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INTERNET GAMING: IS THERE A SAFE BET?

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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INTERNET GAMING: IS THERE A SAFE BET?

TUESDAY, OCTOBER 25, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:38 a.m., in room 2123 of the Rayburn House Office Building, Hon. Mary Bono Mack (chairman of the subcommittee) presiding.

Members present: Representatives Bono Mack, Blackburn, Stearns, Bass, Harper, Lance, Cassidy, Guthrie, Olson, Kinzinger, Barton, Butterfield, Gonzalez, Towns, Schakowsky, and Inslee.

Staff present: Kirby Howard, Legislative Clerk; Brian McCullough, Senior Professional Staff Member, Commerce, Manufacturing, and Trade; Jeff Mortier, Professional Staff Member; Gib Mullan, Chief Counsel, Commerce, Manufacturing, and Trade; Andrew Powaleny, Press Assistant; Krista Rosenthall, Counsel to Chairman Emeritus; Lyn Walker, Coordinator, Admin/Human Resources; Shannon Weinberg, Counsel, Commerce, Manufacturing, and Trade; Michelle Ash, Democratic Chief Counsel; Felipe Mendoza, Democratic Counsel; and Will Wallace, Democratic Policy Analyst.

Mrs. BONO MACK. Come to order. Good morning. Today we turn our attention to a growing controversy in America—should Internet gambling be legalized, and if so, what role should the Federal Government play? We have divergent opinions represented on our panel this morning, and if I were a betting person, I would wager that we are going to have a very interesting hearing.

And the chair now recognizes herself for an opening statement.

OPENING STATEMENT OF HON. MARY BONO MACK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

In many ways, the debate over legalizing Internet gambling is a lot like Texas Hold'em poker. Three cards are dealt face-up. Is the further expansion of gambling in the United States a good bet? Can online gambling be regulated effectively? And what role should the Federal Government play to protect American consumers from "sharks?" This is the "flop" we have been dealt for today's hearing.

Then there is the "turn" card. With billions of dollars sitting on the table, can Congress afford not to get involved?

And finally, the "river" card—what impact would legalized Internet gambling have on American consumers and the U.S. economy?

Clearly, the stakes are high, and a "showdown" is likely on Capitol Hill in the months ahead. As chairman of the House Subcommittee on Commerce, Manufacturing and Trade, this is an issue which I will be following very closely to make certain Americans are dealt a fair hand, regardless of the outcome.

The purpose of our hearing is to simply take a close look at the "face-up" cards—the things we know with some certainty after 80 years of legalized, regulated gambling in the United States. Today, we will hear from both sides of this important yet very contentious issue.

One thing we do know is this: the vast majority of Americans have gambled at some point in their lives. According to the UCLA Gambling Studies Program, approximately 85 percent of U.S. adults have gambled at least once—60 percent in the past year. What is more, some form of gambling is legalized in 48 States plus the District of Columbia. The only 2 States without legalized gambling are Hawaii and Utah.

Gaming policy and regulation is generally handled by the States, although the Federal Government has been involved in shaping the boundaries of what is not permissible. But the legal status of online gaming is a lot more complicated. In 1961, Congress passed the Interstate Wire Act, more than 20 years before anyone had ever heard of a thing called the Internet. Yet according to the Justice Department, online gambling is illegal under the Interstate Wire Act because it prohibits the use of wire communications for the interstate facilitation or transfer of wagers.

In 1988, gambling in the United States began to proliferate after Congress passed the Indian Gaming Regulatory Act, addressing the jurisdiction and authority of tribes to establish gaming on their lands. Since its passage, tribal gaming operations have seen tremendous growth with revenues last year exceeding $26 billion.

And speaking from my own experience—with seven casinos located in my Congressional District—tribal gaming has been a huge plus. It has created thousands of jobs during difficult economic times, and the tribes have been great neighbors, too, contributing regularly to charities and civic events.

Unfortunately, illegal gambling has been growing in popularity as well. So in 2006, to combat the proliferation of illegal Internet gambling, Congress adopted the Unlawful Internet Gambling Enforcement Act. This effectively outlawed interstate online gaming in the United States by prohibiting gambling-related businesses from accepting payments in the form of checks, credit card payments, or electronic funds transfers relating to unlawful Internet gambling. The law also establishes fines and penalties for banks and financial companies that process such payments.

In April of this year, three of the top poker Web sites were shut down and 11 people were indicted for bank fraud and money laundering, raising new questions about the law. Proponents argue that the statute has not reduced Internet gambling; it has simply driven it underground and offshore, where sharks can operate with impunity. Legalizing Internet gambling, they argue, would actually allow the government to provide greater protection for consumers.

Proponents also argue that if Internet gambling is legalized, the U.S. would realize significant tax revenues from online bets that

are currently directed to non-U.S.-based gaming companies. It is estimated that Americans wagered $16 billion last year on Internet poker sites alone. But those who want to keep the ban on Internet gambling in place argue that repealing the current law will expose more Americans to serious problems such as compulsive gambling. They are also worried about an increase in fraud, money laundering, and organized crime. Still others have expressed concern that State budgets could be harmed by the loss of lottery and gaming revenue, and they point to a huge potential impact on existing, legitimate gaming operations.

So, as policy makers, the issue of legalizing Internet gambling certainly raises a lot of questions for us to consider: How effective is current enforcement of online intrastate gaming? What, if any, forms of interstate gaming online gaming should Congress consider allowing? What consumer protections exist for online gaming today and do they need to be strengthened? And how would any easing of legal restrictions on Internet gaming affect American consumers and other stakeholders? Hopefully, after today's hearing, we will have a better idea of whether we need to hold 'em or to fold 'em.

[The prepared statement of Mrs. Bono Mack follows:]

Opening Statement of the Honorable Mary Bono Mack
Subcommittee on Commerce, Manufacturing, and Trade
"Internet Gaming: Is There A Safe Bet?"
October 25, 2011
(As Prepared for Delivery)

In many ways, the debate over legalizing Internet gambling is a lot like Texas Hold'em poker. Three cards are dealt face-up.

Is the further expansion of gambling in the United States a good bet? Can online gambling be regulated effectively? And what role should the federal government play to protect American consumers from "sharks"? This is the "flop" we've been dealt for today's hearing.

Then there's the "turn" card: with billions of dollars sitting on the table, can Congress afford not to get involved?

And, finally, the "river" card: what impact would legalizing Internet gambling have on American consumers and the U.S. economy? Clearly, the stakes are high, and a "showdown" is likely on Capitol Hill in the months ahead.

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One thing we do know is this: the vast majority of Americans have gambled at some point in their lives.

According to the UCLA Gambling Studies Program, approximately 85 percent of U.S. adults have gambled at least once – 60 percent in the past year. What's more, some form of gambling is legalized in 48 states plus the District of Columbia. The only two states without legalized gambling are Hawaii and Utah.

Gaming policy and regulation is generally handled by the states, although the federal government has been involved in shaping the boundaries of what's not permissible. But the legal status of online gaming is a lot more complicated.

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Proponents argue that the statute has not reduced Internet gambling – it's simply driven it underground and offshore, where "sharks" can operate with impunity.

Legalizing Internet gambling, they argue, would actually allow the government to provide greater protection for consumers.

Proponents also argue that if Internet gambling is legalized, the United States would realize significant tax revenues from online bets that are currently directed to non-U.S. based gaming companies. It's estimated that Americans wagered $16 billion last year on Internet poker sites alone.

But those who want to keep the ban on Internet gambling in place argue that repealing the current law will expose more Americans to serious problems such as compulsive gambling.

They are also worried about an increase in fraud, money laundering and organized crime.

Still others have expressed concern that state budgets could be harmed by the loss of lottery and gaming revenue, and they point to a huge potential impact on existing, legitimate gaming operations.

So, as policy makers, the issue of legalizing Internet gambling certainly raises a lot of questions for us to consider:

How effective is current enforcement of online intrastate gaming?

What, if any, forms of interstate online gaming should Congress consider allowing?

What consumer protections exist for online gaming today and do they need to be strengthened?

And how would any easing of legal restrictions on Internet gaming affect American consumers and other stakeholders?

Hopefully, after today's hearing, we'll have a better idea of whether to hold 'em or fold 'em.

Mrs. BONO MACK. And so with that, I am happy to recognize the gentleman from North Carolina, Mr. Butterfield, the ranking member of the subcommittee, for 5 minutes for his opening statement.

OPENING STATEMENT OF HON. G.K. BUTTERFIELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. BUTTERFIELD. Let me thank the chairman for convening this important hearing today. This is a topic that I have heard so much discussion about since I have been in Congress, and I am just looking forward to the six witnesses that we have in front of us. And hopefully, you can bring us a perspective that we have not heard before or perhaps you may be able to reinforce some of the views that we have heard.

And so as your ranking member, Madam Chairman, I look forward to working with you on this issue.

Congress is no stranger to this issue, and we have grappled with how to best address it for some time now. My good friend, Congresswoman Shelley Berkley, talks about this very often both to us privately and in our caucus meetings, and so we want to keep her involved and try to bring some closure to this issue.

Part of the reason why I think is because Members of Congress, just like all of our constituents across the country, have very personal feelings about gambling. Certainly in my community there are divergent views and all across the country it is the same. Some are strongly opposed to all forms of gambling while others see it merely as entertainment. The debate shouldn't be over whether gambling is moral or not moral. Instead, we should acknowledge that Internet gaming is happening now all over the world, including here in our country where online gambling has been treated as illegal by the Justice Department.

As a result, the American Internet gamblers have turned to unregulated foreign offshore entities for access to games. The offshore entities may not provide consumer protections for those who gamble, and there is no U.S. oversight to ensure U.S. citizens are not harmed. There is often no legal recourse for consumers who have been wronged by bad offshore actors.

There is also the small issue of money. Last year alone, Americans wagered $16 billion just on Internet poker. While some of that money went back to players in the form of winnings, the overwhelming majority remained offshore, unregulated and untaxed. With our significant national debt, a commonsense solution seems clear. We need a robust debate on whether Internet gaming should be legalized in the U.S., and if so, we will need an oversight structure put in place to ensure consumers the strongest possible safeguards. Games like poker and bingo are as ubiquitous in the U.S. as baseball and football and are played by young and old alike. But technology has indeed evolved permitting individuals to participate in games of chance and skill in real time and remotely.

Instead of embracing a new twist on an old game, our inaction has led Americans to spend their money offshore and at their own peril. Permitting Internet gaming entities to operate within the U.S. could yield tremendous financial benefits to struggling Federal and State coffers through unrealized direct and indirect tax reve-

nues. It would also allow for oversight of and accountability for the industry's business practices. Most importantly, we would have the opportunity to create and implement strong consumer safeguards that each entity would have to follow.

Having anytime access to gamble real money raises significant concerns. The compulsive gambler would no longer have to expend any effort like driving to a casino to play the game. A mouse click and a credit card number are all that he or she needs to play but with no human interaction with the house. There is no one and no way to cut someone off if they have played too much. Before long, that same gambler has maxed out his or her credit cards and faces the dreaded bankruptcy or worse, he turns to criminal activity to finance his habit.

While my example may be extreme it is very possible and it happens daily at conventional gaming houses. People ultimately must have personal responsibility to know when enough is enough, but when the line blurs, safeguards must be in place. That is why any legislation that permits Internet gaming in the U.S. must, must have protections in place to mitigate compulsive gambling. Consumer protections must also be in place to ensure that the games are honest and fair and truly randomized.

Economic boom that could result from legalized Internet gaming is perhaps the most compelling reason to give it serious consideration. Hundreds of millions of dollars in new revenues could be realized by struggling States. Tens of thousands of jobs could be created all across the country to directly support the new industry. Considering the fragile and struggling state of our economy, I strongly believe that all potential remedies should be considered to return us to greater prosperity.

Thank you, Chairman. I yield back.

Mrs. BONO MACK. I thank the gentleman.

And in accordance with committee rules, Chairman Upton has yielded his 5 minutes to me, and I would now recognize the gentleman from Texas, Mr. Barton, chairman emeritus of the full committee, for 3 minutes.

OPENING STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BARTON. Thank you, Madam Chairwoman. It is good to have Senator D'Amato on the panel, and I see former Congressman John Porter out in the audience. It is good to have you here.

Poker is the all-American game. President Richard Nixon financed his first congressional campaign partially with poker winnings from World War II. Our current president, President Obama, is reputed to be a very good poker player. I learned to play poker, believe it or not, in the Boy Scouts. So if you learn something in the Boy Scouts, it has got to be a good thing, right? Unfortunately, because there is some chance to it, while it is a game of skill, there are those that think we should not allow poker to be played for money on the Internet.

Consequently, we passed the bill or law several years ago that is unenforceable, UIGEA. It is a bad law regardless of which side of the debate that you are on. I have introduced a bill as the chief sponsor to remedy this, and two of my cosponsors are Barney

Frank and Ron Paul. I will postulate that if you have got a bill that Barney Frank, Joe Barton, and Ron Paul are all for, who can be against it? I mean we have covered the spectrum.

You can't see this in the audience but this is a photocopy of a registration from yesterday. A person who is in the audience today signed up on bodog.com to play poker for money. He deposited $50, he got a $5 bonus for making the deposit, and he got a solicitation that if he could be more people to sign up, too, he could get an additional, I believe, $200 in poker chips. People are playing poker on the Internet in the United States for money today. We think as many as 8 million players per month play poker for money online in the United States per month.

Having said that, it is not regulated, and so these sites are offshore, overseas, and consequently outside the ability for us to tax the winnings, to regulate, to make sure that it is a fair game and everybody has an equal chance to win based on their skill. The legislation that I have introduced, H.R. 2366, is not perfect but it would remedy most of the major problems that we face today.

I want to thank Chairwoman Bono Mack for having this hearing. I want to thank the ranking member, Mr. Butterfield, for what he said in his opening statement. I think we should have a robust debate. Perhaps there should even be an additional hearing. But at some point in time in this Congress I hope we can move 2366 or something similar to it, Madam Chairwoman, to let everybody in America who wishes to play poker in States that allow it to do so. And the bill that I have introduced, it is a State option. If the governor of a State says there shall be no Internet poker played by residents of that State, it does not happen. So we are not preempting the States, but in the States that thinks it is OK, we set up a regulatory scheme and a taxation scheme so that we have a fair game and everybody has an equal chance. And future President Nixons and Obamas can play on the Internet for money and use those earnings to join us.

With that, Madam Chairwoman Mack, I yield back the balance of my time.

Mrs. BONO MACK. I thank you, Mr. Barton.

And the chair now recognizes Mr. Guthrie of Kentucky for 2 minutes.

OPENING STATEMENT OF HON. BRETT GUTHRIE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. GUTHRIE. Thank you, Madam Chairwoman, for yielding.

And I went to college in New York State in the 1980s so I appreciate your service Senator D'Amato. I remember reading at the New York Media when I was in college and all the great work you did for that State. I appreciate it.

But I am from Kentucky, and as all you know, in Kentucky we are famous for our horses. We have two of the greatest racetracks in the world—at Churchill Downs in Louisville and at Keeneland in Lexington, and we breed the world's best horses that run on them. And no matter how you cut it, Internet gaming will affect the horse-racing business. Expanded online gaming will result in less gaming dollars being spent at tracks. Fewer dollars in the rac-

ing business doesn't just affect the tracks, breeders, jockeys, and trainers; it also affects thousands of other jobs in these communities that depend on the horse industry.

Because of this concern, the effect on the horse racing must be considered in the expansion of online gaming. And I look forward to hearing from the witnesses and my colleagues on the underlying issue of online gaming legislation. However, as the chairman of the Congressional Horse Caucus, I must remind my colleagues that we cannot overlook the impact that gaming legislation would have on a $50 billion equine industry.

While I am biased towards Kentucky's thoroughbreds and our signature race, which is truly the greatest 2 minutes in sports, this is not a one-State issue. The horse-racing industry supports over a million jobs nationwide. We cannot ignore this important industry as we consider changes to online gaming.

Thank you, Madam Chairwoman, and I yield back.

Mrs. BONO MACK. I thank the gentleman.

And now we turn our attention to our panel. We have one panel of witnesses joining us today. Each of our witnesses has prepared an opening statement that will be placed into the record. Each of you will have 5 minutes to summarize that statement in your remarks.

For introduction, one witness is very well known to many of us, former United States Senator from New York, the Honorable Alfonse D'Amato, who now serves as chairman of the Poker Players Alliance. We all welcome you. And then we have Parry Aftab, Advisory Board Member of Fair Play USA. Also testifying we have Keith Whyte, Executive Director of the National Council on Problem Gambling. We have Kurt Eggert, Professor of Law, from Chapman University School of Law. We have Ernest Stevens, Chairman of the National Indian Gaming Association. And our final witness is Dan Romer, Director of the Adolescent Communication Institute at the Annenberg Public Policy Center.

Good morning. Thank you all very much for coming. Again, you will be recognized for 5 minutes. To keep track of the time, there are lights and timers in front of you. When the timer turns yellow, you will have 1 minute left. And please remember to turn your microphone on and bring it close to your mouth. Although we might hear you, the TV audience might not at home, so it is very important you remember to do that.

So Senator D'Amato, we are very pleased to welcome you and recognize you for 5 minutes.

STATEMENTS OF ALFONSE D'AMATO, CHAIRMAN, POKER PLAYERS ALLIANCE; PARRY AFTAB, ADVISORY BOARD MEMBER, FAIR PLAY USA; ERNEST STEVENS, JR., CHAIRMAN, NATIONAL INDIAN GAMING ASSOCIATION; KEITH S. WHYTE, EXECUTIVE DIRECTOR, NATIONAL COUNCIL ON PROBLEM GAMBLING; KURT EGGERT, PROFESSOR OF LAW, CHAPMAN UNIVERSITY SCHOOL OF LAW; AND DANIEL ROMER, DIRECTOR, ADOLESCENT COMMUNICATION INSTITUTE, ANNENBERG PUBLIC POLICY CENTER, UNIVERSITY OF PENNSYLVANIA

STATEMENT OF ALFONSE D'AMATO

Mr. D'AMATO. Well, Madam Chairman, thank you so very much. And let me wish you a belated happy birthday. I understand yesterday you celebrated your birthday. And I would like to thank you again for giving us an opportunity to testify on an issue which I care very much about. Indeed, in my capacity as chairman of the Poker Players Alliance, I have been privileged to represent 1,200,000 Americans who have joined our organization and who love this great American pastime. They love playing poker in their homes, casinos, card rooms, charitable games, and yes, on the Internet. I want to congratulate the committee for holding this hearing, an opportunity to get a better understanding of what the status quo is as it relates to poker and the Internet.

And let me say status quo is badly broken, and it benefits no one. Although it may have been well intended, the legislation that passed 4 years ago, the fact of the matter is that it has created many more problems than it has solved. It has endangered young people. It has endangered problem gamblers. It has endangered those who want to participate in an honest, legitimate game. And it is my fervent hope that this committee will respond by taking up legislation similar to the bills introduced by Congressman Barton and Congressman Campbell. And at this point, let me take a moment to congratulate the chairman emeritus for his leadership on this issue. Congressman Barton, you have stolen my speech. You have said it all and you said it much more eloquently and much more succinctly than any former United States Senator could do because we never had time limitations. And so this 5 minutes is rather difficult for me to deal with. But let me just touch on one or two points.

Internet poker, as the Congressman has just said, has not gone away. And it is hard to envision a scenario where it will. What is taking place now is it takes place under the radar with no regulations, with no taxation, with unscrupulous groups who can and do operate. They operate in the public and the government can do little if anything and certainly doesn't safeguard the general public. As the Congressman indicated, just yesterday a young man by the name of John Pappas with his Federal credit union debit card—very interesting, I guess it is the right Pappas debit card—went and opening an account at bodog.com. Now, he could have been anybody. He could have opening up an account, been underage, been under the age of 21 because they give these cards to just about anybody. Once I got one for my dog believe it or not. And

so 16-, 17-, 18-year-old can certainly do that. So where is the protection for young people?

And let me tell you, we have people on this panel today who speak up for young people. Parry has done a fantastic job, Parry Aftab. One of the things that the Congressman's legislation provides for is verification and the type of verification that will keep youngsters who are under 21 from playing. That is the kind of thing that you need to do. One of the things that the Congressman's legislation will see to it that you don't have unscrupulous operators who inveigle the poker player's money and use it for themselves. And we have seen that situation with Full Tilt, horrible situation where people took poker players' money that should have been placed in a trust account and distribute it as dividends to the people who ran that corporation, terrible betrayal of people.

Let me say there are those Internet sites that operate where they do have a trust account. Poker Stars, for example, legislation required that they have a trust account for those dollars, and that is what Congressman Barton's legislation does so that you can't have this inveigling, so you have proper supervision. And again, if you want to protect young people—and I understand the genesis of this came from a genuine concern that so many young people were flocking to the poker rooms, the poker sites. The TV was carrying it. I think the third most watched game on television, sports, was poker, online poker on television. And so you had kids getting involved. Well, how do you keep them from doing it? By passing legislation that will require verifiable identification. That is how you do it.

How do you keep the deadbeat dad from becoming a problem gambling? Well, I will tell you how. You pass legislation similar to that that Congressman Barton has put forth and you stop it because States can then post the deadbeat dads that will not permit them to go on the Internet and gamble.

And so for those reasons and lots of others that time will not permit—I don't want to test your patience—let me say that I really hope that we have an opportunity to do something to permit a great game, a game which requires skill to be played in people's homes. It shouldn't be that they can just go to casinos and play. Lots of people don't have the ability to do that. It shouldn't be that they have to go to someone else's home or have people being invited to their home. They may not be able to get together that game. Great pastime. This legislation that has created and clouded the UIGEA legislation, the situation may have been well intended; it has missed its mark.

I thank the chair and the committee for giving me this opportunity and I look forward to any questions that you might have. Thank you.

[The prepared statement of Mr. D'Amato follows:]

www.theppa.org

PPA Chairman Alfonse D'Amato
Testimony Summary
House Subcommittee for Commerce, Manufacturing and Trade

- The status quo with respect to Internet gambling and Internet poker is badly broken and benefits no one.

- Millions of Americans have been playing poker on the Internet for almost 10 years, and even the Department of Justice (DOJ) agrees that playing Internet poker is not illegal for the player.

- For years, European countries have been licensing and regulating online gambling and online poker, both as a way to protect their citizens and to serve as a revenue source for their growing economies.

- Congress should take up legislation similar to the bills introduced by Congressman Barton and Congressman Campbell to license and regulate online poker including provisions to:
    - **Protect minors** by verifying identity and age
    - **Protect against problem gambling** by implementing new technologies that would identify signs of problem gambling, allow players to set limits on deposits and create a list of excluded players
    - **Protect players against fraud** by ensuring that games are fair and players are required to place deposits in trust accounts, with regular audits to ensure solvency
    - **Offer an opt out option for states** who do not wish to participate

- Congress must also clarify the laws governing Internet gambling, such as the Wire Act and UIGEA, and create effective enforcement against whatever is illegal.

- In addition to the benefit of strong consumer protections, a licensed and regulated U.S. industry would create a pathway for tens of thousands of U.S. jobs and tens of billions of dollars in federal and state revenue at a time when the U.S. economy needs it most.

- In sum, Congress needs to stop the outsourcing of consumer protections, jobs and revenue to foreign countries and create a safe, regulated environment for Americans to play this time honored game of skill, while contributing to our nation's economy.

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TESTIMONY OF HON. ALFONSE D'AMATO

on behalf of

THE POKER PLAYERS ALLIANCE

SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE
of the
HOUSE COMMITTEE ON ENERGY AND COMMERCE

"Internet Gaming: Is There A Safe Bet?"

October 25, 2011

Madam Chairman and Members of the Subcommittee, I'd like to thank you for this opportunity to testify today on an issue about which I care very much. My name is Alfonse D'Amato, and for eighteen years, I was privileged to serve the people of New York on the other side of the Capitol. Today, in my capacity as Chairman of the Poker Players Alliance, I am privileged to represent 1.2 million Americans who enjoy playing this great American pastime in their homes, in casinos and card rooms, in charitable games, and on the Internet. They play for recreation, for camaraderie, for entertainment, for intellectual challenge, and in some cases, they play for a living. The game has been a favorite of Presidents, including our current President, Supreme Court Justices, and more than a few Members of Congress.

I congratulate the committee on holding this hearing in an effort to better understand the status quo with respect to Internet gambling and Internet poker. I think what the committee will discover in the course of this hearing is that the status quo is badly broken and benefits no one -- not my members, not the federal or state governments, not minors or problem gamblers, not the financial services sector and certainly not the U.S. economy. It is my fervent hope that the committee will respond by taking up legislation similar to the bills introduced by Congressman Barton and Congressman Campbell, and at this point, let me take a moment to congratulate the Chairman Emeritus for his leadership on this issue.

I would like to emphasize the question that is *not* before this committee: the question of whether Americans will continue to play poker on the Internet. Americans have been playing poker on the Internet for almost 10 years, and even the Department of Justice (DOJ) agrees that playing Internet poker is not illegal for the player. Events like the passage of the Unlawful Internet

Gambling Enforcement Act (UIGEA) and the indictments on April 15, 2010, otherwise known as Black Friday, can change where players play, and for a short time, the number of people playing, but Internet poker has not gone away, and it is hard to envision a scenario where it would. Today, virtually any American with a broadband connection and a checking account can engage in nearly any form of Internet gambling.

What players cannot do, however, is play on a site that is located in the U.S.; that employs U.S. citizens; that pays U.S. taxes or is regulated by any level of government in the U.S. We believe it is time -- indeed, it is well past time -- to replace an offshore industry subject to uneven levels of foreign regulation with an on-shore industry that is subject to strict and consistent federal, state and tribal regulation. In developing this U.S. industry, we can learn from the experience of the many European jurisdictions that have licensed and regulated Internet gambling and Internet poker -- from both their successes and their mistakes.

I am aware that a substantial part of this Subcommittee's mission is consumer protection. As a representative of the consumers you would seek to protect, let me detail briefly the types of consumer protections Congress should enact.

Since the Black Friday indictments, many thousands of U.S. poker players have not been able to recover money that they deposited into Full Tilt Poker and Ultimate Bet/Absolute Poker accounts, or money they won playing on these sites. In the case of Full Tilt Poker, according to the DOJ, that site used those deposits to pay dividends to their shareholders. PokerStars, the largest Internet poker site, as a condition of its license, was required to keep all player deposits in

a regularly-audited trust account. All of PokerStars' players who have requested their funds were paid soon after Black Friday. Congress should pass legislation requiring all player deposits to be kept in trust accounts, with regular audits to ensure solvency.

One of the foremost concerns about Internet gambling -- and gambling in general -- is the question of minors improperly being allowed to place bets. My fellow panelist, Ms. Aftab, is the leading advocate for protecting children on-line, and she can best address this, but let me say this: U.S. legislation should ensure that, in order to access Internet poker sites, players should not only be required to prove that they are adults, but to prove that they are a specific adult whose identity can be separately verified. Identity verification for Internet poker should be as robust as identity verification for Internet banking, and regulators should require "best of breed" technologies to ensure that minors aren't allowed access to sites. I would emphasize again that today, we are outsourcing the protection of our children to foreign jurisdictions and I believe our kids deserve better.

The second most common concern relates to individuals who develop gambling problems. I believe legislation should allow players to set limits on the amount of money they deposit on any licensed site over a particular interval. If a player decides that they do not want to be allowed to lose more than $100 per month on a site, regulations should ensure that they cannot deposit additional dollars on ANY licensed site. In addition, there should be a list of excluded people who are not allowed to play on any site, so that if a player feels that he is developing a gambling problem, he could place himself on that list to avoid the temptation of playing. Further, the sites themselves have the obligation to promote responsible play. Technologies exist today in which a

site can identify a player exhibiting signs of a problem gambler and proactively alert the player and provide necessary resources and information so the player can evaluate their playing habits. Regulation should insist that licensed operators employ these technologies.

As part of licensing legislation, the U.S. should also ensure that games are fair, that random number generators really are random, and that players are protected from fraud and collusion. To this end, I believe that U.S. regulators should look at both the source code for the game, as well as the outcomes it generates for any sign of anomaly within the software that would render the game unfair. In addition, regulators should require "best of breed" technologies to detect when players might be illegally colluding. In Europe, they have developed algorithms to watch millions of hands and flag suspicious behavior so that once a player is flagged, humans watch the hands in real time to detect possible cheating. Again, U.S. regulators should require "best-of-breed" technologies in this area, but today, the players can only count on the vagaries of foreign regulations.

In addition, the prerogatives of states must be respected. While we support an interstate program for the licensing of poker, states that do not wish to participate in such a system should be given the prerogative to opt out , such that no licensee would be allowed to take play from individuals in that state. To be clear, PPA will vociferously encourage states not to opt-out, but if they choose to do so, their choice should be respected. U.S. regulations should ensure that regulators have and use the best technology to ensure that players from "opt-out" states cannot play on licensed sites.

I should emphasize at this point that regulations and technology to accomplish these goals -- protecting minors and problem gamblers, ensure that games are fair, blocking players in prohibited jurisdictions -- are not theoretical. They are being used successfully in many European jurisdictions that license and regulate Internet gambling and Internet poker.

