. Prohibition on acceptance of any bank instrument for Internet gambling

Subsection (a) creates a new crime that prohibits a gambling business from accepting bank instruments in connection with unlawful Internet gambling. Covered instruments include credit cards, electronic fund transfers, and checks.

Subsection (b)(1) defines the term "bets or wagers" as the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance with the agreement that the winner will receive something of greater value than the amount staked or risked. This subsection clarifies that the term "bets or wagers" does not include a bona fide business transaction governed by the securities laws; a transaction subject to the Commodity Exchange Act; an over-the-counter derivative instrument and any other transaction exempt from State gaming or bucket shop laws pursuant to the Commodity Exchange Act or Securities Exchange Act; a contract of indemnity or guarantee; a contract for life, health, or accident insurance; a deposit with a depository institution; or certain participation in a simulation sports game or education game.

It is the view of the Committee that the term "bets or wagers" does not include participation in a simulation sports game or educational game or contest that: (1) is not dependent solely on the outcome of any single sporting event or nonparticipant's singular individual performance in any single sporting event; (2) has an outcome that reflects the knowledge and skill of the participants, with an outcome determined predominantly by accumulated statistical results of sporting events; and (3) offers a prize or award established in advance of the game and not determined by the number of participants. This exclusion is intended to cover "fantasy sports league games" which are simulation sports games in which the out-

come is determined using the results of actual sporting events, and the outcome reflects the relative knowledge and skill of the participants in determining those results. It is the view of the Committee that fantasy sport leagues operated in this manner are not gambling. It is important to note, however, that this exclusion from the definition of a bet or wager is not intended to change the legality of fantasy sports league games or contests under the laws of any State, or under any other applicable Federal law.

The Committee recognizes that many computer and video games played on the Internet are based predominantly on skill, and are not intended to be included within the definition of "bets or wagers." Also, such computer and video games, including those that feature real sports teams and/or teams that are members of an amateur or professional sports organization, do not involve the staking or risking by any person of something of value. The Committee intends that the courts will continue to perform their traditional functions in determining whether games are "bets or wagers."

It is the view of the Committee that the definition of "bets or wagers" does not include: (1) information exchanged via private network if the information is used only to monitor gaming device play, display prize amounts, provide security information, and provide other accounting information; (2) news reporting or analysis of wagering activity; and (3) posting or reporting of educational information on how to make a bet or wager or the nature of betting or wagering. Furthermore, it is the view of the Committee that information exchanged via a linked progressive game accounting system that does not accept bets or wagers and that does not affect game outcome is not included in the definition of the term "bets or wagers."

Subsection (b)(2) excludes from the term "business of betting or wagering" any creditor, credit card issuer, insured depository institution, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or any participant in such network, or any interactive computer service or telecommunications service, unless such entity has actual knowledge and control of bets and wagers and operates or is controlled by an entity that operates an unlawful Internet gambling site. Subsection (b) also defines the terms "designated payment system," "Internet," "interactive computer service," "restricted transaction" and "unlawful Internet gambling."

Subsection (c) authorizes the Attorney General of the United States and State Attorneys General to pursue civil remedies, including a preliminary injunction or permanent injunction against any person to prevent or restrain a violation of this Act. It clarifies that the Act does not alter, supersede, or otherwise affect the Indian Gaming Regulatory Act; generally limits the liability of an interactive computer service to the removal or disabling of access to an online site violating this section, upon proper notice; clarifies that an interactive computer service not liable under this Act is not liable under the Wire Act unless it has actual knowledge and control of bets and wagers, and operates or is controlled by an entity

that operates, an unlawful Internet gambling site; sets out factors to be considered by a court in deciding whether to issue an injunction against any payment system; and provides for notice to bank regulators and institutions to allow violations to be addressed through the bank regulatory process before the injunction process is triggered.

Subsection (d) authorizes criminal penalties, including fines or imprisonment for not more than 5 years or both.

Subsection (e) provides that, notwithstanding the safe harbor provided in subsection (b)(2), a financial intermediary (creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or national, regional, or local network), or interactive computer service or telecommunications service that has actual knowledge and control of bets and wagers, and operates or is controlled by an entity that operates, an unlawful Internet gambling site can be held liable under this section.

Subsection (f) requires the Secretary of the Treasury, in conjunction with the Federal Reserve and the U.S. Attorney General, to prescribe regulations within 6 months requiring any payment system to establish policies and procedures reasonably designed to identify restricted transactions, block restricted transactions, or prevent restricted transactions from entering its system; and provides that a payment system is not liable for blocking or refusing a restricted transaction in an attempt to comply with the Act's enforcement. The Federal functional regulators and the Federal Trade Commission are given the authority to enforce this subsection.

Section 4. Internet gambling in or through foreign jurisdictions

Section 4 provides that, in deliberations between the U.S. Government and any other country on money laundering, corruption, and crime issues, the U.S. Government should encourage cooperation by foreign governments in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes, advance policies that promote the cooperation by foreign governments in the enforcement of this Act, and encourage the Financial Action Task Force on Money Laundering to study the extent to which Internet gambling operations are being used for money laundering. It also requires the Secretary of the Treasury to submit an annual report to Congress on the deliberations between the United States and other countries on issues relating to Internet gambling.

Section 5. Amendments to gambling provisions

Section 5 makes certain amendments to definitions under sections 1081 and 1084 of title 18, the Federal Wire Act, and increases the penalty for unlawful transfers of wagering information. The term "wire communication facility" under the current law would now read "communication facility" and includes transmissions by satellite and microwave as covered means of communication. The Committee intends that this definition will cover all present and future forms of communication.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CHAPTER 50 OF TITLE 18, UNITED STATES CODE

CHAPTER 50—GAMBLING

* * * * * * *

§ 1081. Definitions

As used in this chapter:

(1) The term "gambling ship" means a vessel used principally for the operation of one or more gambling establishments. Such term does not include a vessel with respect to gambling aboard such vessel beyond the territorial waters of the United States during a covered voyage (as defined in section 4472 of the Internal Revenue Code of 1986 as in effect on January 1, 1994).

(2) The term "gambling establishment" means any common gaming or gambling establishment operated for the purpose of gaming or gambling, including accepting, recording, or registering bets, or carrying on a policy game or any other lottery, or playing any game of chance, for money or other thing of value.

(3) The term "vessel" includes every kind of water and air craft or other contrivance used or capable of being used as a means of transportation on water, or on water and in the air, as well as any ship, boat, barge, or other water craft or any structure capable of floating on the water.

(4) The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if such vessel is owned by, chartered to, or otherwise controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

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

* * * * * * *

§ 1084. Transmission of wagering information; penalties

(a) Whoever being engaged in the business of betting or wagering knowingly uses a [wire] communication facility for the trans-

mission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a [wire] communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than [two] *5* years, or both.

* * * * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, MAY 14, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:01 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

[Intervening business.]

Chairman SENSENBRENNER. The second item on the agenda is the adoption of H.R. 21, the "Unlawful Internet Gambling Funding Prohibition Act."

The Chair recognizes the gentleman from North Carolina, Mr. Coble, the Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security, for a motion.

Mr. COBLE. Mr. Chairman, the Subcommittee on Crime, Terrorism, and Homeland Security reports in favor of the bill H.R. 21, and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, H.R. 21 will be considered as read, and open for amendment at any point.

[The bill, H.R. 21, follows:]

I

108TH CONGRESS
1ST SESSION

H. R. 21

To prevent the use of certain bank instruments for unlawful Internet gambling, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 2003

Mr. LEACH (for himself, Mr. OXLEY, Mr. ROGERS of Michigan, Mr. PICKERING, Mr. NORWOOD, Mr. GOODLATTE, Mr. BACHUS, Mrs. KELLY, Mr. WOLF, Mr. SPRATT, Mr. OSBORNE, Mr. PITTS, Mr. BERRY, and Mr. GILLMOR) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To prevent the use of certain bank instruments for unlawful Internet gambling, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Unlawful Internet Gambling Funding Prohibition Act''.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) Internet gambling is primarily funded through personal use of bank instruments, including credit cards and wire transfers.

(2) The National Gambling Impact Study Commission in 1999 recommended the passage of legislation to prohibit wire transfers to Internet gambling sites or the banks which represent them.

(3) Internet gambling is a major cause of debt collection problems for insured depository institutions and the consumer credit industry.

(4) Internet gambling conducted through offshore jurisdictions has been identified by United States law enforcement officials as a significant money laundering vulnerability.

SEC. 3. PROHIBITION ON ACCEPTANCE OF ANY BANK INSTRUMENT FOR UNLAWFUL INTERNET GAMBLING.

(a) IN GENERAL.—No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling—

(1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

(2) an electronic fund transfer or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of the other person;

(3) any check, draft, or similar instrument which is drawn by or on behalf of the other person and is drawn on or payable at or through any financial institution; or

(4) the proceeds of any other form of financial transaction as the Secretary may prescribe by regulation which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of the other person.

(b) DEFINITIONS.—For purposes of this Act, the following definitions shall apply:

(1) BETS OR WAGERS.—The term ''bets or wagers''—

(A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of greater value than

the amount staked or risked in the event of a certain outcome;

(B) includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

(C) includes any scheme of a type described in section 3702 of title 28, United States Code;

(D) includes any instructions or information pertaining to the establishment or movement of funds in an account by the bettor or customer with the business of betting or wagering; and

(E) does not include—

(i) any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) for the purchase or sale of securities (as that term is defined in section 3(a)(10) of such Act);

(ii) any transaction conducted on or subject to the rules of a registered entity or exempt board of trade pursuant to the Commodity Exchange Act;

(iii) any over-the-counter derivative instrument;

(iv) any other transaction that—

(I) is excluded or exempt from regulation under the Commodity Exchange Act; or

(II) is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act or section 28(a) of the Securities Exchange Act of 1934;

(v) any contract of indemnity or guarantee;

(vi) any contract for insurance;

(vii) any deposit or other transaction with a depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act);

(viii) any participation in a simulation sports game or an educational game or contest that—

(I) is not dependent solely on the outcome of any single sporting event or nonparticipant's singular individual

performance in any single sporting event;

(II) has an outcome that reflects the relative knowledge and skill of the participants with such outcome determined predominantly by accumulated statistical results of sporting events; and

(III) 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; and

(ix) any lawful transaction with a business licensed or authorized by a State.

