

THE STATE OF ONLINE GAMING

HEARING

BEFORE THE
SUBCOMMITTEE ON COMMERCE, MANUFACTURING,
AND TRADE

OF THE

COMMITTEE ON ENERGY AND
COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

DECEMBER 10, 2013

Serial No. 113-107



Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE

88-167

WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

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THE STATE OF ONLINE GAMING

TUESDAY, DECEMBER 10, 2013

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

The subcommittee met, pursuant to call, at 12:36 p.m., in room 2123 of the Rayburn House Office Building, Hon. Lee Terry (chairman of the subcommittee) presiding.

Members present: Representatives Terry, Lance, Blackburn, Harper, McKinley, Bilirakis, Johnson, Barton, Schakowsky, McNerney, Welch, and Barrow.

Staff present: Charlotte Baker, Press Secretary; Kirby Howard, Legislative Clerk; Nick Magallanes, Policy Coordinator, Commerce, Manufacturing, and Trade; Gib Mullan, Chief Counsel, Commerce, Manufacturing, and Trade; Shannon Weinberg Taylor, Counsel, Commerce, Manufacturing, and Trade; Michelle Ash, Democratic Chief Consumer Protection Counsel; and Will Wallace, Democratic Professional Staff Member.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Jan is on her way. I am sorry, Ranking Member Schakowsky is on her way and said it was all right to go ahead and start. Before I start my opening statement I want to introduce and thank our witnesses for being here, and so I will go down the list of our witnesses. Mr. Freeman, Geoff Freeman, is President and Chief Executive Officer, American Gaming Association. Then Mr. Andrew Abboud, Vice President of Government Affairs and Community Development at Las Vegas Sands Corporation; John Pappas, Executive Director of Poker Players Alliance; Les Bernal, National Director, Stop Predatory Gambling; Kurt Eggert, Professor of Law, Dale Fowler School of Law, Chapman University; and then Rachel Volberg, Ph.D., I got you two switched, Associate Professor, School of Public Health and Health Sciences at the University of Massachusetts Amherst. And I appreciate you all being here today. In Nebraska, we wouldn't even consider cancelling a hearing for this little, brief flurry that they have here in D.C., or Chicago. So we are forging ahead, and I appreciate the fact that all of our witnesses stayed true. And of course, you guys probably got here before all the panic ensued anyway. But we appreciate you sticking tight with us.

So we will start. Good morning, and welcome all the people here in attendance today. We will be reviewing H.R. 2666, the Internet Poker Freedom Act sponsored by my colleague on the committee, Mr. Joe Barton. This legislation addresses a timely issue, the legality of online gaming, specifically pertaining to Internet poker.

Today's hearing title aptly describes why we are here, and I am very interested in the state of online gaming in the United States and think the issue is ripe for Congress to conduct oversight of this matter. Several different factors have led to an environment in the United States where the status of online gaming is murky, at best. One, a recent DOJ opinion that reinterpreted the Wire Act opened the door for online gaming, except for sports betting, to be hosted on an intrastate basis. This has led to a patchwork of state laws with seven states moving to outlaw online gaming while others have authorized it in different forms, the most expansive being so far New Jersey, which has authorized multiple forms of Internet gambling, and of course, Nevada is moving in that same direction.

In addition to the patchwork of state laws, a multi-national patchwork exists as well. According to a white paper by the American Gaming Association, over 85 countries have chosen to legalize Internet gaming to some extent. While the United States has not explicitly legalized it, our citizens still account for about 15 percent of the global revenues to the roughly 2,700 Web sites which host online gaming. This means that Americans are patronizing these offshore Web sites to the tune of over a billion dollars a year, and as if that is not confusing enough, as we will hear today, the American gaming industry also does not seem to be in agreement on a clear path forward for the future of online gaming domestically.

The issues are very concerning to me. While unfettered online gaming here in the United States is surely not the ideal, absent a clear mandate from Congress, we risk exposing our constituents to an environment of a race to the bottom, which could present itself. It is my hope that hearings such as this one will shed light on what logical steps Congress can take to address this growing dilemma. While I understand and agree that Congress should not trample on the rights of states, I believe it is critical that we gain an understanding for the integrity of the different state standards, how this affects the citizens of other states and what the role of the Federal Government should be in the future of domestic online gaming.