Along with legislation to license Internet poker, Congress should finally clarify the laws governing Internet gambling and create effective enforcement against whatever is illegal. DOJ has long maintained that the federal Wire Act prohibits any wager over the Internet phone lines, and the highest court that has ruled on it said the Wire Act only applies to sports betting. State laws mostly pre-date the Internet and only govern behavior within the state. Although the House-passed version of UIGEA sought to finally clarify the Wire Act, the Senate could not reach a consensus. In the end, UIGEA simply told banks to block payments for "unlawful Internet gambling" without defining that term. When the Federal Reserve official responsible for drafting the UIGEA regulations testified before the Financial Services Committee, she listed the lack of a clear definition of "unlawful Internet gambling" as one of her biggest challenges.

In the course of developing those regulations, many stakeholders, including sports leagues and family groups, urged the regulators to create and maintain a list of prohibited businesses to which U.S. banks should not transfer money, modeled after the OFAC list which prevents the transfer of money to supporters of terrorism. Many in the banking industry supported the creation of such a list as well, since it would remove them from the precarious position of having to determine what constitutes "unlawful Internet gambling" and who is engaged in it. Both the

Barton and Campbell bills create such a list, as well as an additional "tattle-tale" provision that would allow any affected party to build a prima facie case that a site or its financial agent belongs on the list. Treasury would then have 60 days to place the individual on the list, or explain why they hadn't.

In addition to better protecting players, bringing Internet poker on-shore and regulating it will yield real economic benefits to the U.S. Billions of dollars that today flow across our borders and onto offshore websites could be kept here, creating tens of thousands of good-paying jobs, and yielding billions of dollars in revenue for the federal government, all without having to raise taxes.

In sum, Congress has a choice. They can preserve the status quo, where Americans play on foreign sites with consumer protections outsourced to foreign regulators, while creating jobs and tax revenue for foreign countries. Or they can replace it with a licensed regime for Internet poker with strict consumer protections, clear laws and effective enforcement against illegal Internet gambling. Such a regime would allow states to regain control over the gambling activities of their residents, and in so doing, create tens of thousands of U.S. jobs and billions in federal and state revenue.

For over a century, poker has been a reflection of America's entrepreneurial and competitive spirit and has been a positive ambassador of our culture throughout the globe. Over the years, the way people play the game has changed and, like other recreational activities, more and more are turning to the Internet to enjoy this pastime. I urge this committee and this Congress to

swiftly enact federal policy that ensures American consumers have a safe and secure marketplace in which to play this game of skill over the Internet.

Again, Madam Chairman and members of the committee, I appreciate the opportunity to testify, and I look forward to answering your questions.

Mrs. BONO MACK. Thank you, Senator.

And now I recognize Ms. Aftab for 5 minutes.

STATEMENT OF PARRY AFTAB

Ms. AFTAB. Good morning. Thank you very much, Chairman Bono Mack and Ranking Member Butterfield and other members of the subcommittee, for enabling me to speak today.

I am representing Fair Play USA as a member of their Advisory Board. I am joined in that Advisory Board by Louis Freeh, who was director of the FBI; and the first secretary of Homeland Security, Governor Ridge, who are unable to testify today.

As we look at these issues, we need to recognize that they have a lot in common with the issues that this subcommittee has been working on—privacy, security, authentication, protecting our consumers. It is very much a matter of protecting our kids and protecting our families as well. So to the extent any of you know my work, I have been probably best known for protecting kids and families online as the unpaid executive director of Wired Safety. We are the oldest and largest Internet safety group in the world. And we handle all issues. And in that capacity I receive phone calls and emails from people who have gambled online, won, and not retrieved their winnings; people who are confused about whether or not it is legal for them to play poker online.

I am a lawyer and I have to parse the law to really understand it. If you walk up and down the street, a lot of people don't. They don't understand the difference between online poker fun games that are just part of computer games and those where there is wagering that takes place. A lot of the other countries around the world have looked at this and found the solution for the problems that we have identified with online gambling: identity theft, money laundering, underage gambling, problem gambling, fraud, identity theft, privacy/security breaches. All of these issues can be dealt with the ironic position of legalizing certain aspects of online gambling but regulating it and being able to enforce it.

The benefits of this allow us to help people who are defrauded, put in the safeguards that have been put in brick-and-mortar gambling situations. As we look at this, it is not a matter of whether gambling is moral or not. I think that issue was dealt with many years ago when State lotteries were put in place, when we looked at tribal gambling and we saw how many schools could be funded with this. But we can put safeguards in effect that are not in effect now. What is happening now isn't working. There are millions of people gambling billions of dollars online without any protection at all. And because of the laws that we have, it is really a hear-no-evil, see-no-evil, speak-no-evil situation. And these people find themselves with no place to go but calling my cell phone at three o'clock in the morning.

So I have a group of teens, teen angels and some of the representatives on this subcommittee have teen angels in their districts and they are familiar with them, and they knew that I was testifying here today. And they are teen Internet safety experts. So they said, well, it is really easy for us to find these online poker sites in particular, and they went to several of them. And one they went to I have here; it is pokersites.com. It took them about 2–1/

2 seconds to find that one. And it has top lists of places that are the best legal U.S. poker site 2011—betonline, bodog again. I knew they did this because they called and asked for my credit card number to be able to put it in place or for permission to use one of theirs, and one of the girls was 16 years old and had her own credit card that her parents had given her to be able to shop at the mall. It is easy. It is too easy and there is nothing we can do right now to keep underage gamblers out and protect problem gamblers with the kind of things that we can do.

There are many things that we do to address online gambling as it relates to horse racing, although I don't know anybody who would rather go to the Internet than the beautiful State of Kentucky. But I think that there are so many things that can be done here if we treat this as another Internet safety, privacy, and security issue instead of something that is unique because it has a lot more in common with all of the other things we are looking at than there are differences. So I am happy to discuss any of those issues with anyone on the committee if you have questions and help in any way I can. Thank you.

[The prepared statement of Ms. Aftab follows:]

Written Statement of Proposed Testimony of

Parry Aftab,

Advisory Board Member of FairPlayUSA

House Committee on Energy and Commerce

Subcommittee on Commerce, Manufacturing and Trade

2125 Rayburn House Office Building

Washington, D.C. 20515

Hearing on "Internet Gaming: Is there a Safe Bet?"

Tuesday October 25, 2011

Summary

FairPlayUSA believes that existing federal laws enacted before the Internet was created that purportedly prohibit businesses from providing Internet-based gambling must be strengthened.

Currently, illegal Internet gambling is not clearly defined, muddying the differences between allowed and illegal games and leading to widespread confusion. Moreover, law enforcement, despite the recent well-publicized indictments against a small group of operators, does not have adequate tools to shut down illegal sites. In addition, online poker is not regulated by U.S. law.

The lack of proper regulation leaves Americans at risk. Offshore sites can endanger minors and expose adult consumers to fraud. Offshore sites also leave consumers with no legal recourse in disputes with unregulated operators. State-of-the-art technology, coupled with strict regulation, will enforce our laws and shut down illegal sites, protect players and children, and create tens of thousands of American jobs. We believe that poker, a popular pastime for millions of American adults, should be safe and fair for adult, law-abiding players. Our goal is to educate and create public momentum for effective law enforcement, consumer protection, and strict regulation.

While we have tried to prohibit online gambling and therefore make it unavailable to U.S. residents, the statistics reflect otherwise:

- It is estimated that each year Americans spend approximately $4 to 6 billion on Internet gambling, despite the 2006 passage of UIGEA;
- Surveys indicate that more than 300,000 young people between 14 and 22 gamble at least once a week on the Internet, and over 700,000 do so at least once a month;
- 3.3% of male youth, or more than 1 million individuals, play cards online for money at least once a month; and
- An estimated 1,700 rogue international gambling sites currently take bets from players located in the U.S.

Research evaluating the different types and levels of consumer risks associated with existing, mostly unregulated Internet gambling against the risks associated with Internet gambling in a strictly-regulated environment concludes that the net effect of the current approach is to push Internet gambling underground and offshore, out of the reach of U.S. courts and regulators and exposing American consumers to significant risks. The United States therefore finds itself in the unfortunate position of incurring all the social costs of online gambling while having no control over the gaming sites that serve U.S. residents. The status quo offers no meaningful consumer protections. The current regime exposes consumers to a number of potential risks, all of which would be eliminated or significantly mitigated by regulation, coupled with state-of-the-art technology.

If we are going to protect consumers, we owe it to Americans to address online gambling more intelligently and effectively than we do today. Changing the law to provide greater clarity and enhanced law enforcement authority, combined with the use of state-of-the-art technology and strict regulation, can help combat money-laundering, fraud, and other threats, as well as better protect all consumers, including those who choose to play legal online poker.

Written Statement of Proposed Testimony of
Parry Aftab,
Advisory Board Member of FairPlayUSA

Hearing on "Internet Gaming: Is there a Safe Bet?"

Thank you, Chairman Bono Mack, Ranking Member Butterfield, and Members of the Subcommittee for giving me the opportunity to testify today on this important topic.

My name is Parry Aftab and this morning I am testifying on behalf of FairPlayUSA, on whose board of advisors I am pleased to serve. Other members of our board include former FBI Director Louis Freeh, and former Pennsylvania governor and first Secretary of Homeland Security Tom Ridge.

FairPlayUSA is a coalition of law enforcement officials, consumer protection experts, poker players, and other Americans that seeks to educate policymakers and the public on the broad public policy issues raised by the current ambiguous laws in the U.S. Today, millions of Americans continue to regularly gamble on games of all types on websites provided by foreign operators, causing confusion among consumers, the criminal justice community, and among the financial and Internet industries. FairPlayUSA supports Congress once and for all defining what is illegal gambling and providing strong law enforcement tools to ban such gambling, as well as providing a strict regulatory framework for online poker. I believe that FairPlayUSA reflects a growing consensus among a spectrum of stakeholders for an online gambling policy solution that

has three principal elements - strong law enforcement and strict regulation, consumer protection, and the rights of U.S. adult consumers to engage safely in legal pastimes.

My perspective, and a perspective that I share with Judge Freeh and Governor Ridge, is that existing federal laws that were enacted before the Internet was created that purportedly prohibit businesses from providing Internet-based gambling must be strengthened. Currently, illegal Internet gambling is not clearly defined, muddying the differences between allowed and illegal games and leading to widespread confusion. Moreover, law enforcement, despite the recent well-publicized indictments against a small group of operators, does not have adequate tools to shut down illegal sites. In addition, online poker is not regulated by U.S. law. The lack of proper regulation leaves Americans at risk. Offshore sites can endanger minors and expose adult consumers to fraud. Offshore sites also leave consumers with no legal recourse in disputes with unregulated operators. State-of-the-art technology, coupled with strict regulation, will enforce our laws, protect players and children, and create tens of thousands of American jobs. We believe that poker, a popular pastime for millions of American adults, should be safe and fair for adult, law-abiding players. Our goal is to educate and create public momentum for effective law enforcement, consumer protection, and strict regulation.

Let me describe for you how I arrived at the position I am advocating. In addition to being on the advisory board of FairPlayUSA, I am the Executive Director of WiredSafety, the largest Internet safety and help group in the world. WiredSafety operates entirely through its thousands of unpaid volunteers, worldwide. I founded and run the group as an unpaid volunteer as well.

WiredSafety covers all cyber-risks for digital technology users of all ages. While best known for our work in child protection and digital literacy, we protect senior citizens from scams and fraud and adults from cyberstalking and harassment equally as often.

WiredSafety served as one of the 29 members of the Harvard Berkman Center's Internet Safety Technology Task Force (the "ISTTF"), which was commissioned to render a report on children online to the Attorneys General of 49 states. I was recently appointed to serve on the 24-member working group established by an act of Congress and run by the NTIA to render a report for Congress in June of 2010 on cybersafety issues impacting children. The UN and UNESCO, as well as the FTC and FCC have turned to us for advice and help.

Minors and online gambling has been a problem since WiredSafety first began our work in 1995. Even then, kids were gambling online. Teens would use babysitting, paper-delivery and birthday money to place bets online. Teens themselves would contact us when the websites failed to pay out, or they suspected fraud. Parents and grandparents would contact us when they discovered their teens gambling online, or wanted help keeping them away from online gambling sites. We helped them when we could, reviewing filtering and blocking technologies, reaching out to the credit card companies and phone companies used as payment intermediaries and would sometimes even contact the sites themselves.

But minors' gambling remains a problem. So does illegal and fraudulent practices by many unregulated gambling websites. These issues range from scams and fraud perpetrated by the gamblers and those perpetrated by the website operators. Rigged games and collusion using old-fashioned and digital methods are common place among unregulated websites. Problem gamblers can face enhanced problems when the websites are not using best practices to address these special issues. Online gambling abuse has become a mainstream consumer issue. It is WiredSafety's role to address problems affecting our consumer constituency online. Gambling is one of those problems we must address.

After more than a decade of analyzing the risks posed by unregulated Internet gambling, it may be ironic but I have reached the conclusion that the best way to protect families and consumers in connection with online gambling is regulating it, not prohibiting it. Current laws prohibit the use of any financial institution for placing or paying on illegal online bets. But this approach won't work in isolation and can't work in today's digital commerce environment. For example, some financial transactions such as deposits into an offshore bank account don't violate UIGEA, and those accounts can be debited for gambling purposes. Furthermore, there can be fraud regarding the coding of transactions, and other illegal ways to evade UIGEA. The current approach has been to "see no evil…hear no evil." But while we have tried to prohibit online gambling and therefore make it unavailable to U.S. residents, the statistics reflect otherwise:

- It is estimated that each year Americans spend approximately $4 to 6 billion on Internet gambling, despite the 2006 passage of UIGEA;

- Surveys indicate that more than 300,000 young people between 14 and 22 gamble at least once a week on the Internet, and over 700,000 do so at least once a month;
- 3.3% of male youth, or more than 1 million individuals, play cards online for money at least once a month; and
- An estimated 1,700 rogue international gambling sites currently take bets from players located in the United States.

Because of the nature of online financial transactions, the many unregulated industry members and often unsophisticated online gamblers, WiredSafety has over the years identified a broad range of risks related to online gambling. While all gambling is, by its nature, risky, unregulated gambling is the most risky. Frankly, we need governmental help. We have to legislate best practices, identify the good actors and the bad, and find ways to protect minors and assist those who may have gambling problems. Despite the federal government's best intentions, consumers and families are on their own without regulations to handle underage gambling, addictive gambling, fraud, collusion, malware and malicious code, privacy and data protection, criminal involvement, disputes and online security threats. That is unacceptable.

WiredSafety has always taken the position that education is preferred to regulation. And we have learned that existing laws can often fit new technology legal needs. But in this case it appeared that help was needed from Congress, and we believed that the issues warranted further study and deliberation. In 2009, we commissioned a comprehensive study of the risks we had identified, existing and viable regulatory schemes and the ability of technology tools to address our top

concerns. Would regulation of cyber-gambling work? Is there a way to address the most crucial cyber-risks under existing laws or using alternative methods? Is it practical? Will it improve the existing situation? What can be learned from other jurisdictions? How can we improve on existing approaches? Can risks be realistically mitigated? And if so, how much?

We asked Dr. Malcolm Sparrow, a professor at Harvard University's Kennedy School of Government, to be the study's lead investigator. A former deputy chief inspector with the British Police Services and a world-renowned expert on approaches to regulatory policy and compliance, Dr. Sparrow reviewed the existing literature, evaluated current regulations and cutting-edge technologies, and interviewed regulators, researchers and public policy experts from around the world. Dr. Sparrow was supported by experts in technology and other relevant disciplines.

The report we commissioned, which is attached as a supplement to my written statement, doesn't advocate for or against legalized Internet gambling. Instead, it evaluates and weighs the different types and levels of consumer risks associated with existing, mostly unregulated Internet gambling against the risks associated with Internet gambling in a strictly-regulated environment.

Notwithstanding the current prohibitionist legal and regulatory approach, the study cites evidence that millions of U.S. residents gamble online through offshore gambling sites. Indeed, the report concludes that the net effect of the current approach is to push Internet gambling

underground and offshore, out of the reach of U.S. courts and regulators and exposing American consumers to significant risks.

The United States therefore finds itself in the unfortunate position of incurring all the social costs of online gambling while having no control over the gaming sites that serve U.S. residents. The status quo offers no meaningful consumer protections. The current prohibitionist regime exposes consumers to a number of potential risks:

- gambling by minors;
- problem gambling;
- fraud by operators:
- fraud by players;
- organized crime;
- money laundering by players;
- money laundering by operators;
- violation of jurisdictional prohibitions;
- breaches of data confidentiality; and
- lack of site security.

A fundamental conclusion of the study is that the legalization and regulation of online poker would offer significant improvements to consumer welfare and protections related to each and every risk factor. That is, if we are concerned about the potential problems with online poker, such as underage play and problem gambling, we should seek strict and intelligent regulation coupled with technology – not by trying to completely ban Internet poker. For each of the risks

Dr. Sparrow identified, the research identifies a set of regulatory methods and technologies that would provide appropriate risk management in a regulated online poker environment.

In the two years since the study was prepared, the problems associated with illegal online gambling have matured, as have the solutions. Today, Judge Freeh, Governor Ridge, and my other colleagues at FairPlayUSA do not support any broad legalization of online gambling in the United States. In fact, we're in favor of giving law enforcement powerful new tools to shut down illegal sites that offer sports betting and casino games to Americans. We support strong law enforcement oversight and applaud the Justice Department for bringing charges against those individuals who may have violated U.S. law.

Our focus is on educating the public and policy makers about the need to clarify existing federal laws on Internet gambling, to provide law enforcement with tools to shut down illegal sites, to protect consumers, and to subject online poker to strict regulation.

Should Congress agree with us that strict regulation of online poker makes sense, we believe there must be well-designed minimum standards for regulation that can effectively address the principal public policy concerns that surround playing poker online. We would favor a strict regulatory system that will:

- Exclude minors.

- Restrict access to online poker from individuals residing in states and jurisdictions where online poker has been restricted by the state under mechanisms that Congress chooses.
- Prevent the use of online poker sites for money laundering or other illegal purposes.
- Effectively address problem gambling by providing tools allowing customers to control their own gambling.
- Ensure that online poker games are fair to players by preventing cheating by players, operators or through the use of poker "bots."

In conclusion, if we are going to protect consumers, we owe it to Americans to address online gambling more intelligently and effectively than we do today. Changing the law to provide greater clarity and enhanced law enforcement authority, combined with the use of state-of-the-art technology and strict regulation, can help combat money laundering, fraud, and other threats, as well as better protect all consumers, including those who choose to play legal online poker.

Thank you again for the opportunity to testify and I look forward to your questions and any help I can provide.

Mrs. BONO MACK. Thank you very much.

Mr. Stevens, you are recognized for 5 minutes.

STATEMENT OF ERNEST STEVENS, JR.

Mr. STEVENS. Thank you. Good morning, Madam Chairman Bono Mack, Ranking Member Butterfield, and the members of the subcommittee. Thank you for this opportunity to provide the views of the National Indian Gaming Association on the important issue of Internet gaming.

To place our views in context, let us start with the Constitution. Indian tribes are recognized in the United States Constitution as governments. Through treaties with the United States, tribal governments ceded hundreds of millions of acres of their homelands to help build this great Nation. In return, the U.S. promised to preserve remaining tribal lands and tribal sovereignty and provide for the health, education, and general welfare of Indian people.

Unfortunately, Madam Chairman, the United States has broken many of these treaty promises. After suffering generations of failed Federal policies, tribes took matters into their own hands in the 1960s and '70s when they began to use gaming as a means to generate revenue to meet tribal needs. That is when President Johnson and Nixon adopted the policy supporting Indian self-determination. Indian gaming is Indian self-determination.

In 1988, after more than a decade of legal challenges by States and commercial gaming interests, Congress stepped in and established a Federal law through the Indian Gaming Regulatory Act, or IGRA. IGRA acknowledges Indian tribes as governments with the right to regulate and operate gaming. IGRA provides that tribal gaming revenues be used for tribal government purposes. It also provides that tribal revenues are not subject to taxation. And finally, the Act established a comprehensive regulatory system that involves 3 levels of government regulation: tribal, Federal, and State.

Twenty-three years later, more than 200 Indian tribes have made IGRA work to begin to rebuild their once-forgotten communities. Gaming revenues are working to improve tribal education, health, elder care, and rebuilding tribal infrastructure, and so much more. For many tribes, Indian gaming is about jobs. In 2010, Madam Chair, Indian gaming created more than 600,000 American jobs. Without question, Indian gaming is putting people to work.

These tribes realize that the games would not be possible without strong regulation. The tribal regulatory system employs more than 3,400 regulators, along with state-of-the-art technology to protect tribal revenues. In 2010, tribes spent 375 million in regulation. The system is costly, it is comprehensive, and our record of experience shows that it is working. Because of Indian gaming, tribal governments are stronger, our people are healthier, and an entire generation of Indian youth have hope for a better future.

As a result of these gains, all tribes are weary when Congress considers changing the playing field with regard to gambling. Legalized Internet gaming raises significant concerns. In 2010, tribal leaders conducted more than a dozen meetings to discuss the issues of Internet gaming. From these meetings, tribal leaders nationwide have unified behind a set of general principles regarding Federal

Internet gaming legislation. These principles are listed in my written testimony, and I will try to summarize these for you, Madam Chairman.

First, our principles require that Federal legislation provides similar authorizations and protections for tribal Internet gaming that IGRA provides for Indian gaming. To accomplish this goal, Internet gaming legislation must acknowledge that tribes are eligible to operate and regulate Internet gaming. If a Federal regulatory system is required, tribes ask that the NIGC be vested with the authority to regulate tribal Internet gaming. The National Indian Gaming Commission is the only Federal agency with experience in regulating any form of gaming in the United States.

Indian Country's fourth principle states that the Federal legislation must acknowledge that customers may access tribal Internet sites as long as such gaming is not prohibited where the customer is located. And five, legislation must acknowledge that tribal Internet gaming revenues are not subject to taxation. Tribal gaming revenues are 100 percent taxed. These funds go to serve the public purpose of tribal and nearby communities. There is no room for Federal and State taxation.

Our final principle is based on the fact that tribes have invested significant resources on the current law. Thus, legislation must fully protect tribal rights under the Indian Gaming Regulatory Act and existing tribal State gaming compacts.

Internet gaming bills that have been introduced in the 112th Congress violate many of these principles and we oppose their passage as currently written. In addition, there are many stakeholders that have yet to be heard from. For example, neither of the Departments of Justice, Interior, Commerce, Treasure, or the National Indian Gaming Commission have been heard on this issue.

I know my time is short so I will briefly conclude, Madam Chairman. Indian gaming has proven to be the most effective tool to help Indian tribes address more than a century of Federal policy failures. Tribes are concerned that legalized Internet gaming will threaten these games. NIGA has dialogued with Congress on Internet gaming for close to 15 years, and on the most recent discussions, tribes have met and unified behind these set of core principles.

We look forward to working with Congress and this subcommittee and to ensure that any legislation moving to legalize Internet gaming adheres to these principles that are developed and established by the tribes across the United States. And I thank you again for this opportunity to testify and I am here to answer any questions you may have, Madam Chairman.

[The prepared statement of Mr. Stevens follows:]

TESTIMONY OF ERNEST STEVENS, JR., CHAIRMAN

NATIONAL INDIAN GAMING ASSOCIATION

HOUSE ENERGY AND COMMERCE COMMITTEE

SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE

"INTERNET GAMING: IS THERE A SAFE BET?"

OCTOBER 25, 2011, 10:30 A.M.

2123 RAYBURN HOUSE OFFICE BUILDING

Introduction

Good morning Chairman Bono Mack, Ranking Member Butterfield and members of the Subcommittee. My name is Ernie Stevens, Jr., I am a member of the Oneida Nation of Wisconsin and it is my honor to serve as Chairman of the National Indian Gaming Association (NIGA). NIGA is an intertribal association of 184 federally recognized Indian Tribes united behind the mission of protecting and preserving tribal sovereignty and the ability of Tribes to attain economic self-sufficiency through gaming and other economic endeavors. I want to thank the Subcommittee for this opportunity to provide our views on proposals to legalize Internet gambling in the United States.

Summary of Testimony

My testimony today will provide the Subcommittee with background of the constitutional status of Indian tribes as governments in the U.S. federal system, a brief look at the history and current state of Indian gaming, and detailed focus on tribal views of federal proposals to legalize Internet gaming in the United States.

Indian Tribes and the Constitution

In order to understand our views on Internet gambling, I would like to first place Indian gaming in proper context by providing some background about the status of Indian tribes in the United States and discuss the state of Indian gaming.

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

When the United States was formed, it too acknowledged the governmental status of Indian tribes. The U.S. Constitution specifically acknowledges tribes as distinct governments in the Commerce Clause, which states that "Congress shall have power to ... regulate commerce with foreign nations, and among the several states, and with the Indian tribes." *U.S. Constitution, Article I, section 8, clause 3.*

The United States entered into hundreds of treaties with tribal governments. Through these treaties, tribes ceded hundreds of millions of acres of tribal homelands to help build this great Nation. In return, the United States promised to provide for the education, health, public safety and general welfare of Indian people. The Supremacy Clause of the Constitution establishes these treaty promises as "the supreme law of the land." *U.S. Constitution, Article VI, clause 2.* The U.S. Supreme Court later acknowledged that this course of dealing with tribal governments established a trust relationship between tribes and the United States, with accompanying obligations on the part of the United States towards Indian people. *See, e.g., United States v. Kagama, U.S. (1886).* It is widely known that the federal government has fallen far short in meeting these solemn treaty and trust obligations.

Despite these obligations, federal policies directly violated tribal treaty promises, caused the death of hundreds of thousands of our ancestors, stole additional millions of acres of tribal homelands, suppressed and outlawed the practice of tribal religion and culture, and destroyed tribal economies. One of the most tragic

examples was the federal policy of Assimilation, whereby the federal government forcibly took Indian children from their homes and placed them in military and religious boarding schools where they were forbidden from speaking their language or practicing their Native religions. The concurrent policy of Allotment sought to destroy tribal governing structures, sold off treaty-protected Indian lands, and had the result of further eroding tribal land bases and devastating tribal economies. After a brief reversal in Indian affairs policy in the 1930's and 1940's, the federal policy of Termination in the 1950's again sought to put an end to tribal governing structures, eliminate remaining tribal land bases, and relocate individual Indians from tribal lands with the help of one-way bus tickets to urban areas with the promise of vocational education. The aftermath of all of these policies continues to plague Indian country to this day.

Background: Indian Gaming and IGRA

Indian communities and tribal culture, however, persisted in face of these failed policies. The strong perseverance of Indian people demonstrated to the federal government that Indian country was not going to fade away. On July 8, 1970, President Nixon formally repudiated the policy of Termination and adopted a policy supporting Indian Self-Determination, which seeks to improve Indian education, fosters tribal culture, and enhances tribal economic development, among other goals. More than forty years later, Indian Self-Determination remains the Indian Affairs policy of the United States. Tribal governments have

seen significant progress in rebuilding their communities as a result of the Self-Determination policy.

In the late 1960's and early 1970's, tribal governments took the concept of self-determination to heart, opening the first Indian gaming operations to generate governmental revenue to fund essential tribal government programs to make up for the federal government's shortfalls in meeting its treaty and trust obligations. Like state lotteries, tribal gaming revenues are used exclusively to fund tribal government programs to improve the education of Indian youth, provide health care, care for tribal elders, provide pubic safety, and promote the general welfare of Indian and nearby communities.

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

In 1988, one year after the *Cabazon* decision, Congress enacted the Indian Gaming Regulatory Act (IGRA). The stated goals of IGRA include the promotion

of tribal economic development and self-sufficiency, strengthening tribal governments, and establishing a federal framework to regulate Indian gaming. The Act also established the National Indian Gaming Commission (NIGC). While there are dozens of forms of gaming in America, the NIGC is the only federal commission to regulate any form of gaming in the United States.

Many tribes viewed IGRA as a product of state and commercial interests. A number of tribal governments strongly opposed the federal legislation considering it an intrusion on tribal sovereignty. The Act is far from perfect, and the U.S. Supreme Court has added to its imperfections. However, for 23 years, more than 200 tribes nationwide have made IGRA work to help begin to rebuild their communities and meet the stated goals of the Act.

Benefits of Indian Gaming

Indian gaming is the Native American success story. For four decades, Indian gaming has proven to be the most successful tool for economic development for many Indian tribes. In 2010, 240 of the 565 federally recognized Indian tribal governments operated gaming to generate revenue for their communities.

Many tribes have used revenue from Indian gaming to put a new face on their communities. Indian tribes have dedicated gaming revenues to improve basic health, education, and public safety services on Indian lands. We have used

gaming dollars to improve tribal infrastructure, including the construction of roads, hospitals, schools, police buildings, water projects, and many others. Gaming revenues also enable tribes to diversify their economies beyond gaming. Tribes have invested in renewable energy projects, retails operations, manufacturing and other entrepreneurial ventures.