(2) BUSINESS OF BETTING OR WAGERING.—The term ''business of betting or wagering'' does not include, other than for purposes of subsection (e), any creditor, credit card issuer, insured depository institution, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund trans-

fer, stored value product transaction, or money transmitting service, or any participant in such network, or any interactive computer service or telecommunications service.

(3) DESIGNATED PAYMENT SYSTEM DEFINED.—The term ''designated payment system'' means any system utilized by any creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, or money transmitting service, or any participant in such network, that the Secretary, in consultation with the Board of Governors of the Federal Reserve System and the Attorney General, determines, by regulation or order, could be utilized in connection with, or to facilitate, any restricted transaction.

(4) INTERNET.—The term ''Internet'' means the international computer network of interoperable packet switched data networks.

(5) INTERACTIVE COMPUTER SERVICE.—The term ''interactive computer service'' has the same

meaning as in section 230(f) of the Communications Act of 1934.

(6) RESTRICTED TRANSACTION.—The term ''restricted transaction'' means any transaction or transmittal involving any credit, funds, instrument, or proceeds described in any paragraph of subsection (a) which the recipient is prohibited from accepting under subsection (a).

(7) UNLAWFUL INTERNET GAMBLING.—The term ''unlawful Internet gambling'' means to place, receive, or otherwise transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State in which the bet or wager is initiated, received, or otherwise made.

(8) OTHER TERMS.—

(A) CREDIT; CREDITOR; AND CREDIT CARD.—The terms ''credit'', ''creditor'', and ''credit card'' have the meanings given such terms in section 103 of the Truth in Lending Act.

(B) ELECTRONIC FUND TRANSFER.—The term ''electronic fund transfer''—

(i) has the meaning given such term in section 903 of the Electronic Fund Transfer Act; and

(ii) includes any fund transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

(C) FINANCIAL INSTITUTION.—The term ''financial institution'' has the meaning given such term in section 903 of the Electronic Fund Transfer Act.

(D) MONEY TRANSMITTING BUSINESS AND MONEY TRANSMITTING SERVICE.—The terms ''money transmitting business'' and ''money transmitting service'' have the meanings given such terms in section 5330(d) of title 31, United States Code.

(E) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(c) CIVIL REMEDIES.—

(1) JURISDICTION.—The district courts of the United States shall have original and exclusive jurisdiction to prevent and restrain violations of this section by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under this section.

(2) PROCEEDINGS.—

(A) INSTITUTION BY FEDERAL GOVERNMENT.—

(i) IN GENERAL.—The United States, acting through the Attorney General, may institute proceedings under this subsection to prevent or restrain a violation of this section.

(ii) RELIEF.—Upon application of the United States under this subparagraph, the district court may enter a preliminary injunction or an injunction against any person to prevent or restrain a violation of this section, in accordance with Rule 65 of the Federal Rules of Civil Procedure.

(B) INSTITUTION BY STATE ATTORNEY GENERAL.—

(i) IN GENERAL.—The attorney general of a State (or other appropriate State official) in which a violation of this section allegedly has occurred or will occur may institute proceedings under this subsection to prevent or restrain the violation.

(ii) RELIEF.—Upon application of the attorney general (or other appropriate

State official) of an affected State under this subparagraph, the district court may enter a preliminary injunction or an injunction against any person to prevent or restrain a violation of this section, in accordance with Rule 65 of the Federal Rules of Civil Procedure.

(C) INDIAN LANDS.—

(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), for a violation that is alleged to have occurred, or may occur, on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act)—

(I) the United States shall have the enforcement authority provided under subparagraph (A); and

(II) the enforcement authorities specified in an applicable Tribal-State compact negotiated under section 11 of the Indian Gaming Regulatory Act shall be carried out in accordance with that compact.

(ii) RULE OF CONSTRUCTION.—No provision of this section shall be construed

as altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act.

(3) EXPEDITED PROCEEDINGS.—In addition to any proceeding under paragraph (2), a district court may, in exigent circumstances, enter a temporary restraining order against a person alleged to be in violation of this section upon application of the United States under paragraph (2)(A), or the attorney general (or other appropriate State official) of an affected State under paragraph (2)(B), in accordance with Rule 65(b) of the Federal Rules of Civil Procedure.

(4) LIMITATION RELATING TO INTERACTIVE COMPUTER SERVICES.—

(A) IN GENERAL.—Relief granted under this subsection against an interactive computer service shall—

(i) be limited to the removal of, or disabling of access to, an online site violating this section, or a hypertext link to an online site violating this section, that resides on a computer server that such service controls or operates; except this limitation shall not apply if the service is subject to

liability under this section pursuant to subsection (e);

(ii) be available only after notice to the interactive computer service and an opportunity for the service to appear are provided;

(iii) not impose any obligation on an interactive computer service to monitor its service or to affirmatively seek facts indicating activity violating this section;

(iv) specify the interactive computer service to which it applies; and

(v) specifically identify the location of the online site or hypertext link to be removed or access to which is to be disabled.

(B) COORDINATION WITH OTHER LAW.—An interactive computer service that does not violate this section shall not be liable under section 1084 of title 18, except this limitation shall not apply if an interactive computer service has actual knowledge and control of bets and wagers and—

(i) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received,

or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

(ii) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

(5) FACTORS TO BE CONSIDERED IN CERTAIN CASES.—In considering granting relief under this subsection against any payment system, or any participant in a payment system that is a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, or money transmitting service, or a participant in such network, the court shall consider the following factors:

(A) The extent to which such person is extending credit or transmitting funds knowing

the transaction is in connection with unlawful Internet gambling.

(B) The history of such person in extending credit or transmitting funds knowing the transaction is in connection with unlawful Internet gambling.

(C) The extent to which such person has established and is maintaining policies and procedures in compliance with regulations prescribed under subsection (f).

(D) The feasibility that any specific remedy prescribed in the order issued under this subsection can be implemented by such person without substantial deviation from normal business practice.

(E) The costs and burdens the specific remedy will have on such person.

(6) NOTICE TO REGULATORS AND FINANCIAL INSTITUTIONS.—Before initiating any proceeding under paragraph (2) with respect to a violation or potential violation of this section by any creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized

to effect a credit transaction, electronic fund transfer, or money transmitting service, or any participant in such network, the Attorney General of the United States or an attorney general of a State (or other appropriate State official) shall—

(A) notify such person, and the appropriate regulatory agency (as determined in accordance with subsection (f)(5)) for such person, of such violation or potential violation and the remedy to be sought in such proceeding; and

(B) allow such person 30 days to implement a reasonable remedy for the violation or potential violation, consistent with the factors described in paragraph (5) and in conjunction with such action as the appropriate regulatory agency may take.

(d) CRIMINAL PENALTY.—

(1) IN GENERAL.—Whoever violates this section shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

(2) PERMANENT INJUNCTION.—Upon conviction of a person under this subsection, the court may enter a permanent injunction enjoining such person from placing, receiving, or otherwise making

illegal bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

(e) CIRCUMVENTIONS PROHIBITED.—Notwithstanding subsection (b)(2), a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, or money transmitting service, or any participant in such network, or any interactive computer service or telecommunications service, may be liable under this section if such creditor, issuer, institution, operator, business, network, or participant has actual knowledge and control of bets and wagers and—

(1) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

(2) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise

made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

(f) POLICIES AND PROCEDURES TO IDENTIFY AND PREVENT RESTRICTED TRANSACTIONS IN PAYMENT FOR UNLAWFUL INTERNET GAMBLING.—

(1) REGULATIONS.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Board of Governors of the Federal Reserve System and the Attorney General, shall prescribe regulations requiring any designated payment system to establish policies and procedures reasonably designed to identify and prevent restricted transactions in any of the following ways:

(A) The establishment of policies and procedures that—

(i) allow the payment system and any person involved in the payment system to identify restricted transactions by means of codes in authorization messages or by other means; and

(ii) block restricted transactions identified as a result of the policies and procedures developed pursuant to clause (i).

(B) The establishment of policies and procedures that prevent the acceptance of the products or services of the payment system in connection with a restricted transaction.

(2) REQUIREMENTS FOR POLICIES AND PROCEDURES.—In prescribing regulations pursuant to paragraph (1), the Secretary shall—

(A) identify types of policies and procedures, including nonexclusive examples, which would be deemed to be ''reasonably designed to identify'' and ''reasonably designed to block'' or to ''prevent the acceptance of the products or services'' with respect to each type of transaction, such as, should credit card transactions be so designated, identifying transactions by a code or codes in the authorization message and denying authorization of a credit card transaction in response to an authorization message;

(B) to the extent practical, permit any participant in a payment system to choose among alternative means of identifying and blocking, or otherwise preventing the acceptance of the products or services of the payment system or participant in connection with, restricted transactions; and

(C) consider exempting restricted transactions from any requirement under paragraph (1) if the Secretary finds that it is not reasonably practical to identify and block, or otherwise prevent, such transactions.

(3) COMPLIANCE WITH PAYMENT SYSTEM POLICIES AND PROCEDURES.—A creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, or money transmitting service, or a participant in such network, meets the requirement of paragraph (1) if—

(A) such person relies on and complies with the policies and procedures of a designated payment system of which it is a member or participant to—

(i) identify and block restricted transactions; or

(ii) otherwise prevent the acceptance of the products or services of the payment system, member, or participant in connection with restricted transactions; and

(B) such policies and procedures of the designated payment system comply with the requirements of regulations prescribed under paragraph (1).

(4) NO LIABILITY FOR BLOCKING OR REFUSING TO HONOR RESTRICTED TRANSACTIONS.—A person that is subject to a regulation prescribed or order issued under this subsection and blocks, or otherwise refuses to honor, a restricted transaction, or as a member of a designated payment system relies on the policies and procedures of the payment system, in an effort to comply with this section shall not be liable to any party for such action.

(5) ENFORCEMENT.—This subsection shall be enforced by the Federal functional regulators and the Federal Trade Commission under applicable law in the manner provided in section 505(a) of the Gramm-Leach-Bliley Act.

SEC. 4. INTERNET GAMBLING IN OR THROUGH FOREIGN JURISDICTIONS.

(a) IN GENERAL.—In deliberations between the United States Government and any other country on money laundering, corruption, and crime issues, the United States Government should—

(1) encourage cooperation by foreign governments and relevant international fora in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes;

(2) advance policies that promote the cooperation of foreign governments, through information sharing or other measures, in the enforcement of this Act; and

(3) encourage the Financial Action Task Force on Money Laundering, in its annual report on money laundering typologies, to study the extent to which Internet gambling operations are being used for money laundering.