I am pleased to say that we will be hearing from a balanced panel of experts today, and I stress balanced because in planning this hearing I want to make sure that we heard from as many sides of this debate in all of its nuances as possible.

And I would like to again thank all of our witnesses for being here and yield the last 2 minutes to Mr. Lance.

[The prepared statement of Mr. Terry follows:]

PREPARED STATEMENT OF HON. LEE TERRY

Welcome to today's hearing—the last hearing of 2013 for the Commerce, Manufacturing, and Trade Subcommittee. We have had a tremendously productive year on the subcommittee having held hearings investigating and learning about diverse areas such as:

- The nation's manufacturing sector;
- Issues affecting global trade, such as the EU-US trade deal (TTIP) and global intellectual property challenges;

- The Federal Trade Commission on the eve of its 100th anniversary; and
- Several pieces of legislation, ranging from bills dealing with foreign direct investment, to others that address race horse doping and today—online gaming.

Today, we will be reviewing H.R. 2666—The Internet Poker Freedom Act, sponsored by my colleague on the committee, Mr. Joe Barton. This legislation addresses a timely issue—the legality of online gaming, specifically pertaining to Internet poker.

Today’s hearing title aptly describes why we are here. I am very interested in the state of online gaming in the United States and think the issue is ripe for Congress to conduct oversight of the matter. Several different factors have led to an environment in the U.S. where the status of online gaming is murky, at best:

- A recent DOJ opinion that reinterpreted the Wire Act opened the door for online gaming (except sports betting) to be hosted on an intrastate basis. This has led to a patchwork of state laws—with seven states moving to outlaw online gaming while others have authorized it in different forms—the most expansive so far being New Jersey, which has authorized multiple forms of Internet gaming.

- In addition to a patchwork of state laws, a multi-national patchwork exists as well. According to a white paper by the American Gaming Association, over 85 countries have chosen to legalize Internet gaming to some extent. While the U.S. has not explicitly legalized it, our citizens still accounted for around 15 percent of the global revenues to the roughly 2,700 Web sites which host online gaming. This means that Americans are patronizing these offshore Web sites to the tune of over a billion dollars every year, and in many ways putting themselves at grave risk.

- And as if that was not confusing enough, as we will hear today, the American gaming industry also does not seem to be in agreement on a clear path forward for the future of online gaming domestically.

These issues are very concerning to me. While unfettered online gaming here in the U.S. is surely not the ideal, absent a clear mandate from Congress, we risk exposing our constituents to an environment where a “race to the bottom” could present itself. It is my hope that hearings such as this one will shed light on what logical steps Congress can take to address this growing dilemma. While I understand and agree that Congress should not trample on the rights of the states, I believe it is critical that we gain an understanding for the integrity of the different state standards; how this affects the citizens of other states; and what the role of the federal government should be in the future of domestic online gaming.

I am pleased to say that we will be hearing from a balanced panel of experts today—I stress “balanced” because in planning this hearing I wanted to make sure that we heard from as many sides of the debate as possible.

I would like to thank all of our witnesses for taking the time to travel to Washington this week and look forward to hearing your testimonies.

Mr. LANCE. Thank you, Mr. Chairman. The legal gaming industry is a multi-billion dollar operation with significant economic impact in the State of New Jersey, which I represent here in Congress, and of course, in the United States.

According to the American Gaming Association, commercial casino operator’s reported revenue of \$37.3 billion in 2012. In New Jersey, revenue from legal gaming in 2012 topped \$3 billion.

In recent years the development of mobile technology and the Justice Department’s 2011 legal interpretation of the Wire Act have opened the door for states to operate Internet gaming within their borders. In November, New Jersey became the third state to operate Internet gaming, joining Nevada and Delaware.