For many tribes, Indian gaming is first and foremost about jobs. Indian gaming is a proven job creator, establishing and fostering over 600,000 direct and indirect American jobs in 2010. Indian gaming has provided many individual Indians with their first opportunity at work. Just as importantly Indian gaming is bringing entire families back to Indian country. Because of Indian gaming, reservations are again becoming livable homes, as promised in hundreds of treaties. These American jobs go to both Indian and non-Indian alike. Without question, we are putting people to work.

Indian gaming also benefits federal, state, and local governments. A June 2011 National Public Radio report, titled "Casino Revenue Helps Tribes Aid Local Governments," acknowledged that revenue from the Stillaguamish Tribe of Washington helped prevent additional layoffs at the local Everett, Washington prosecutor's office. The articles also acknowledged the $1.3 million contribution that the Tulalip Tribes recently gave to the local school district after they heard about possible budget cuts and teacher layoffs. These same scenarios are taking place in more than a hundred local tribal jurisdictions throughout the United

States, saving thousands of American jobs for health care workers, fire fighters, police officers, and many other local officials that provide essential services to children, elders, and others.

In 2010, Indian gaming generated close to $13 billion for federal, state and local governments budgets through compact and service agreements, indirect payment of employment, income, sales and other state taxes, and reduced general welfare payments.[1] Despite the fact that Indian tribes are governments, not subject to direct taxation, individual Indians pay federal income taxes, the people who work at casinos pay taxes, and those who do business with tribal casinos pay taxes. Last year, Federal and Social Security/Medicare taxes taken from Indian gaming wages totaled $6.1 billion.

Indian tribes also made more than $100 million in charitable contributions to other tribes, nearby state and local governments, and non-profits and private organizations. In short, Indian gaming has become a vital piece of the national economy.

[1] Federal Taxes Paid From Indian Gaming: $9,305,000,000; State Taxes, Revenue Sharing and Regulatory Payments: $2,990,000,000.

However, much more must be done to improve tribal economies and the lives of Indian people. Indian gaming is not a cure all. Many tribal communities continue to suffer the devastating effects of the past failed federal policies. Too many of our people continue to live with disease and poverty. Indian health care is substandard, violent crime is multiple times the national average, and unemployment on Indian reservations nationwide averages 50%.

To broaden the economic success of Indian gaming, NIGA is working with our Member Tribes to further encourage tribe-to-tribe giving and lending. Through our American Indian Business Network, we work to highlight the benefits of hiring Native owned businesses and procurement of Native produced goods and services. Empowering tribal entrepreneurs and tribal government owned businesses, will serve to further diversify and strengthen tribal economies.

We have much work to do, but Indian gaming has proven to be one of the best available tools for tribal economic development. Indian gaming has helped many tribes begin to rebuild communities that were once forgotten. Because of Indian gaming, our tribal governments are stronger, our people are healthier, and an entire generation of Indian youth has hope for a better future.

Indian Gaming Regulation

Tribal governments realize that none of these benefits would be possible without a strong regulatory system to protect tribal revenue and to preserve the integrity of our operations. With regard to regulation, IGRA established a three-tiered system. The Senate Report on the Act makes clear the original intent for the regulatory system:

> "[IGRA] provides for a system of joint regulation by tribe and the federal government for class II gaming on Indian lands and a system of compacts between tribes and states for regulation of class III gaming. The bill establishes the NIGC as an independent agency within the Department of the Interior. The Commission will have a regulatory role for class II gaming and an oversight role with respect to class III gaming."

Senate Report 100-446, at 1 (Aug. 3, 1988).

This regulatory system vests local tribal government regulators with the primary day-to-day responsibility to regulate Indian gaming operations. IGRA requires that Indian gaming revenue go: "(i) to fund tribal government operations or programs; (ii) to provide for the general welfare of the Indian tribe and its members; (iii) to promote tribal economic development; (iv) to donate to

charitable organizations; or (v) to help fund operations of local government agencies." *25 U.S.C. section 2710(b)(2)(B).* As a result, no one has a greater interest in protecting the integrity of Indian gaming than tribes.

While tribes take on the primary day-to-day role of regulating Indian gaming operations, IGRA requires coordination and cooperation with the federal and state governments (in the case of class III gaming) to make this comprehensive regulatory system work. This comprehensive system of regulation is expensive and time consuming, but tribal leaders know what's at stake and know that strong regulation is the cost of a successful operation.

Despite the recent economic downturn, tribal governments have continued to dedicate tremendous resources to the regulation of Indian gaming. In 2010, tribes spent more than $375 million on tribal, state, and federal regulation. This number includes $276 million to fund tribal government gaming regulatory agencies; $81 million to reimburse states for state regulatory activities negotiated and agreed to pursuant to approved tribal-state class III gaming compacts; and $18 million to fully fund the operations and activities of the National Indian Gaming Commission.

The Indian gaming regulatory system employs more than 3,400 expert regulators and staff to protect tribal operations. Tribal governments employ approximately 2,800 gaming regulators and staff. Among the ranks of tribal regulators are

former FBI agents, BIA, tribal, and state police officers, former state gaming regulators, military officers, accountants, auditors, attorneys and bank surveillance officers. In addition, states employ more than 500 regulators, staff and law enforcement officers to help tribes regulate Indian gaming. At the federal level, the NIGC employs more than 100 regulators and staff.

In addition to the NIGC, a number of other federal agencies help regulate and protect Indian gaming operations. Tribes work with the FBI and U.S. Attorneys offices to investigate and prosecute anyone who would cheat, embezzle, or defraud an Indian gaming facility. *18 U.S.C. §1163.* Tribal regulators also work with the Treasury Department's Internal Revenues Service to ensure federal tax compliance and the Financial Crimes Enforcement Network (FinCEN) to prevent money laundering. Finally, tribes work with the Secret Service to prevent counterfeiting.

Tribal governments have also invested heavily in state-of-the-art surveillance and security equipment, and employ professional personnel to operate these systems. Tribal surveillance systems are on par with the best systems in the gaming industry, and exceed standards employed by state and commercial gaming operations.

The FBI and the Justice Department have repeatedly testified that there has been no substantial infiltration of organized crime on Indian gaming. Our regulatory system is costly, it's comprehensive, and our record and our experience shows that it's working.

NIGA Views on Federal Legalization of Internet Gambling

Against this backdrop, all Indian tribes are wary when Congress considers federal legislation that will change the playing field with regard to gambling in the United States. Legalization of Internet gaming raises significant concerns.

Congress has considered various forms of Internet gaming legislation for the past 15 years. Early on the discussion focused on prohibition. This debate culminated in the enactment of the Unlawful Internet Gambling Enforcement Act (UIGEA), which was attached as a rider to the Security and Accountability for Every Port Act, *P.L. 109-347*. Since enactment of UIGEA, several members of Congress have sought to reverse course and legalize Internet gaming in the United States.

Tribal governments hold differing positions on the legalization of Internet gaming. Some tribes acknowledge that Internet gaming is a growing legal part of the worldwide economy. They realize that one day it may become a part of the United States economy, and believe that it is in the best interests of their communities to enter the market as early as possible. Other tribes see Internet

gaming as a direct threat to the significant investments made to brick and mortar operations based on current law. Still others believe that regulatory technology has not yet evolved to adequately protect children and compulsive gamblers from abusing Internet gaming.

Despite these differences, tribal governments have built a consensus position on Internet gaming. Last year, tribal leaders met on more than a dozen occasions to discuss the pros and cons of Internet gambling legislation. We heard from experts in the Indian gaming and Internet gaming industry. From these meetings, tribal leaders came together to form a unified voice in support of general principles regarding federal legislation that would legalize Internet gaming in the United States.

Our Resolution acknowledges that Indian country has diverse economies that could be adversely impacted by the federal legalization of Internet gaming. The Resolution resolves that, at a minimum, federal Internet gaming legislation must incorporate the following fundamental principles:

- **Indian tribes are sovereign governments with a right to operate, regulate, tax, and license Internet gaming, and those rights must not be subordinated to any non-federal authority**

All federally recognized Indian tribes must be eligible to both operate and regulate Internet gaming. IGRA authorizes tribes to both operate and regulate

brick and mortar casinos. As noted above, the current regulatory / operation system in place for Indian gaming is working. A similar system is in place for state governments to both operate and regulate lottery systems. However, state lotteries do not have the added oversight of a federal regulatory agency like the NIGC.

When it comes to recognized U.S. governmental entities, Congress should not pick winners and losers if or when it decides to establish a new industry such as Internet gaming. Any federal internet gaming legislation must also allow tribal governments to have an early entrance into Internet gaming, with a limited period of exclusivity. Carving out exemptions for certain states or gaming industries while violating existing Tribal-State compacts is unacceptable to Tribal governments and raises major concerns under the Fifth Amendment Due Process and Takings Clauses.

Current Internet gaming legalization bills and recent drafts violate this principle by prohibiting a licensee / operator to also regulate Internet gaming. From the operational standpoint, these bills do not acknowledge that governments can be eligible operators. These same bills pick a select few most favored regulators and operators. These provisions should be amended to acknowledge tribal governments as eligible operators and regulators.

In addition, if a federal regulatory scheme is developed, tribal governments ask that the NIGC be vested with authority to regulate tribal Internet gaming. IGRA established the NIGC as the principal federal regulatory body overseeing Indian gaming. The NIGC is the only federal agency in the United States with experience in regulating any form of gaming in the Nation. Any Internet gaming bill must provide that the NIGC shall be the exclusive federal agency to provide oversight of gaming activities by Indian tribes. This provision should not supersede tribal governments' rights to regulate Internet gaming.

- **Internet gaming authorized by Indian tribes must be available to customers in any locale where Internet gaming is not criminally prohibited**

Internet gambling transcends borders. Thus, Internet gaming legislation must acknowledge that customers may access tribal government operated and regulated gaming sites as long as Internet gaming is not criminally prohibited where the eligible customer is located. Such acknowledgment would be consistent with current law and would recognize significant experience on the part of tribes in using technology to conduct gaming across borders. IGRA authorized tribal gaming operations to use telecommunications and other technology with the intent of authorizing tribes to provide games to a broader audience. In addition, for decades, tribes have employed technology to link class III machines across tribal and state borders.

This would be consistent with past statements of the U.S. Department of Justice. "Finally, to the extent that any legislation would seek to exempt from its prohibition bets and wagers that are authorized by both the state or country in which the bettor and the recipient reside ... Indian Tribes should be treated as every other sovereign for the purpose of authorizing gaming activity on their lands." *Statement of Kevin V. DiGregory, Deputy Assistant Attorney General, Criminal Division, http://www.justice.gov/criminal/cybercrime/kvd0698.htm.*

- **Consistent with long-held federal law and policy, tribal Internet gaming revenues must not be subject to tax**

It is a widely held general rule of law that governments do not tax one another. Thus, Internet gaming legislation must acknowledge that tribal Internet gaming revenues are not subject to taxation. Tribes are willing to maintain the same limits on the use of tribal Internet gaming revenue as are included in IGRA for the use of tribal gaming revenue. These limits, included in section 2710(b)(2)(B), (quoted above) essentially assess a 100% tax on tribal gaming revenue. Under IGRA, all tribal gaming revenues must be used for government and public purposes. There is no room for federal or state taxation.

Current Internet gaming legalization bills and recent drafts violate this principle by placing an across the board tax on Internet gaming revenues. These tax provisions must be amended to acknowledge tribal Internet gaming revenue as governmental revenue not subject to taxation.

- **Existing tribal government rights under Tribal-State Compacts and IGRA must be respected**

Tribal governments have invested significant resources in their operations based on IGRA and on carefully negotiated tribal-state class III gaming compacts. These agreements must not be violated. Enacting a bill with provisions that render exclusivity agreements null and void without the consent of affected states and tribes may violate the Fifth Amendment Due Process and Takings Clauses. In addition, IGRA requires that if a state government regulates gaming by any person for any purpose, then federally recognized tribes in that state may conduct class II gaming on their lands and may enter into agreements with states to conduct class III gaming.

Current Internet legalization bills before Congress contain provisions that would both of these principles. Bill would permit state governments to ignore the principles of IGRA with regard to tribal eligibility to conduct gaming under IGRA, requirements for tribal-state compact negotiations, and would authorize the violation of provisions, such as exclusivity agreements, in existing tribal–state compacts. These provisions should be amended to affirmatively recognize the full force and effect of existing tribal-state compact agreements as well as safeguard existing tribal government rights under IGRA.

Finally, Internet gaming legislation must permit Indian tribes to operate Internet gaming without renegotiating their tribal-state compacts under the IGRA.

- **The legislation must not open up IGRA for amendments**

This provision is simple and straightforward. For hundreds of tribal governments there is simply too much at stake to open the Indian Gaming Regulatory Act up to amendments on the floor of either the House or Senate. Tribes have consistently opposed subjecting IGRA to amendments for the past 23 years.

- **Federal legalization of Internet gaming must provide positive economic benefits for Indian country**

This provision requires the United States to acknowledge its Constitutional, treaty and trust obligations to Indian tribes as well as the significant stake that tribal governments have in the existing gaming industry. To meet this principle, federal legislation legalizing Internet gaming must dedicate funding to meet the significant unmet needs of tribal communities.

Current Internet Legalization Proposals Before Congress

As noted above, Internet gaming bills that have been introduced in the House of Representatives in the 112th Congress (H.R. 1174 and H.R. 2366) as well as recent drafts developed in the Senate violate many of the principles discussed above. NIGA strongly opposes these proposals unless they are amended to adhere to the principles detailed in this testimony.

We understand that this is a preliminary oversight hearing, and that the Subcommittee will solicit the views of the Departments of Justice, Interior, Commerce, and Treasury, as well as the views of the National Indian Gaming Commission. We urge this Subcommittee and other committees of jurisdiction to first obtain the views of these agencies and other regulatory experts before moving forward to enact internet gambling legislation. These agencies will provide Congress with vital information on the feasibility of regulating Internet gaming in the United States.

A number of Members of Congress have raised social concerns with legalized Internet gaming in the U.S. They continue to oppose efforts to legalize Internet gambling, because they believe that it fosters problems unlike any other forms of gambling. Opponents list concerns that online players can gamble 24 hours a day from home; children can play without sufficient age verification; and betting with a credit card can undercut a player's perception of the value of cash — leading to possible addiction and, in turn, bankruptcy, crime, and other serious societal consequences.

Feasibility of regulation has also been listed as a significant concern. Because of the virtual nature of Internet gaming the regulatory protections utilized at brick-and-mortar casinos do not translate to online gambling. An online regulator does not have the benefit of live confrontation with players to confirm their identity, identify and stop problem gambling, or the use of facial recognition software to

identify cheats and others that would defraud a gaming operation.

Internet Gambling and the Deficit Reduction Plan

Proponents of legalizing Internet gambling have asked the Joint Select Committee on Deficit Reduction to include Internet gaming as part of the national strategy to cut the federal deficit. We strongly oppose inclusion of Internet gaming legalization as part of the national plan to reduce the federal deficit.

Legalization of Internet gaming is a controversial policy issue that must be carefully examined. As noted above, much more work must be done convince many Members of Congress that the benefits of legalizing Internet gaming in the United States outweigh the social concerns they hold. In addition, the U.S. Attorney General has publicly stated that he will oppose legislation to legalize Internet gaming in the United States.

Finally, the claims made by the proponents of Internet gaming with regard to the potential revenues to be generated from the legalization of Internet gaming should be closely studied. The Congressional Budget Office made initial estimates based on a nationwide legalization of all forms of Internet gaming that did not include individual state and tribal opt-out provisions and was based on a certain minimum tax rate. The current measures under consideration in both the House and Senate would not meet the lofty claims of the past CBO score. As

Congress considers addressing the deficit by more than $1.5 trillion, the limited revenue offered by Internet legalization is not worth the risk of bringing the entire package down.

Conclusion

For four decades, Indian gaming has proven to be the most effective tool to help Indian tribes begin to address more than a century of federal policies that sought to destroy tribal land holdings, culture, and economies. Many tribal governments are justly concerned that legalizing Internet gaming in the United States will threaten the American jobs and precious government revenues that are created by Indian gaming.

To address these concerns, tribal governments ask that if federal Internet gaming legalization moves forward: (1) that the legislation acknowledge that all federally recognized tribes are eligible, as governments not subject to taxation, to participate in the new industry as both operators and regulators; (2) that tribal Internet operations be open to customers wherever legal; (3) that the legislation fully protect tribal government rights under IGRA and existing tribal-state compacts; (4) that IGRA not be opened to amendment; and (5) that the legislation set-aside positive economic benefits to address the significant unmet needs of Indian country.

I again thank you for this opportunity to testify this morning. I look forward to working with the Subcommittee on this important issue, and am prepared to answer any questions.

Mrs. BONO MACK. Thank you, Mr. Stevens.

And now I am happy to recognize Mr. Whyte for 5 minutes.

STATEMENT OF KEITH S. WHYTE

Mr. WHYTE. Thank you, Madam Chairman, Ranking Member Butterfield, and the committee members.

My name is Keith Whyte. I am the executive director of the National Council on Problem Gambling. This is actual my 12-year anniversary with the National Council; I started 12 years ago this week. The NCPG is the national advocate for programs and services to assist problem gamblers and their families. We have a 39-year record of independence and objectivity in dealing with the often controversial issue of gaming. We are neutral on legalized gambling taking no position for or against it. Our main concern is advocacy for problem gamblers and their families.

We believe strongly the most ethical and cost-effective response to problem gambling issues raised by the Internet is a comprehensive public health approach. Problem gambling, like other diseases of addiction, will likely never be eliminated, but we can and must make better efforts to protect consumers, prevent addiction, and mitigate the damage. It is inconceivable that Internet gambling be legalized without dedicating a portion of the new revenue to address the known social costs of gambling addiction.

Madam Chairman said this in her opening statement: at least 85 percent of adults have gambled once in the past year, 15 percent at least once in the past week. You are looking at $95 billion generated by casinos, tracks, and lotteries in legal gaming revenue alone, which obviously does not include most sports gambling and much of the Internet gambling today. $6 billion per year comes from the special Federal withholding tax on legalized gambling winnings. Yet unlike the Federal excise taxes on tobacco and alcohol, not a single penny of this Federal tax revenue from legalized gambling is returned back to prevent and treat the social cost of gambling addiction.

Between 68 million adults and 500,000 adolescents meet criteria for a gambling addiction in a given year. High-risk groups include members of racial and ethnical minority groups, young males, and veterans. The estimated social cost to families, business, and communities top $7 billion per year from addiction, bankruptcy, and crime. Problem gambling is therefore an important national public health concern. Gambling problems are significantly correlated with other substance use and abuse problems that we know are extremely costly to our State governments and to our families and individuals. Gambling problems are significantly correlated with higher rates of unemployment, bankruptcy, arrest, incarceration, and poor physical health. In addition, millions of spouses, children, families, and parents, employers are also negatively impacted by gambling addiction.

It is not clear with the impact of the legalization of Internet gambling is going to be on problem gambling. The available research does consistently show that Internet gambling has the lowest participation rates of any form of gambling regardless of legality of gambling in that jurisdiction. The rates of participation do not seem to vary significantly whether it is legal or illegal. And as we

have heard this morning already, there are massive numbers of Americans that are gambling online currently. Yet studies throughout the world also find relatively high rates of gambling problems among those who do gamble online. Of course, those who gamble online are also very likely to gamble in traditional forms to the extent that Internet gambling almost seems to be an adjunct to people who are already gambling in traditional forms.

It is also possible that people who gamble online may be exacerbating their problems due to the unlimited access, the high speed of play, use of credit and non-cash instruments and perceived social anonymity, all of which are known risk factors for gambling addiction in the bricks-and-mortar world. Since online gamblers are known to have high rates of problems, it is important to require extensive responsible gaming policies.

These programs provide an opportunity to create informed consumers, to provide informed consumers with a variety of information designed to encourage safe choices and discourage unsafe behavior. The technology exists to allow players to set limits on the amount of money gambled, the time they gamble, and the deposits they make. And I am pleased that Dr. Romer is going to speak a little bit on some of these consumer protection policies.

Strong regulation is important but it cannot be effective alone. It must be accompanied by equally robust prevention, education, treatment, and research services. A portion of gambling revenue from legalized gambling, which we estimate would be not less than $50 million annually, must be set aside for such programs. This need is magnified by the disparity of services among the States as more than 1/3 of the States, including a number of States represented by members of this committee, provide absolutely no public funds whatsoever to prevent or treat gambling problems. This is neither cost effective nor an ethical means of responding to a known public health concern.

An important and cost-free first step is to cut social costs by designating a lead Federal agency on problem gambling. Unbelievably—although we have heard a lot of testimony that gambling has been around and is certainly present in most States—there is no single Federal agency that coordinates efforts on this issue. I call your attention to H.R. 2334, the Comprehensive Problem Gambling Act, which has been introduced now for the fourth time in the House, which would designate the Substance Abuse and Mental Health Services Administration as the lead agency on problem gambling to address the public health concerns of this issue.

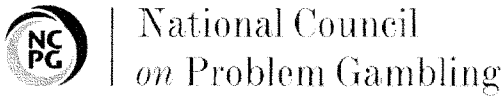
I thank Representatives Barton, Schakowsky, Pitts, Whitfield, Campbell, Frank, and many others who are current or former sponsors of this legislation. And as Member Emeritus Barton has said, we certainly appreciate the broad sponsorship on our bill as well with you and Representative Frank.

In closing, millions of Americans are experiencing gambling problems today like my friend Mike. He gambled away more than $250,000 in the past 3 years gambling on the Internet. He lost his job, his house, and his family. He sat in his grocery store parking lot here in Northern Virginia and contemplated suicide. Fortunately, he was able to get treatment, and today, he works to ensure that hope and help are available for problem gamblers and their

families. Simply put, treatment works. It is an investment that pays for itself many times over.

In closing, those who legalize, regulate, promote, and profit from gambling have an ethical and an economic imperative to minimize the social cost of gambling addiction. Thank you for the opportunity to testify.

[The prepared statement of Mr. Whyte follows:]



Statement of Keith S. Whyte, Executive Director
National Council on Problem Gambling

Internet Gaming: Is There a Safe Bet?

United States House of Representatives
Energy & Commerce Committee
Commerce, Manufacturing & Trade Subcommittee

Tuesday, October 25, 2011, at 10:30 a.m.

Dear Chairwoman Bono Mack, Ranking Member Butterfield and Members of the Committee:

Gambling has benefits but also has well documented negative consequences. And internet gambling is no exception. The most ethical and cost-effective response to problem gambling issues raised by internet gambling—regardless of legality—is a comprehensive public health approach. Problem gambling, like other diseases of addiction, will likely never be eliminated, but we can and must make better efforts to mitigate the damage. It is inconceivable that internet gambling would be legalized without dedicating a portion of revenue to reduce the social costs of gambling addiction. Unfortunately, none of the internet gambling bills introduced to date currently contain any funding for such programs.

Over the past 30 years, and particularly in the last decade, the availability and acceptability of gambling has greatly increased in our society. Consider that today:

- 48 states and a majority of Native American tribal governments have legalized gambling;
- 75% of adults gambled at least once in the past year, 15% at least once in the past week;
- $95 billion in legal gaming revenue was generated by casinos, tracks and state lotteries last year alone, which does not include illegal sports gambling and card playing;
- $6 billion per year in Federal revenue comes from the special withholding tax on individual gambling winnings, none of which is dedicated to reduce corresponding social costs (unlike the taxes on alcohol and tobacco);
- 6-8 million adults and 500,000 teens meet criteria for gambling addiction, approximately the same number who abuse prescription drugs; and
- Estimates of the annual social cost of gambling-related addiction, bankruptcy and crime approach $7 billion.

Problem gambling is therefore an important national public health concern. Gambling addiction is characterized by increasing preoccupation with and loss of control over

gambling, restlessness or irritability when attempting to stop gambling, and/or continued gambling despite serious negative consequences.

High-risk groups include males (prevalence of problem gambling in men has been found to be 2-3 times higher than in women) and racial/ethnic minorities including African-American, Asian and Native Americans; individuals with a family history of gambling (elevated rates of problem and pathological gambling have been found in twins of males with gambling problems); veterans and individuals with disabilities. An estimated 500,000 youth between the ages of 12-17 meet criteria for a gambling problem. These adolescents are twice as likely to binge drink and to use illegal drugs and three times more likely to be involved with gangs, fights and police. In addition, student behavior surveys have consistently shown that gambling participation is correlated to increases in all known risk factors and decreases in all known protective factors related to substance use and antisocial behaviors. In addition to those presenting with the disorder, millions of spouses, children, parents, family members, employers and neighbors are negatively impacted by gambling addiction.

Problem gambling is significantly correlated with other problematic behavior in adults and adolescents, including substance use and mental health issues. Adult problem gamblers are five times more likely to have co-occurring alcohol dependence, four times more likely to abuse drugs, three times more likely to be depressed, eight times more likely to have bipolar disorder, three times more likely to experience an anxiety disorder and have significantly elevated rates of tachycardia, angina, cirrhosis. Approximately 20% of members of Gamblers Anonymous and individuals in treatment for pathological gambling have attempted suicide. Individuals with problem and pathological gambling, compared with other gamblers and non-gamblers, had higher rates of receipt of past-year unemployment and welfare benefits, bankruptcy, arrest, incarceration, divorce, poor or fair physical health, and mental health treatment. The estimated social cost to families and communities from problem gambling-related bankruptcy, divorce, crime and job loss was almost $7 billion last year.

It is not clear what the impact of legalization of internet gambling would be on problem gambling. The available research consistently finds internet gambling has the lowest participation rates of any form of gambling, regardless of the legality of internet gambling in the jurisdiction. In addiction, those who do gamble on the Internet are extremely likely to also gamble in multiple "traditional" forums, so to some extent it appears internet gambling is mainly an adjunct for people who already gamble. It therefore seems unlikely that legalization would significantly increase participation among those who are not currently gambling. However, it is also possible that problem gamblers may exacerbate their problems by going online, given the high speed of play, perceived anonymity, social isolation, use of credit/non-cash and 24-hour availability. Many of these factors can also be found in "traditional" forms of gambling. Regardless of whether poker is predominately a game of skill or chance, it is clear that some who play will develop problems, that these problems are serious but can be mitigated though public health-based interventions.

Internet gamblers who spend significant amounts of time and money online, while relatively rare, are more likely to meet problem gambling criteria. Indeed, studies throughout the world find relatively high rates of gambling problems among those who gamble online, though it is not clear if internet gambling is a cause or effect of problem

gambling. Regardless, since online gamblers are known to have problems, it is important to adopt extensive, evidence-based responsible gaming policies.

The graphical and interactive structure of the internet provides an opportunity to create informed consumers with access to a variety of information designed to encourage safe choices and discourage unsafe behavior. The technology also exists to allow players and operators to set limits on time, wagers, deposits, etc...as well as to exclude themselves. A number of studies have found such programs to be effective. These programs can be improved by utilizing the data collected by these websites to develop profiles of general online wagering behavior. From this information medians and benchmarks could be created to allow the development of predictive programs for abnormal usage as well as publicized norms, an important prevention tool. Operators should, as a condition of licensure, provide public access to de-identified data on player behavior for research purposes. Overall, the amount of online information and possible interventions are essentially unlimited. Responsible gaming regulations must be mandatory and enforceable.

Strong regulation is important, but it cannot be effective at reducing harm unless accompanied by equally robust prevention, education, treatment and research services. A portion of gaming revenue, not less than $50 million annually, must be set aside for such programs. Although a comprehensive budget justification and needs assessment is beyond the scope of this hearing, NCPG estimates the minimum annual cost to provide every adolescent with a gambling prevention message is approximately $20 million. Current state spending is estimated at less than $10 million per year, leaving a gap of at least $10 million. Given the conservative estimates that 1% of adults meet criteria for pathological gambling in a given year (2.17 million), and that only 2% (43,000) of these gamblers seek outpatient treatment at an annual cost of $1,000, the lowest estimated treatment need (43,000 x $1,000) is $43 million. Current total state treatment spending is approximately $23 million, leaving a gap of at least $20 million. An additional $10 million each for responsible gaming education and research provides an essential foundation. The need is magnified by the disparity in services among the states, as almost 1/3 of states provide absolutely no public funds. Thus, $50 million is the bare minimum needed to fill the gaps in state services and establish a rudimentary safety net. The funding needed to meaningfully address problem gambling is likely several times greater.

An important and cost-free first step to cut social costs is to designate a lead agency on problem gambling. I call the Committee's attention to H.R. 2334, the Comprehensive Problem Gambling Act, which would formalize the authority of the Substance Abuse and Mental Health Services Administration (SAMHSA) to combat problem gambling. We thank Representatives Barton, Pitts, Whitfield, Campbell, Frank, Capps, Schkowsky and over 100 Members are current or previous co-sponsors of the bill and urge all Members to support this important legislation. H.R. 2334 lays the groundwork for SAMHSA to allocate problem gambling funds though competitive grants to state health agencies and non-profits. This would help individuals, families, companies and communities reduce the social cost of gambling addiction.