(b) REPORT REQUIRED.—The Secretary of the Treasury shall submit an annual report to the Congress on the deliberations between the United States and other countries on issues relating to Internet gambling.

SEC. 5. AMENDMENTS TO GAMBLING PROVISIONS.

(a) AMENDMENT TO DEFINITION.—Section 1081 of title 18, United States Code, is amended—

(1) by designating the five undesignated paragraphs that begin with ''The term'' as paragraphs (1) through (5), respectively; and

(2) in paragraph (5), as so designated—

(A) by striking ''wire communication'' and inserting ''communication'';

(B) by inserting ''satellite, microwave,'' after ''cable,''; and

(C) by inserting ''(whether fixed or mobile)'' after ''connection''.

(b) INCREASE IN PENALTY FOR UNLAWFUL WIRE TRANSFERS OF WAGERING INFORMATION.—Section 1084(a) of title 18, United States Code, is amended by striking ''two years'' and inserting ''5 years''.

○

Chairman SENSENBRENNER. And the Chair recognizes the gentleman from North Carolina to strike the last word.

Mr. COBLE. I thank the Chairman.

Mr. Chairman, H.R. 21, the "Unlawful Internet Gambling Funding Prohibition Act," introduced by Congressman Jim Leach, addresses a serious concern for many Americans; that is, the problem of Internet gambling.

It is now estimated that 4.2 billion is wagered over the Internet each year. This is an increase from $445 million just 6 years ago. There are currently more than 1,800 Internet gambling sites, and the total dollar amount wagered worldwide is expected to reach 10 billion in the near future.

The most troubling aspect of Internet gambling is the relative ease of accessibility for our Nation's children. The anonymous nature of the Internet makes it almost impossible to prevent underage gamblers from using their parents' credit cards, or even their own in some cases, to log on to a Web site.

Another group of people particularly susceptible to Internet gambling are America's problem gamblers. The National Council of Problem Gambling estimates that there are currently 11 million Americans directly suffering from gambling problems. High rates of financial debt, unemployment, bankruptcy, divorce, homelessness, and suicide are all associated with problem gambling. Virtual casinos and their video game structure have been labeled the crack cocaine of gambling. These facilities are open 24 hours a day, 7 days a week, all within a person's own home. By making gambling more convenient, it can do nothing but make the problem worse, it seems to me.

In addition to the social problems associated with Internet gambling, these Internet sites also offer organized crime groups a very simple opportunity to launder the proceeds of their criminal activities. Because of the lack of oversight or regulations and the high degree of anonymity, money laundering through Internet gambling sites is already a major concern to our Nation's law enforcement agencies.

Federal law is currently unclear as to whether or not all types of Internet gambling is illegal. H.R. 21 is intended to make it crystal clear that operating a gambling business on the Internet is, in fact, illegal.

This bill creates a new crime of accepting financial instruments such as credit cards or electronic fund transfers for debts incurred in illegal Internet gambling.

Also, because the perpetrators of this crime are offshore and beyond the reach of U.S. law enforcement tactics, the bill enables State and Federal attorneys general to request that injunctions be issued to any party, such as financial institutions and Internet service providers, to assist in the prevention or restraint of this crime.

Finally, the bill allows Federal bank regulators to create rules requiring financial institutions to use designated methods to block or filter illegal Internet gambling transactions.

Mr. Speaker, I urge my colleagues to support this legislation, and I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Michigan.

Mr. CONYERS. Thank you, Mr. Chairman.

This is our annual Internet gambling bill that we have to deal with on a yearly basis. And in this ritual, the Congress considers a bill that is supposed to prohibit Internet gambling, but actually expands it.

By the way, to my friend from Carolina, Mr. Coble, didn't the Department of Justice have some reservations about this bill? I yield.

Mr. COBLE. Not known to me, Mr. Conyers. Perhaps they did, but I am not aware of it.

Mr. CONYERS. Did they testify before this Subcommittee? They testified, and they pointed out it would permit more gambling.

Now, the bill has a different name, but it is the same game. While proponents—you know, we talk about the evils of gambling. Did Bennett testify before your Subcommittee, Mr. Chairman—Subcommittee Chairman? Did Bill Bennett testify before your Subcommittee?

Mr. COBLE. He did not.

Mr. CONYERS. He didn't. Okay. Proponents talk about the evils of gambling, and they expand it yet for horse racing, dog racing. And the bill explicitly carves out for any lawful transaction within a business license or authorized by the State—that translates into horse racing, dog racing, on Internet sites—it doesn't require that these businesses be licensed for Internet gambling, just any kind of license will do.

Now, we dealt with this last year, and it is back again in a new form.

Now, what about lotteries? Boy, there I am proud to join with the Free Congress Foundation, the Traditional Values Coalition, that say that this bill will expand gambling. And so this is a critical issue here. Either at the hearings, which we are so happy to have at the Subcommittee level, either supports that it expands gambling or it doesn't. The United States Department of Justice suggested that in its present form, it would. So all we are saying is this: Instead of imposing an Internet gambling prohibition that will drive many Internet gambling operations offshore—that is the problem we have here—into the hands of the unscrupulous, why don't we in the Committee set an example by examining the feasibility of strictly licensing and regulating the on-line gaming industry? A gambling industry will ensure that gaming companies play fair and drive out the disreputable operators in the field. It also, incidentally—if anybody cares anymore—it preserves States rights.

The rules should be simple. If the State does not want to allow gambling in its borders, a licensed operator should exclude the State's residents from being able to gamble on its Web site. That is why we have another bill, 1223, that will create a national Internet gambling licensing regulation study commission to go into this.

Now, the R's and the D's in this Committee have stood together against those who wanted to regulate the Internet and restrict its boundaries, and so I hope we don't head down that road to break up this bipartisan opposition that we have enjoyed in the previous years.

Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's time has expired. Are there other amendments? The gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 21 offered by Mr. Cannon:

Page 6, strike line 15 and all that follows through line 16.

Make appropriate clerical and technical changes.

[The amendment follows:]

AMENDMENT TO H.R. 21

OFFERED BY MR. CANNON

Page 6, strike line 15 and all that follows through line 16.

Make appropriate clerical and technical changes.

Chairman SENSENBRENNER. The gentleman from Utah is recognized for 5 minutes.

Mr. CANNON. Thank you, Mr. Chairman.

I would like to start off by just pointing out that I am against gambling, I don't like gambling, and agree with the expression of the Chairman of the Crime Subcommittee as to the vices that are associated with gambling, including youth gambling, people who get addicted and carried away. Did I hear that this bill was called the Bennett bill earlier today somewhere, Mr. Chairman?

There are all kinds of problems with gambling. Utah is one of only two States left in the Union that prohibits all forms of gambling. Hawaii is the only one. We are feeling a little bit in the minority in Utah, and it is my determination to protect Utah from the invasion of gambling outside and in particular on the Internet.

It is my view that whatever we do in this body should limit gambling. There are some disagreements on that, I understand, but in my view is that we ought to be limiting gambling. And, secondly, where we can't limit it, we ought to be thinking in terms of regulation. And, in fact, while there are difficulties in regulating offshore entities, there are entities offshore that want to be regulated and therefore subject themselves to the jurisdiction of the United States and, therefore, prosecution of illegality and crime.

Now, there are a couple problems with this bill, and I don't want to mix them up in my amendment. I have passed out letters from several people that I will come to in a moment, but the opposition to the bill breaks down to a couple of things.

The first is the burden that this bill would create on the Internet. I agree with that, and the statements of people that believe that this bill would be a burden on the Internet. I encourage you to read the letters that we passed out and that I will make part

of the record shortly. That is very important to me, so I oppose the underlying bill.

But, secondly, as I read this bill and several other people read it, this bill—the section that I am striking, III(b)(1)(e)(ix), on page 6, lines 15 and 16, specifically exempt from the definition of bets or wagers any lawful transaction with a business license or authorized by the State. This would exempt, in my view, horse racing, dog racing, lotteries, and in some cases casino-style wagers.

In support of that view—actually, in support of the bill we have, the New York Thoroughbred Breeders, Inc., which would like this bill because they view it as, I believe—in fact, Mr. Chairman, I would like to make four letters part of the record.

Chairman SENSENBRENNER. Without objection.

[The material referred to follows:]

May 12, 2003

The Honorable F. James Sensenbrenner, Jr.
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
By Facsimile Machine

Dear Chairman Sensenbrenner:

On behalf of Traditional Values Coalition's 43,000 member churches, I am writing to raise our concerns about H.R. 21, the Unlawful Internet Gambling Funding Prohibition Act.

Let me begin by saying that we strongly support the goals of H.R. 21, that is, to keep gambling off of the Internet. However, we have always emphasized that any legislation in this area should not pick and choose among various gambling interests, but rather, ban all gambling from the Internet. Our concern is the prospect of people being able to bet from their homes; not the prospect of people betting on black-jack as opposed to horses, or lotteries as opposed to football games.

Of particular concern is a provision of the bill which exempts from the definition of "bets or wagers" any wager placed with a "state-licensed entity." We believe that this provision is a loophole big enough to drive a truck through. We are aware that some people claim that this provision has no real effect, and that it will not allow Internet gambling. However, our concern remains simple: If the relevant provision has no effect, then no one should mind if it is removed from the bill. However, if (as we suspect), it does have the real effect of allowing Internet gambling, then it undercuts the ostensible purpose of the bill. In short, it is either extraneous or insidious, and in either case it should be removed.

We expect that a Republican member of your committee will be offering an amendment to strip out this provision. We strongly urge the adoption of that amendment.

Mr. Chairman, last year, the Judiciary Committee took a bill (H.R. 3125) that was riddled with carve-outs and turned it into a clean and effective bill to stop all Internet gambling. We hope that, under your leadership, the committee can give H.R. 21 similar treatment.

Sincerely,

Rev. Lou Sheldon

Rev. Louis Sheldon
Chairman

100 S. Anaheim Blvd., Suite 350, Anaheim, CA 92805 (714) 520-0300
139 "C" Street S. E., Washington D.C. 20003 (202) 547-8570

May 14, 2003

Dear Member:

The conservative Free Congress Foundation has, since its founding in 1977, been active in preserving the Constitutional rights and freedoms we enjoy as American citizens. Our Center for Technology Policy has been active on issues that curtail those freedoms and with that, we are writing to express our concern over the proposed legislation being offered by Rep. Jim Leach entitled "Unlawful Internet Gambling Funding Prohibition Act" (H.R. 21), currently pending committee review. As fellow conservatives, we wholeheartedly share Mr. Leach's concern over the increasing presence of gambling online and the harm to families and communities that result from it.