Online gaming in New Jersey allows consumers who are present within the State to have access to the same games of skill and chance that are offered in Atlantic City’s casinos. Online gaming has the potential to provide much-needed revenue to Atlantic City and to the State of New Jersey’s budget. A report in our largest newspaper, the Newark Star Ledger, states that Internet gambling is expected to produce hundreds of millions, if not billions, of dollars in revenue annually. Since 1978 when gambling began in Atlantic City the gaming industry has been an important part of New

Jersey's economy, and Internet gaming has the potential to reinvigorate the State's industry and secure its financial solvency in the future.

At this hearing we will also examine legislation introduced by my friend and colleague, Representative Barton of Texas, the Internet Poker Freedom Act of 2013. This legislation would establish a program for the licensing of Internet poker by states and federally-recognized Indian tribes.

I look forward to examining this legislation and the hearing and testimony from the panel on the state of online gaming. Thank you, Mr. Chairman.

Mr. TERRY. Thank you, Mr. Vice Chairman. I now recognize the Ranking—

Ms. SCHAKOWSKY. Do you want to ask unanimous—

Mr. TERRY. Oh, yes. Thank you. Ask unanimous consent to allow Mr. Heck from the greater Las Vegas area to join us on the panel today. Hearing none, so ordered. I now recognize the gentlelady from Chicago, the ranking member of the subcommittee, for her 5 minutes.

OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. I look around. I see there are no weather wimps in this room, and I welcome all of you. I know us Midwesterners, this is nothing. We don't get it.

But anyway, I am very happy that you are here to give your testimony. This is an important issue that has a significant following, and I look forward to hear from our witnesses and gaining from all of your perspectives.

The issue of online gambling is incredibly complex and is certainly deserving of our attention. It also is becoming increasingly important as last month New Jersey joined Nevada and Delaware as the only States to offer real money, online casino games. Most states are considering or many states are considering similar action, possibly including my home State of Illinois.

I understand that some amount of gambling is already occurring online. Establishing a stronger federal role might improve oversight, reduce illegal operations, and provide new revenues at the federal or state level. However, I do have some serious concerns about expanding online gambling. Studies show that low income workers, minorities, retirees suffer disproportionately from problem gambling. It is important that if online wagering expands, protections are in place to prevent the exploitation of vulnerable populations. That should include limitations on using lines of credit rather than real assets to bet. The government should not be in the business of increasing the number of people struggling with gambling addiction.

As a lifelong consumer advocate, I also think it is critical if federal legislation is to expand online gambling it does so with consumer protections as a top priority. Safeguards must be in place to ensure that consumer data is well protected. That can be accomplished in part by ensuring that standards are in place to limit the unnecessary collection of consumer information. Consumers must

be adequately informed of the data being collected about them and the policies regarding the handling of that data. In any legislation to expand online gambling, high standards of privacy must be maintained for those who choose to engage or not to engage in online gambling. Information about frequent betters or those who have self-identified as problem gamblers to limit their access to online gambling must not be shared or sold without the consent of that individual. Individual consent should not be wrapped up in a complex privacy agreement but should be clear and transparent to the user. If an expansion of online gambling is allowed, those who choose to play should also have confidence that the game they are playing is operated with integrity.

Is it bots?

Mr. TERRY. Bots.

Ms. SCHAKOWSKY. I don't even know what that is. Bots, collusion, and other unfair practices must be kept away from any gambling Web sites created to maintain fairness for players. I thought maybe that is bets or bats or whatever.

Again, I appreciate the varied perspectives of our witnesses, and I look forward to hearing from them today about the current state of online gambling, where we go from here and how any future actions can address the many consumer protection concerns that I have raised. And I yield back, Mr. Chairman, and I think—let us see, Mr. Welch, I asked the others. Are you interested in the remaining time?

Mr. WELCH. You spoke for me.

Ms. SCHAKOWSKY. I spoke for him. Thank you. I yield back for all of us.

Mr. TERRY. All right. Mr. Barton, you are now recognized for 5 minutes.

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

Mr. BARTON. Thank you, Mr. Chairman. To my good friend, Jan Schakowsky, a bot is a computer program that uses artificial intelligence and pre-programmed instructions to play not just poker or games of chance but all kinds of things on the Internet. And it is there. They are not good things, in my opinion. So that is what a bot is.