Regardless of the legality of internet gambling, millions of Americans today are experiencing gambling problems, devastating individuals, families and communities. People like Mike R., whose betting on sports over the internet spiraled out of control

three years ago. His losses—beyond the $250,000 he gambled away—included his job, house and marriage. He contemplated suicide. Fortunately he was able to get treatment and today he advocates for services to ensure that hope and help are available to problem gamblers and their families. Simply put, treatment works. It is an investment that pays for itself many times over. Early intervention and prevention are even more cost-effective.

The National Council on Problem Gambling (NCPG) is the national advocate for programs and services to assist problem gamblers and their families. As the advocate for problem gamblers, NCPG does not take a position for or against legalized gambling. We were founded in 1972 and our 39-year history of independence and neutrality makes the National Council the most credible voice on problem gambling issues. We are a 501(c)(3) not-for-profit charitable corporation. NCPG does not accept any restrictions on contributions.

Major NCPG programs include the National Problem Gambling Helpline Network (800.522.4700) a single national point of access for problem gambling information that received over 288,000 calls in 2010; National Problem Gambling Awareness Week; Risk Education Program for Athletes; the National Conference on Problem Gambling, now in its 26th year; and an information clearinghouse. In addition, the majority of problem gambling services are provided on the state level by the 35 state affiliate chapters of NCPG.

I have been Executive Director of NCPG since October 1998. My prior public policy experience includes positions at the American Gaming Association, American Bar Association and the U.S. Department of Health and Human Services. I am a graduate of Hampden-Sydney College. Neither I nor NCPG have received any Federal grants or contracts related to gambling issues since October 2008.

I would like to thank the Chair, Ranking Member and the Committee for the opportunity to submit my remarks for the record and I would be happy to respond to any questions.

Mrs. BONO MACK. Thank you, Mr. Whyte.

And Professor Eggert, welcome, and you are recognized for 5 minutes.

STATEMENT OF KURT EGGERT

Mr. EGGERT. Good morning, Madam Chairwoman. Thank you, Madam Chairwoman and Ranking Member Butterfield and members. I appreciate your inviting me to talk about this important issue. You should know I come at this from a different angle than most. I come from a consumer protection angle where I have worked in most of my career. I was an advisor to the Federal Reserve Board on consumer financial issues on their Consumer Advisory Council, and you can imagine what fun that was during our recent years. And so when I think about gambling, the question I have is what consumer protection should be in place? And I am very happy to hear many of you talk about the importance of consumer protection in gambling because it is in fact a crucial issue.

Gamblers used to be looked down on but now they are just consumers. It is just another industry. And so we should treat them as consumers as we would in other industries and think about what consumer protection is important in this industry. The purpose of consumer protection is to make consumers good shoppers, to give them the tools they need to make smart decisions when they purchase—when they go to a casino, when they gamble online, whatever they do, we want to make them good shoppers and protect them from shark practices. Because the engine of the consumer economy is if the consumers drive it and as long as they are given the information they need to make good decisions, then companies will have to compete based on quality of product and price, which is what makes our economy run.

Now, in the gambling industry, they talk often about consumer protection is honesty, fairness, and making sure that the gambler gets paid. Those are all very important, but equally important is that the gambling industry provides accurate price disclosure to consumers who are gambling. Now, the price of the game in the gambling industry is a very interesting thing. If you play $100 slot machine, you put $100 in, but on average you get money back. Otherwise, why do it? And so the real average price of a slot machine is the amount that the casino retains from the gambler's bets. So if you bet $1,000 and you get $970 back, then the price of that gambling was $30.

For slot machines, casinos know exactly what the average hold percentage of the slot machine is. They can order a slot machine with a 5 percent hold percentage, a 10 percent hold percentage, 15 percent hold percentage, and they know that is on average what that machine will cost. The problem is that information is not disclosed to gamblers. They may be sitting at a 2-percent-hold-machine table or a 15-percent-hold-machine table and not know the difference. They could be sitting at one much more expensive or much cheaper and not be given that information.

It is crucial that gamblers have this information so that they can make smart decisions and so that they can shop based on price. Any Internet gambling should include that. And so any legislation

for Internet gambling should require disclosure of the hold percentage of every slot machine on the system.

Now, for Internet poker, it is a different proposition because the price made by the borrower is based more on competition of other players than it is by any setting of the site. Here, the problem is that professional players have new tools to use against recreational gamblers that far exceed anything that they could do in a casino poker table. There are computer boosts that they have; there are computer bots that are getting increasingly effective. And so recreational gamblers may find themselves playing against professionals who far exceed their ability to play and the recreational gambler may have no idea what they are getting into. There is even computer tracking software using data mining that helps strong gamblers identify who the weak gamblers are so they can follow them to tables and play against them.

This is a real problem for the Internet poker industry because the industry doesn't want all of its recreational gamblers' money to be drained out by professionals using bots or other tools. And so any legislation has to think about how to have a level playing field in Internet poker. And I have some ideas on that but my time is up so I will appreciate any questions later on. Thank you.

[The prepared statement of Mr. Eggert follows:]

Testimony of Kurt Eggert
Professor of Law
Chapman University School of Law

Before the

House Energy and Commerce Committee
Subcommittee on Commerce, Manufacturing, and Trade

At a Hearing Entitled:

"Internet Gaming: Is There a Safe Bet?"

Rayburn House Office Building, Washington, DC
October 25, 2011

Executive Summary

This testimony examines the role of consumer protection in the gaming industry, with special attention to slot machines and internet poker, which will likely be among the most popular forms of internet gambling, should they be legalized. For slot machines, a crucial piece of information that a gambler should have, whether playing in land-based casinos or on the internet, is the hold percentage of the slot machines, which represents the true average cost of the slot machine. Gamblers should have access to this information, both while they shop among their gambling opportunities, and also while they are gambling, so that they can make an informed decision where, whether, when, and how much to gamble. Study should continue on the use of smart cards to allow gamblers to track their winnings and losses, and to institute limitations on the amount or time they spend gambling, or to enforce a time-out from gambling.

Consumer protection in the realm of Internet poker is challenging, in that the greatest threat to a recreational gambler's pocketbook comes from other, more skilled gamblers, especially those who use data-mining techniques to identify and target weaker players. Recreational poker players are also threatened by the development of ever-more sophisticated poker robots, or "bots," computer programs unleashed on the Internet to defeat weaker human players. With advances in Artificial Intelligence, poker "bots" will become more formidable opponents, and poker sites will likely have difficulty preventing poker "bots" from playing on their sites, causing problems to the gamblers they take on. The testimony proposes one possible solution to this problem.

Madam Chairwoman, Members of the Committee:

Good morning. My name is Kurt Eggert. I am a Professor of Law at the Chapman University School of Law in Orange, California, where I teach courses in gambling law and legal remedies, among others, and direct the Alona Cortese Elder Law Center. The views I express today are my own, however

Thank you for the invitation to discuss the issues involved in legalizing various forms of Internet gambling. I would like to focus on the consumer protection issues involved. I have focused much of my career on consumer protection issues, both as a practicing attorney and as a law professor. Much of that work has been done in the financial services industry. I have served on a board that advises the Federal Reserve Board on consumer financial issues and testified to Congressional committees regarding lending and securitization. I also teach gambling law and have written and lectured internationally on gambling regulation, again with a focus on consumer protection issues.[1]

[1] See Kurt Eggert, Truth in Gaming: Toward Consumer Protection in the Gambling Industry, 63 Maryland Law Review 217 (2004), available at SSRN: **http://ssrn.com/abstract=901306**, for a general discussion of consumer protection in the gambling industry, and Kurt Eggert, Lashed to the Mast and Crying for Help. 36 Loyola of Los Angeles Law Review 693 (2003), available at SSRN: http://ssrn.com/abstract=905062, discussing autonomy effects of self-exclusion programs for casinos.

Testimony of Kurt Eggert

Introduction:

"Were you wondering was the gamble worth the price."

As Congress considers measures to legalize various forms of Internet gambling, it should include in any such legislation measures that would provide sufficient consumer protection for those who would gamble online. By legalizing Internet gambling, we would be causing perhaps the greatest single increase in legal access to gambling ever. With smart phones, many Americans carry the Internet in their pockets, and so gambling would for many always be just a click away, on the train, in the Laundromat, in the school library. Making such a great change should be done with great caution. In legalizing any form of Internet gambling, we should have processes in place to minimize the harm that such gambling might cause, but we should also do our utmost to ensure that gamblers are making informed choices when they gamble, and that they have all the tools needed to make an informed choice as to whether, when, where, and how to gamble. They should have all of the information they need to be good shoppers among their gambling opportunities, and to determine whether the cost of the gambling is worth the price of the entertainment they are likely to receive from it.

In my testimony, I will discuss what consumer protection means in the context of the gambling industry, and how a basic element of consumer protection, mandating accurate and timely price disclosure, is largely missing from slot machine regulation. Then, my testimony will turn to consumer protection for Internet gambling, and discuss the special challenges that are involved in regulating Internet poker.

In the United States, consumer protection in the gambling industry is too much like the weather. While people talk about it, little is done about it. When it comes to perhaps the greatest profit center of the casino industry, slot machines, real consumer protection is largely absent in American casinos. Recreational gamblers are prevented from shopping based on price, and often find themselves sitting in front of a slot machine with only a vague idea of how much, on average, their recreation might cost them. Casinos have at their hands all of the information gambling consumers need to make good decisions about how, when, or whether to bet on slot machines, but because the state regulatory agencies that govern casinos appear more interested in protecting casino profits than consumer decisions, slot machine users can typically at best only guess at the true cost of their preferred form of recreation.

If Internet gambling is to be legalized, the gamblers who choose to use this form of gambling should be given sufficient information to be good shoppers, to be able to shop based on the price of the gambling, to recognize the risks and rewards that they face in gambling, to fend off gambling predators, and to make an informed decision of whether the gamble is worth the price.

What is Consumer Protection?

In American casinos, a primary purpose of gambling regulation is to instill confidence in consumers (the gamblers who would use the casinos) that the casinos are honest and fair, and that the gamblers will be paid their winnings and will not otherwise be

cheated.[2] This confidence then encourages patronage of a state's casinos, as gamblers feel protected by state regulation. State regulation has allowed the gambling industry to clean up its reputation and remove the stigma of organized crime, as the casino are primarily owned and operated by large, publicly traded corporations.[3]

Honesty in the gaming industry requires that gamblers be protected from "fixed" or inconsistent games and that the outcomes of games of chance depend on truly random events, whether from a deck of cards or the spin of a slot machine's reel, that are not controlled by the casino. Fairness, by comparison, focuses, at least in the eyes of the gambling industry, on the advantage or edge the casino has over the gambling patron, and whether the casino extracts a fair or unfair, excessive return from the amount wagered by the patron.[4] Games that cost gamblers too much are unfair, while games that are fixed or fail to be sufficiently random are dishonest.

True consumer protection requires more than mere "fairness" and "honesty" as described above, however. Consumer protection is based on the fundamental idea that consumer purchases should, to the extent practicable and desired by consumers, be the product of voluntary, informed, and competent decisions by consumers among

[2] Anthony N. Cabot & Robert C. Hannum, Gaming Regulation and Mathematics: A Marriage of Necessity, 35 J. Marshall L. Rev. 333, 334 (2002).
[3] William R. Eadington, The Economics of Casino Gambling, 13 J. Econ. Persp. 173, 175 (1999).
[4] For a discussion of "fairness" and "honesty" in the gambling industry, see Anthony N. Cabot & Robert C. Hannum, Gaming Regulation and Mathematics: A Marriage of Necessity, 35 J. Marshall L. Rev. 333, 334 (2002).

various possible and competing options.[5] Informed choice is at the heart of capitalism, and capitalism works when both sides to a transaction can determine whether they benefit from the deal, and so whether the transaction creates a net benefit to both.[6]

Informed choice by consumers also promotes healthy competition between product and service providers, as they are forced to compete to provide the best product at the best price. The goal of consumer protection, then, is to encourage consumers to be "good shoppers," and to maximize the product or service value they receive while minimizing the price they pay. Consumer protection is also designed to protect consumers from sellers' sharp practices that might take advantage of them or reduce their ability to make informed decisions.

An essential element of consumer protection is "consumer sovereignty," the idea that the provision of consumer products and services should be driven by consumer demand and consumers' decisions, not governmental or industry mandate. Where informed consumer preference governs the marketplace, competition is generally based on quality, convenience, and price, and less effective suppliers of products and services tend to be driven out of the marketplace by stronger competitors, maximizing

[5] Milton Friedman noted that the test of whether a transaction benefits both parties is if the transaction is bilaterally voluntary and informed. See Milton Friedman, Capitalism and Freedom 13 (1962).
[6] "Classical economic theory mandates that, in order for the invisible hand of the free market economy to work, consumers must at all times make rational choices. The ability to make rational choices requires the consumer to have access to perfect information. To the extent that businesses engage in deceptive or unfair acts or practices, they interfere with consumer access to perfect information, thereby interfering with the operations of the market." J.R. Franke & D.A. Ballam, New Applications of Consumer Protection Law: Judicial Activism or Legislative Directive?, 32 SANTA CLARA L. REV. 347, 358 (1992).

the value to consumers. Because consumers are normally the best judges of what they want and how much they are willing to pay, they are the ultimate arbiters of the market, and should be provided the information they need for their decisions, though regulatory regimes should also recognize the limits of consumer rationality and decision-making.[7] By comparison, the providers of products and services are not likely to provide that information where it will decrease their profits or the size of the overall market. For example, cigarette manufacturers were loath to disclose the harm caused by cigarettes until forced to, even if their individual product might have had the fewest cancer-causing attributes.

Consumer Protection vs. Harm Minimization

Many researchers into the effects of gambling on individuals and society discuss "harm minimization," a concept that comes from medical research such as studies of how to stop the spread of hepatitis among drug users.[8] While harm minimization and consumer protection are complementary ideas, and there is often much overlap between them, they spring from separate ideas. Harm minimization is the attempt to reduce the harm, negative consequences or health threat caused by an activity without

[7] See, Joel Waldfogel, Does Consumer Irrationality Trump Consumer Sovereignty?, 87 Rev. Econ. & Stat. 691, 691 (2005), suggesting that while consumer rationality and sovereignty occupy central roles in economic theory, empirical evidence demonstrates the limits of consumer rationality, and that actual behavior "is constrained by bounded rationality, bounded willpower, and bounded self- interest".
[8] Alex Blaszczynski, et. al., The Assessment of the Impact of the Reconfiguration on Electronic Gaming Machines as Harm Minimisation Strategies for Problem Gambling, 2001, at 24.

necessitating the prohibition of or abstinence from that activity.[9] In the gambling context, the purpose of harm minimization is to reduce the negative effects of gambling and especially of problem gambling and to reduce the incidence of problem and pathological gambling. Those negative effects include damage to the physical, mental, and emotional health and finances of the gambler and his family, as well as broader economic, health and social problems that widespread gambling may cause.

Harm minimization focuses on problem and pathological gamblers because they are the ones most likely to suffer significant harm from gambling, while recreational gamblers may instead derive entertainment, social activity, and mental stimulation from gambling. Examples of harm minimization strategies include self-exclusion programs and limitations on times, places and play speed for gambling. Researchers are busily studying the effects of harm minimization strategies, both for land-based casinos and for on-line versions.[10] Some have cautioned, though, that harm minimization should be done with an eye to preserving the pleasurable aspects of gambling for recreational gamblers and not inflict unnecessary damage to the profitability of the gambling industry.

By comparison, consumer protection focuses more on the recreational gambler, though aspects of consumer protection could have benefits for problem and

[9] Alex Blaszczynski, et. al., The Assessment of the Impact of the Reconfiguration on Electronic Gaming Machines as Harm Minimisation Strategies for Problem Gambling, 2001, at 23.
[10] See, for example, Broda, et. al., Virtual harm reduction efforts for Internet gambling: effects of deposit limits on actual Internet sports gambling behavior, Harm Reduction Journal 2008, 5:27, finding that "Deposit limits might be necessary harm reduction measures to prevent the loss of extremely large amounts of money and cases of bankruptcy" for Internet sports gambling.

professional gamblers alike. This distinction between harm minimization and consumer protection is important because, while some have argued that harm minimization strategies should have a scientific basis to prove that they reduce the negative effects of problem gambling, consumer protection should not depend on scientific proof of effect on problem gamblers.[11]

Goals and Tools of Consumer Protection in Gambling

The current regime of gambling regulation, with its focus on guaranteeing "fairness" and "honesty," but not much more, falls woefully short of providing sufficient consumer protection for gamblers, at least concerning the casino industry's most popular product, the slot machine. Gamblers, like other consumers, should have access to the information they need in order to shop based on price, quality, and convenience. While casino gamblers can determine for themselves the convenience of their various gambling options, and can discern many aspects of the quality of casinos, such as their physical condition, their promotional offers, and their food options, casinos keep gamblers at least somewhat in the dark about a primary aspect of slot machine gambling, namely the true and accurate price of slot machines. All too often, gamblers are given either no information on the true price or only vague information, and so casinos can in many cases avoid competing with each other based on the prices of their slot machines.

[11] For the argument that harm minimization in the context of gambling should be based on scientific experiment, see Alex Blaszczynski, et. al., A science-based framework for responsible gambling: the Reno model. J Gambling Stud. 2004 Fall;20(3):301-17.

Determining the proper consumer protections for slot play would be crucial to legalizing Internet gambling generally. Slot machines are among the most profitable and popular games in casinos. While overall exact figures on gambling profits broken out by specific types of play are difficult to obtain, it has been estimated that the average casino generates 65% of its profits from slot machines.[12] Given their popularity and profitability in land-based casinos, it is reasonable to assume that were Internet gambling to be broadly legalized in the United States, slot play would be an important part of the on-line gaming industry.

While it might seem that casinos publicly mark the prices of various slot machines, be they nickel, quarter, or dollar slots, or larger denominations, the true price of slot machine play is not the amount that the gambler inserts into the machine, since essential to the game is that the slot machine on average retains only a percentage of the gamblers' bets and returns the rest to gamblers in the form of winnings. As one gambling commentator noted, "Gambling is a form of entertainment with an ingenious billing system."[13] The amount the casino retains from the gamblers' wagers is the true cost of those wagers and the average amount the casino retains is the average cost of the wagers. While the amount that the slot machine retains may vary widely from one gambling session to the next, each slot machine is set to have a specific average amount that it retains, which in slot lingo is called the "hold

[12] Steve Bourie, Slot Machines, in American Casino Guide 29 (Steve Bourie ed., 2011).
[13] Anthony Curtis, Gambling--What Does It Cost?, in American Casino Guide 6 (Steve Bourie ed., 2000).

percentage."[14] For example, one slot machine may be set for a hold percentage of 10%, while another might have a hold percentage set at 5%. While individual session outcomes will vary greatly, a gambler can expect to pay on average twice as much for using a slot machine with a 10% hold percentage than one with a 5% hold percentage. Therefore, the true average cost of any wager can be expressed in two ways, either (a) as the average percentage of each bet the gambler loses and hence, the casino wins, which is the hold percentage, or (b) as the average amount lost by the gambler for a bet of a given size, which could be termed the "average hold amount."[15] For example, a $100 bet on a machine with a 5% hold percentage would have a $5 average hold amount.

Consumer guides to the gambling industry often refer to a "payback percentage," which is the amount that slots, on average, return to gamblers, with one guide noting that payback percentages in New Jersey average "close to 92 percent" while those in Nevada average "slightly less than 94%."[16] However, doing rapid mental calculations with payback percentages is more difficult than with hold percentages. For example, the difference between a 12% and a 6% hold percentage is more immediately obvious than that between an 88% and a 94% payback percentage. The payback percentage is

[14] The New Mexico Gaming Control Board rules have defined "hold percentage" to be "the percent of coins or credits played that are retained by the gaming machine; it is determined by subtracting the payback percentage from 100%." N.M. Admin. Code tit. 15, § 1.8.7(K) (2003). "Hold percentage" also has another, more arcane meaning within the gambling industry concerning table games. Because in table games, such as blackjack, casinos have difficulty tracking the exact amount bet by gamblers and the flow of chips back and forth between gamblers and the dealers, they instead track the percentage that, on average, a casino should win from the "drop," the amount that gamblers are prepared to put at risk in a game. See Robert C. Hannum & Anthony N. Cabot, Practical Casino Math (2001), at 43-45.

[15] See, for example, James Walsh, True Odds 342-44 (1996) (describing the method of calculating expected value in the gambling context).

[16] Steve Bourie, Slot Machines, in American Casino Guide 29 (Steve Bourie ed., 2011).

a bit confusing, like asking someone returning from Las Vegas how much money they did not lose.

Any adequate system of consumer protection regulation would require the disclosure of the hold percentage of slot machines, both in advance while gamblers are shopping among their various gambling opportunities and deciding whether to gamble, and also at the time of use, so that gamblers can determine, as they gamble, whether the pleasure and other benefits they receive from slot machine play is worth the average price. Thus, in addition to "fairness" and "honesty," casinos should be required to have "transparency" in terms of accurate and timely disclosure of hold percentages of all games available to gamblers.

Disclosure of hold percentages is necessary because gamblers cannot effectively determine the hold percentages of slot machines themselves. Casinos could have two identical slot machines with widely varying hold percentages. For example, some slot machines are available with hold percentages ranging as wide as 2% to 15%.[17] In other words, a slot machine could on average cost gamblers seven and a half times as much as an identical appearing machine sitting next to it, with no indication to customers. Gamblers cannot determine the hold percentages of machines with any accuracy even by playing them, as other factors, such as the hit percentage or the volatility of slot machines prevent any accurate estimation of the slot machines'

[17] Steve Bourie, Slot Machines, in American Casino Guide 31 (Steve Bourie ed., 2011), noting the payback percentages available for IGT's "Enchanted Unicorn."

returns. For example, a slot machine set with high volatility, with infrequent but high jackpots, may be perceived as "tighter" than a machine with a higher hold percentage but more frequent pay-offs.[18] While a gambler may have longer playing time, on average, on a lower-volatility machine, the more often the player gambles on slot machines, the more important the hold percentage will loom in determining the overall price of play.

In mandating the disclosure of price information such as hold percentages, gambling regulators should be mindful of the lessons learned in studies of how consumers process information in their shopping decisions. Unsurprisingly, research shows that information should be presented to consumers simply and in clear terms.[19] If too much information is provided at once, consumers can become confused or disregard the information.[20] Consumers do better with information tailored to them and their specific needs,[21] and with information disclosure standardized across an industry, so that they can become familiar with the method of information disclosure and compare products from different companies and in different settings.[22] For slot machines, it is better to provide price information in terms of hold percentages than in odds or

[18] Anthony F. Lucas & A. K. Singh, Estimating the Ability of Gamblers to Detect Differences in the Payback Percentages of Reel Slot Machines: A Closer Look at the Slot Player Experience, UNLV Gaming Research & Review Journal, 15:1, 17-36(2011).
[19] Cass Sunstein, Informing America: Risk, Disclosure, and the First Amendment, 20 Fla. St. U. L. Rev. 653, 653, 668 (1993).
[20] See, for example, W. Kip Viscusi, Using Warnings to Extend the Boundaries of Consumer Sovereignty, 23 Harv. J.L. & Pub. Pol'y 211, 230 (1999).
[21] Robert S. Alder & R. David Pittle, Cajolery or Command: Are Education Campaigns an Adequate Substitute for Regulation?, 1 Yale J. on Reg. 159, 188-89 (1983).
[22] See William M. Sage, Regulating Through Information: Disclosure Laws and American Health Care, 99 Colum. L. Rev. 1701, 1741 (1999) (explaining this in the context of health care).

probabilities, because many people have difficulty understanding odds and probabilities and using them to make mental calculations.[23]

The information disclosure should be interactive, so that the consumer can see how changed behavior changes the average price of gambling. For example, some slot machines reduce their hold percentage by, for example, increasing the size of jackpots, if the gambler increases the size of each bet.[24] An informed gambler in such a circumstance would learn that while the hold percentage for the slot machine goes down if she bets more, the hold amount likely increases as the size of the bet increases. Therefore, the gambler could decide whether minimizing hold percentages or hold amounts is more important to her, and play accordingly. Ideally, gamblers would be able to learn the hold percentages of a casino's slot machines both before they enter the casino, so that they can shop effectively for the best price, and while they play, so that they can always have access to accurate price information while playing. Each slot machine should display its hold percentage and register the average hold amount each time a gambler places a wager.

Sadly, the states, in regulating gambling, have often failed miserably in mandating accurate and timely price disclosures. For example, in California, there is no

[23] See Jacob Jacoby, Is It Rational to Assume Consumer Rationality? Some Consumer Psychological Perspectives on Rational Choice Theory, 6 Roger Williams U. L. Rev. 81, 112 (2000) , stating that "[M]any consumers haven't the foggiest idea of how to work with independent and especially joint probabilities." See also Vicki Abt et al., The Business of Risk: Commercial Gambling in Mainstream America 263 (1985), stating that "Odds and price are frequently confused by gamblers and even by the operators of commercial gambling businesses." Id.

[24] Steve Bourie, Slot Machines, in American Casino Guide 32 (Steve Bourie ed., 2011).

requirement that that the hold percentages for slot machines be disclosed in any way, and in fact the compacts signed by the state with the tribes that operate casinos appear to forbid the state from disclosing hold percentages even if it were to discover them.[25]

In Nevada, the state releases overall payback percentages by region rather than by casino, and groups together slot machines and video poker games, making the information provided even less useful.[26] Nevada at one time considered but rejected the idea that slot machines display the odds of winning, as its then commissioner argued such information would "take away the mystery, the excitement and entertainment and risk of playing. . ." and that "there isn't an establishment that would agree with posting those odds."[27] Perhaps only the gambling industry could convince its government regulators that its customers benefit from the lack of price disclosure and that they, rather than the regulator, should make that decision. New Jersey's record on hold percentage disclosure is little better. Until 2000, New Jersey casinos were barred by state regulation from revealing their hold percentages even if they wanted to, a ban casinos lobbied for so that they would not have to compete based on price.[28]

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[25] See, for example, Sec. 8.4 of the TRIBAL-STATE GAMING COMPACT Between The FORT MOJAVE INDIAN TRIBE,A Federally Recognized Indian Tribe, And The STATE OF CALIFORNIA, available at http://www.cgcc.ca.gov/documents/compacts/fort_mojave_compact.pdf, which seems to forbid the state from disclosing hold percentages from slot machines, even if it discovers them.
[26] Steve Bourie, Slot Machines, in American Casino Guide 244 (Steve Bourie ed., 2011).
[27] John Mangels, Computerized slot machines far removed from originals, Cleveland Plain Dealer, May 16, 2011.
[28] Patrick Jenkins, New Jersey Lifts Outdated Ban on Casino Slot Ads, Knight-Ridder Trib. Bus. News, July 7, 2000, at 1. See also, The Associated Press, State Will Allow Casinos to Advertise Their Odds, The Rec. N. N.J., June 17, 2000, at A14.

In addition to accurate price disclosure, gamblers should also have access to accurate information about the total price of their own gambling. Casinos already track the winnings and losses of their slot machine customers who apply for and use slot club cards, and use that record of the amount gambled by their customers to reward customers with complimentary rewards (comps) such as free or discounted rooms or food, or even cash back. Since casinos are tracking this information anyway, their patrons should have access to it, and in that way be able to determine whether they are obtaining sufficient value for their money, or if they are losing more money than the entertainment is worth.

Harm minimization efforts could also benefit from the use of smart cards by gamblers that would do more than just track wins and losses. If slot players were required to use a smart card to access a slot machine, those cards could be programed to allow players to set loss limits by the day, week or month, or to give themselves mandatory cooling off periods where they are not able to gamble. Such a system is being used as an experiment in Nova Scotia, and appears to show promise, even among potential problem gamblers.[29]

In addition to providing timely, accurate, and easy to understand price information for slot machines, an effective consumer protection regime would ban certain practices

[29] Focal Research Consultants Phase 1 Evaluation of The "My-Play" System: 2010 Regular VL Players Benchmark Survey, prepared for Nova Scotia Gaming Foundation. Available at: http://www.nsgamingfoundation.org/uploads/Research/Phase%201%20My-Play%20Final%20Highlight%20Report%20Jan%2028%202011.pdf

that might mislead slots players about their chances of winning. For example, slot machines have been programmed to show an artificially inflated number of "near misses," where the machine indicates that the player almost won a jackpot, because the one symbol the player needed was right above or below the pay row. This might lead a player to continue playing in hopes of obtaining what seemed so close. Or slot machines can be programmed to show far more winning symbols as they spin than are actually one the "virtual reel" that determines the outcome, so that as the gambler watches the symbols flash by, winning a significant prize seems more likely than it really is.[30]

Consumer protection issues in games of skill like casino poker are very different than for slot machine play. For poker games, a player's returns depend in large part on the skill of the player's opponents, something over which a casino has little control or even ability to track. Consumer protection plays out very differently in Internet poker, as will be discussed later in this testimony.