The arguments in favor of banning gambling online are compelling, but there is a larger picture to be examined here that transcends a social ill, to which we are wholeheartedly concerned.

1. Like its predecessor, H.R. 3125 "The Internet Gambling Prohibition Act of 1999", H.R. 21 would set a very dangerous precedent with Congress dictating appropriate or acceptable content online. Whether the issue is online gambling or anything else, it is not the role of Congress to determine what content is acceptable online and what is not.

It is important to remember that "mission creep" has been and undoubtedly will always be a problem in Washington. Though H.R. 21 is intended only to prohibit online gambling, passage of this bill will only succeed in opening the floodgates to more content regulation by Congress later on. And while it can be argued that banning online gambling is a worthy cause, a federal government which today can outlaw such activity can turn around in the future and mandate that licensed firearms dealers be forbidden to sell their wares online, or perhaps sites that sell tobacco or even religious books be banned as well. Again, what the Right can do, the Left can do as well and our fear is that H.R. 21 will provide that opportunity for enemies of liberty to be more effective. Once the federal government sets such a precedent, no matter how well-meaning at the outset, it can never again be argued that the government doesn't have the power to ban what it considers harmful. Again, Congress must not be in the business of regulating online content.

2. The narrow picture that has been painted is that if H.R. 21 is passed into law, that it would effectively reduce the risk of addiction to online gambling. While the cause is admirable, we know that this would not be the outcome. In fact, like its predecessor, H.R. 3125 "The Internet Gambling Prohibition Act of 1999", H.R. 21 would only serve as another federal regulation of state-run activity. It would also reinvent the wheel by making illegal those gambling activities which are already illegal under existing federal law. Horseracing, dog racing and jai alai would still be permitted online and therefore, we believe it is highly deceptive for Congress to make the claim that it would be preventing the spread of gambling into the home when in fact, H.R. 21 gives a clear federal stamp of approval for in-home gambling activities. As conservatives, we have traditionally opposed such activity and instead, respected states' rights.

3. In addition to setting a precedent with regard to content regulation, H.R. 21 would also deputize credit card companies and certain financial institutions, a practice which we opposed during the Clinton Administration and continue to oppose now.

Such a practice is dangerous for three reasons: (a) it puts an undo financial burden on these institutions to train personnel, to install the systems necessary to track purchases of their customers; (b) it breaks down further the level of trust that exists between customers and their banks and/or credit card companies and (c) places a costly burden on the customer if a mistake is made on his record by bank personnel. What recourse will the person have for speedy correction

of his records? There is no provision within H.R. 21 that indicates compliance with the Privacy Act of 1974 allowing for an individual to correct his records in the event that an error is made in order to prevent hardship or at the very least, inconvenience to the individual.

In 1998, the Federal Deposit Insurance Corporation along with the Federal Reserve Board, the Comptroller of the Currency and the Office of Thrift Supervision proposed regulations, entitled "Know Your Customer" which, in effect, intended to deputize financial institutions. Not only were many of the banks themselves opposed to the measure but over 325,000 American citizens responded to the agencies during the comment period. All but 78 were opposed to Know Your Customer implementation.

This example should illustrate to the committee the intense opposition by the public to requiring financial institutions to monitor their purchases.

4. We understand that the rules regarding monitoring of individuals have changed since 9/11 and the passage of the USA Patriot Act but we strongly caution the committee to refrain from passing any bill that will further erode the liberties of the American people, specifically with regard to their online purchases and habits.

It is for these reasons that the Free Congress Foundation is in strong opposition to H.R. 21 and we urge you, as members of the committee, to not allow this bill to be voted out of committee. Instead, we urge you to take into consideration the concerns we have expressed in this letter and allow states to correct this problem. Local decisions can be reversed by local people, rather than by Washington. But once a mandate comes from Washington, no local authorities will have any control unless they forego federal funds. History as well as current events prove that to be an unlikely scenario.

While we applaud Mr. Leach for his moral concern over this issue as well as share his concerns, we regret that we cannot support his measure and will actively oppose it.

We will be happy to make ourselves available to discuss this further and provide assistance toward achieving our common goal.

Sincerely,

Paul M. Weyrich
Chairman & CEO

Lisa S. Dean
Director, Center for Technology Policy

AMERICANS FOR TAX REFORM

GROVER G. NORQUIST
PRESIDENT

Chairman James Sensenbrenner
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

As you may know, H.R. 21, the Unlawful Internet Gambling Funding Prohibition Act, seeks to discourage online gaming by targeting credit cards, the most common method for placing bets on the Internet. The Act would require financial institutions to effectively spy on the purchasing habits of their customers and report on "questionable activity" to the government. This raises both privacy and business concerns. **It is for this reason that ATR strongly opposes H.R. 21, the Unlawful Internet Gambling Funding Prohibition Act.**

While H.R. 21 specifically addresses Internet gambling, passage of this legislation would undoubtedly open the door to further bans in other sectors of Internet commerce, including book sales, firearm sales or practically anything else one could purchase over the Internet. The government would soon have license to monitor all of our activity over the Internet.

Furthermore, if this bill were passed, significant additional costs would be imposed on financial institutions as they employ additional resources to rummage through consumers' purchases and report them to the government. Banks would of course pass these additional costs on to consumers--essentially a new tax on us all.

The nature of the Internet also raises questions about the effectiveness of such a measure. An Internet casino might be run, owned and stored on computers all over the world. Therefore one site might involve computers in six countries, all with different laws and social norms regarding gambling.

H.R. 21 amounts to greater government intrusion on individual liberty and significant additional costs to consumers while they simultaneously are afforded less privacy online. This seems quite a high price to pay for a little less Internet gambling. H.R. 21 deputizes financical institutions, advocates privacy intrusions and increases the regulatory burden at the cost of taxpayers and therefore ATR urges opposition to H.R. 21.

Onward,

Grover Norquist

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CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
Government Affairs

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

May 13, 2003

The Honorable F. James Sensenbrenner, Jr.
Chairman, Judiciary Committee
U.S. House of Representatives
2449 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the U.S. Chamber of Commerce, the world's largest business federation, with more than three million members, representing businesses of every size, sector and region of the country, I am writing to express our concerns with H.R. 21, the "Unlawful Internet Gambling Funding Prohibition Act," which is scheduled for mark-up in your Committee on May 14, 2003.

If H.R. 21 were to become law, its enforcement mechanism would set important precedents in the areas of e-commerce and financial services, and these issues are the focus of our concern.

First, we believe that H.R. 21 requires companies to enforce the law without telling them what laws they are supposed to enforce -- the bill makes it a crime to process payment for "unlawful Internet gambling" wagers, without saying what an illegal Internet gambling wager is, or what law should apply. As you know, the definition of an illegal Internet gambling wager is an open question that is being litigated in both federal and state court, and therefore imposing potential criminal penalties on a company for undertaking an action that is neither clearly legal nor illegal, is highly problematic.

Second, compliance with this bill will *not* simply entail blocking of transactions coded as "gambling." The current industry-wide mechanisms used for a variety of financial instruments -- including electronic check or electronic debit transactions -- do not employ a coding system comparable to that for credit cards, which currently code for "gambling." However, the bill applies to *all* financial instruments, which may require other types of money transfers, including checks, to potentially develop a coding system – a potentially costly and unenforceable requirement.

The U.S. Chamber believes that e-commerce presents almost limitless potential for U.S. businesses, and more importantly, the quality of life for U.S. consumers. However, the Internet presents new legal and regulatory issues and challenges whose resolution is critical for the future of this relatively new business medium. For that reason, the U.S. Chamber urges policymakers to use caution in dealing with business on the Internet.

Sincerely,

R. Bruce Josten

cc: Members of Judiciary Committee
Representative Mike Oxley
Representative Jim Leach
Representative Barney Frank

Mr. CANNON. And request to do that.

The second letter is from the Conservative Free Congress Foundation. And the gist of this letter is that, first of all, there are—this section creates carveouts for horse racing, dog racing, and jai alai; and, secondly, that it is not good to regulate commerce on the Internet. The Chamber of Commerce focuses on the enforcement mechanism, and points out that electronic checks or electronic debt transactions don't have the same system that credit cards have today, and that the current bill would encumber the development of those transactions.

The Traditional Values Coalition focuses with clarity on the carveouts.

And then, finally, a letter from the Americans for Tax Reform opposes this on the basis that it creates additional costs on financial institutions, and also that it chooses winners and losers in Internet commerce.

The U.S. Department of Justice and the National Association of Attorneys General have concerns about the carveout. In testimony before the Senate Banking Committee, John Malcomb of the U.S. Department of Justice testified that the aforementioned section was one of the reasons DOJ could not endorse Senate 627, which is nearly identical to H.R. 21. Testifying on behalf of the National Association of Attorneys General, Richard Blumenthal, the Attorney General of Connecticut, warned that under that bill the exceptions could swallow the rule. In testimony before the House Judiciary Committee, when asked if that section of H.R. 21 would allow lotteries to go on-line, Malcomb responded: Absolutely.

H.R. 21 is not really an Internet gambling prohibition bill. In fact, it is an Internet gambling industrial policy bill, defining a favored class of State-sponsored Internet gambling. Last year, during consideration of a similar bill in the 107th Congress, the Judiciary Committee voted overwhelmingly against allowing carveouts in Internet gaming legislation.

Chairman. SENSENBRENNER. The gentleman's time has expired.

Mr. CANNON. Thank you, Mr. Chairman. I yield back.

Chairman SENSENBRENNER. The gentleman from Florida, Mr. Keller.

Mr. KELLER. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KELLER. Mr. Cannon's amendment I believe is very well-intentioned. In fact, the last time around, I tell you that I voted in favor of it. This time, however, I am going to vote against it, and I will tell you why.

First, I think it makes this bill unnecessarily controversial. Second, it interferes with States' rights. And, third, most importantly—for me anyway—is that this bill will have the effect, albeit unintentionally, of killing this legislation. And we don't have to guess, because last year after we put this in the bill, the legislation was never even brought to a floor vote based on its controversial nature.

I want to see this legislation pass. I am a big fan of Mr. Cannon both personally and in terms of his legislative prowess, and I am certain that his heart is in the right place. But as a practical mat-

ter, because I want to see this pass, I am going to vote no, and I would urge other people to consider doing the same.