I want to welcome some former members out in the audience. Jon Porter of Nevada, and the former Chairman of the Ag Committee, from California I think, Richard Pombo is out there, and so we welcome him back to Congress.

I want to tell the committee, Mr. Chairman, that God must be for this bill because I got up this morning at 4:00 in Ennis, Texas, outside of Dallas and braved icy roads and 20-degree temperatures to get to DFW airport when my good friends at American Airlines left exactly on time and God put a 200-mile-an-hour tailwind behind the plane and I got here an hour early. So that tells me that God is for this bill. That is my opinion.

Well, Mr. Chairman, I first want to thank you for holding this hearing and Chairman Upton and Ms. Schakowsky and Mr. Waxman for agreeing to do it. I want to thank our witnesses. This is a serious issue, and it has a lot of ramifications for the country.

When I first got elected 30 years ago, there was no such thing as the Internet. You could actually still send a telegram. And I talked about flying up here on American Airlines this morning. Members of Congress still got two paid, roundtrip train tickets to their district. OK? The world was completely different. If you wanted to make a bank deposit, you had to literally go to the bank. If you wanted to see a doctor, you had to literally go to a doctor's office. Everything had to be done in person.

Well, now we have the Internet and iPhones and iPads and apps and all these things. Just about the only thing you can't do anymore on the Internet is play poker, and that is changing. As Ms. Schakowsky has pointed out, lots of states are beginning to allow intrastate poker and/or other games of chance. Only 2 states in the Union don't allow within their borders some form of gaming, 2 out of 50.

So I think the time has come to recognize that in the Internet age we need to regulate and set a level playing field for those of us who would like to play poker online. And I want to emphasize that the Internet Poker Freedom Act, H.R. 2666, is a poker-only bill. And for my good friends on the Republican side of the aisle, it is a states' rights, user-friendly bill. It is an opt-out. We start out saying all 50 states are going to allow poker to be played, but if a state doesn't want to do it, it just takes the governor of a state to write a letter maybe even on the back of a postcard, send it to the Secretary of Commerce, and that state will not allow Internet poker within its boundaries.

H.R. 2666 has been developed in openness and transparency. It is a refined product of a similar bill that I introduced in the last two Congresses. I think it is a good work product. I think it would work. I think it would provide fairness and all the things that several of the other members who have talked about this this morning support. It is not a perfect bill, and obviously the purpose of this hearing will be to see where it needs to be improved. There are some that talk about the problems of addiction and gambling to excess. We have taken every recommendation in the bill from the advocates who want to try to prevent such bad behavior.

So Mr. Chairman, I look forward to the hearing. I do appreciate you holding it. And I will point out that in the last Congress a similar hearing in this subcommittee was the most-watched hearing of the entire Energy and Commerce Committee in terms of people watching it over the Internet. So I am sure we are going to have a lot of people watching this today.

Mr. TERRY. Yes, I think we will, especially since we are the only hearing.

Mr. BARTON. That is a tribute to your leadership, Mr. Chairman.

Mr. TERRY. Timing. But Joe, under your states' rights, I will have to ask you at some point in time after the hearing if it is all right then if a governor could ban Texas Hold'em and just allow Omaha.

Mr. BARTON. We will talk, Mr. Chairman.

Mr. TERRY. Thank you.

Mr. BARTON. If that is the only problem we—

Mr. TERRY. Yes, good point. All right. So our Vegas routine is now completed, and now off to business with our witnesses here.

Some of you have been here before, and you know how it works. You have 5 minutes to give us your statement. There is a little light down there. Green means go, yellow means start wrapping it up, red means I am going to start tapping the gavel and go onto the next. And then at the end of Mr. Eggert's testimony, we will open it up to the questions, of which each member will have 5 minutes.

So with that, Mr. Freeman, thank you all again for being here, and you are recognized for 5 minutes.