Internet Gambling Regulation

If gambling over the Internet becomes legal, it will pose some special challenges for gambling regulators. Some of those challenges are bound up in problems particular to the Internet, such as what a gambling site should do when a gambler, in the midst of a

[30] For a discussion of the use and abuse of apparent "near-misses" by slot machine manufacturers, see Kevin A. Harrigan, Slot Machines: Pursuing Responsible Gaming Practices for Virtual Reels and Near Misses, Int J Ment Health Addiction (2009) 7:68–83, DOI 10.1007/s11469-007-9139-8.

game, loses connection to the Internet. Because the Internet is international in scope, Internet gambling presents problems for dispute resolutions. If a gambler has a dispute with an Internet casino with computer servers across the country, where should any arbitration or litigation take place?

Internet gambling may also pose problems if its legalization leads to an increase in problem gambling or gambling addiction, a possibility that many researchers are examining now. It appears that Internet gambling may lead to, or at least accompany, a greater incidence of problem gambling. As noted recently, "Certain characteristics inherent to online gambling are decisive for this theoretical proposition [that Internet gambling is associated with "rather high" potential for addiction], such as the permanent availability and ease of access, the speed and broad range of games, the possibility to gamble anonymously without social control, and the cashless payment transactions."[31] More research is needed to tease out the causal implications, such as how much Internet gambling causes additional problem gambling versus how much problem gamblers are drawn to Internet gambling.[32]

Regardless of which direction the causal chain leads, however, it appears that Internet gambling is ripe for effective harm minimization techniques. Some recent research indicates the promise of self-limiting or self-exclusion programs for Internet

[31] Tobias Hayer & Gerhard Meyer, Internet Self-Exclusion: Characteristics of Self-Excluded Gamblers and Preliminary Evidence for Its Effectiveness, Int J Ment Health Addiction (2011) 9:296–307, at 296-7, DOI 10.1007/s11469-010-9288-z.
[32] Id., at 297.

gamblers, though more research is needed.[33] Internet gamblers might also benefit from pop-up messages encouraging them to be mindful of the amount of time and money they are spending gambling.[34] The information-gathering ability of Internet casinos might well prove useful in early identification of problem gambling, allowing early intervention where Internet gambling sites detect early signs of problem gambling.[35]

Consumer Protection for Internet Slot Machine Players

Internet slot machines have many of the same consumer protection issues as land-based slot machines. However, for internet slots, the hold percentage looms even larger in a customer's decision whether to gamble at a particular site. Unlike land-based casinos, which may feature better or worse food or atmosphere or friendlier employees, there is little to differentiate one internet slot operation from another, other than the hold percentage, hit percentage or volatility. The key for consumer protection would be to mandate adequate provision of information, so that internet casinos have to compete against each other based on price.

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[33] Sarah E. Nelson, et. al. Real Limits in the Virtual World: Self-Limiting Behavior of Internet Gamblers, J Gambl. Stud (2008) 24:463–477. See also Tobias Hayer & Gerhard Meyer, Internet Self-Exclusion: Characteristics of Self-Excluded Gamblers and Preliminary Evidence for Its Effectiveness, Int J Ment Health Addiction (2011) 9:296–307, DOI 10.1007/s11469-010-9288-z.

[34] See, Sally M. Monaghan: 'Responsible gambling strategies for Internet gambling: the theoretical and empirical base of using pop-up messages to encourage self-awareness', Computers in Human Behavior, (2009) vol. 25, no. 1: 202-207.

[35] Joerg Haefeli, et. al. (2011): Early detection items and responsible gambling features for online gambling, International Gambling Studies, DOI:10.1080/14459795.2011.604643, available at http://dx.doi.org/10.1080/14459795.2011.604643.

Consumer Protection for Internet Poker Players

In poker, it is difficult for online players to determine the honesty of the game. At a casino, poker players might watch the dealer for suspicious behavior, and at least try to hear or see whether the dealer is giving some players inside information, though there are techniques by which unscrupulous dealers can cheat players. For Internet games, players have great difficulty in detecting cheating by the casino. For example, an Internet casino could easily allow chosen players to view other players' down (or "hole") cards, and so give favored players an advantage, or rig the game to deliver better cards to chosen players. Similarly, employees or former employees of an online casino could have installed a "trapdoor" in the casino's poker software that allows them to gain control over some functions of the site and so while playing poker, view their opponents' down or "hole" cards. In two related Internet poker scandals, players were able to cheat their opponents by being able to view their hole cards.

One Internet poker site admitted that its software had been cracked, and refunded $1.6 million to dozens of cheated players. This fraud might have gone undetected had the cheater not taunted one of his victims, goading the victim into investigating, and if the cheater had not failed to lose enough games that the

cheater's winnings did not seem entirely improbable.[36] When poker players investigated the apparent cheating, at first they were met with stonewalling from the Internet poker site. Even when the poker site admitted that cheating had occurred and made refunds, the site reportedly refused to disclose the name of the cheater or turn him over for prosecution, and instead reportedly cut a deal with the cheater to disclose the methods used.[37]

In another case, another poker site admitted that some of its former employees had installed a "trap door" in the site's software that secretly allowed them to view players' hole cards, allowing them to rack up incredible victories in high stakes games. Again, the cheating was caught by other online gamblers, and likely only because the cheaters behaved recklessly, making "one improbable bet after another, yet winning most hands," and so the improbability of the wins alerted other players.[38]

A challenge in consumer protection for Internet poker is that for most recreational gamblers, the greatest danger to their bankroll comes not from the online casino itself, but rather from other players. Recreational gamblers are typically informed of and should be able to afford the casino's rake. However, it is more difficult for

[36] By Gilbert M. Gaul, Cheating Scandals Raise New Questions about Honesty, Security of Internet Gambling, Washington Post, November 30, 2008, available at http://www.washingtonpost.com/wp-dyn/content/article/2008/11/29/AR2008112901679.html
[37] Id.
[38] Id.

recreational gamblers to discover when they are playing against a much better player, and one determined to induce high losses in the recreational gambler. A player might think he or she has just had a run off bad cards, when in fact the player's losses are due more to the superiority of the opponent. In the world of Internet poker, the game is the sharks versus the fish. The sharks are professional gamblers with the skill and tools, some ethical and some not, to catch the bankroll of the fish, amateur players without the skills to defend themselves from professionals.

Obviously, as any fan of old westerns can attest, card sharks have been with us for ages, probably for as long as cards have been used for gambling. However, the Internet presents special difficulties for average players compared to playing cards in person. First of all, in poker games at casinos, a gambler can eyeball his or her opponents and attempt in that way to discern if one of the opponents is a professional. In Internet poker sites, such visual clues are missing. Internet poker games also move more rapidly, so it is easy for players to get more caught up in the game and lose more rapidly than they might in a casino.

More importantly, the Internet and computerized poker have given professional poker players huge additional advantages over recreational players, other than the mere difference in skill. The advent of cheap computer processing has provided professional poker players with access to databases containing millions of hands of

poker, and they can learn to use advanced statistical analysis to tease out new theories of poker playing. In this way, young "math brats" are having surprising success against the previously dominant players in poker tournaments by using probability theory and "a mountain of sortable data from the millions of hands played online to dominate the game."[39] A new guide to poker playing discusses not only game theory and statistical analysis, but also more esoteric tools like the Nash equilibrium.[40] Players have access to probability calculators that can calculate the probabilities of each hand prevailing far faster and more accurately than a human.

Another tool used by the new breed of online professional poker players is data-mining, which allows players to use the Internet to obtain and track crucial information on other players' strengths and weaknesses and which is particularly effective in allowing professional players to ferret out weaker opponents for profit. According to a recent report, "There are numerous tracking systems available. . . Players using such systems are given a heads-up display on their screen that provides invaluable information about other players at the table. This includes such data as VPIP, PFR and AF statistics. For the uninitiated, these acronyms stand for Voluntarily Put Money in Pot, Pre-Flop Raise and Aggression Factor. These are shown as numbers, so for example a player with a high VPIP factor but a low AF will be flagged up as a potential victim."[41] While the recreational player may have little

[39] Dan Kadlec, World Series of Poker: Attack of the Math Brats, Time Magazine, June 28, 2010, available at: http://www.time.com/time/magazine/article/0,9171,1997467,00.html.
[40] Philip Newall, The Intelligent Poker Player (2011).
[41] Nic Szeremeta, One issue which divides the online poker community is the use of tracking software, Independent (United Kingdom) 54, May 20, 2011, 2011 WLNR 10043254.

idea that he or she has been targeted as a weak player, the professional player may have used data mining to hunt down the weak player. As one gaming author sagely noted regarding on-line poker, "Routinely playing in soft games will do wonders for your long-term profit."[42]

Online poker sites have recognized the hazards of such data-mining to their own profit margins and the happiness of many of their clients, and some are beginning to take steps to prevent it, either by introducing their own software designed to prevent data-mining, by changing the information provided by their web-site to make data-mining more difficult, or by offering anonymous tables that prevent the tracking of players.[43] However, the data-miners no doubt are taking action to defeat the poker sites' attempts to prevent data-mining, and it is not clear who will ultimately have the upper hand.

Even worse than data mining are the computer programs, known as "poker bots," designed to outplay the average recreational gambler and unleashed on the Internet to play against unwitting humans. Poker bots are freely available, and can be purchased on Ebay or other Internet sites.[44] While poker sites claim to weed out poker bots,

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[42] Anthony Holden, Holden on Hold'Em, 143 (2008). Holden also discusses the use of data-mining devices to track the obtain extensive records regarding opponents' previous games in order to "exploit their style" and also to find tournaments filled with weaker players. Id. At 146.

[43] Nic Szeremeta, One issue which divides the online poker community is the use of tracking software, Independent (United Kingdom) 54, May 20, 2011, 2011 WLNR 10043254. See also, Euclid Infotech: Procurement News, Anonymous Poker Tables Launch at Online Poker Sites, October 27, 2010; and AP Alert – HiTech, Bodog's Online Casino Revolution Underway with new Lobby, August 11, 2011.

[44] David O. Stewart, Online Gambling Five Years After UIGEA, American Gaming Association White Paper, 2011, at p. 12.

with the rapid increases in computer-driven artificial intelligence, it may be increasingly difficult for Internet poker sites to bar poker bots from their tables. For example, a recent "white paper" on Internet gambling, claimed that online casinos could detect "bots" by their behavior, stating, "Poker bots tend to play in identifiable patterns and not to show the variability that human poker players demonstrate — bluffing, for example, or taking breaks for food or personal hygiene. . . [M]any bots will click on the same location on the screen for play after play, something that humans cannot do and which is readily detected by audit software."[45] These would seem to be flaws easy to correct, especially now that they have been publicly identified.

The playing ability of poker playing computer software is growing by leaps and bounds. In 2008, Polaris, a poker program designed by the University of Alberta's Computer Poker Research Group (CPRG), played poker against six different professional poker players, and of the six matches, Polaris won three and drew one.[46] CPRG has improved its poker programs since then.[47] Many Artificial Intelligence researchers have taken on poker as the next great challenge, now that computer programs have defeated humans in checkers, backgammon, and chess. According to the web page for the Association for the Advancement of Artificial Intelligence's Annual Computer Poker Competition, "Just as the development of world-class chess-

[45] David O. Stewart, Online Gambling Five Years After UIGEA, American Gaming Association White Paper, 2011, at p. 13.
[46] The Economist, Bet on the bot: Will Polaris do for poker what Deep Blue did for chess? July 8, 2010, available at:
[47] Philip Newall, The Intelligent Poker Player, 222 (2011).

playing programs was considered an important milestone in the development of intelligent computing, poker is increasingly being seen in the same way."[48] The 2009 computer poker competition included 25 different programs from 7 different countries.[49] With this kind of wide-spread international effort, further developments in poker "bots" are likely to come in leaps and bounds, and just as it is now inexpensive to purchase a chess program that can defeat most human players, it may all too soon be easy to purchase a poker "bot" that can vanquish most human competition. Unless regulated, Internet poker may become a shark tank of computer programs, hazardous water for recreational gamblers, who may find their bankrolls regularly taken by computer programs designed outplay them.

The irony in Internet poker is that not only would recreational gamblers benefit from consumer protection that would give them protection from data-mining and poker bots, so too would the poker sites themselves and the governmental entities that can tax the poker sites. With slot machines, the casinos are the sharks with their almost inexorable edge, and all of the players are fish who have little hope of winning in the long run. And so, casinos have little reason to allow slot players to make fully informed decisions.

In Internet poker, however, the game provider has an economic interest in giving fish any information needed to protect themselves from the sharks. Poker sites can be

[48] http://www.aaai.org/Conferences/AAAI/2010/aaai10poker.php
[49] Id.

viewed as financial ecosystems, with most of the money brought into the system by recreational gamblers, who often are willing to lose money in order to obtain the recreational value of gambling, much like slot players continue to play knowing that the odds of winning in the long run are stacked high against them. Professional poker players bring in an initial stake, but only succeed professionally if they are a net financial drain on the system, systematically removing money from the poker sites. The poker site itself and the government also remove money from the system, through the rake and the tax on the rake. In other words, poker sites and their government beneficiaries are in competition with professional poker players for the money recreational players bring into the system. If there are too many professional players or poker "bots" draining money from the system, recreational gamblers will be tapped out too quickly, or might even flee poker sites after being burned too often, and so leave less profit for the poker site and the governmental entity.

Short of fighting a perpetual and possibly losing battle against bots and data mining, what can government regulators do to provide protection from professional players, data mining and robots? One possibility that government regulators could investigate would be requiring Internet poker sites themselves to track and list ratings for Internet poker players, much like the ratings used in the chess world. In chess, a player's rating is determined by a player's win and loss record and the strength of the competition, so that a win against a higher rated opponent provides a bigger rating

boost than against an equally rated opponent.[50] To convert this system to online poker, it would be necessary to factor into the ratings how much money was at stake in the game, so that big wins or losses would count more, and so that players could not intentionally reduce their ratings by trying to lose numerous very low stakes games. Therefore, a players' rating would increase if he or she won money, and the amount of increase would depend on the amount won compared to the amount wagered, as well as the rating of the player compared to that of his or her opponent.

By providing the ratings of each player at the site, poker sites would alert recreational gamblers when they are facing a player with a much higher rating, and so one likely to win against them, whether that opponent is a poker "bot," a data mining professional, or simply a much better poker player. Some recreational players would welcome such a challenge, while others might run from it. However, the decision would be the players'. Online casinos could also run some ratings-free rooms, where players could go in order to play without their ratings automatically revealed to other players. This would reduce privacy concerns for this system, as those who desire privacy could find it in the anonymous rooms.

If recreational gamblers could avoid much more talented gamblers, professional players and poker "bots," and succeed in playing against other gamblers with roughly equal ability, then they would be more likely able to play longer on the same bankroll.

[50] Bobby Ang, CHESSPIECE, 9/14/09 BusinessWorld (Manila), September 14, 2009, 2009 WLNR 17989686.

By the same token, if professional players have greater difficulty in finding inexperienced players to target, their winnings will be reduced and they will remove less money from the system. Longer play by recreational gamblers, along with less cash out to professional players should translate into higher profits for site operators and the governmental entities that tax them.

Clearly, this is merely one possible regulatory response to the problem of recreational gamblers facing poker "bots" or professionals playing with computer-assistance or data mining tools. Before such a response is broadly implemented, it should be tested and studied, much like Nova Scotia is currently testing its smart card technologies for use in casino games. The important point, though, is for gambling regulators to think deeply about consumer protection, and test and then implement methods designed to encourage informed decision-making by consumers in the gambling industry.

Conclusion

If Internet gambling is legalized, that legalization should go hand in hand with consumer protection for Internet gamblers. For Internet slot machines, such protections would focus on giving the gamblers the information they need on a timely basis to shop for gambling opportunities and to force Internet casinos to compete based on the price of their slot machines. In addition, further research should be conducted into the possibilities of using smart cards to give gamblers more control over their expenditures.

Designing consumer protection for Internet gambling is a more challenging project. One possibility would be to mandate that for all but anonymous tables, gamblers have a designated rating which indicates the relative strength or weakness of the player. In that way, recreational gamblers could avoid, if they want, playing against a much stronger player. However, consumer protection for internet poker is a complex problem that deserves more study.

Mrs. BONO MACK. Thank you, Professor.

And Dr. Romer, welcome. You are recognized for 5 minutes.

STATEMENT OF DANIEL ROMER

Mr. ROMER. Good morning, Madam Chair and Ranking Member Butterfield and other members of the committee. Thanks for inviting me this morning. It is a pleasure to be here and to hear all the different points of view about what I think is a very difficult issue for you to deal with.

So I have been doing research on adolescent gambling since 2002 at the Annenberg Public Policy Center and trying to understand both the prevalence and the harms that might occur to young people as a result of all kinds of gambling, not just on the Internet. And we have found with a lot of the research that we have been doing is that young people at a very early age are starting to gamble and this puts them at risk potentially for gambling dependence as they get older. So it is very important for the committee and for the Congress to think about what the impact will be on young people and their families as a result of any actions that are taken with regard to online gambling.

One of the things we have done since 2002 is conduct a National Annenberg Survey of Youth, which studies young people ages 14 to 22, and what we have found from this survey is that most of the attempts to restrict online gambling haven't been particularly effective, as we have already heard. We found in our last survey in 2010 that more than 400,000 youth in the college-age range gamble once a week and 1.7 million or more once a month. So a lot of people are online as you have heard. The same is true of high school kids, very high rates, but not so much on a regular basis. So we think that age restrictions and laws that would encourage age-restricted responsible gambling—which is what we have seen in some of the other countries that have allowed online gambling—may be an approach that would work, but we are still very much in the early phases of understanding how online gambling will work, and I think we need research to understand it better.

But if we have legislation that can provide some safeguards that could potentially restrict underage gamblers and also to the extent they do go online, make it harder for them to lose control while they are online would be excellent safeguards to include in any legislation.

And I think the principle that I see when I look at what is going on in Europe is this idea of responsible gambling, and so one idea that I think is particularly helpful is that gambling operators should not receive disproportionate income from users who are unable to control their habit. And I think the bill that has been put forth by Mr. Barton and others might have a mechanism in it for the public to observe, monitor how funds are being made on Internet gambling so that you could see if certain gamblers are disproportionately contributing to profits.

Now, some of the other ideas that we have heard about age restrictions and so forth I think are very important. The method of payment is really important. We still don't really know how well they work. We need research, and this country is actually way behind the U.K. and countries in Europe on understanding what hap-

pens when young people go online and gamble. We really need to find that out. We need monies dedicated to that question.

I think we also need to consider and the law should consider money and time limits. I think Keith mentioned that he thinks this is a good idea. There should be a running clock online, there should be a win/loss total online so that the young person knows how much they are wagering. And this is true whether they are 18, 21, or 51. This is something I think is straightforward but we really don't know how many of these kinds of restrictions would work.

We also need prevention messages online. It is much easier to put these online than it is, for example, at a casino. And we need to regulate or monitor the advertising that is done to attract people. We don't want the advertising to target young people disproportionately or addicted gamblers disproportionately.

And so I think the challenge will be if you do legalize this will be to put in place both things that Keith talked about in terms of treatment but also a program of research to figure out are restrictions that you put in place working? What mix of restrictions work best? And what can we do in the future to maximize the chance that this kind of activity will not produce harms for young people and their families. And I have included a bunch of other ideas in my testimony.

And I thank you for this opportunity to say these things. Thanks.

[The prepared statement of Mr. Romer follows:]

Summary of Testimony of Daniel Romer Before the House Subcommittee on Commerce, Manufacturing, and Trade, U.S. House of Representatives

Hearing on: "Internet Gaming: Is There a Safe Bet?"

October 25, 2011

Research conducted by the Annenberg Public Policy Center at the University of Pennsylvania since 2002 shows that gambling, including card playing, is a popular activity among adolescents and young adults in the U.S. The rise of off-shore Internet gambling sites provides opportunities for young people to engage in card games with little supervision. Furthermore, card games are associated with higher levels of problem gambling symptoms than other forms of gambling that youth engage in. The inability to restrict access to these Internet sites makes regulation that can enforce responsible age-restricted access an attractive option. Experience in other countries suggests that incentives to provide responsible gambling experience on the Internet are possible. Some suggestions for ways to implement responsible gambling practices on the Internet are reviewed. Nevertheless, further research will be needed to determine the most effective mix of measures to restrict underage users from these sites and to protect both the users and their families from potential harms of online gambling.

Testimony of Daniel Romer
Before the House Subcommittee on Commerce, Manufacturing, and Trade
U.S. House of Representatives

Hearing on
"Internet Gaming: Is There a Safe Bet?"

October 25, 2011

Good morning Chairwoman Bono Mack, Ranking Member Waxman, and Members of the Committee.

Thank you for inviting me to present to you this morning. I am Dan Romer, Associate Director of The Annenberg Public Policy Center at the University of Pennsylvania (Penn) and the Director of its Adolescent Communication Institute (ACI). Since its founding in 2001 with a grant from Walter and Leonore Annenberg to the University, ACI has been studying the prevalence and consequences of gambling behavior of high school and college age youth in the US.

We became interested in this problem because it was a neglected area of study among researchers who have traditionally been more concerned about other youth problem behaviors, such as drug use, violence, early pregnancy, and sexually transmitted infections. In a book I edited concerning these problems, several gambling experts pointed to the widespread prevalence of gambling in youth and to the risks that this behavior creates.

Gambling often starts in adolescence and can lead to symptoms of addiction that are similar to the abuse of drugs. In research conducted with colleagues at Penn supported by the National Institute on Drug Abuse, we have found that gambling is one of the earliest and most prevalent forms of risk -taking that children engage in. Indeed, just as the age of onset of drug use predicts later drug dependence, there is reason to believe that early exposure to gambling can increase the risk of later dependence.

Since 2002, our center has annually conducted the National Annenberg Survey of Youth, the only national survey of youth ages 14 to 22 that systematically examines gambling activity. Over this time period, we have consistently found that large proportions of young people gamble on a regular basis (see Table 1). Indeed, about half of young males do so at least once a month. Most of this gambling is informal, organized by youth themselves. This includes such activities as poker games and sports betting. Other forms of gambling that attract young people are more formal, sponsored by states (such as lotteries) or private entities (e.g., casinos).

The rise of online gambling over the past 10 years presents new challenges, in part because it is currently sponsored by illegal entities outside the U.S., and therefore

falls outside of the protections that could be placed on this form of commerce. Despite various barriers erected by Congress (e.g., the Unlawful Internet Gambling Act of 2006) and enforcement activities by the federal government, the use of these sites continues. Indeed, our 2010 survey found that projected nationally, more than 400,000 male youth in the college age range (18-22) gambled for money once a week on the Internet and over 1.7 million did so once a month.

High school age youth also venture onto Internet gambling sites but less frequently. While about 12% of college-age male youth reported gambling on Internet sites at least once a month, only about 4.5% of high school age youth (ages 14-17) did so at the same rate. And the rate of weekly use was quite small (see Table 2). Nevertheless, unregulated access to such sites invites a number of harms that include not only the potential for developing symptoms of problem gambling, but also harms to the family that is likely to be paying for the adolescent's game playing.

Harmful effects appear to be especially problematic for card playing, since we find that adolescents and young adults engaging in this form of gambling tend to report higher rates of problems than for other forms of gambling. In particular, over half of adolescents who play cards weekly report being preoccupied by thoughts of gambling, and over 30% report experiencing loss of control when they play. If legalized online card playing were to come to the U.S., problems could be minimized were the government to require several safeguards to prevent users, especially youth, from abusing the opportunities that such sites afford for unlimited access to card playing.

Coping with the adverse effects of gambling on youth and their families

Experience in Europe and other countries that have legalized online gambling provides some guidance for how online gambling companies should be certified before they are allowed to operate in a country. The general principle surrounding these rules is to create incentives or regulations that increase the likelihood that the gambling that exists will be conducted responsibly; that is, permitting adults to enjoy gambling activity while also reducing the harms that might occur for vulnerable populations. So for example, gambling operators should not receive disproportionate income from users who are unable to control their gambling activity. Some of the ways that these general principals have been implemented include the following taken from the Nova Scotia Gaming Corporation.

Age Requirement

Given the potential for many adolescents to be attracted to gambling, it would be desirable to have an effective screening mechanism to prevent persons under a certain age from using the site. In Europe this age is most often 18. Here in the U.S., given age restrictions already in place, it is likely to be 21. One approach to enforcing age limits in Europe is to require the use of credit cards, which can be checked with the credit reporting agencies (e.g., Experian) to verify the age of the

owner. Unless a person uses a credit card (or other form of payment) that is verified as belonging to someone over the legal age, the person cannot obtain a user ID for the site. If the underage person uses a family member's card, then it is the responsibility of that family member to monitor the expenses incurred by gambling.

It may also be desirable to place age restrictions on the common practice of allowing users to play for free. Although research has not yet demonstrated harm from this practice, it is likely that it lures young people into trying to play with real money.

There are limits to what age restrictions can do to screen under-age users. Once an ID is licensed for use on a site, another person can use it. Nevertheless, this system at least requires that the owner of the payment method be of legal age.

It should be noted that this method of enforcing age requirements is no less subject to abuse than many state lotteries. In Pennsylvania for example, it is possible to buy a lottery ticket from a kiosk without any age restriction. These kiosks are now stationed in drug stores and other convenient locations. Indeed, we find that many youth under the age of 18 report buying lottery tickets on a regular basis.

Money and time limits

Online gambling also provides the opportunity to exert control over the gambling experience that is potentially less available at other gambling venues. It is possible to limit the amount of money that can be gambled on a site in any session or the amount of time that any player can stay on a site in one session. Pauses can be required after a certain amount of time to encourage the player to evaluate his/her gains or losses. A visible running tab can also be required to enable the player to see how much has been won or lost during a session.

A visible clock can also be required to time the length of any session so that the player is aware of the time that is being spent on the site. It also is possible to provide self-exclusion options that deny the player access to a site at certain times in the day or month (e.g., right after pay day).

Prevention messages

Any site that engages in responsible gambling should have messages that explain the rules of the game, the odds of winning, and how likely it is that players will win money on that game. Players should also be reminded that they should exercise self-control if they are on a losing streak. And messages about treatment or help to those who feel that they are losing control should be prominently displayed at all times.

Advertising and promotion

Companies that advertise their online gambling services should not target vulnerable populations, such as youth or gambling addicts. They should also not promise unlikely rewards or winnings. A monitoring system should be in place to check on these stipulations on a regular basis.

Funding for Research and Treatment

In the UK, several mechanisms have been created to receive funds from gambling operators for dispersal to approved treatment providers for those unable to control their gambling behavior (i.e., The Responsible Gambling Fund). In addition, the government requests funds from gambling firms to pay for research to understand the effects of online and other gambling sites on youth and other vulnerable populations. There is much we do not know about the risks of legalized gambling and any system that is created to limit the adverse effects will have flaws and opportunities for improvement. Research to evaluate the effectiveness of age and other restrictions will help to make them stronger.

Consistency across Gambling Sites

Current law permits the placing of online bets for horse racing. We find that some young people use these sites. A new regime of online licensing and control could bring all forms of online gambling under a single regulatory structure and eliminate inconsistencies in the current regulatory scheme for online gambling activity.

In conclusion, by controlling online gambling the federal government could minimize the harm that this activity can inflict on the young and their families and could also make the use of these sites safer for them. Additional research is needed to determine the best ways to implement such controls and to determine how best to protect children and other vulnerable populations from exploitation by gambling site operators.

Appendix

Table 1. Participation in various forms of gambling on a monthly basis among youth ages 14 to 22 in the U.S. from 2004 to 2008, National Annenberg Survey of Youth.

Table 2. Participation in various forms of gambling on a monthly basis among youth ages 14 to 22 in the U.S. in years 2008 and 2010, National Annenberg Survey of Youth.

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Mrs. BONO MACK. Thank you, Dr. Romer.

And I am going to begin the questioning. And I thank all of the panel for your testimony and recognize myself for 5 minutes for questions.

Mr. Whyte, I would like to begin with you. And Dr. Romer just spoke about this, too, but you state problem gamblers could exacerbate their problems by gambling online because of the use of credit and 24-hour availability. Would restrictions on those factors reduce the problem, for example, limited times and limits on credit? Do other countries offering Internet gambling currently have restrictions to limit the use of credit and availability, and if so, can you talk about their results?

Mr. WHYTE. Yes, I can. There is some evidence from Canada and Europe that there are supposed to be restrictions that have been put into place which generally include, as you say, limits on the use of certain types of payment processing, limits on the time and money spent gambling seem to be able to not necessarily intervene with pathological gamblers who will keep gambling despite any and all barriers put in their way. They seem rather to be better targeted at those people that are at risk for gambling problems or they are moderate problem gamblers. These restrictions, properly tailored, can be and have shown to be effective in some studies at stopping people from stepping over the edge and developing severe gambling problems.

As Dan said, we are not entirely sure exactly what works best, but we believe that there is enough evidence to show that some of these interventions can be effective, and in fact some of them can be much more successfully implemented on the Internet with account-based wagering than in a traditional gambling forum.

Mrs. BONO MACK. Thank you.

Mr. Stevens, you suggest that any legislation authorizing online gambling should allow tribal governments' early entry with a period of exclusivity. Can you explain the rationale for your position?