Mr. CANNON. Would the gentleman yield?

Mr. KELLER. I will.

Mr. CANNON. I thank the gentleman. I don't know if this will kill the legislation or not. Last year, the sponsor, in the Judiciary Committee, of the bill congratulated me for making the bill more conservative. I think that that is clearly the case.

There is an alternative to the bill and the way we are doing it. And, if it can't be passed without the carveouts, then it probably shouldn't be passed. I think the only thing we can really do that makes a difference is to regulate. And I don't know how to did that yet. And so Mr. Conyers and I have introduced a bill that would propose a study for doing that. I think the weight of the problems of this bill are greater than any good that might come out of it, and I will tell you that from my perspective and from the State of Utah—we don't have anyone here from Hawaii, but I suspect the feeling would be the same there—this is insidious. The section that I am moving to strike is either irrelevant—in other words, it won't kill the bill to take it out—or it is insidious. If it is insidious, then it ought to come out for the sake of Utah and Hawaii and all the other States that want to limit gambling around the country.

Thank you, And I yield back.

Mr. KELLER. Mr. Cannon, and just to reclaim my time. I certainly respect what you have to say. I guess it just comes down to the fact that ultimately I would rather have 90 percent of a loaf of bread than no loaf, frankly. And, with that, I will yield back.

Chairman SENSENBRENNER. The gentleman from Florida, Mr. Wexler.

Mr. WEXLER. Thank you, Mr. Chairman. And I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WEXLER. Thank you.

I, too, am a big fan of Mr. Cannon, and I very much appreciate his candor at the beginning of the explanation of his amendment, which is, he very rightfully says he does not like gambling.

[11:00 a.m.]

Mr. WEXLER. And Mr. Cannon rightfully points out that the State which he represents is apparently one of two, as I understand it, that specifically prohibit gambling in the context that he speaks of. The issue is not whether Mr. Cannon or any one of us likes or doesn't like gambling. If I understand Mr. Cannon's amendment correctly, the issue is whether we are going to make a policy that says Americans cannot use credit cards for behavior that is entirely legal. That is the question.

I think smoking is awful, but I would never suggest that Americans shouldn't be able to use credit cards to purchase cigarettes because I happen to think it is a bad thing. Or I wouldn't argue that somebody shouldn't be able to use a credit card to purchase alcohol because I may think alcohol may not be the right thing or there is a list, God knows, we could all come up with of behaviors that people may find objectionable.

The issue here is whether or not Congress is going to make a policy that says Americans cannot use credit cards to engage in a be-

havior which in their State is legal. That is the only issue. And Mr. Cannon, very honestly and deliberately, says he believes that because gambling is bad we as a national legislature should prohibit Americans from using credit cards for a——

Mr. CANNON. Would the gentleman yield? That is not exactly what I am saying. The underlying bill prohibits using credit cards, and I agree with everything the gentleman has said up to this point. I am only suggesting—I don't like that. I would associate myself with your comments up to this point. In my amendment, all we are doing is limiting the extension of this bill to the State of Utah. In other words, the amendment I am making either removes an irrelevant piece of this bill or removes a piece of this bill which is insidious.

Mr. Keller's comment that this amendment makes the bill controversial. If the gentleman doesn't want to limit credit card access to gambling, then he would want to support my bill if he believes that Mr. Keller is correct that my amendment would make the bill more controversial.

I yield back.

Mr. WEXLER. If I may retake my time for just a quick moment. As I understand the bill, if any State prohibits a behavior or activity, then this bill would not give people the right to engage in it. Only activity which is legal under a State's law, that is the activity in which that an individual can engage in. In Utah, if it is already illegal, it would seem to me already under this bill, Mr. Cannon, you and the people of Utah have nothing to worry about.

Mr. GOODLATTE. Would the gentleman yield? I thank the gentleman for yielding. The gentleman from Florida is exactly right. This has no impact on the people of the State of Utah because the State of Utah, as the gentleman correctly notes, is one of two States that don't allow any type of gambling. So the language he seeks to strike, which says any lawful transaction with a business licensed or authorized by a State, clearly does not affect the State of Utah.

Mr. WEXLER. I yield to Mr. Cannon. He wanted time.

Mr. CANNON. Thank you. If that was the case then there wouldn't be a question about making the bill more controversial with my amendment.

Mr. WEXLER. Retaking my time, yes, because it seems that your amendment would make it so that in other States where there is, in fact, legal activity it would prohibit the use of credit cards by those citizens.

Mr. CANNON. No, no. That is the underlying bill that does that.

Mr. WEXLER. No. The underlying bill allows credit card use if it is for a legal activity already sanctioned in the State. If it is not sanctioned, then you can't do it anyway.

Mr. CONYERS. Could I ask my friend, have you seen page 3 of this bill in which casinos can't use credit cards? And I will read it to you just in case you may not have seen it. Means the staking or risking by any person or something of value upon the outcome of a contest, a sporting event, now catch this, or a game subject to chance. And so you are absolutely right, Mr. Cannon, that what we are doing for one we are now not doing for the others. We are saying that casinos where it is lawful can't use credit cards. Now so

much for people smoking and not being able to use credit cards and gamblers not being able to——

Chairman SENSENBRENNER. Gentleman's time has expired.

Mr. CONYERS.—what is wrong with casinos? Why do casinos get discriminated?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Mr. Chairman, I want to associate myself with the glowing comments that have been directed in the direction of Mr. Cannon. I also am an avid fan of Mr. Cannon, however, I oppose this amendment. Not unlike much legislation that comes before us, Mr. Chairman, conclusions are oftentimes subject to interpretation. It is my belief that Mr. Wexler and Mr. Goodlatte are on the money. It is my belief—no pun intended—maybe I should strike that.

Chairman SENSENBRENNER. Would the gentleman yield? Do you have a license from North Carolina for that?

Mr. COBLE. We will strike that previous word. I believe Mr. Wexler and Mr. Goodlatte are correct in that if this bill passes in its present form, I believe that gambling would still be unlawful in Utah. Now I think Mr. Cannon probably does not agree with that, but I oppose the amendment further because it would strike the provision of the bill that states that the term "bets or wages" does not include any lawful transaction with a business licensed or authorized by a State. This provision is duplicative of the actual definition of unlawful Internet gambling as it appears on page 8 of the bill which is defined as a bet or wager that is unlawful under any applicable Federal or State law.

I am told that some groups feel that this is a carve-out in their favor from the prohibition set forth in the bill. I believe that those groups are misinterpreting current law and with or without this provision will have to contend with the prohibitions of the Wire Act. Contrary to what some have said, this subsection does not serve as a loophole for the expansion of gambling.

First, the provision requires a State to authorize or license the business. This requires action by the States so that Internet gambling sites do not justify their existence with the fact that a State does not specifically forbid that activity.

Second, the transaction must be lawful to fall under the exemption. In other words, the authorization or license must be consistent with State and Federal law. For example, in order not to violate the Wire Act, a State that wants to sell lottery tickets online would have to show that nobody outside of that State is able to purchase those tickets online. And I believe, Mr. Chairman, with current technology this is practically impossible. I believe the language that the gentleman seeks to strike simply preserves the ability of States to regulate gambling. Because of this I would ask my colleagues to oppose the amendment.

Mr. CANNON. Mr. Coble, would you yield for a question? We had testimony the other day that indicated that MGM could limit the place from which people were placing bets, at least with current technology. Are you suggesting by your comments that no State lottery could go online because of the prohibition—because they would have an almost impossible time proving that no one in Utah could place a bet on a lottery from, say, Tennessee?

Mr. COBLE. With current technology, yeah.

Mr. CANNON. In other words, you are saying that Tennessee will not go online with its lottery because Tennessee cannot prove that it cannot prohibit people in Utah from betting?

Mr. COBLE. That is my belief.

Mr. CANNON. With all due respect, I don't want this law to turn on technology or the lack thereof. I don't think that we can rely on that. I think if this is duplicative, as you just said, then it ought to come out. I don't see a purpose for it if it is duplicative. If it is not duplicative then we are going to have judges and appeals courts determining what this actually means from their own light instead of the light we are trying to shine here. If this does what I believe it does, which is create carveouts, it ought to go, or at least we want to be clear about that as they vote. If it is duplicative then it ought to go.

Mr. COBLE. Let me reclaim. I think what I have tried to make clear is the fact that I think this bill in its present form preserves the right for States to regulate gambling. And with that I yield back.

Chairman SENSENBRENNER. The question is on the adoption——

Mr. GOODLATTE. Mr. Chairman.

Chairman SENSENBRENNER. Gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GOODLATTE. Thank you, Mr. Chairman. I will be brief. I want to associate myself with the remarks of the Chairman of the Subcommittee, the gentleman from Florida, in opposition to this amendment. Now it is noteworthy that both gentlemen from Florida voted for a Cannon amendment when a different bill came before this Committee last year, but therein lies the key. This is a very different piece of legislation than the legislation that I brought before the Committee last year. This is the legislation that came from the Financial Services Committee passed by Mr. Oxley and Mr. Leach. They strongly opposed this amendment because they know that it gets back to the problems everybody told me they had with my bill last time.

We don't need to jump back into that thicket. We need to address this legislation. It has an incredibly wide basis of support. The gentleman cited some letters he made a part of the record which were conflicting. Some of those folks like Free Congress don't want any regulation on the Internet. Others like the Traditional Values want total regulation on the Internet. These are the groups, however, who support this specific bill and not the Cannon amendment: The National Collegiate Athletic Association, Major League Baseball, the Family Research Council, the United Methodist Church, the American Family Association, SBC, the United States Telephone Association, American Express, Morgan Stanley, Citigroup, Securities Industries Association, Christian Coalition, the National Football League, the Federal Law Enforcement Officers Association, the Family Foundation, Focus on the Family, Southern Baptist Convention, Presbyterian Church, Net Coalition.com, Qwest, Allegiance Telecom, the AARP, Household Finance, eBay, MBNA and Con-

cerned Women for America. That is an amazingly broad based support for this legislation.

Don't spoil it by throwing it back into the thicket that I had you in in the last Congress. And believe me, I have learned from that. If you do, then suddenly you have this whole issue of whether or not certain groups, whether it is horses or dogs or jai alai or State lotteries

Or casinos or Indians, you name it, whatever the group is, if they think that their current view of the law is affected by removing the right of the States to regulate gambling, which this bill preserves, they are going to be off of the sidelines and again involved in this thicket. We don't need to go there with this kind of broad based support for the current bill.