STATEMENTS OF GEOFF FREEMAN, PRESIDENT AND CEO, AMERICAN GAMING ASSOCIATION; ANDREW ABOUD, VICE PRESIDENT, GOVERNMENT RELATIONS AND COMMUNITY DEVELOPMENT, LAS VEGAS SANDS CORPORATION; JOHN PAPPAS, EXECUTIVE DIRECTOR, POKER PLAYERS ALLIANCE; LES BERNAL, NATIONAL DIRECTOR, STOP PREDATORY GAMBLING; RACHEL VOLBERG, PH.D., ASSOCIATE PROFESSOR, SCHOOL OF PUBLIC HEALTH AND HEALTH SERVICES, UNIVERSITY OF MASSACHUSETTS AMHERST; AND KURT EGGERT, PROFESSOR OF LAW, DALE E. FOWLER SCHOOL OF LAW, CHAPMAN UNIVERSITY

STATEMENT OF GEOFF FREEMAN

Mr. FREEMAN. Thank you, Chairman Terry, and Ranking Member Schakowsky and members of the subcommittee. It is great to come back before the committee again. I did this several times while with the U.S. Travel Association and appreciate the opportunity to work with you.

This hearing couldn't be more timely. Three states have already kicked off their versions of online gaming, New Jersey, Nevada and Delaware. The demand to play is high, and your attention is critical.

I would like to start by joining the almighty and thanking Congressman Barton for his leadership on this issue and pragmatic efforts to create a regulated gaming environment. That is certainly what we need more of.

There are three points that I would like to make to committee today. The first is that the experience of the past several years has yielded one crystal clear conclusion and that conclusion is the prohibition of online gaming has not and will not work. Until this year, online gaming, poker or otherwise, has been illegal in every corner of the country, and the Justice Department has led an aggressive crackdown on offshore operators. The result? Last year Americans spent nearly \$3 billion on illegal offshore gaming sites constituting nearly 10 percent of the entire worldwide online gaming market.

In other words, recent prohibition attempts have only created a thriving black market. This should come as no surprise to a country where sports betting takes place just about everywhere despite an ostensibly blanket government prohibition. In fact, it is fair to argue that prohibition has given shady offshore operators the best ally they could imagine. Legitimate operators, such as my members, respect the law, have licenses at stake and stay out of the American market. Illegal operators disobey the law and often dis-

regard their own customers. Make no mistake, online gaming is here to stay. The government cannot put the Internet back into the bottle. The question is, are we going to regulate online gaming or allow the black market to continue to thrive?

My second point is the demand for online gaming will only continue to grow. The world over, the Internet is changing how we live our lives and it is certainly changing the face of business. Some companies get on the first wave of that change and thrive in the marketplace. Other companies, like Blockbuster or Hollywood Video for example, refuse to adapt to the needs of their customers and are left in innovation's wake.

Just 2 weeks ago, in the very first week that online gaming was offered legally in New Jersey, more than 50,000 people signed up. Last week Juniper Research estimated that 100 million will conduct gambling on mobile devices by 2018. The demand is extraordinary and certainly not going away.

With this demand and the blossoming black market, my final point is that there is an important role for the Federal Government. Congress should provide a uniform set of protections for consumers while respecting states' rights to choose what is in their best interests. The AGA supports a strong regulatory regime that insists on player identification, age verification, transparent records of all transactions, geolocation, aggressive tools for responsible gaming and help for those with gambling disorders. New technologies are proven to detect the vulnerable and those who may wish to do us harm. And it is worth noting that as an industry, we are completely aligned on the need to protect vulnerable populations, even as we may disagree on the best means of doing so.

The United Kingdom, France, Italy, Spain, Denmark, Belgium, Sweden, Finland, Australia, Japan, Hong Kong, and Canada, just to name a few, have all considered the serious issues brought before you today, and all have chosen to pursue a regulated market. Consumers are protected, national security concerns are addressed and economic development is realized.

In conclusion, let me say that Americans will always gamble, offline, online or in whatever form is invented in the coming years, and as countless studies show, more than 95 percent will do so in a responsible manner. We believe the best protection for consumers and for our country is strong and effective regulation that respects states' rights. We look forward to working with you and others in Congress to build the type of regulatory framework that is important here.