Mr. STEVENS. Yes, I can. You know, I think it is important to understand and appreciate what tribes have been through and the history with the United States Government. You know, if I could speak just quickly about my grandmother. She is 101 years old and she lives in her own apartment independently in an apartment that is assisted but not a nursing home. And she lives in that apartment at 101 independently. She started out her life going to boarding schools and working and wearing a uniform and disciplined for being left-handed like my friend next to me and speaking her language, you know, and, you know, leaving her family. The family would go by the boarding school and not even be able to wave or visit or look at your children. And again as we approach a little bit emotional to bring it up because even though my grandma is doing fine and if you called her apartment on the reservation in Oneida, Wisconsin, you would probably find that she is not home. So she is involved in activities which she is a retired schoolteacher. She spent her whole life teaching the language and the culture that was attempted to be taken from her.

And again, that is a success story, but really if you look at the way her life was, her grandfather who raised her was a Civil War veteran and he used to ride by the boarding school and throw

candy but he would never look because the government said you couldn't even look at your kids. And again, that is a mild story about what our people have been through. Millions and millions of Indian folks when our first European contact, in spite of all those struggles and challenges that we have been through, we have been able to persevere and survive and fight back. And if anybody deserves to be at the front line in this industry, it is Native American people.

Mrs. BONO MACK. OK.

Mr. STEVENS. And at the very least equal footing, Madam Chair.

Mrs. BONO MACK. Well, why is it important that legislation permit tribes to operate Internet gaming without renegotiating their tribal state compacts? What is the concern?

Mr. STEVENS. Well, I believe that that is a new industry and I believe that they shouldn't undo or attempt to amend the current law in order to accomplish that.

Mrs. BONO MACK. Can you please clarify your principle regarding the preservation of tribal regulatory authority? Should we actually legalize online gaming? Can you speak to that and how do you see that authority affected by Federal legislation to legalize online gaming?

Mr. STEVENS. OK, I am sorry, Madam Chair. I misunderstood you.

Mrs. BONO MACK. I actually think I missed a comma in there. So could you please clarify your principle regarding the preservation of tribal regulatory authority should Federal legislation legalize online gaming?

Mr. STEVENS. I think that I spoke briefly to that in my testimony and quite extensively on it in my written testimony. The regulators in Indian Country have analyzed this and they are the ones responsible. The National Indian Gaming Commission is the only Federal authority that has experience in gaming, so we feel like that in order to oversee this element of it, we should utilize experienced folks.

Now, just by coincidence I have my—it is the nicest one I got but it is the National Tribal Gaming Commission and Regulators. It is a national association independent of NIGA and independent of the tribes that have worked to analyze the expertise and the important aspects of tribal regulation to make a stronger and able to adhere to the responsibilities to our constituents.

Mrs. BONO MACK. I am sorry. I hate to cut you off but my time is up if you can wrap up in 5 seconds.

Mr. STEVENS. My bottom line is that we have asked these regulators nationwide if they are prepared to regulate this industry and they assured us that they are in strong preparation to do so.

Mrs. BONO MACK. Thank you.

All right. Again, my time has expired and I am pleased to recognize Mr. Butterfield for 5 minutes.

Mr. BUTTERFIELD. I thank the chairman.

Madam Chairman, I am among those who is beginning to understand I would say online gambling. I am beginning to understand that it could provide a great boost to our national economy and it could provide a boost for Federal and State coffers. And so I am beginning to connect the dots and understand what this is about.

Today should be the beginning of a robust discussion and this conversation certainly should be expanded as we go forward.

As the chair pointed out, online gambling is a very complicated issue. I am beginning to see that. Other issues still warrant discussion. For example, the great State of California with 53 Representatives and the District of Columbia with a nonvoting Representative are already moving forward with intrastate online gaming even though its legal status is unclear given that the U.S. Justice Department believes the Wire Act prohibits all online gambling. I have to wonder, therefore, under the current state of play, is Justice going to shut these operations down once they are up and running? And there are other critical questions that need to be answered.

We need to hear from California and D.C.; we need to hear from the Justice Department; we need to hear from other State and Federal regulators who would be tasked with implementing and enforcing inter-regulatory framework regarding online gaming. This is an issue that warrants further review before this subcommittee. We have jurisdiction and we need to certainly inquire into that.

In his testimony, Mr. Whyte notes that among the groups at high risk for gambling addiction are racial and ethnic minorities. I want to talk about that for a minute. He specifically identifies African Americans, among others, as being at high risk. Earlier this month, this subcommittee held a hearing on revisions to the Children's Online Privacy Protection Act Rule. The testimony of one of the witnesses for that hearing contained references to a study by the Sesame Workshop that included some interesting insights into the online habits of minority children. According to that study, African Americans and Hispanic children have less home Internet access, but those that have access use the Internet more than white children. African American children between the ages of 5 and 9 spend 41 minutes online per session. White children in contrast spend 27 minutes online per session. Hispanic children between ages 8 and 14 spend almost 2 hours online each day, 40 minutes more than white children. The study also pointed out that children from low income and ethnic minority homes were less likely to have adult guidance when accessing the Internet. As a result, they were spending more time on lower-quality Web sites or on activities that wouldn't help them develop school-based skills.

Now, Dr. Romer, let me try you, sir. I know your own work has focused on the prevalence of gambling among high school and college youth. However, I don't think it would be too much of a leap to assume that this tendency by younger minority children to use the Internet more and to spend more time on lower-quality Web sites persists into high school and college. Given all of this, I am wondering whether you can speak to whether you have seen differences along racial and ethnic lines?

Mr. ROMER. There are racial and ethnic differences in gambling. We haven't seen it in terms of Internet use partly because it has still been kind of small in our survey so I can't really talk to it. But from what you have said if there are these disparities that occur for kids who are online, I would fully expect that those kids to then make the same——

Mr. BUTTERFIELD. The data seems to suggest that.

Mr. ROMER. Yes.

Mr. BUTTERFIELD. Yes. Do you have any thoughts about whether there might be particular implications for young minorities from online gambling that should be taken into account in the discussion about whether and how to go about recognizing some forms of online gambling as legal?

Mr. ROMER. Well, I mean are you saying——

Mr. BUTTERFIELD. Is there anything in particular we could write into the law that would try to safeguard against this?

Mr. ROMER. Well, I don't know that you could write a law that would, you know, safeguard against particular people other than people who are prone to, you know, lack of control. So I think the thing you want to prevent is people from using online gambling sites who can't control their gambling. And anything you can do to warn them, to remind them, to keep them aware of the fact that they may be spending more than they have I think would be valuable. And you need to explain I think, as Kurt Eggert has said, people need to know what they are going to win on a site. I think that is a valuable thing to tell people at any age. But we don't want kids on there at all. I mean that is the goal. We don't want kids.

Mr. WHYTE. Another important aspect is to make sure that there are health services available if kids do get into trouble. And I think that is where, again, the impact on the minority community is disproportionate. There is less access to health services. We also understand that there is less access to, for example, services in Spanish and in other culturally specific services for Native Americans, Asian Americans, and others. So on the health side, regulation alone cannot adequately protect people from an addiction as we have known from drugs and alcohol and tobacco. You must have health services and we must have within those health services dedicated, culturally specific services available for both youth and adults to prevent, educate, treat, and research. That is the way that we are going to make the progress that gets to public health disorders.

Mr. BUTTERFIELD. Thank you.

Mrs. BONO MACK. I thank the gentleman.

And chair would remind people that we have a 5-minute rule on questioning and answering as well if we can try to stick close to it. We will have a second round of questioning that way.

The chair is happy to recognize Mr. Bass for 5 minutes.

Mr. BASS. I thank the chairman. And I also want to thank my friend from Texas, Mr. Barton, for his courtesy. I have to preside at noon and the House is not in session now, and when you don't show up at noon, people get uptight very quickly.

I am also quite perplexed by some of this discussion about this money that could be lost in Internet poker. I know quite a few people who have played poker and I haven't met one yet that admits to ever losing anything. I will also point out that New Hampshire is, as we all know, first in the Nation presidential primary and it will remain so. It also happens to the first State to adopt a statewide lottery in 1964. It has raised over $4 billion and provided about $1.3 billion for public education in the State.

My question and only question is for my former colleague from New York, Senator D'Amato. Senator, representing the poker players, in your organization's opinion, what impact would the passage of legislation permitting Internet gambling have on State lotteries? And secondly, would your organization have any objection to allowing or giving the State lotteries the opportunity to also compete if you will in the Internet poker business?

Mr. D'AMATO. Congressman, let me answer the second question first because that is an easier one to answer. We would have no objection whatsoever. As it relates to whether or not there has been an impact, we believe that the people who buy lottery tickets are generally not the same people and we don't believe they really compete. We believe that many will continue. If you look at the lottery tickets and their purchases, you will find that while the Internet does play a role, most of it is at your commercial establishments. And so we don't see a conflict and we certainly have no objection to lottery tickets and the scrape-off tickets that the States put out there having that ability.

I would also note that in New York, you presently have a situation where the revenues from the lotteries—I am very conscious of this—play a very substantial part in our State's economy and budget, and we want to protect that. I am certainly not advocating that we cut into that.

But I make one other point. And the ranking member brought up the fact that there is a disparate impact and it would seem that the young minority children are addicted to a greater extent to the Internet and to programs which are not those kind that you would generally want to encourage them is going to help them in school. And I hope I am paraphrasing your sentiments correctly. More reason to see to it that there is good, tight regulation as it relates to using the Internet and poker in particular. There is no regulation now. There is nothing to stop these kids from getting on. If we want to eliminate those who unfortunately become involved at a young age, there is no verification required by these offsite groups. There is no way to stop or prevent them.

And so I think it makes abundant sense if we want to do something to curtail this, the misuse by youngsters to have strong, tough regulations protecting the consumers, protecting the young people, seeing to it—I would like to hear some of Mr. Eggert's suggestions because we are certainly not opposed—to how do we give the kind of information so that players have a better playing field. So I think for all of those reasons that it is important that we move forward with this kind of legislation.

Mr. BASS. Thank you very much, Senator. I appreciate your addressing my question as well as Mr. Butterfield's and Mr. Eggert's.

Mr. D'AMATO. Thank you, Congressman.

Mr. BASS. And I yield back to the chairlady.

Mrs. BONO MACK. Thank you, Mr. Bass.

The chair recognizes Mr. Towns for 5 minutes.

Mr. TOWNS. Thank you very much, Madam Chair and of course the ranking member, Mr. Butterfield, for having this hearing. I think this is a very, very important hearing.

The question before this committee is what if any forms of online gaming should Congress consider? Over the course of the next sev-

eral weeks, Congress will decide on how our Nation will begin to put its fiscal house in order. And this seems to be a way to get revenue. One of the many proposals that Congress will consider is easing the current restriction of online gamine. Currently under the Wire Act, online gaming is illegal. However, that has not stopped offshore gaming, Web sites from profiting off of the United States. Gaming industry experts have estimated that United States spent over $16 billion in 2010 online poker alone. Some experts also suggest that revenues generated by online gaming would bring in significant tax revenues to the Federal Government that currently are directed to non-U.S. gaming companies. This additional revenue could be used to help balance our growing Federal deficit without causing drastic cuts to entitlement programs that so many Americans rely on.

While I am sympathetic to the view that more revenue is needed to help balance the Federal budget, I am concerned with the unintended consequences of this proposal. So first I want to begin by asking you, Mr. Stevens, you know, I am not sure in terms of your real reasons for opposing any kind of change, what are your real reasons? Could you be very specific?

Mr. STEVENS. I don't think I understood your question, sir.

Mr. TOWNS. I understand that you oppose this, right, and you mentioned the fact that there were certain agencies that were not involved in it, you know. What are the reasons as to why you might oppose it?

Mr. STEVENS. And again, Representative Towns, we had several, as much as 12-plus meetings on this issue, and the Indian tribes are opposed to this discussion based on 6 points. Indian tribes are sovereign governments with a right to operate, regulate, tax, and license Internet gaming and those rights must not be subordinated to any non-Federal authority. Internet gaming as authorized by Indian tribes must be available to customers in any locale where Internet gaming is not prohibited. Consistent with long-held Federal policy, tribal revenues must not be subject to tax. Existing tribal government rights under the tribal state compacts and Indian Gaming Regulatory Act must be respected. The legislation must not open up any gaming regulatory act and Federal legislation of Internet gaming must provide positive economic benefits for Indian Country. Those are the 6 points that were developed in a series of meetings with tribal leaders from throughout the country.

Mr. TOWNS. You know, this committee must ensure that, you know, all the stakeholders involved are able to benefit from any legislation that may take shape over the coming weeks and months. You know, so we are very sensitive to that as well. But you know, my concern would be the fact that the oversight and the fact that we make certain that, you know, it is being done fairly. And of course that would be a real concern because I think that we have to look at ways to be able to deal with the deficit. And based on what everybody is saying, this is a way to attract revenue.

Now, I am also concerned about youth and all of that but I think that based on programs that are in place that we can sort of look at that and be able to make certain that they are safe and that they are not involved in any way. And any time you have anything,

you are always going to have some folks that take it to the extreme. I think that what we need to do is to make certain if they do, that there is something in place, you know, for them. I mean so you can name almost anything and I can tell you, you know, how someone has gone and taken it to the extreme. You name it. I think the main thing, though, is to try to put safeguards in place. And I think that is an issue that we need to talk about as to safeguards that we can put in place, programs that we can put in place that will make it possible for people to continue to function without destroying families.

So I want to thank all of you for your testimony and I am going to respect the 5 minutes.

Thank you, Madam Chair.

Mrs. BONO MACK. Thank you, Mr. Towns. I will remember you at Christmas for that.

And I am pleased to recognize I think the best poker player in Congress, Mr. Barton, for 5 minutes.

Mr. BARTON. Well, I don't know about that. I haven't got some bills passed through the Senate yet. That is where you play real poker up here is when you play with the Senate at the end of the year on getting your bills through.

Mr. BUTTERFIELD. Mr. Engle wouldn't like that, either.

Mr. BARTON. That is exactly right.

Mr. BUTTERFIELD. He considers himself world-class.

Mr. BARTON. First of all, Madam Chairwoman, I would ask unanimous consent to put into the record a letter to you from Frank Fahrenkopf, who is the president of the American Gaming Association, and written testimony that he was prepared to give had there been room on the panel. I am told this has been cleared by your staff and the minority staff and that it is not a problem.

Mrs. BONO MACK. Hearing no objection, so ordered.

[The information follows:]

FRANK J. FAHRENKOPF, JR.
President & CEO

October 24, 2011

The Honorable Mary Bono Mack
Chairwoman
Subcommittee on Commerce, Manufacturing and Trade
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chair Bono Mack:

Please accept this written testimony into the record for the Subcommittee on Commerce, Manufacturing and Trade hearing on Tuesday, October 25, 2011 entitled "Internet Gaming: Is There a Safe Bet?"

I appreciate the opportunity to present the perspective of the American Gaming Association on this important issue. As you may know, for several years our association urged caution as the country considered the legalization of Internet gambling. However, new technology and processes have proven successful in eliminating the risks that caused our initial concerns.

Today, we believe the safe bet is to allow states, should they so choose, to license and regulate online poker following federal guidelines. Such action would protect U.S. consumers, keep children from gambling on the Internet, and provide the tools law enforcement needs to shut down Internet gambling operators. And, it would create new jobs and tax revenue at a time when both are sorely needed.

The AGA does not support any specific legislation, but there are certain provisions that any change should include:

- Each state should have the right to determine whether online poker should be legalized within their jurisdictions.
- Federal guidelines should be established that the states must follow to ensure a consistent regulatory and legal framework.
- U.S. law enforcement should be provided with the ability to go after illegal operators and successfully prosecute them.

1299 PENNSYLVANIA AVENUE, NW • SUITE 1175 • WASHINGTON, DC 20004
202-552-2675 Fax 202-552-2676 www.americangaming.org

With the appropriate technology and processes in place, Americans would have a safe, well-regulated environment in which to play poker online.

Thank you for consideration of my testimony.

Kindest personal regards,

Frank J. Fahrenkopf, Jr.

cc: The Honorable G.K. Butterfield

Attachment

Written Testimony of
Frank J. Fahrenkopf Jr., President and CEO
American Gaming Association

Submitted to the U. S. House Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade
Hearing entitled: "Internet Gaming: Is There a Safe Bet?"
October 25, 2011

Thank you Chair Bono Mack, Ranking Member Butterfield and the subcommittee members for the opportunity to provide testimony on behalf of the American Gaming Association (AGA). Allow me a brief introduction of our organization. The AGA represents the commercial casino-entertainment industry by addressing federal legislative and regulatory issues affecting its members, their employees and customers, including federal taxation, online poker, and travel and tourism matters.

The AGA also serves as the industry's national gaming information clearinghouse, providing the media, elected officials, other decision makers and the public with timely, accurate gaming industry data. Commercial casinos operate in 22 states, but there is legal gaming in 48 of the 50 states and the District of Columbia.

Our member companies have committed more than $22 million to the National Center for Responsible Gaming (NCRG), the AGA's affiliated charity. The NCRG is the only national organization exclusively devoted to funding research that helps increase understanding of pathological and youth gambling, and finding effective methods of treatment for the disorder.

From an economic standpoint, commercial casino companies directly employ nearly 400,000 men and women at 566 properties and are responsible for an additional 475,000 jobs across the country through the additional economic activity they generate.

In fact, the commercial casino industry accounted for about $114 billion in consumer spending last year, which is nearly one percent of the entire $14.5 trillion U.S. Gross Domestic Product.

Some might be surprised to learn that of the $49.5 billion in commercial casino revenues generated last year, one-third – $15.2 billion – came from nongaming sources

such as food and beverage sales, hotel revenues and other activities, including entertainment, shopping and conventions.

It is also important to understand the commercial casino industry pays a gaming-specific tax of $7.6 billion to state and local governments, which computes to $9,000 *per year* for every job it supports in the economy. So, as you can see, our industry is squarely in the mainstream of the U.S. economy, growing more rapidly over the last two decades than any other segment of the recreation industry. We have achieved this by responding to the demands of our customers, which brings us to the subject of the hearing for which this testimony has been prepared.

The answer to the question posed in the title of today's hearing – "Is There a Safe Bet?"– is a clear yes. That safe bet can be found in the licensing and regulation of online poker. The risky bet would be to leave unchanged current law that leaves consumers, minors and those with gambling problems vulnerable to unregulated offshore companies.

As you may know, the AGA has not always taken this position. For much of the time since Internet gambling was first introduced, the AGA urged caution as the country considered the legalization of Internet gambling.

We simply were not convinced that Internet gambling could be regulated to protect Americans against fraud, money laundering and other illegal activities. We also were concerned that Internet gambling companies wouldn't be able to prevent minors from gambling on their sites and that there weren't sufficient safeguards to protect problem gamblers.

New technology and new processes have changed that. We live in a digital world where people can purchase everything from groceries to automobiles online. These e-commerce companies have developed new technology and processes to help them facilitate sales, protect customers and, in some cases, prevent minors from purchasing their products. The same types of technological and process advancements are being used in countries such as Great Britain, France, and Italy and in provinces of Canada to effectively regulate and oversee Internet gambling. Those countries and others have proven that the technology and processes exist to effectively eliminate the risks that contributed to the passage of the Unlawful Internet Gaming Enforcement Act (UIGEA).

Because of the technological and process advancements now available to the gaming industry, we now support the right of states to license online poker, should they choose to do so, through the passage of legislation that would strengthen and enhance UIGEA and provide a strong regulatory framework for states to follow.

You might ask, "Why just online poker?" Poker is substantially different than other forms of gaming. First, it is a game that vast numbers of Americans have historically played and that millions of Americans still play. In fact, the jargon of poker is woven throughout our language with phrases such as blue chip, pass the buck, high roller, wild card, poker face and up the ante.

Second, unlike other forms of Internet gambling, poker is primarily a game of skill. And, poker is played between or among individuals, whereas in other forms of Internet gambling the customer is playing against the "house." Finally, the support we've seen around the country is really focused on online poker and not on other forms of Internet gambling.

The fact is practically every adult in the country has played poker at one time or another, and today the preferred venue for millions of poker players is the Internet.

Last year, in the United States, an estimated 10 million to 15 million people bet billions of dollars online, even though it is illegal for companies to offer real-money Internet gambling in the U.S. Americans will continue to bet online as long as there are sites they can access, and we can expect that there will always be sites they can access as long as there are billions of dollars to be made.

While we applaud the efforts of law enforcement agencies to crack down on illegal off shore gambling sites, they can only make temporary gains. For example, following enactment of the UIGEA in 2006, several major offshore operators stopped taking bets from U.S. residents, and for a period of time the volume of online betting from the U.S. decreased.

Yet the market recovered with new sites coming online, and in 2010, Internet gambling revenues from U.S. bettors exceeded $4 billion.

Even the indictments of executives from several online poker companies last April did not stop Internet gambling. In fact, in the immediate aftermath of online poker's "Black Friday," the companies that continue to operate in the U.S. saw a surge in new business. Shortly after that event, it was estimated there were still more than 1,000 real-money websites operated by nearly 300 offshore operators targeting the U.S. market. This is further proof that offshore operators will continue to cater to demand and develop new techniques to circumvent the barriers we put in place. The volume may fluctuate with each closed website and set of indictments, but demand will prevail in the end.

Moreover, it is very likely that Internet gambling operators who fill this void will be even less regulated and less trustworthy than their predecessors, which will only hurt American consumers.

Put simply, the current environment puts American online players at risk. It is practically impossible to ensure that children are not gambling online and that the Internet gambling companies are acting responsibly towards those who cannot gamble responsibly. These companies, by illegally operating in the U.S., are flouting our laws; they are doing it where law enforcement cannot reach them and where, in many cases, there is little to no regulatory oversight.

One dramatic example of the risks faced by U.S. consumers in this environment can be found in the indictment of key figures at Full Tilt Poker, one of the most popular and prominent Internet gambling sites. Calling the operation a "Ponzi" scheme, the federal government alleged that several executives at Full Tilt Poker defrauded unwitting online gamblers of hundreds of millions of dollars.

Consumers could be saved from this risk if UIGEA were strengthened so states that wanted to could license and regulate online poker, following federal guidelines. We know U.S.-licensed gaming companies, following time-tested gaming regulations, would provide safe, honest, responsible sites for the use of the men and women who want to play online poker. A strengthened UIGEA also would protect Americans from unscrupulous operators and would have the added advantage of bringing the jobs and revenues associated with this billion-dollar industry back to the United States.

The creation of the infrastructure to support a licensed and regulated online poker industry would create an estimated 10,000 high-tech jobs – jobs that our country desperately needs right now. In addition, once a well-designed system is in place, the legalization of online poker would generate $2 billion in tax revenue, primarily at the state level, every year. That's money that would go back into American communities to help fund schools, fix roads and provide medical care.

To realize these benefits will require action by Congress, beginning with this committee. The AGA does not support any specific legislation, but there are certain provisions that any change should include:

- Each state should have the right to determine whether online poker should be legalized within their jurisdictions.
- Federal guidelines should be established that the states must follow to ensure a consistent regulatory and legal framework.

- U.S. law enforcement should be provided with the ability to go after illegal operators and successfully prosecute them.

In addition, online poker companies licensed in the U.S. should adhere to the same stringent level of regulation that governs brick-and-mortar casinos in this country. Our companies have a strong history of regulatory compliance. In fact, we welcome tough regulation, because we know it is essential to our ability to operate. The regulations we follow are time-proven and if online poker companies are required to comply with them it would ensure American consumers are playing in a fair and secure environment provided by a responsible operator.

The AGA introduced a Code of Conduct for U.S. Licensed Online Poker Companies that incorporates the key elements of the successful regulations followed by U.S. casinos. To be licensed, companies should agree to:

- Submit to extensive background investigations of the company and key personnel
- Ensure proper ID of every U.S. online poker player
- Submit to regular testing and auditing of online poker software
- Implement effective player exclusion processes
- Incorporate effective responsible gaming protections
- Implement effective anti-money-laundering procedures

Legislation that incorporates the provisions above and the elements of the Code of Conduct would effectively protect U.S. consumers and state licensing and regulation would eliminate illegal websites operated by offshore companies. But, without the technology and processes available today such a law would probably be impossible to enforce.

Fortunately, new technology and processes can, in fact, address those concerns. This can be accomplished in four ways:

- A rigorous registration process;
- Technology-assisted fraud and collusion monitoring;
- Anti-money-laundering technology and processes; and,

- Promotion of responsible gaming by providing players the ability to manage their game play in real time.

Let's take a look at these safeguards.

Most people are familiar with registering for online services. Registering to play poker online is much more extensive and thorough. For example, the online poker company would be able to, with almost 100 percent certainty, instantly determine the potential player's age and confirm his or her identity. Registration processes and advanced technology very similar to those used by companies such as Major League Baseball, CBS and Apple also would allow the online poker company to:

- determine where the player is located,
- determine whether the Social Security number used is valid and is actually the player's own, which would prevent underage gambling, and
- find out if the player has any sanctions by state, federal or international governments.

One example of the advanced techniques available is biometric confirmation. Biometric confirmation – also known as voice or facial recognition – could be required of everyone registering to play online. This would prevent a minor from using a parent's or other adult's sign-in information or credit card as he or she would be unable to pass the biometric confirmation test.

Preventing cheating, whether by humans or software programs, is made easy through the use of fraud and collusion monitoring technology, coupled with reporting of suspicious play by other players.

And, efforts to launder money are detected through a number of reports and checks used exclusively by the gaming industry, as well as other processes that are common in financial institutions. Among those processes are spotting unusual deposit and cash-out patterns, and identifying players who frequently play with the same players or frequently lose to the same players. Other safeguards include having processes that don't allow a person-to-person transfer of funds because operational controls ensure that money deposited with an online poker company would always return to its original source.

Technology also allows players to manage their gambling in real time by doing things such as designating a set amount of money or time they can spend on the site, asking

for a cooling off period and, if they feel they have lost control of their gambling, choosing to self-exclude.

With these processes and the technology that supports them in place, patrons could play poker online in a safe, honest place. Law enforcement would be helped by operators' ability to quickly identify possible fraud and other criminal activities. And, the public could be confident that operators are taking bets only from jurisdictions where it is legal, keeping minors from gambling and providing assistance to problem gamblers.

Eighty-five countries have legalized Internet gambling, and the technology and processes described above are being used in many of them, including Western Europe and Canada, where years of experience are proof positive that the risks formerly thought to be a companion to online poker can be effectively managed.

Before concluding this testimony, I would like to take the opportunity to address in more detail the question of the impact of online poker on problem gambling.

It is settled science that at any given time that about 1 percent of the U.S. adult population are pathological gamblers. Researchers also have found no evidence that Internet gamblers are more likely to be pathological gamblers. In fact, a major British study found no increase in the rate of pathological gambling between 1999 and 2007, even though Internet gambling became widely available during that period. Similar results emerged in a study of Swedish gamblers.

More recently, in a 2010 article in *Addiction Research and Theory,* Dr. Howard J. Shaffer, director of the Division on Addictions and associate professor of psychiatry at Harvard Medical School, and his colleagues offered a comprehensive look at the research conducted to date, including summaries of their own investigations of the gambling patterns of customers of bwin.party, one of Europe's largest Internet gambling companies.

Professor Shaffer and his colleagues have pioneered new methods for studying Internet gambling by virtue of their access to the actual wagering transactions of 40,000 online gamblers, including every keystroke of every person who subscribes to the bwin.party website. These data, which reflect *actual* gambling patterns rather than relying on self-reporting, provide "objective detailed information about betting behavior and the conditions under which gamblers place wagers."

The analysis of the bwin.party data has produced seven peer-reviewed publications that contradict the notion that Internet gambling breeds excessive and problematic gambling (Broda et al., 2008; LaBrie et al., 2007, 2008; LaPlante et al., 2008, 2009; Nelson

et al., 2008; Xuan & Shaffer, 2009). Although the prevalence of pathological gambling is low, and even though there is no evidence that Internet gambling would change that pattern, it is still important that online poker companies should implement responsible gaming programs just as brick-and-mortar casinos do.

By requiring licensed websites to include social responsibility protections, legalization of online poker would actually improve efforts to assist pathological gamblers. Today, without any U.S. regulation, there are no uniform requirements for player protection tools at gambling websites. Indeed, many foreign jurisdictions require no such tools, so gambling operators located in those jurisdictions often do not provide them. For these reasons, the report by Shaffer et al. concluded that "regulators should be able to design sufficient protections to prevent any significant growth in problem gambling that results from legalization."

In conclusion, the safe bet is to allow states to license and regulate online poker following federal guidelines. Such action would protect U.S. consumers, keep children from gambling on the Internet, and provide the tools law enforcement needs to shut down illegal Internet gambling operators. It would also create new jobs and tax revenue at a time when both are sorely needed.

Mr. BARTON. OK, thank you.

My first question to the distinguished panel: Is there any one of you who believes that millions of Americans are not playing poker for money on the Internet right now? Let the record show that they all are staring. So is there any of you that believe it would be possible to prevent American citizens who wish to play poker for money on the Internet from doing so? The gentlelady with Fair Play.