I urge my colleagues to oppose the amendment and support the underlying bill.

Chairman SENSENBRENNER. Question is on the amendment offered by the gentleman from Utah, Mr. Cannon. Those in favor will say aye. Opposed no. The ayes appear to have it.

Mr. CANNON. I ask for a rollcall.

Chairman SENSENBRENNER. The question is on the Cannon amendment. Those in favor will as your name is called, answer aye. Those opposed no, and the Clerk will call the roll.

The CLERK. Mr. Hyde.

[no response.]

The CLERK. Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble votes no.

Mr. Smith.

Mr. SMITH. No.

The CLERK. Mr. Smith votes no.

Mr. Gallegly.

[no response.]

The CLERK. Mr. Goodlatte.

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte votes no.

Mr. Chabot.

[no response.]

The CLERK. Mr. Jenkins.

[no response.]

The CLERK. Mr. Cannon.

Mr. CANNON. Aye.

The CLERK. Mr. Cannon votes aye.

Mr. Bachus.

Mr. BACHUS. No.

The CLERK. Mr. Bachus votes no.

Mr. Hostettler.

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler votes aye.

Mr. Green.

Mr. GREEN. Aye.

The CLERK. Mr. Green votes aye.

Mr. Keller.

Mr. KELLER. No.

The CLERK. Mr. Keller votes no.

Ms. Hart.

[no response.]
The CLERK. Mr. Flake.
[no response.]
The CLERK. Mr. Pence.
Mr. PENCE. No.
The CLERK. Mr. Pence votes no.
Mr. Forbes.
[No response.]
The CLERK. Mr. King.
Mr. KING. No.
The CLERK. Mr. King votes no.
Mr. Carter.
Mr. CARTER. No.
The CLERK. Mr. Carter votes no.
Mr. Feeney.
Mr. FEENEY. No.
The CLERK. Mr. Feeney votes no.
Mrs. Blackburn.
Mrs. BLACKBURN. Aye.
The CLERK. Mrs. Blackburn votes aye.
Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers votes aye.
Mr. Berman.
[no response.]
The CLERK. Mr. Boucher.
[no response.]
The CLERK. Mr. Nadler.
Mr. NADLER. No.
The CLERK. Mr. Nadler votes no.
Mr. Scott.
Mr. SCOTT. No.
The CLERK. Mr. Scott votes no.
Mr. Watt.
Mr. WATT. Aye.
The CLERK. Mr. Watt votes aye.
Ms. Lofgren.
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren votes aye.
Ms. Jackson Lee.
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee votes aye.
Ms. Waters.
[no response.]
The CLERK. Mr. Meehan.
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan votes aye.
Mr. Delahunt.
[no response.]
The CLERK. Mr. Wexler.
Mr. WEXLER. No.
The CLERK. Mr. Wexler votes no.
Ms. Baldwin.
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin votes aye.

Mr. Weiner.
Mr. WEINER. Aye.
The CLERK. Mr. Weiner votes aye.
Mr. Schiff.
Mr. SCHIFF. No.
The CLERK. Mr. Schiff votes no.
Ms. Sánchez.
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez votes aye.
Mr. Chairman.
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman votes aye.
Chairman SENSENBRENNER. Additional Members wish to cast or change their vote?
Gentleman from Ohio, Mr. Chabot.
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no.
Chairman SENSENBRENNER. Gentleman from Tennessee, Mr. Jenkins.
Mr. JENKINS. Aye.
The CLERK. Mr. Jenkins, aye.
The CLERK. Gentlewoman from Pennsylvania, Ms. Hart.
Ms. HART. No.
The CLERK. Ms. Hart, no.
Chairman SENSENBRENNER. Gentleman from California, Mr. Berman.
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye.
Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? If not, the Clerk will report.
Gentlewoman from California, Ms. Waters.
Mr. NADLER. Mr. Chairman.
Chairman SENSENBRENNER. Are there further Members? Gentlewoman from California, Ms. Waters.
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Chairman SENSENBRENNER. Further Members wish to cast or change their vote? If not, the Clerk will report.
The CLERK. Mr. Chairman, there are 16 ayes and 15 nays.
Chairman SENSENBRENNER. And the amendment is agreed to. Are there further amendments?
Ms. JACKSON LEE. Mr. Chairman, I have an amendment at the desk. Amendment No. 1.
Chairman SENSENBRENNER. The Clerk will report the amendment.
The CLERK. Amendment to H.R. 21 offered by Ms. Jackson Lee. Unlawful Internet gambling, strike section 3.
[The amendment follows:]

JACKSON LEE AMENDMENT #1 – To H.R. 21 – "Unlawful Internet Gambling Funding Prohibition Act."

Strike Section 3.

Chairman SENSENBRENNER. Gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. Specifically, Mr. Chairman, thank you very much. And might I say that I am in support of understanding the impact of Internet gambling and would encourage this Committee at the appropriate time to support the Conyers-Cannon legislation that would allow us to do so. I think it is appropriate to note that I have been on record in supporting the concept and this bill in the past. I have no, if you will, skepticism of now approaching it from a different perspective and to also ask to move this bill or this theory along by supporting the legislation of Conyers-Cannon, but because I think we will gain a further understanding.

But this amendment in particular strikes all of section 3.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman and Mr. Ranking Member, I have serious reservations about H.R. 21, the "Unlawful Internet Gambling Funding Act" because I believe that this legislation is premature, should be opposed by all of my colleague, or in the alternative, should be subjected to copious amendments.

I have reservations about H.R. 21 because while I believe very strongly that internet gambling should be heavily regulated, I am not convinced that the bans proposed in H.R. 21 are the most prudent course of action at this time.

We have several options that we should consider before imposing bans. For example, I believe the legislative option proposed by my distinguished colleague, and Ranking Member of the full Judiciary Committee, John Conyers in H.R. 1223 should be given our full consideration before imposing the bans in H.R. 21. Congressman Conyers recommend that we conduct further inquiries into the best ways to regulate the Internet gambling issue instead of rushing to ban portions of it.

H.R. 21 prohibits Internet gambling businesses from accepting bets from credit cards, electronic fund transfers, money transmitting business transfers, and instruments or transactions drawn through financial institutions. It also grants Federal district courts jurisdiction over violations of bill, requires the Secretary of the Treasury to prescribe regulations on payment systems and policies to prevent restricted transactions, and calls for U.S. and foreign governments to cooperate to prevent money laundering and other crimes.

The issue of Internet gambling is always debated vigorously. The Internet gambling industry receives wagers amounting to an estimated $4.2 billion dollars per year through 1,800 internet gambling sites. Internet gambling has a high likelihood of causing personal bankruptcy, provides a fertile ground for fraud and money laundering, is difficult for states to regulate, and offers an addictive and appealing gambling outlet for children.

I was an original co-sponsor of H.R. 3215, an internet gambling bill considered in the last Congress, because of my grave concern that children and teenage gamblers, who have wide access to the Internet, will abuse the Internet for gambling. A study released by the American Psychological Association finds that pathological gambling is more prevalent among youths than adults. Between five and eight percent of young Americans and Canadians have a serious gambling problem, compared with one to three percent of adults. The study went on to say that with gambling becoming more accessible in U.S. society, it will be important to be able to intervene in children's and adolescent's lives before the activity can develop into a problem behavior.

Many Internet gambling sites require bare minimum information from gamblers to participate. Security on bets placed over the Internet has proven ineffective. And unlike traditional regulated casinos, Internet operators have no demonstrated ability or requirement to verify a participant's age or identification. Also, an Internet gambling site can easily take a person's money, shut down their sites, and move on.

Gambling over the Internet, particularly because of the danger it poses to our children, is an industry that I feel is in dire need of heavy regulation. Particularly, given the fact that the majority of our citizens and children have access to computers and the Internet, we must ensure that laws are in place to eliminate the potential harm of Internet gambling.

I will propose two amendments to H.R. 21 specifically geared toward protecting children from the dangers of internet gambling.

While I am concerned about the impact of Internet gambling and support rigorous regulation, I am also concerned that we have insufficient data to reach a conclusion at this time. For example, I recently met with representatives of Sure Fire Commerce, an on-line payment processing company that represents Internet gaming merchants. According to Sure Fire's records, they receive approximately 60,000 complaints yearly from customers who found unrecognized charges on their credit cards. Of those 60,000 unrecognized charges an average of only 5 have been for underage gambling. While I find one incident of underage gambling unacceptable, Sure Fire's statistics suggest that more study into the impact of Internet gambling is necessary.

Additionally, there is also evidence that passing H.R. 21, and banning certain Internet gambling funding mechanisms, will worsen the problems of underage internet gambling. If U.S. financial institutions are prohibited from processing Internet gambling bets, habitual gamblers and children will be forced to make the bets through foreign financial institutions that are far less regulated. The global scope of the Internet makes these foreign financial institutions readily accessible. By passing H.R. 21 prematurely, we may not reduce the incidence of underage gambling or habitual gambling at all. We may simply force children and gambling addicts to use less credible betting outlets.

Mr. Chairman and Mr. Ranking Member, I strongly believe that gambling is a protected individual freedom and personal choice. I also believe that the Congress should pass legislation that strictly regulates the gambling industry to prevent underage gambling, habitual gambling, and also money laundering. However, I feel that regulating such as massive industry should not be done without a comprehensive analysis to determine the most prudent regulations. For, these reasons I believe that H.R. 21 is premature, and I encourage my colleagues reconsider passing this legislation without ample amendment.

Mr. Chairman, the Committee is not in order.

Chairman SENSENBRENNER. The gentlewoman is correct. The meeting will be in order.

Ms. JACKSON LEE. The amendment strikes all of section 3. It leaves section 4, Internet gambling in or through foreign jurisdictions, United States and international countries cooperate to prevent money laundering. It leaves section 5, amendments to gambling provisions, increases penalty for unlawful wire transfers. This amendment removes the loophole riddled portion of the bill that creates significant new hardships on financial institutions, has troubling implications for Internet privacy and is probably unworkable.

It leaves in place a simple amendment to the Wire Act, which is the current law banning the interstate transmission of bets or wages that makes clear that any bet that is illegal under current law over the telephone is also illegal on the Internet regardless of whether Internet wage passes through a wire, is wireless, satellite based on whatever. But what this does is of course manages to get us to where we would like to be, and that is to get a better understanding of this problem of Internet gambling and to allow this bill not to be shackled, if you will, with some of the aspects that have been controversial in the bill.