Thank you for inviting me, and I look forward to your questions.
[The prepared statement of Mr. Freeman follows:]



**Written Testimony of
Geoff Freeman, 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:
"The State of Online Gaming"

December 10, 2013

Chairman Terry, Ranking Member Schakowsky, Members of the Subcommittee:

Thank you for inviting me today to testify on behalf of the members of the American Gaming Association on this important issue.

The commercial casino-entertainment industry represents an increasingly important driver of economic growth and job creation in the 23 states in which we operate. Last year, our members operated and supplied more than 500 resorts that support more than one million jobs in the United States.

Our industry accounted for \$125 billion in consumer spending last year and generated nearly \$9 billion in state tax revenues that support vital public services.

Today's hearing on the state of online gaming is extremely timely.

I know the Chairman Emeritus of the Energy & Commerce Committee, Congressman Barton, has introduced legislation to rationalize the regulation of online gaming.

We appreciate such leadership on this issue – and the opportunity to discuss the important need for consistent and effective regulatory standards that protects consumers, ensures the integrity of online games, gives law enforcement agencies the tools they need to combat illegal operators and provides Americans with access to an online gaming marketplace they unquestionably desire.

The experience of the past years has yielded one crystal clear conclusion: Prohibition simply does not work.

The federal government has tried the prohibition approach through legislation – specifically the Unlawful Internet Gambling Enforcement Act of 2006 and the Wire Act – and through multiple Justice Department crackdowns on offshore operators, as well.

What was the result of these attempts at prohibition? Last year, before a single state authorized legal online gaming, Americans spent nearly \$3 billion on illegal, unregulated offshore gaming sites. To put that into further context, Americans accounted for nearly 10% of the entire \$33 billion worldwide online gaming market in 2012.

In other words, rather than “prohibiting” online gaming, recent attempts at prohibition have created a thriving black market and driven its economic benefits offshore. This should come as no surprise to a country where sports betting takes place in every corner of the country, despite an ostensibly blanket government prohibition.

The fact is that Americans are currently spending billions on illegal, but easily accessible online gaming sites. These sites operate in the shadows, with little consumer protection against cheating, money laundering or underage gambling.

In fact, it’s fair to argue that prohibition has given these shady operators the best ally they could possibly imagine by blocking principled gaming companies from competing in the market. Legitimate, strictly regulated operators respect the law and have licenses at stake, while illegal operators always find ways to circumvent the law and offer little to no regard for consumer protection.

Rather than pursuing more futile attempts at prohibition, the American Gaming Association supports strong regulation and oversight of online gaming that respects states’ rights to pursue what is in the best interest of their residents.

Make no mistake: online gaming is here to stay. The government cannot put the Internet back in the bottle. As we saw with Blockbuster and the advent of online movies, industries must adapt to consumers or be left in their wake.

And, where prohibition has failed, a strong regulatory regime will succeed in achieving several critical public policy goals:

- It will protect consumers from unscrupulous operators and fraudulent games;
- It will shrink the unregulated black market and provide for the safe, controlled, pragmatic development of the regulated transparent market;
- It will provide law enforcement agencies with a willing partner for cracking down on underage gambling, criminal activity and illegal operators;
- It will bring over 22,000 gaming jobs to the U.S., rather than sending them overseas, and generate over \$26 billion in tax revenue.

The legal landscape for online gaming in the U.S. has changed significantly since the last time this subcommittee held hearings on the issue in 2011.

Most importantly, in December 2011, the Justice Department changed its interpretation of the Wire Act stating that it only applies to sports wagers made over a wire transmission. If you look back to 1961 when the Wire Act became law, it was enacted to prevent someone from calling a bookmaker to place an illegal wager on a sporting contest.

So with the Justice Department's new interpretation, the door has opened for states to authorize regulated, intrastate online gaming if they so choose. It is also important to point out that prior to the Justice Department's interpretation change there were no online gaming prosecutions under the Wire Act, even though we know an estimated 10 to 15 million Americans were gambling billions of dollars through offshore online gaming websites.