Ms. AFTAB. Underage gamblers we would be able to deal with. I was part of the Berkman Center, the Harvard Center Age Verification Group, the Internet Safety Technology Taskforce, and although you can't prove for the purposes of COPPA who is under the age of 13, you certainly can prove who is over the age of 21. So we would be able with the right things in place——

Mr. BARTON. I will stipulate that whatever we can do if the bill moves to prevent underage poker players, you tell me how to do it, and we will put it in the bill.

Ms. AFTAB. We actually had a study that was done at the Kennedy School at Harvard with Dr. Sparrow, and it was presented last year at the hearings with Barney Frank. And if anyone on the subcommittee would like that, I am happy to enter that into additional testimony——

Mr. BARTON. As the chief sponsor of the bill, I can assure you that I don't want underage poker players, so we will work with you on that.

I want to ask the gentleman who is representing the Indian tribes, under the proposed legislation that I have introduced, a State that wishes not to allow its citizens to play poker for money on the Internet simply opts out. We give that same option to the tribes. Why would that not protect your sovereignty? If you don't want your citizens in the Indian Nation to play, all you have to do is send a letter to the Secretary of Commerce that you don't want them to play.

Mr. STEVENS. I am sorry. Could you restate that question, sir?

Mr. BARTON. Well, we respect sovereignty. We respect State sovereignty and we respect the Indian Nation's sovereignty, so the bill that I have introduced, it gives the governor of a State—I would have to check what it does for the Indian tribes. I would assume it would give the chief or the tribal council the same right that we give a governor. If you don't want to let the citizens within your boundaries play poker for money on the Internet, you simply opt out so they can't play. So we treat the Indian tribes the same as we treat the States. That seems pretty fair to me.

On the other hand, if you think it is OK for them to play, then you play by the same rules that everybody else plays by in terms of regulating poker players for money on the Internet. I mean that seems to me to be a very fair position. We are not anti-Indian; we are not pro-Indian. We are fair to all concerned.

Mr. STEVENS. I think in the States on behalf of the tribes, I think that covers it, but we want to be recognized as tribal governments appropriately under the law.

Mr. BARTON. Well, that is beyond the scope of the poker bill I think. I played poker at an Indian casino in Oklahoma so I am

with you and I am 1/32nd Cherokee. So I am 1/32nd with you there on that.

Mr. STEVENS. Well, sir, I am a full-blooded Oneida from Wisconsin who used to engage in New York State. And under the Jay Treaty, you know, we are encouraged to do commerce for not just with other Indian tribes but other regions and even across into our friends in the First Nations in Canada.

Mr. BARTON. Well, that may be larger than the scope of this bill, but we are not trying to treat Indian tribes for poker playing any differently than anybody else.

Senator D'Amato, do you think there are any technical issues in terms of addressing problem poker players and underage poker players that couldn't be addressed in this legislation?

Mr. D'AMATO. We definitely have the technology now, Mr. Congressman, to deal certainly with problem gamblers where there is nothing now restraining them. There is no impact. There is no one out there looking. And we can build into the system the kind of program that can identify or they can be placed on a list where they will be not allowed in if they go over a certain amount of money to participate. Is this going to solve all the problems? No. But it certainly will eliminate and curtail what is taking place now—no protection for the kids or the problem gamblers.

Mr. BARTON. My time is expiring. Let me simply say to Mr. Eggert before I yield back, this issue of the bots, these mechanical or automatic players, whatever needs to be done to prohibit that and outlaw it, if you have got proposed language, if you will give it to the committee staff. We absolutely don't want to set up a system where somebody in this audience can play poker online for money if their governor says it is OK and play against a computer. That is not what we are trying to do. So if you have got a program that can prevent it or language to prohibit, we will certainly look at it positively.

With that, I yield back, Madam Chairwoman.

Mrs. BONO MACK. I thank the gentleman. And the chair recognizes Mr. Lance for 5 minutes.

Mr. LANCE. Thank you, Madam Chair, and good morning to you all. This is a subject that interests me greatly, last term on the Financial Services Committee and this term on the Energy and Commerce Committee.

Louis Freeh could not be here today, Madam Chair. He has a statement that states in part, "addressing a growing threat that can mutate as rapidly as illegal Internet-based gambling operated outside of the country is challenging in and of itself for Federal law enforcement." And he goes on to say, "online poker stands apart because it is a game that millions of Americans play at home with friends and family or even at charity fundraisers. Unlike most games played against other players rather than against the house and relies on a set of practiced skills, unlike most other games, it is also not defined as illegal in other statutes. Clarifying which online games are illegal also creates an opportunity to establish a strict and transparent regulatory regime for online poker that allows adult consumers to play safely and securely while ensuring accountability to tax and law enforcement authorities."

Madam Chair, I would request unanimous consent to introduce Mr. Freeh's statement into the record.

Mrs. BONO MACK. Without objection, so ordered.

[The information follows:]

Written Testimony of
Mr. Louis Freeh
Advisory Board Member
Fair Play USA

Submitted to the U. S. House Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade
"Internet Gaming: Is There a Safe Bet?"
October 25, 2011

The issue of illegal gambling and its impact on individuals, businesses and our country has been ubiquitous throughout the many different roles I have played in my career: working law school student, FBI agent, prosecutor, Federal judge, FBI Director and now private practice attorney. My perspective into the issue has differed throughout those forty years with each new role, but the main lesson I learned has not: without clear laws, strong regulation and adequate tools for law enforcement, illegal gambling – and today that increasingly means illegal internet gambling – can very easily put consumers at risk and support broader criminal enterprises that undermine a safe and secure society.

While my first exposure to gambling was as a law school student watching my coworkers play games on a Teamsters platform in Jersey City, it was when I was a young FBI agent that I first began to understand that true impact of illegal gambling. I was assigned early in my career to an organized crime squad focused, in large part, on enforcing illegal gambling statutes. Raiding wire rooms and taking numbers operations down seemed small time to me and other less experienced agents. But, the more experienced agents explained to us how the small bets we were trying to disrupt ultimately funded a huge criminal enterprise that included racketeering, organized murder and narcotics trafficking on a global scale.

I took the lessons about illegal gambling I learned as a FBI agent into the prosecutor's office, where we focused extensively on using illegal gambling statutes to support Racketeer Influenced and Corrupt Organization Act (RICO) prosecutions against organized crime. It was in this role that I learned the corollary lesson about illegal gambling: if the illegal gambling statutes are not clear and do not provide effective tools for law enforcement, successful prosecutions become very difficult and the criminal enterprise can continue uninterrupted.

While illegal gambling has largely changed venues from the backroom to the internet since the decades I learned these lessons, the threats and ultimate impact is still the same. Today illegal internet gambling has ballooned into an industry on which Americans spend an estimated $4 to 6 billion annually. These billions of dollars flow almost exclusively to an estimated 1700 websites run by shady offshore operators, often outside the effective reach of U.S. law enforcement. This environment is rife with opportunity to defraud players and launder money for much more dangerous operations.

Consumers – and often minors – are most immediately at risk. As a father of six, I know how difficult it can be to monitor children's activities and this problem has only gotten worse with the rise of wireless access to the internet. That statistic demonstrates that a large and growing number of children are gambling online. A recent *Washington Post* story found that "16 percent of college-age males — 1.7 million young men — gambled on the internet at least once a month." The same story cited a 2008 study that found college students were twice as likely to gamble as older adults." These statistics are reported alongside alarming stories about instances of massive fraud on some illegal gambling sites.

Addressing a growing threat that can mutate as rapidly as illegal internet-based gambling operated outside of the country is challenging in-and-of-itself for Federal law enforcement. But the challenge is even greater at present because the principal law covering illegal internet gambling – the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) – while well-intentioned only goes so far in defining what is prohibited and assigns banks and financial institutions with enforcement responsibilities instead of law enforcement agencies.

The good news is that UIGEA offers a good platform that enhancements can make into a very effective law. The first such enhancement is to very clearly define what constitutes illegal internet gambling. This clarity can make UIGEA consistent with other statutes defining illegal gambling, as well as demarcate the difference between illegal internet gambling on games of chance and legal internet gambling on games of skill like online poker.

Online poker stands apart because it's a game that millions of Americans play at home with friends and family, or even at charity fundraisers. Unlike most games, it's played against other players rather than against the house and relies on set of practiced skills. Unlike most other games, it is also not defined as illegal in other statutes.

Clarifying which online games are illegal also creates an opportunity to establish a strict and transparent regulatory regime for online poker that allows adult consumers to play safely and securely, while ensuring accountability to tax and law enforcement authorities.

Finally, there is a need to reprioritize enforcement to move away from banks and financial institutions to appropriate federal, state and local authorities with strengthened authorities. When I left government service, I served as the general counsel for a very large bank. We spent lots of ineffective time trying to assist the government in enforcing criminal prosecutions and investigations of illegal internet gambling. Based on my experience there, and prior to it as FBI Director, I know very well that bankers are not the best suited for those purposes.

The amazing changes that have taken place in both the internet and the global financial transactions system since UIGEA was passed in 2006 offer incredible challenges, but also important opportunities to combat illegal internet gambling and regulate online poker. But, to take advantage of those opportunities the law must be updated to incorporate some fundamental changes that provide vital clarity and rational legal authorities.

This Hearing represents an excellent way to begin the consideration necessary to pursue those changes. I look forward to continuing to be a part of this dialogue going forward.

Mr. LANCE. Thank you very much, Madam Chair.

Ms. Aftab referenced a wonderful study in my judgment from Malcolm Sparrow at the Kennedy School of Government up at Harvard titled, "Can Internet Gambling be Effectively Regulated: Managing the Risks." And while I will not ask that the whole study be placed into the record, I would read a pertinent part that "notwithstanding the current prohibitionist legal and regulatory approach, millions of U.S. residents gamble online through offshore gambling sites. The establishment of a well regulated industry under U.S. jurisdiction would offer far better protection against online gambling's potential social harms than outright prohibition." That is my considered view and certainly those who are interested in reviewing the full study can contact my office or I am sure Ms. Aftab.

To Mr. Stevens, good morning to you. And sir, I certainly respect your opinions and I recognize your sovereignty and honor your sovereignty. You mentioned that tribes should not be subject to tax or third-party regulation based on their sovereign status. I respect the status of Indian tribes but isn't it true that tribes in gaming and other businesses can make a sovereign decision to do business in the 50 States outside of their reservation lands and subject themselves to State and Federal regulation? For example, Mohican Sun is licensed in Pennsylvania with a casino, although Mohican Sun is obviously in Connecticut, and the Florida Seminoles purchased Hard Rock. If tribal gaming is to be expanded beyond the borders of the reservation through the Internet, isn't it inevitable that tribes will have to submit to some sort of regulation other than that of their own tribal governments?

Mr. STEVENS. You know, I think that our regulation is established and prepared for to deal with this type of situation. I think that dealing with sovereign governments doing business from their sovereign territories are different than some of the areas where they have branched out and again appropriately games and other economic endeavors to reach beyond gaming as far as building our future.

Mr. LANCE. Thank you. Certain Indian tribes have been pushing the idea of regulating Internet gaming at the State level, I think that this might mean a challenge for tribes in small States. In poker, for example, where you need a critical mass of players to operate a site, how could a tribe in Rhode Island or South Dakota or even Connecticut hope to participate? It seems to me that this would only benefit a small number of tribes in California and the other larger States.

Mr. STEVENS. Yes, I think that we have tried to analyze where tribes are working through coalitions and working within their State organizations, and so we have yielded to the State tribal authorities to handle those types of situations.

Mr. LANCE. Thank you for your response.

And finally—and my time is about to expire—let me say it is an honor for me, Madam Chair, to be in the same committee hearing room with Senator D'Amato. I was rooting for his election as a graduate student at Princeton in 1980, and as I recall, Senator D'Amato, I wagered $10 you would win your primary and another $10 that you would win the general election. This was not on the Internet because, of course, it hadn't been——

Mr. D'AMATO. You should have gotten some good odds.

Mr. LANCE. I was confident in your public service, sir.

Thank you, Madam Chair.

Mrs. BONO MACK. I thank the gentleman and now recognize Mr. Harper for 5 minutes.

Mr. HARPER. Thank you, Madam Chair.

I welcome each of you here today and appreciate you taking time out of your schedule, and it has been interesting to hear the input from each of you and the concerns well noted of what do you do about preventing or reducing the possibility of problem gamblers. You know, that is something we would all agree that there are certain people that shouldn't gamble. There are some that gamble that maybe need to have limits on them. And it is one thing with the physical location where you can do that, but to have it online with the anonymity, with all of the concerns that can go on is that I have not been given any real comfort here that since it can't be regulated offshore or in illegal sites how we are actually going to be able to do that if this takes what appears to be an interest in another step.

So I know we have heard different opinions here, some that are trying to decide. The idea of online gambling, legal or illegal, gives me great concern. But with that, I do thank you for your time here.

And I guess one question I would have for each of you is do any of your organizations receive any money from offshore casinos? Does your organization receive any funds or contributions from offshore casinos? And I will start with Mrs. Aftab.

Ms. AFTAB. Fair Play USA does not accept any money from offline casinos. And if I could address just for a moment unlike other aspects of the Internet where you are looking for anonymity, when you are dealing with online gambling, you need to look for authentication and verification of identity.

Mr. HARPER. Sure.

Ms. AFTAB. And that, given your expertise already in the subcommittee, you will understand that it will allow you to track problem gamblers and allow them to opt into programs to protect them. So this is the one area where we are not looking for anonymity.

Mr. HARPER. All right.

Ms. AFTAB. But Fair Play USA does not accept money to my knowledge from anyone offshore.

Mr. HARPER. Thank you. Mr. Stevens?

Mr. STEVENS. Not to my knowledge, sir.

Mr. HARPER. Mr. Whyte?

Mr. WHYTE. We have received a donation from companies that operate offshore. We accept no restrictions on those donations, but yes, we have received some money.

Mr. HARPER. And how many different entities?

Mr. WHYTE. I think just one. We have a long tradition of encouraging that anybody that operates gambling should contribute to responsible gambling, so Mississippi Casinos have donated to our organization. We accept again no restrictions on any money we receive from any source, especially from the gaming industry.

Mr. HARPER. But you have received funds from offshore sources?

Mr. WHYTE. Yes.

Mr. HARPER. OK. Senator D'Amato?

Mr. D'AMATO. Yes, we have. And I would note, though, we encourage this legislation so that we will permit onshore activities and we say it should not be just offshore.

Mr. HARPER. OK.

Mr. D'AMATO. And to your question, Congressman, as it relates to being able to ensure the age, right now there is nothing that restricts youngsters basically and requires age identification. We would say that we have the technology that is developed that is used today in banking, online banking, as it relates to the kinds of proofs necessary for people to conduct banking activities. And it is that same process that we would utilize here.

Mr. HARPER. Thank you, Senator.

Mr. D'AMATO. Thank you.

Mr. HARPER. Professor Eggert?

Mr. EGGERT. I work for Chapman University. I have no idea who their donors are.

Mr. HARPER. Sure.

Mr. EGGER. I hope there are many, though.

Mr. HARPER. Dr. Romer?

Mr. ROMER. Yes, so the Annenberg Public Policy Center doesn't accept money from any commercial——

Mr. HARPER. I think it is important that we just kind of know where we are on this, but it doesn't appear to me that there are really being any real steps taken that are being used to block—perhaps the way to deal with the offshore or the illegal casinos is to come up with ways to block payment to those sites. That is something that I think we could develop more. But, you know, we certainly have some that have argued that we should develop legalized online gambling in this country much the same way that we have heard others argue that we should legalize certain drugs. So I think, you know, this is something that I think we need much more to look at. I am not confident at all that we have the tools in place to do what we need to do.

And the question in looking back and preparing for this, Senator D'Amato, I know in September of this year, the U.S. Attorney in New York referred to Full Tilt Poker as a global Ponzi scheme and, you know, apparently thousands of online poker players out about $300 million, Ultimate Bet, another organization that I believe you represent—does Poker Players Alliance receive dues or contributions from either Full Tilt Poker or Ultimate Bet?

Mr. D'AMATO. No, we don't.

Mr. HARPER. OK.

Mr. D'AMATO. And again, Congressman, I don't mean to beat a dead horse to death, it is already killed, but the one way to deal with Full Tilt and people like that who have taken advantage of the system is to provide a tough, strong, enforceable licensing bill. And I mean tough.

Mr. HARPER. Um-hum.

Mr. D'AMATO. There should be a requirement as there has been for Poker Stars—I mention them because they are the largest offshore—where those dollars are segregated and placed in a special account so that these kinds of things can't take place. Had we had legislation, we could have prevented players from being taken advantage of and that is why it cries out for regulation.

Mr. HARPER. And Senator D'Amato, with all due respect, perhaps it is better that we not go down this road, we work on ways to protect people against offshore sources. And with that I yield back.

Mrs. BONO MACK. The gentleman's time has expired.

The chair recognizes Ms. Blackburn for 5 minutes.

Mrs. BLACKBURN. Thank you all for being here. I will have to admit this is a feisty debate and a wonderful conversation and I think many of our Members are like me. We have got friends that are for it and friends that are against it. And it is good to have you all here and to listen to what you have to say.

Mr. Whyte, I want to come to you and, Senator D'Amato, I am glad that the two of you are sitting there in the center, kind of like these debates. I have got the two people I want to talk to right in the middle.

Now, Mr. Whyte, you said that you didn't think that having online poker would expand the use and so that is curious to me. I would like for you to talk about if there is something in the American culture that is different about our addictive behavior? And then I would like to know if it is not going to increase participation, then why are entities so anxious to offer online gambling? Mr. Whyte first.

Mr. WHYTE. Thank you very much. That is a great question. It does seem that right now the participation in poker is generally very low. You know, whether or not legalization would dramatically increase that is an open question. In the U.K., for example, it has not except among young men. Young men do seem to show in replication surveys in the United Kingdom more propensity to gamble online. So there may be——

Mrs. BLACKBURN. OK. Now, let me interrupt you right there. And then, Mr. D'Amato, I want you to weigh in on this. You mentioned the U.K.

Mr. D'AMATO. Yes.

Mrs. BLACKBURN. So what are the successes of the European jurisdictions that have licensed and regulated Internet gambling and what are their mistakes? So the lessons learned, basically.

Mr. WHYTE. Sure. The lessons that we take away from the European experience is that you have to have a balanced approach with both regulation and public health protections. Obviously, in a country like the U.K., there is an extensive social welfare, a health system to make sure that if people do get into trouble, they have resources to go.

Mrs. BLACKBURN. OK. So they have got a safety net.

Mr. WHYTE. Yes, ma'am.

Mrs. BLACKBURN. Senator D'Amato?

Mr. D'AMATO. Well, I think that Mr. Whyte has touched on it. Number one, we can and should provide revenues and I think $50 million that he has mentioned that should be there to treat youngsters, to treat addicted people, to deal with their problem, easily could be made available with the revenues that would be generated from online poker players.

Robust verification, we can do that today so that we know who it is that is playing and we can keep that youngster off. We have learned that. Seeing to it that funds are utilized and segregated as they have in Europe to keep the kind of thing that Full Tilt en-

gaged in where they took monies that belonged to the players and distributed them out. So there are those things that we have learned that they have done well and we can expand upon them. We can build on them and bring those protections here.

Mrs. BLACKBURN. OK. If I may interrupt you right there and I have got 1–1/2 minutes left, and I want to start with Ms. Aftab and work down. I would like to have each of you answer. Looking at brick-and-mortar gambling and the rules and regulations that apply in a brick-and-mortar sense, should those same rules and regulations apply in the online sense and should those two be paired up? And just one right after another.

Ms. AFTAB. Yes, plus more. Because of the nature of the technology, we can do a lot more with authentication, controls, verification——

Mrs. BLACKBURN. OK.

Ms. AFTAB [continuing]. So at least that much.

Mrs. BLACKBURN. OK, Mr. Stevens?

Mr. STEVENS. Yes, we believe not, two different forms of gaming——

Mrs. BLACKBURN. Two completely different forms?

Mr. STEVENS. Yes, and our folks are working on that, our national—our regulators——

Mrs. BLACKBURN. OK. Mr. Whyte?

Mr. WHYTE. Yes, but more. I agree with Parry.

Mrs. BLACKBURN. Yes, but more. Senator?

Mr. D'AMATO. Well, I think you have the opportunity to be much more vigilant as it relates to the utilization of technology and knowing who the people are, verification, et cetera. It is easier to do.

Mrs. BLACKBURN. OK. Mr. Eggert?

Mr. EGGERT. I think you need more in the Internet sense, especially given the problem of bots, which I think you can't just ban. And if that is not dealt with, the Internet poker is going to have huge problems.

Mrs. BLACKBURN. OK. Doctor?

Mr. ROMER. Yes, I think I mentioned some thoughts about how you can put things online that you typically wouldn't have in a casino, you know, a clock, wins, losses, that kind of thing——

Mrs. BLACKBURN. Thank you.

Mr. ROMER [continuing]. That would remind people that they are going over their limit.

Mrs. BLACKBURN. Thank you. My time has expired. I yield back. Thank you, Madam Chair.

Mrs. BONO MACK. I thank the gentlelady.

And the chair recognizes Mr. Stearns for 5 minutes.

Mr. STEARNS. Thank you, Madam Chair.

Mr. Whyte, is Internet gambling allowed for blackjack, poker, roulette, and other things in the European Union?

Mr. WHYTE. It depends on the State. The regulation is quite broad, but in general what we see is a lot of poker and sports gambling. Sports gambling in particular is a big driver of gambling on the Internet in Europe.

Mr. STEARNS. But they also have poker?

Mr. WHYTE. Yes. Yes, sir.

Mr. STEARNS. Now, if I go to the 27 countries in the European Union, would all of them have poker?

Mr. WHYTE. The law in the European Union is very complex. They are trying to harmonize that right now. It is not my understanding that poker is universally available across the European Union.

Mr. STEARNS. Is blackjack universally available?

Mr. WHYTE. I believe that is far less available.

Mr. STEARNS. And what about roulette or slot machines on the Internet?

Mr. WHYTE. They certainly exist both in the legalized, regulated framework in the EU and also, of course, on, you know, the second tier of unregulated Web sites that always seem to flourish regardless of legality.

Mr. STEARNS. Ms. Arab?

Ms. AFTAB. Aftab.

Mr. STEARNS. Aftab. How do you do identification with children? You know, with pornography, you can't stop it because they just ask are you over 18? They say yes and away they go. I mean how would you do this to protect the family and the children—or even children that are latchkey that are home and their parents aren't there—from gambling?

Ms. AFTAB. Well, we don't age verify children. We age verify adults so that if the age is set at 21 and older, there are many indicators we have of somebody being the age of 21. They may be registered voters, they may have drivers' licenses, they may have bank accounts that have already been authenticated, they may be holding jobs. There are many other ways where they can be authenticated.

Mr. STEARNS. How would you authenticate in this case if we made poker legal?

Ms. AFTAB. What I would do is set a goal and the goal is we authenticate that they are 21 and older using the best methods that are available at the time, as opposed to locking into a technology that is improving all the time.

Mr. STEARNS. So you have sort of a voter ID?

Ms. AFTAB. You may use a voter ID, you may use——

Mr. STEARNS. License?

Ms. AFTAB [continuing]. Homeownership, you may be using rental records. There are so many——

Mr. STEARNS. And who would keep that and who would verify and keep the record up to date?

Ms. AFTAB. There would be a third-party verification system that would be built in and required or at least those standards that are applied. And the benefit of this is once you get the professionals who have a financial stake in this, you are going to get the best practices and the best that you can get because they don't want kids on there.

Mr. STEARNS. No, I know but just——

Ms. AFTAB. And by putting——

Mr. STEARNS [continuing]. Like we have an e-verify program that we, you know, took a long time to get that working and in some cases it is not accurate, so you have confidence that we could set up a third-party verification for children——

Ms. AFTAB. Yes, but not of children.

Mr. STEARNS. I mean for adults.

Ms. AFTAB. Of adults, absolutely. And there is a large Federal——

Mr. STEARNS. So if a 17-year-old is working or a 19-year-old is working——

Ms. AFTAB. Well, they may but we know that they are 17.

Mr. STEARNS. What?

Ms. AFTAB. So we know that they are 17 years old. So we would require—whatever technology at the time would let us know that that person has been verified of being 21 and older, not just a credit card. This is not COPPA. This is something far more that would require several levels of authentication that this person is 21 and older. And there are a lot of those technologies out there now. And actually, the Federal Government is now looking at—in addition to Congress we are seeing it out of the White House and a lot of other departments that are looking at verification authentication methods to identify who people are, how old they are, and where they are really from.

Mr. STEARNS. I understand that you can't do Internet gambling because we passed the law here in Congress, but in Nevada aren't they doing it on Blackberrys right now, so you can gamble intrastate? In other words, if I am in Nevada today, can't I gamble off my Blackberry today?

Mr. WHYTE. Yes, sir. It is called remote gambling and it is almost a wireless form of gambling. It is allowed within——

Mr. STEARNS. And bet money?

Mr. WHYTE. Yes.

Mr. STEARNS. Since the law says you can't use your credit card, you can't use deposits, you can't use money transfers, how can Nevada——

Mr. WHYTE. Think of it a little bit like off-track betting or even more so like having a telephone account for a State that allows horse racing where you can call in your bets. This is essentially the same sort of system where it is regulated within a State or within a property but you are able to use a wireless device to access your account and place a wager there from within that property.

Mr. STEARNS. Now, how do the authorities in Nevada protect children from picking up their parents' Blackberry and gamble?

Mr. WHYTE. Well, it is not Blackberry. It is a specific custom device that is available. It is treated almost like a gaming device——

Mr. STEARNS. Well, let us say the parents have that device——

Mr. WHYTE. Right.

Mr. STEARNS [continuing]. Leave it on the dining room table—what she indicated is this identification program. Do they have that in place now?

Mr. WHYTE. I am not an expert on this but again I think——

Mr. STEARNS. Do you care to comment?

Mr. WHYTE [continuing]. You have to use both enforcement and prevention that——

Ms. AFTAB. Yes, to my knowledge, States do not have an age verification system in place, which is one of the reasons we need this. We have a problem that I believe only you can solve because there is nothing out there now. There are no systems, there are no

best practices, there is no baseline to keep kids off, to help parents with this, to deal with senior citizens and scams, helping law enforcement do what they need to do. Right now there is nothing.

Mr. STEARNS. Yes.

Ms. AFTAB. We need to do something and with due respect, when we are looking at ways to control what money is being spent, that is what UIGEA is all about. And unfortunately, in the same way kids can get around all these issues, a lot of the people who are trying to gamble can, too. They pretend they buy towels, they miscode it and they are able to use the financial systems to do this.

Mr. STEARNS. Thank you, Madam Chair.

Mrs. BONO MACK. I thank the gentleman and now recognize Dr. Cassidy for 5 minutes.

Mr. CASSIDY. Thank you. And may I begin by wishing Madam Chair a happy 29th birthday.

Mrs. BONO MACK. I thank the gentleman very much.

Mr. CASSIDY. Mr. Whyte, did I hear you say that you don't think that if this law passes that there would be an increase in Internet gambling in the United States?

Mr. WHYTE. Well, not necessarily significant increase.

Mr. CASSIDY. Well, now, I got to wonder why Google ads are even purchased. I would just say recently I was looking at the Minnesota Vikings football team and all of a sudden on my sidebar I had all sorts of things about Minnesota. Do I want to take a vacation, did I want to do this, did I want to do that? Now, why is somebody buying that, number one; and number two, my intuition is to think you are wrong. There is a large settlement recently in which Google is paying the Federal Government for running advertisements for overseas pharmacies.

Mr. WHYTE. Um-hum.

Mr. CASSIDY. So that tells me that somebody thought Google was an effective enough advertiser to purchase for overseas pharmacies. Why would that not yield a significant increase in gambling?

Mr. WHYTE. Well, certainly, we may very well be wrong, and I think that is one the reasons why we are calling certainly for health-based research because it is very unclear. But the experience in other jurisdictions seems to suggest that those people that gamble online who are prone to and want to gamble online are already doing so regardless of the legality of the law. But certainly, yes, we have grave concerns that——

Mr. CASSIDY. Just because I have limited time, it reminds me of blue laws. I think I know from my medical training that if a county has a blue law, it still has alcoholics but it has fewer drinkers and therefore fewer alcoholics. In effect, this is a blue law, correct?

Mr. WHYTE. Yes, sir.

Mr. CASSIDY. Ms. Aftab, do we have data on the prevalence of underage gambling in countries—I don't know; I am asking. I am not advocating or challenging—prevalence of underage gambling in jurisdictions in which they do require the sort of verification you are describing?

Ms. AFTAB. Yes, and it is in the report that we put together with Dr. Sparrow, so to the extent that is entered into the record, we have it there.

There are certain countries, in particular in the U.K., that have looked at the capability of locking kids out by requiring age verification systems that work and they have been very, very effective. So it is out there and it is getting better by the minute.