I ask my colleagues to support it.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, I propose this amendment to H.R. 21 to strike Section 3 of the bill which contains the provisions prohibiting persons engaged in betting or wagering businesses from accepting credit, the proceeds of credit, electronic funds transfers, checks, drafts, or similar instruments, in connection with the participation of another person in unlawful Internet gambling.

With Section 3 stricken, the bill would be streamlined to include only the provisions in Sections 4 and 5 dealing with encouraging cooperation between the United States and foreign countries in investigating Internet gambling operations as a possible avenue for money laundering, corruption, and other crimes. The amended bill

would also advance policies to promote international cooperation, and encourage annual reports from the Financial Action Task Force on Money Laundering, and the Secretary of the Treasury to address international efforts to prevent money laundering through Internet gambling sites. Finally, the amended bill will amend the gambling provisions and increase the penalty for unlawful wire transfers of wagering information from two years to five years.

I propose this amendment because the provisions of Section 3 of the bill have not been adequately researched. There remains substantial disagreement and debate about whether the bans proposed in H.R. 21 will actually do more to encourage unlawful Internet gambling than to prevent it. There is ample evidence that if H.R. 21 is passed, Internet gamblers will be forced to place bets on websites based overseas. The overseas websites are fertile ground for unscrupulous businesses and may result in higher incidence of gambling addiction, gambling by minors, and money laundering. The provisions in Section 3 should be stricken and the most prudent means of regulating Internet gambling should be researched before an outright ban on the use of instruments from financial institutions is passed.

For these reasons, Mr. Speaker, I propose this amendment to H.R. 21.

Chairman SENSENBRENNER. Gentlewoman yields back. The Chair recognizes himself for 5 minutes in opposition to the amendment. This amendment basically strikes the guts of the bill, which is the prohibition on the use of credit cards for unlawful Internet gambling. I don't think we wish to have credit cards being used willy-nilly for any kind of gambling, whether it is lawful or unlawful. I would hope that this amendment would be defeated.

I yield back the balance of my time.

The question is on the Jackson Lee amendment. Those in favor will say aye. Opposed no. Noes appear to have it. The noes have it.

Ms. JACKSON LEE. I have another amendment at the desk.

Chairman SENSENBRENNER. The Clerk will report the second amendment.

The CLERK. Amendment to H.R. 21 offered by Ms. Jackson Lee. Delete all language in section 3, subpart (a)(1). The deleted language reads one, credit or the proceeds of credit extended to or on behalf of such other person, including credit extended through the use of a credit card. Strike this language in full.

[The amendment follows:]

JACKSON LEE AMENDMENT #2 – To H.R. 21– "Unlawful Internet Gambling Funding Prohibition Act."

Delete all language in Sec.3, subpart (a)(1):

The deleted language reads:

(1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

Strike this language in full.

Chairman SENSENBRENNER. Gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, this amendment specifically goes to what I think is the crux of the problem of this particular bill, and it removes credit cards from the scope of H.R. 21 because it does not make sense when credit cards can be an effective tool

of age verification if minors are using it. It does not make sense in essence to utilize or have the bill structured as it is. In the Children's Online Privacy Protection Act Congress allowed credit cards as a method of age verification to restrict access by minors to adult Web sites. Clearly I believe—I am not sure the intent to allegedly bring down the utilization of financial structures such as a credit card system to decrease access to gambling. You are also decreasing the access to information, to tracking, to utilizing financial products that might actually help solve the problem as opposed to enhance the problem. Certainly what you do is you keep us from being able to track overusage, abuse and certainly the use by minors.

I think it is important for this aspect of the bill to be stricken, and I ask my colleagues to support it.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, I propose this amendment to H.R. 21 to protect minors from the dangers of Internet gambling. This amendment removes credit card transactions from the scope of the bill.

As H.R. 21 is presently drafted, no betting or wagering businesses may knowingly accept credit cards, proceeds of credit, electronic fund transfers, monies transmitted through a money-transmitting business, or a check or similar draft, in connection with another person's participation in unlawful Internet gambling.

Allowing credit cards to be used in Internet gambling transactions helps to protect minors. Credit cards, unlike the other methods of payment prohibited in H.R. 21, provide safeguards that help to insure that minors do not engage in Internet gambling. For example, acquiring a credit card requires the individual to verify he or she has reached the age of 18. Credit cards are an effective method of verifying age because minors are not issued their own accounts. Credit card companies may also conduct a background or credit check to confirm the individual is of age. The procedures help to deter minors from using credit cards to gamble.

In fact, in previous legislation passed by Congress to protect children from harmful Internet sites, credit cards were used as a deterrent. In the Children's Online Privacy Protection Act ("COPPA") Congress specifically allowed the use of credit cards as a method of age verification in order to restrict access by minors to websites containing adult material. By prohibiting the use of credit cards, H.R. 21 ties the hands of law enforcement agencies and federal regulatory agencies like the FTC to ensure sufficient controls to identify minors who may attempt to gamble online.

There are also transactional safeguards available from credit card companies that will help prevent Internet gambling by minors. For example, several of the major credit card companies have a coding system that tracks the type of merchandise that is being sold by a merchant.

Mr. Speaker, Mr. Ranking Member, the age verification and merchandise tracking safeguards provided by credit cards are not sufficient alone to cure the problem of minors engaging in Internet gambling. However, these safeguards are a step in the right direction and they will prevent some minors from using Internet gambling websites. If we pass this legislation without amendment, H.R. 21 will eliminate the one proven method of effectively preventing children from accessing Internet gambling websites. For these reasons, I propose that H.R. 21 be amended so that credit cards can be used by betting and wagering businesses.

Chairman SENSENBRENNER. Gentlewoman yields back.

Ms. JACKSON LEE. I yield back.

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes in opposition of the amendment. This amendment is narrower but just as bad as her previous amendment. It allows for the use of credit cards to pay for unlawful gambling. I don't think we should encourage that and I would really encourage my people on my left to complain about credit card companies passing out too many credit cards when the bankruptcy bill came up, to at least

restrict the use of credit cards so they can't be used to run up unlawful gambling debt.

Yield back the balance of my time and urge a no vote on the amendment.

The question is on the amendment by the gentlewoman from Texas, Ms. Jackson Lee. Those in favor will say aye. Opposed no. Noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments? Gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The Clerk will report the amendment.

[The amendment follows:]

AMENDMENT TO H.R. 21

OFFERED BY MR. SCOTT OF VIRGINIA

Page 2, line 18, after "person" insert "may knowingly offer, and no person".

Mr. SCOTT. Mr. Chairman, the amendment was drawn to the previous version of the bill. I ask unanimous consent that line 18 be changed to line 20.

Chairman SENSENBRENNER. Without objection. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Did the Clerk report the amendment, Mr. Chairman?

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 21 offered by Mr. Scott of Virginia. Page 2, line 20, after "person" insert "may knowingly offer and no person."

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman, and I appreciate you convening the markup. Mr. Chairman, I believe that gambling should be tightly regulated. It has traditionally been primarily a State regulatory responsibility. It should continue to be so in my judgment, although I think it is also appropriate for the Federal Government to have a role to assist the States in the total regulatory scheme.

While I can appreciate the need to update the ability of the Department of Justice to address illegal gambling in today's context, I am concerned that this bill, similar to the bills in the last several Congresses which have attempted to control Internet gambling, will not be likely to be effective in doing so.

Mr. Chairman, this bill is not about prohibiting Internet gambling, it is only about regulating how you can bet on the Internet and then it is only affected in the United States Internet gambling

market. It is not about reducing Internet gambling because foreign sites are not affected.

Regulating anything on the Internet is problematic even when it is desirable. Most law enforcement is jurisdiction dependent. The Internet has no specific jurisdiction. As a result, I suspect that even if we are successful in closing down businesses physically located in the United States or even in countries we can get to cooperate, because of the nature of the Internet and electronic funds transfers we have no way to control the activities physically located in other countries. Therefore, the approach in H.R. 21 will be ultimately ineffective.

Furthermore, a gambling Web site can simply code an Internet gambling transaction as another type of transaction and thereby evade the primary enforcement mechanism in this bill. Or an eCash or electronic payment system can relocate to another country and thereby evade any enforcement of the provisions of the bill.

Mr. Chairman, I fear that the illegal Internet gambling, money laundering, fraud and other problems will only be encouraged by removing the transparent credit card process. This will bring about the development of less transparent processes where such illegal activities can flourish.

Mr. Chairman, we should not overestimate the cooperation we will get from other countries. Presently over 50 nations allow some form of gambling online and that number is likely to grow. So even if we are successful in getting cooperation from most countries, we would be simply increasing profit opportunities for uncooperative countries, especially those without diplomatic relations with the United States. The net result will be flourishing Internet gambling exclusively run by businesses over which the Department of Justice has no control.

To have any chance to be effective in prosecuting illegal gambling over the Internet, you have to prosecute individuals. This bill does not. Prosecuting individuals for illegal Internet gambling would be effective because the technology of the Internet would be in the Government's favor since activities of illegal gambling would lead a trail leading directly back to the gambler. So long as individuals can gamble over the Internet with impunity a market will be provided for them, which the regulatory scheme in this bill will not be able to stop. If we prohibit domestic firms from supplying this demand, it will be supplied by foreign companies who are totally unregulated beyond any consumer protections and beyond the reach of the United States taxing authorities.

Accordingly, Mr. Chairman, I offer an amendment to make individuals subject to the prohibitions of the bill as well as gambling businesses to ensure that the bill has some chance of accomplishing its goal of restricting gambling over the Internet.

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

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. I rise to oppose——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. COBLE.—the amendment of my good friend from Virginia, which would criminalize the activity of individual betters who gamble online in addition to the activities of gambling businesses. Al-

though I am in favor, Mr. Chairman and colleagues, of prohibiting gambling on the Internet, I do not believe the testimony that we heard at the hearing would support this amendment. The consensus seems to be that not only from the witnesses but also from the authors of various legislative proposals that the most effective way to prohibit Internet gambling is to effectively shut down the gambling businesses or sites themselves. And I believe the bill before us to date accomplishes that goal.

If this measure is enacted into law and it proves to be ineffective in prohibiting all lines of gambling, I would certainly be willing to examine the issue of whether or not criminalizing the acts of individuals is necessary. For the time being, however, I believe that the provision of the bill will make the most effective use of the limited law enforcement resources that the country has. These same resources it would take to prevent one individual from gambling online could be better used, it seems to me, to prevent an entire online gambling business or gambling site from operating and thereby prevent thousands of people from accessing that site.