The American Gaming Association continues to believe that Congress should enact strong minimum regulatory standards that would provide a uniform set of protections for consumers while respecting states' rights to choose what is in their best interests. In the absence of federal action, however, states are moving forward.

So far, three states now offer legal, regulated online gaming – Nevada, Delaware and New Jersey. A dozen more states are also looking at introducing online gaming in a safe, secure, regulated fashion. Many will have initiatives related to online gaming under consideration in 2014. And there is enormous pent-up demand – last week it was reported that 50,000 people signed up for New Jersey’s online gaming sites in the very first week it was offered.¹ Juniper Research estimated that 100 million individuals will play games on their mobile devices by 2018.² Are we going to regulate this behavior or pretend that we can eliminate the demand?

The gaming industry respects the rights of states and tribal nations to introduce online gaming on their own timetables, consistent with the desires and preferences of their residents. At the same time, the American Gaming Association believes that any effective regulatory regime must include certain standards, such as:

- The establishment of player identities to comply with the standards of the Bank Secrecy Act;

¹ Fund, John. "A Roll of the Dice." National Review Online. 5 Dec. 2013. Web. 6 Dec. 2013. <<http://www.nationalreview.com/article/365559/roll-dice-john-fund>>

² Davy, Lee. "Mobile phone gamblers to increase by 100M people in the next 5 years." CalvinAyre.com. 6 Dec. 2013. Web. 6 Dec. 2013. <<http://calvinayre.com/2013/12/06/business/mobile-phone-gamblers-to-hit-164m-by-2018>>

- The use of age-verification technologies that have proven successful in other age-sensitive industries;
- The creation of a transparent record of all transactions to ensure the integrity of games and prevent illegal activity;
- The use of geo-location technologies to ensure online gaming is restricted to jurisdictions where it is legal;
- The aggressive deployment of tools that promote responsible gaming and provide help for those with gaming problems.

More than 100 jurisdictions worldwide allow regulated online gaming and many of them incorporate these technologies and processes to protect consumers, prevent underage play and provide law enforcement officials the tools they need to identify fraudulent and other criminal activity.

Financial institutions, web-based retailers and many other industries also employ the same, or similar, technologies to ensure the safe, responsible use of their products.

Opponents of online gaming suggest that expanding this option will open a Pandora's Box threatening the young and vulnerable members of our society. I respect this point of view, even as I respectfully disagree. I believe we can use technology to put effective protections in place for these individuals. In fact, this is where, as an industry, we are completely aligned, whether or not we agree on online gaming.

Other countries -- including the United Kingdom, France, Italy, and Canada -- are already using technology effectively to protect online gamers, as are three U.S. states. Contrary to what some opponents of online gaming claim, the sky has not fallen in these regulated markets.

Growth of the Internet into wider and wider areas of our lives always raises fears of the unknown and predictions of dire consequences. Just a decade or so ago, millions of people thought it was unsafe to purchase products online. Now, Cyber Monday has eclipsed Black Friday as the busiest shopping day of the year.³

³ Hsu, Tiffany. "Cyber Monday was biggest online shopping day ever, data firm says." Los Angeles Times. 3 Dec. 2013. Web. 6 Dec. 2013. <<http://www.latimes.com/business/money/la-fi-mo-cyber-monday-records-20131203,0,7572388.story#axzz2mdMSIZQz>>

Responsibly extending gaming into the online world is a natural progression for our industry. Millions of Americans are already gambling online illegally and will continue to do so, no matter how many times we try to prohibit it. Millions and millions more would like to do so legally and responsibly.

Americans will always gamble — offline, online or in whatever new form will be created tomorrow. And, as countless studies show, 95% will do so in a responsible manner.

The American Gaming Association believes the best protection for consumers of online games is through strong and effective regulation that respects states' rights. We look forward to working with Members of this Subcommittee and other congressional leaders to achieve this goal.

Thank you again for inviting me and for holding this important hearing. I look forward to answering any questions you might have.

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Mr. TERRY. Thank you. And now Mr. Andy Abboud, you are recognized for 5 minutes.