Mr. CASSIDY. Mr. Eggert, I really liked your testimony, man. I kept on reading your testimony thinking if we think we can restrict any sort of super bot or some smart kid from gaming—excuse the pun—system, your testimony suggests to me that we cannot. There is going to be some kid who has got his buddy right there and the buddy is going to be typing in what all the cards are. And so even if the bot is not resident upon the computer which is accessing the Internet, it is nonetheless telling him what bet to place. Reasonably speaking, is there any way to restrict data mining to find weaker players, super bots to play, et cetera?

Mr. EGGERT. Well, that is an interesting question. The recent American Gambling Association White Paper addresses that very question, and in the text of the paper it says, you know, sites can ban bots. But there is a footnote that says if somebody is using a bot to guide them so the bot isn't playing but it is somebody playing with the bot given them advice, there is no way to restrict that. I know of no way to prevent somebody from having a bot on one computer telling him what to play on another computer. And so this is a huge problem for the industry to the extent that legal industry or illegal in that recreational gamblers don't want to go on their poker site and get killed by somebody using a bot. And that is going to happen more and more as bots get smarter and smarter. There are international competitions now to design the best poker-playing bot. And they are doing a darn good job, and they are just going to get better and better until they can beat anybody in this room or almost anybody——

Mr. CASSIDY. Even Joe Barton?

Mr. EGGERT. Even him.

Mr. CASSIDY. So once we put the imprimatur of government that this is an OK activity and therefore Google can run a sidebar when I say I am going to go visit Nevada to see Yucca Mountain and instead I got a lot of places to go gamble on the Internet. How would you address what Mr. Eggert just spoke of, how these bots are going to be basically ripping people off legally? Yes, ma'am?

Ms. AFTAB. Well, right now on brick-and-mortar casinos, you have card counters.

Mr. CASSIDY. Yes, but the house watches for those and throws them out.

Ms. AFTAB. The house watches but the online sites, if they are well done and operated correctly, can watch for a lot of that as well.

Mr. CASSIDY. But if I were designing such a super bot, I would get it so it would win only 90 percent of the time. Every now and then it would fold on a full house or something such as that.

Ms. AFTAB. But once you are dealing with full authentication and you know who everyone is, it allows you to start tracking patterns. And what will happen is part of what we are doing now on the Homeland Security grid, the energy grid, we start sharing the information scrubbed of where the problem occurred with other companies across it so that you can improve your skills in that way.

Mr. CASSIDY. So before we pass this bill, do we need to have the permissive legislation to allow that data sharing?

Ms. AFTAB. I don't think you need permissive legislation. I think it is a matter of what the privacy policies say and what the expectations of the users are. And I think if you say that it is scrubbed of certain things and you are looking at people who are violating the law or violating the terms, I think that that can be done with privacy policies and so forth.

Mr. CASSIDY. I am out of time. And I love Mr. Eggert's opinion on the doability of that. But that said, we are out of time and I yield back. Thank you.

Mr. BARTON. Would the gentleman yield the time he doesn't have?

Mrs. BONO MACK. With negative time. We will have a second round of questions if we can do it through that means.

And with that, I am happy to recognize myself for 5 minutes and just say that as I listen to the testimony, I am reminded a lot about what we saw with the content industry—music and film and television that they stood in the way of the Internet and were bowled over by it not exclusive to that content. And I believe if we are going to do this, then the rising tide has to lift all boats, including Indian Country.

Senator D'Amato, do you take any issue with any of the principles advanced by Mr. Stevens on behalf of the National Indian Gaming Association? Most specifically, do you agree that the tribal governments should be allowed early entrance and a period of exclusivity? And do you agree that tribal Internet operations should be open to customers wherever legal?

Mr. D'AMATO. Madam Chairman, I think we want a competitive marketplace for everyone, for casinos, for our Indian brothers. The fact of the matter is it doesn't exist today. The fact of the matter is what we have is old operators. None of the legitimate houses that we have in this country are going to go forward and risk the loss of their licenses, et cetera, until or unless we change the law. And so we are going to continue to have all of the problems that we have heard about. They will be exacerbated as it relate to young people, as it relates to having a fair game so that people have a fair opportunity whether they use the super bots or not. There will be no opportunity to control that. And you are not going to be able to stop the advertising because they will still advertise on Google; they will advertise all over.

So the problem we have now is one that it seems to me is very parallel to what we had in prohibition. We know that people who overindulge—it was terrible. We know that the cost to society was ruinous. And so with all good intent we passed the Volstead Act. And what happened? We had the very people who we didn't want to get into the distribution and sale of alcohol, some that was killing people, got in. Government lost revenue. It didn't cut down on all of the problems, the family abuse, the drunkenness, et cetera, and I would suggest that here we are 50 years later, we are well behind the times to say that you shouldn't use the Internet for commerce. But whether you like poker or not, that is nonsense to say, "Oh, our little kiddies." Did we ever hear about parental responsibility as well?

Now, let me tell you what moved the gambling—and there did come a time when youngsters wanted to play Texas Hold'em. They want to say Texas Hold'em, Congressman Barton, the State has got the Texas Hold'em. Why? It became famous because of television. The third most watched sport—first, NFL, then NASCAR and then, yes, poker on the television. Are we going to ban that? Are we going to ban showing that at the casinos? What do you think created this impetus and a huge surge in that game in particular of poker——

Mrs. BONO MACK. Senator, let me just jump in here if I might because as you know better than anybody here our problem is to try to advance technological problems at the same time as legislative hurdles. And Professor Eggert spoke eloquently I think about bots and as Dr. Cassidy and the fear that can we actually protect some people. Is this entirely new version the wild, wild west? Is this entirely a buyer beware? Professor Eggert in his testimony talked about artificial intelligence and I feel like I should ask Seary on here if she is capable of gambling.

Mr. D'AMATO. But Madam Chairman, if we do nothing, that problem will grow with no opportunity to interdict, no opportunity of having people who will have the skills and have the wherewithal because they want to protect their business. So as the professor indicated, one of the things they are going to be looking to do is to reduce that. He knows of no system to eliminate it but to reduce it. And you can identify——

Mrs. BONO MACK. Little questions, though, that we do—I don't know if you all can answer and I have 30 seconds left—and I think Professor Eggert's testimony again, how do you handle something as innocent as losing Internet service in the middle of a hand.

Mr. D'AMATO. I didn't quite get that. How do I handle something as innocent as——

Mrs. BONO MACK. Your Internet service just goes out and you are in the middle of a big hand and you lose Internet connectivity. What happens?

Mr. D'AMATO. You know, Congresswoman——

Mrs. BONO MACK. Do I win if I just flip off my modem?

Mr. D'AMATO. I have to tell you this legislation can't protect everybody at every time in every instance but it can go a long way to protecting people who have no protections at all, whether it is the bots, whether it is the problem gambling, whether it is the youngsters, no one can promise 100 percent certainty. When it comes to identification and verification, certainly we should be able to use the most robust technologies that have been developed and will continue to be developed. But there is nothing perfect about this legislation. It will be imperfect but a heck of a lot better than doing nothing.

Mrs. BONO MACK. All right. I thank you and my time has expired. And I am pleased to recognize Mr. Butterfield for 5 minutes.

Mr. BUTTERFIELD. Thank you.

Technological advances have allowed manufacturers to create ever-more enticing products. But I am not concerned about the flashing lights and the funny noises or a game's appearance; I am only interested in game attributes or marketing practices that have the potential to mislead, deceive, or confuse.

Mr. Eggert, I think I will try you on this one. You discussed slot machines that intentionally give the game player a large number of near misses complete with a counter on the side of the screen letting them know exactly how many they have had. This is a manipulation of consumers that inhibits their ability to understand how the game works and makes the game seem easier to win than it actually is. You may agree or disagree with that, but briefly, what are the most egregious examples of misleading or deceptive tactics that we should be aware of in the online gambling world, those worse practices that should be carefully monitored or restricted?

Mr. EGGERT. Well, in the online world, we have heard some of the worst practices are online poker sites not having the money that the gamblers have put—have drained the money out so if the gamblers try to get their money out, they can't. That is a very bad practice. Another bad practice is insiders being able to see the whole cards of their opponents so that they can win much more easily because they are playing against. That is another really bad thing. But another really bad thing is not being able to tell what the hold percentage of a slot machine you are playing is. I think that is an important thing for any slot player is to say, you know, am I going to lose on average 2 percent, which is a good machine or am I going to lose 15 percent, which is a much more expensive and much worse machine. That is an incredibly bad practice and it exists in Internet slots; it exists in land-based slots. That is something that should be addressed. It is an important part of consumer protection.

Mr. BUTTERFIELD. What kind of expertise and authorities should an enforcing agency have in order to keep up with the misleading or deceptive tactics of an industry's bad actors?

Mr. EGGERT. Well, that is actually an interesting question. I do a lot of work in the financial services community, and regulators are doing a better job now of actually experimenting to see what consumers understand and what they don't understand. And so what we should have is a regulatory agency that focuses on consumer protection and really tries to figure out what can consumers understand as far as disclosure is? What information do they want? How much information can they use? And so I would assert that we should have a Federal regulator who does that kind of investigation to see what works best for gambling consumers.

Mr. BUTTERFIELD. Can you tell me how vendors describe their games when they do it in writing to their consumers?

Mr. EGGERT. Well, typically for slot machines they say that they are either loose or they are looser or they are the loosest, but often they don't give much detail as to what that means.

Mr. BUTTERFIELD. Is there room for improvement?

Mr. EGGERT. There is incredible room for improvement.

Mr. BUTTERFIELD. What about misleading tactics or deceptions by other players, for example, when a poker game is infiltrated by predatory professional players or algorithm-driven bots that are impossible to beat? In a case like this, is an empowered, knowledgeable consumer even enough?

Mr. EGGERT. Well, the problem consumers have is they often don't know if they are playing against somebody who is using a

computer assist or computer bot to help guide the game. And so you might have some, you know, 21-year-old who is playing their first game of poker online facing, you know, somebody who with the computer algorithms is, you know, really a top poker player. It would be as if you go to the neighborhood to have a pickup game and unbeknownst to you, you are playing against an NBA player. I don't think you can prevent people from using bots because I think that is just impossible.

For me, the solution would be to have a rating system whereby if you want to play against people and know whether they are good or bad, everybody has a rating like in the chess world. Better players have higher ratings; worse players have lower ratings. I know if I play against somebody with a 1,000-point higher rating than me, I am going to get beat but it might be fun. The same thing should happen in the gambling world where if you go online playing poker and you have a 1,400 rating and you are playing against somebody who has a 2,100 rating, most likely they are going to beat you but you might learn something.

Mr. BUTTERFIELD. Very informative. Thank you.

Mrs. BONO MACK. Thank you, Mr. Butterfield.

And the chair recognizes Mr. Barton for 5 minutes.

Mr. BARTON. Thank you, Madam Chairwoman. I was going to leave and then we were told we were going to have a second round so I decided to stick around. But my stomach is starting to growl, so let us don't have 3 rounds even though I asked for the hearing.

I want to refocus. You know, we are kind of letting the tail wag the dog here. We are having a hearing as to whether it is acceptable, appropriate to allow those citizens of the United States that live in States that the States want them to play poker for money online to do so, and we are getting into some pretty esoteric areas about underage and problem gambling and now we are into this issue of computer gamblers. I will acknowledge that it is technically possible to set up some elaborate scheme using these computer bots against people, but we can always guarantee that somebody is a live body at the table, right, even if they have a computer. That is doable, and if you have that, you know, you are not going to set up an elaborate computer scheme to play in a 1-cent, 2-cent limit online poker game. There is just enough money. And the higher you go in these games—I have never played money online. I have played poker online and I have got play money out the kazoo. I have got $10, $15 million of play money, but that and 75 cents gets you a coke. I mean it just doesn't help you a lot.

But when I look at the for-money sites, most of them are less than $100. Now, you can get 1,000, 2,000, so anybody with any sense at all who—to use your term, Professor—a recreational poker player, you are going to be an absolute idiot to go online and get into a high-dollar poker game. I mean just you go into that game knowing that everybody else at that table is really good and unless you are an heir to the Rockefeller family or the Perot family or Bill Gates or somebody like that, you don't in your wildest dreams want to be playing poker in that game. You just don't want to do it.

So if we can verify that they are adults and maybe even require people to stipulate that they are not using computer ability when

they play, even though they can cheat, if they cheat you can catch them. Do you agree with that, Professor?

Mr. EGGERT. I don't think you can catch poker players who are using a computer to guide them. I think as long as they make sure that they don't win too often, that they screw up once in a while, that they can fly under the radar and make good money. You don't have to be playing $300-a-bet games to make a decent living. People can make 60, $100,000 playing professional poker with bots——

Mr. BARTON. Well, all of the information in your written testimony about data manipulation and data statistical analysis I can get. I can get myself right now if I want to take the time to do it. It doesn't mean I understand it, it doesn't mean I will benefit by it, but I have the ability if I want to really find out what is out there, I can do that without too much trouble. That information is fairly transparent.

What we want to prevent is somebody using it unfairly, and in a real-world situation when you walk into the casino, you can't take a pocket computer with you. You know, you can't have somebody behind you saying the probability on this hand 33 percent, that that guy over there has got pocket aces or whatever. You have got to know it. On the computer, you can get access to it, but there should be ways to verify with the current technology is somebody is routinely beating the system, we can flag that and then we can outlaw them. We can put penalties into the bill that if I use computer analysis at all, I can be banned from that site, I can be penalized, and I guess if the committee wants to, we can throw them in jail.

So that is not a reason not to do it. It is something we need to work on, it is something we need to be aware of, but because some computer whiz kid at MIT develops a problem that they think can beat the system, if we are aware that they have got that program, eventually we are going to catch them. Do you agree or disagree with that?

Mr. EGGERT. I disagree with that. Think of the chess world. You know, if——

Mr. BARTON. No, no, chess is perfect knowledge. Everybody knows on the chess board where the pieces are. When I sit down at a poker table, I know my cards, I know the cards on the table, and if I am really, really smart, I might be able to infer what Senator D'Amato has and you have based on the way you bet, but I don't have perfect knowledge. That is why poker is such a great game. It is a game of skill, it is bluffing, it is probability, and it is reading people, but it is not poker knowledge. This is not chess.

Mr. EGGERT. But if you have a poker program that plays as well as some of the best players in the world and I use it, how do you tell if I am using a program——

Mr. BARTON. Well, within an hour, everybody at the table is going to know that——

Mr. EGGERT. How will you know——

Mr. BARTON [continuing]. And if you use it for a week, the people that are monitoring the site, if it is legalized and regulated are going to know it and you are going to be banned.

Mr. EGGERT. How would you distinguish between me and a really good player who is not using the program?

Mr. BARTON. I would call you up and talk to you about 15 minutes on the phone if I am the regulator and ask you a few basic questions. I would find out pretty quick what kind of a poker player you are. I could do that right now actually.

Mr. EGGERT. I think that your——

Mr. BARTON. And I yield back.

Mrs. BONO MACK. I thank the gentleman and recognize Mr. Kinzinger for 5 minutes.

Mr. KINZINGER. Well, thank you, Madam Chairman, for putting this on.

Just a few questions to start with, Ms. Aftab. Let us talk a little bit about the offshore gambling industry, and I apologize if you have been asked this already. But can you tell me a little bit about it, just how it exists today? Specifically, you know, where is most of it located at? What kind of gambling, you know, for the most part is occurring on these offshore sites? And what kind of protections do these offshore sites have for players and particularly for minors? If you just want to talk in general about it and then we will go from there.

Ms. AFTAB. Thank you very much. I hate to keep referring to our report from the Kennedy Center at Harvard, but it does address these things.

Offshore we are dealing with sites that are legal under the jurisdiction where they are regulated—Gibraltar, the U.K. A lot of the different foreign jurisdictions have regulatory schemes that allow online gambling under certain circumstances with checks and balances. And then the vast majority of the sites we are seeing are unregulated. They are in places that have no regulations in place and no checks and balances.

So when you are looking at a well regulated scheme, they keep kids out by requiring adult verification and authentication. They have trust systems that money needs to be put into trust accounts and kept distinct so that a payment is made on winnings. They have checks and balances on money laundering to make sure that they know who they are dealing with and you are seeing patterns of behavior. They are using artificial intelligence, Symantec web that Representative Barton was talking about. From his perspective, it is the good side of the bots to look at certain patterns of behavior. They have audits of who is employed, where the money came from——

Mr. KINZINGER. And again, we are talking about regulated sites right now, correct?

Ms. AFTAB. I am sorry?

Mr. KINZINGER. We are talking about the regulated——

Ms. AFTAB. The regulated sites as opposed to the other ones that may be run by terrorist organizations, they could be run by underworld criminal activity, they could be run by somebody out of their garage. You don't know and, you know, you never know who is a dog on the Internet and it is pretty hard to figure out who you are gambling with. So there are ways of doing this and I think what we need to do is cherry-pick the best that we see out there and then Americanize it and make it even better.

Mr. KINZINGER. So on the unregulated sites, basically it really is anything can go. I mean you could have 12-year-olds on there betting——

Ms. AFTAB. You could have 12-year-olds on it, you will have collusion among gamblers, you are going to have people who aren't paying you on bets, they are taking your money, it is not even real. Anything that could possibly go wrong does go wrong.

Mr. KINZINGER. Do we have any idea approximately how much American money is being bet on those sites?

Ms. AFTAB. The numbers are huge. The 4 to $6 billion a year of U.S. gambling is the estimate that we are seeing offshore. That is a lot of money that people are spending not in the United States, maybe they shouldn't be spending it, and they are not spending it fairly. So it is money that could be brought back here and help us and be done better.

Mr. KINZINGER. And ultimately, you know, if it is unregulated, it is almost impossible to put them out of business. I mean we can't——

Ms. AFTAB. It is really impossible to put them out of business, and the problem I have been seeing is consumers here don't know where to go because if they think that what they are doing is illegal because they are gambling online and they are scammed, they are afraid to call the police because they think they might be arrested. So we are finding consumers who have no place to go, no recourse in law enforcement but doesn't know what to do and how to do it effectively.

Mr. KINZINGER. And just one more question for you, too. Operator fraud and theft from players, you touched on that with these companies that are—has any of this happened in companies regulated in EU-member states? I mean have you been seeing that or is that mostly on the unregulated sites I guess?

Ms. AFTAB. Well, every once in a while you are going to see somebody in a regulated scheme that is violating the laws and they police those very carefully.

Mr. KINZINGER. Right.

Ms. AFTAB. And that is the difference. People will always break the law, but if you have laws in place and law enforcement skills and the tools are there, then you can put them out of business and——

Mr. KINZINGER. You can prosecute it and go after it.

Ms. AFTAB [continuing]. Put them behind bars.

Mr. KINZINGER. OK. Great. Well, that is all I have. Thank you for your patience. And I yield back.

Ms. AFTAB. Thank you.

Mrs. BONO MACK. Thank you. And Mr. Harper, you are recognized for 5 minutes.

Mr. HARPER. Thank you, Madam Chair.

You know, there are so many things going through my mind as we listen to the different witnesses and the input on this. You know, right now if we have offshore online Internet casinos, whatever we want to call them, and they are receiving funds illegally from U.S. citizens, would you support legislation that would say that those companies that are knowingly right now violating our

law that would ban them from ever opening up and being a part of legal U.S. Internet gambling?

Ms. AFTAB. I will answer for myself but not necessarily for Fair Play USA because I don't know what the answer is. And as far as I am concerned, if you are violating the law, you shouldn't be allowed to engage in a licensed and regulated regime——

Mr. HARPER. OK, thank you.

Ms. AFTAB [continuing]. In the same way you couldn't open a brick-and-mortar casino if you are a criminal. You shouldn't be able to do this, either.

Mr. HARPER. Mr. Stevens?

Mr. STEVENS. Yes, sir, we would be supportive. Absolutely.

Mr. HARPER. OK. Mr. Whyte?

Mr. WHYTE. We don't have a dog in this fight. We are neutral on legalized gambling so our organization has no opinion on that.

Mr. HARPER. Well, then I will ask you personally.

Mr. WHYTE. Personally, yes.

Mr. HARPER. Do you have an opinion personally as to whether or not a company that has been conducting technically illegal activity offshore is now going to want to come in and be licensed to do this in the United States?

Mr. WHYTE. Yes, if they are breaking the law, it certainly seems that they would be unfit to receive licensure under the general gaming statutes that we have.

Mr. HARPER. Thank you. Senator D'Amato?

Mr. D'AMATO. If you violated the law, you should not be permitted to have a license.

Mr. HARPER. OK. Mr. Eggert?

Mr. EGGERT. I also agree that if a company has been intentionally violating the law, I don't see them as a fit gambling operator here.

Mr. HARPER. Dr. Romer?

Mr. ROMER. Well, I mean all of them are violating the law as far as I can tell. So I think there have been some agreements with some of these companies to acquire, you know, back taxes and so forth that might work.

Mr. HARPER. Thank you.

Mr. D'AMATO. I might, Congressman——

Mr. HARPER. Yes, sir, Senator?

Mr. D'AMATO. They are not really all violating the law. That is a very real question. And indeed I think the 5th Circuit indicated that the Wire Act——

Mr. HARPER. Sure.

Mr. D'AMATO [continuing]. Which really creates the violation has not been violated as it relates to playing poker but rather that Wire Act was intended for sports gambling. So I think, you know, there is a legal distinction. Now, some are still battling that out. It hasn't gone up to the Supreme Court, but that is the highest ruling to date.

Mr. HARPER. And I am certainly aware of that conflict that is there.

Professor Eggert, if I may ask this, and I will just read a little something here and then get your thoughts on it. In 2007, Jeff Schmidt, CEO of Authis, provider of identity- and security-related

products, testified before our committee. Mr. Schmidt certainly is recognized as an expert on these issues on online identification and authentication. In his testimony he stated, "age verification and determination of geographical location simply cannot be done reliably over the Internet." And I would ask has technology changed and improved to the point where that has drastically changed since '07 and do you agree with Mr. Schmidt's assertion regarding age and geolocation verification?

Mr. EGGERT. Well, that is actually a good question. I am not sure I am the proper person to answer that because I haven't really studied age verification and Internet search. I wouldn't want to hazard an opinion without doing more reading on that.

Mr. HARPER. And I know that, Ms. Aftab, you would agree that it has changed or has improved, would you not?

Ms. AFTAB. Yes, it is changing radically and very quickly and all of us are now carrying around devices with GPS capability on them all the time so that it has changed greatly. And I was part of the taskforce that said you can't authenticate kids but you can authenticate adults, so that question needs to be asked in the right way when we ask about age verification of adults.

Mr. HARPER. But if you are doing that, can a person still not sell their information or share that with someone else or it be stolen?

Ms. AFTAB. They could but if you are using biometrics along with it that would require that when you log in you are authenticated as you and that has been verified through some regimen that has been approved, I think we can really get there. And we are getting there across the board on a lot of other areas.

Mr. HARPER. If we legalize Internet gambling in the United States, there will be obviously costs associated with that. So what will prevent someone from saying, well, you know, it cost me more to use what is the legal Internet gambling here; I want to still go offshore? What is going to prevent them from still doing what they are doing now?

Ms. AFTAB. Well, now you are going to have a lot of big players in the fence. So right now everybody is outside of the fence, but when you get a lot of the players who know what they are doing, they understand the technology, they understand the patterns of play, they understand all of these things who now have a vested stake inside, they can turn around and blow the whistle on everybody else and help you get the ones who are the outliers because they are competing unfairly. You will have some good allies.

Mr. HARPER. My time is up. I yield back.

Mrs. BONO MACK. Thank you. And Dr. Cassidy for 5 minutes.

Mr. CASSIDY. Mr. Whyte, again, as I think about, OK, we have a subset of people; let me just accept what you say earlier—again, not to challenge just to learn—that you will not significantly increase the risk, there is a possibility that those that do gamble will significantly increase their gambling.

Mr. WHYTE. Absolutely. We covered that in our written statement.

Mr. CASSIDY. So let me——

Mr. WHYTE. Sorry.

Mr. CASSIDY. Now, I have learned when gambling was introduced in Louisiana, the problem gambling increased dramatically, as well

as did theft from businesses as people financed their habit if you will. Have you learned in these jurisdictions that legalized Internet gambling that problem gambling increases and that the incidents of theft associated with such increases?

Mr. WHYTE. That is a great question. In the jurisdictions we have looked at to date without exception the rate of problem gambling has not exploded. It has not exploded in proportion to the——

Mr. CASSIDY. Now, exploded is a subjective term.

Mr. WHYTE. Exactly. But still what we do see—and I think to the point of your question—is that there are subtle increases in perhaps severity of problems especially among certain groups like, for example, young men who tend to be very heavy gamblers, who tend to be high adopters of Internet gambling. So I think Louisiana's example is the same. There are at-risk groups that when gambling is made legalized, more accessible, more available, more acceptable, they may shift in their patterns of gaming. They may either start gambling or take their existing——

Mr. CASSIDY. Now, when you say that exploded is objective, 20 percent is a definite, can you give me a percent, say, across all jurisdictions we see a 5 to 20 percent increase in problem gambling?

Mr. WHYTE. No, sir, we have not seen that.

Mr. CASSIDY. Do you have a percent I am asking? I am making up a number.

Mr. WHYTE. Absolutely. I apologize. Yes, in the United States it has gone roughly from .5 percent to around 1 percent over the last 30 years——

Mr. CASSIDY. Problem gambling?

Mr. WHYTE [continuing]. Pathological gambling. So that is a large percentage increase, certainly——

Mr. CASSIDY. See, my local DA told me that the amount of theft associated with it had increased significantly, not a definite number, but after gambling was legalized, the amount of theft—in fact they stopped investigating it because it was, you know, so much of a problem.

Mr. WHYTE. That is absolutely—60 percent of problem gamblers will commit a white collar crime to finance their gambling.

Mr. CASSIDY. OK.

Mr. WHYTE. And as more and higher-stakes forms of gambling are available, they may be driven to more severe crimes because they are chasing more and more money to——

Mr. CASSIDY. OK. Let me ask Dr. Romer and Mr. Eggert, first you, Mr. Eggert. If I would say that my goal is to limit the amount of problem gambling, to limit the amount of the number of adolescents who enter into a lifestyle which is destructive, but to allow people like Mr. Barton if you will to pursue his pastime, Mr. Eggert, do you think that this legislation is a positive in terms of pursuing that goal or do you think it is a negative?

Mr. EGGERT. Well, first of all, I am not a problem gambling expert. I am a consumer protection expert. I think that there are good things about Internet gambling where you can put in harm minimization strategies. I don't think that there is a good study out there that shows whether that has a net benefit or a net——

Mr. CASSIDY. So what about consumer protection? Do you feel like this legislation is a negative or a positive for consumer protection?

Mr. EGGERT. Well, I haven't seen any legislation yet that has what I consider strong consumer protection. I think if we had legislation with strong consumer protection, that could be a net positive.

Mr. CASSIDY. And then the very fact of legalization which some folks suggest will allow it to be increased consumer protection, you are not convinced of?

Mr. EGGERT. I am sorry, could you——

Mr. CASSIDY. So some folks I am hearing say just legalize it and inherent in legalization will come consumer protection.

Mr. EGGERT. I think that you have to build in strong consumer protections.

Mr. CASSIDY. Dr. Romer, again, let me ask you. Do you think this legislation in particular—I gather from your testimony you actually think this legislation or some legalization would be beneficial in terms of the problem of adolescent gambling.

Mr. ROMER. I think it would if certain, you know, safeguards were put in place, the kinds that have been suggested, because the Internet is a place where you can alert people to problems while they are gambling, you could cut them off, and we could also examine—I think the bill that is currently proposed suggests that we could make public the records of these gambling companies so that we could see are they making disproportionate profits from——

Mr. CASSIDY. To go back to Mr. Eggert's comment, he wants to see that sort of thing on the front end, not kind of retrofitted on the back end. Do you think that such legislation should have that sort of transparency built into it on the front end?

Mr. ROMER. Yes, I think consumers ought to know what their chances are of winning on a particular site, and if it is very difficult, they ought to know that. Yes. They ought to know the odds.

Mr. CASSIDY. OK. And I haven't read this legislation so critically. You may not be an attorney. I hope you are not.

Mr. D'AMATO. Congressman, we would have no problem supporting legislation that clearly called for the kind of thing that Kurt Eggert suggested and that is that there be identified what percentage does the house keep? If it is 3 percent on a game, 2 percent, whatever it is, no problem in establishing that. That is great consumer protection and putting it out there before they pull that slot, if it is not a slot, but before they deal those cards.

Mr. CASSIDY. OK. I am out of time. Thank you. I yield back.

Mrs. BONO MACK. I thank the gentleman. And I would like to thank our panel very much for being here today. You have been very gracious with your time and helpful and enlightening with your answers. I look forward to working with all of you again as we continue to explore the issue of Internet gambling.

As chairman of the subcommittee, let me be clear about two things: First, we are going to be very thorough in examining a wide range of issues related to Internet gambling before coming to any conclusions; and secondly, at the end of the day, we are going to do what is best for American consumers.

I remind members that they have 10 business days to submit questions for the record and ask the witnesses to please respond

promptly to any questions they might receive. The hearing is now adjourned.

[Whereupon, at 1:00 p.m., the subcommittee was adjourned.]

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