As we heard at the hearing, the problem of Internet gambling is a complex problem in light of the fact that this amendment could be placing undue burden on Federal law enforcement agencies and the fact that the States will still have the option of prosecuting an individual better under its own State laws. I do not think it would be wise to adopt this amendment at this time and urge my colleagues to oppose it.

Chairman SENSENBRENNER. Question is on the amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye. Opposed no. Noes appear to have it. The noes have it, and the amendment is not agreed to.

Mr. SCOTT. Mr. Chairman, recorded vote.

Chairman SENSENBRENNER. A recorded vote is requested. Those in favor of the Scott amendment will as their name is called answer aye. Those opposed no. And the Clerk will call the roll.

The CLERK. Mr. Hyde.

[no response.]

The CLERK. Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble votes no.

Mr. Smith.

[no response.]

The CLERK. Mr. Gallegly.

[no response.]

The CLERK. Mr. Goodlatte.

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte votes no.

Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot votes no.

Mr. Jenkins.

[no response.]

The CLERK. Mr. Cannon.

Mr. CANNON. No.

Mr. SCOTT. Mr. Chairman, ask unanimous consent that the recorded vote be eviscerated.

Chairman SENSENBRENNER. Without objection, so ordered and the recorded vote is eviscerated.

Are there further amendments. There are no further amendments?

A reporting quorum is present. The question is on reporting the bill H.R. 21 favorably, as amended. Those in favor will say aye. Opposed no.

Chairman SENSENBRENNER. The noes appear to have it.

Mr. GOODLATTE. I ask for a recorded vote.

Chairman SENSENBRENNER. Recorded vote is ordered. Those in favor of reporting H.R. 21 favorably, as amended, will as your name is called answer aye. Those opposed no. And the Clerk will call the roll.

The CLERK. Mr. Hyde.

[no response.]

The CLERK. Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble votes aye.

Mr. Smith.

[no response.]

The CLERK. Mr. Gallegly.

[no response.]

The CLERK. Mr. Goodlatte.

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte votes aye.

Mr. Chabot.

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot votes aye.

Mr. Jenkins.

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins votes aye.

Mr. Cannon.

Mr. CANNON. No.

The CLERK. Mr. Cannon votes no.

Mr. Bachus.

Mr. BACHUS. Aye.

The CLERK. Mr. Bachus votes aye.

Mr. Hostettler.

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler votes aye.

Mr. Green.

Mr. GREEN. Aye.

The CLERK. Mr. Green votes aye.

Mr. Keller.

Mr. KELLER. Aye.

The CLERK. Mr. Keller votes aye.

Ms. Hart.

Ms. HART. Aye.

The CLERK. Ms. Hart votes aye.

Mr. Flake.

Mr. FLAKE. No.

The CLERK. Mr. Flake votes no.

Mr. Pence.

Mr. PENCE. Aye.

The CLERK. Mr. Pence votes aye.

Mr. Forbes.
[No response.]
The CLERK. Mr. King.
Mr. KING. Aye.
The CLERK. Mr. King votes aye.
Mr. Carter.
Mr. CARTER. Aye.
The CLERK. Mr. Carter votes aye.
Mr. Feeney.
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney votes aye.
Mrs. Blackburn.
Mrs. BLACKBURN. Aye.
The CLERK. Mrs. Blackburn votes aye.
Mr. Conyers.
Mr. CONYERS. No.
The CLERK. Mr. Conyers votes no.
Mr. Berman.
Mr. BERMAN. No.
The CLERK. Mr. Berman votes no.
Mr. Boucher.
[no response.]
The CLERK. Mr. Nadler.
Mr. NADLER. No.
The CLERK. Mr. Nadler votes no.
Mr. Scott.
Mr. SCOTT. No.
The CLERK. Mr. Scott votes no.
Mr. Watt.
Mr. WATT. No.
The CLERK. Mr. Watt votes no.
Ms. Lofgren.
Ms. LOFGREN. Pass.
The CLERK. Ms. Lofgren passes.
Ms. Jackson Lee.
Ms. JACKSON LEE. No.
The CLERK. Ms. Jackson Lee votes no.
Ms. Waters.
Ms. WATERS. No.
The CLERK. Ms. Waters votes no.
Mr. Meehan.
Mr. MEEHAN. No.
The CLERK. Mr. Meehan votes no.
Mr. Delahunt.
[no response.]
The CLERK. Mr. Wexler.
Mr. WEXLER. No.
The CLERK. Mr. Wexler votes no.
Ms. Baldwin.
Ms. BALDWIN. No.
The CLERK. Ms. Baldwin votes no.
Mr. Weiner.
Mr. WEINER. No.
The CLERK. Mr. Weiner votes no.
Mr. Schiff.

Mr. SCHIFF. No.

The CLERK. Mr. Schiff votes no.

Ms. Sánchez.

Ms. SÁNCHEZ. No.

The CLERK. Ms. Sánchez votes no.

Mr. Chairman.

Chairman SENSENBRENNER. Aye.

The CLERK. Mr. Chairman votes aye.

Further Members who wish to cast or change their votes? Gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. Aye.

The CLERK. Ms. Lofgren, aye.

Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? If not, the Clerk will report.

The CLERK. Mr. Chairman, there are 16 ayes and 15 noes.

Chairman SENSENBRENNER. And the motion to report favorably is agreed to.

I thank the Members of the Committee for their vigorous debate. The business for this—without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes. Without objection, the bill will be reported to the House in the form of a single amendment in the nature of a substitute incorporating the amendment adopted here today. And all Members will be given 2 days, as provided by the House rules, in which to submit additional dissenting, supplemental or minority views. And the Committee stands adjourned.

[Whereupon, at 11:35 a.m., the Committee was adjourned.]

DISSENTING VIEWS

Although we are opposed to illegal gambling, whether done over the Internet or otherwise, we cannot support the legislation reported by the Judiciary Committee because the enforcement mechanisms will likely be ineffective. We question the wisdom of spending valuable prosecutorial resources on attempting to shut down Internet gambling sites—an endeavor which ultimately is likely to be futile.

H.R. 21 makes it unlawful for a person engaged in a gambling business knowingly to accept, with respect to the transmission of bets or wagers, credit, electronic fund transfers, checks and other similar financial instruments.[1] By prohibiting the payment of credit, electronic funds, checks and other similar instruments to Internet gambling businesses, H.R. 21 deputizes the financial services industry to be the primary enforcers of the law.

In order to ensure compliance, the bill authorizes law enforcement to obtain injunctive or declaratory relief to restrain or prevent any person from paying or assisting in the payment of bets or wagers in interstate commerce.[2] Such relief, when granted against an interactive computer service, is limited to the removal of, or disabling of access to, an online site violating the law or a hypertext link to an online site violating the law, that resides on a computer server that such service controls or operates.[3]

The version of H.R. 21 that the Committee initially considered would have created an unfair situation in which Internet betting was legal for certain types of gambling (e.g. horse racing, lotteries, and dog racing[4]), but illegal for other types of Internet gambling (e.g. charitable gaming and Tribal gaming). At markup, however, the Committee adopted an amendment offered by Rep. Cannon that would make it illegal for any gambling business knowingly to accept financial instruments, thereby eliminating the bill's preferences for certain types of gambling interests.

Credit card companies such as Visa and Master Card have raised concerns with the bill in the past because it could subject them to injunctions in numerous jurisdictions that require different—or even conflicting—remedies to prevent the payment of Internet bets or wagers. The result will be a hodge-podge of inconsistent court orders, rather than a cohesive enforcement scheme.

In addition, the U.S. Chamber of Commerce has expressed concerns about the bill.[5] They are concerned that the bill's prohibition on accepting financial instruments for "unlawful Internet gambling" is unduly vague and, as such, will subject the financial serv-

[1] H.R. 21, subsection 3(a).
[2] H.R. 21, subsection (3)(c).
[3] H.R. 21, subsection (3)(c)(4).
[4] Such wagering was legal if it was a "lawful transaction with a business licensed or authorized by a State."
[5] Letter from R. Bruce Josten to Chairman Sensenbrenner dated May 13, 2003.

ices industry to criminal liability without sufficient notice of the law. We agree that the law governing what constitutes "unlawful Internet gambling" is not well settled.

Also, relying on financial institutions to enforce the law will likely be ineffective. Credit card companies have a limited ability to block financial transactions to illegal Internet gambling businesses. The companies rely on a merchant coding system to ascertain the nature of particular transactions, but this system has limitations. First, it depends on the merchant to accurately code a transaction. There are obvious incentives for many Internet gambling merchants to falsify their merchant identification.[6]

More significantly, the Chamber also contends the coding system applies only when an online gambler uses a credit card to transact business directly with an online gambling merchant. Often times, an Internet gambler will use electronic cash and account funding systems to create a pool of electronically available funds. Thus, a cardholder could use his or her credit card to purchase "e-cash" on a web site that does not, itself, offer gambling, but allows that e-cash to be used on another web site that does offer gambling. The credit card coding system would not capture these transactions as Internet gambling.[7] And if the e-cash website is offshore, it could be beyond the reach of U.S. law enforcement.

Additionally, the bill does not make it illegal for an individual to place an Internet bet. Rather, the bill only criminalizes an Internet gambling business which accepts bets or wagers or accepts credit or other types of financial instruments. As such, the bill leaves out the most effective enforcement mechanism—targeting individual bettors. This legislation, therefore, has little or no deterrent value. Offshore gambling sites will evade any restrictions easily, and individual bettors will continue to seek out these sites and gamble free from any fear of any legal consequences.

CONCLUSION

Although the intent of this legislation is laudable, we believe conscripting credit card companies to enforce our criminal laws is ineffective and will set a bad precedent regarding the Internet. In addition, criminalizing only the Internet gambling business without placing any penalty on the individual bettor further weakens the enforcement scheme of the bill. In the end, it is unlikely that this legislation will successfully halt Internet gambling.

JOHN CONYERS, JR.
MELVIN L. WATT.
SHEILA JACKSON LEE.
TAMMY BALDWIN.
ANTHONY D. WEINER.
LINDA T. SÁNCHEZ.

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[6] Testimony of Mark MacCarthy, Senior Vice President of Public Policy, Visa U.S.A., Inc., before the Subcommittee on Oversight and Investigations of the Committee on Financial Services, 107th Congress, 2nd Sess. (July 12, 2001).

[7] *Id.*