STATEMENT OF ANDREW ABOUD

Mr. ABOUD. Thank you, Congressman Terry, Madam Ranking Member. I have to say it is an honor for me. This is my first time testifying before Congress and have a unique opportunity to testify before two hometown congressmen, one being my Husker friend here, Congressman Lee Terry, and my congressman in Las Vegas, Congressman Joe Heck. Thank you for allowing us to be here today.

I have three simple points as well. I am the Senior Vice President for the Las Vegas Sands Corp. in Las Vegas, Nevada. We are the world's largest gaming company in the world by market cap. We have three simple points. Internet gambling takes gambling too far. We would like Congress to restore the Wire Act, and we would implore Congress to shut down the illegal gaming sites that are out there today.

Simply, a lot of people say it can't be done. Congress did it by shutting down 1,200 online pharmacies that were black market pharmacies. It can be done, it needs to be done. There are no provisions in place to do that.

The thought of every single one of these becoming a casino should concern all of you. You go into states like Florida where we are negotiating for an opportunity to spend \$3 to \$4 billion on an integrated resort creating tens of thousands of jobs. And not a casino-centric mentality which is what the industry has moved away from. But you have to negotiate each gaming position. Can you do 2,000 machines? Can you do 100 tables? And you have to figure out how you blend into the marketplace so you don't saturate the market, so you don't injure the existing infrastructure, so there is just not too much of it.

And now, for whatever reason, they want to turn every single one of these into a casino with unlimited access, unlimited provisions. Congressman Terry, I am pretty sure that I have known your family from the beginning. Your father delivered the news on Channel 7 when I was growing up, and I know that you and I probably never saw our parents' credit card, let alone did we touch it. But the world has changed. Children have 100 percent access to credit cards. They buy their apps with it, they buy their iTunes with it. And I don't want to speak to the integrity or the intelligence of anyone here on this committee and their ability to understand technology, but if they legalize it, it is going to be the kids that teach their parents how to get on.

There is a point when it goes too far. Simply because we can, doesn't mean we should. December 2011 was not the day that the Internet became safe. It is the day the Wire Act was overturned. And rather than my industry rushing to make the marketplace more safe, it has become a rush to the marketplace, without any provisions. The Internet, bots, netbots, all those things, Congresswoman, are more prevalent than ever. The Internet is more dangerous than ever.

But I have a lot of respect for Geoff Freeman and for the American Gaming Association, and I have tremendous respect of our competitors on the strip. We just happen to disagree on this issue.

But I also have a lot of respect for Frank Fahrnekopf, who was Geoff's predecessor, and I want to read a letter he put in Gaming Compliance in just February of 2012. "Finally, it is important to remember what the DOJ decision really is. It is an opinion of the current Justice Department, not the law of the land as determined by the Supreme Court or any other court decision. The opinion is counter to that of four prior administrations that considered this matter, and when President Obama ultimately leaves office, the DOJ serves under the next president to reverse this opinion. Near the end of last year I had the opportunity to testify on behalf of the commercial gaming industry before the U.S. House Committee on Energy and Commerce, Subcommittee on Commerce, Manufacturing, and Trade. I told Congress that without a federal framework on online gaming, there will be a patchwork quilt of rules and regulations that while aimed at protecting consumers could have the opposite effect by confusing customers and making it difficult for law enforcement to manage. I believe that still in the DOJ's opinion and its implication reinforce my concerns."

Members of the committee, the thought of a 50-state solution is scary. We are imploring on Congress to act, to restore the Wire Act, to conduct a study, if it shows that the Internet can eventually be safe. But it is time to stop. Don't make a race to the bottom of the marketplace. Restore the Wire Act and protect American consumers. Thank you, and I look forward to your questions.

[The prepared statement of Mr. Abboud follows:]

Testimony of Andrew F. Abboud
Senior Vice President, Las Vegas Sands Corporation
Before the Subcommittee on Commerce, Manufacturing and Trade
Committee on Energy and Commerce
December 10, 2013

Mr. Chairman and Madam Ranking Member. My name is Andy Abboud, Senior Vice President of the Las Vegas Sands Corporation. I appreciate your giving me the opportunity to testify today.

Two days before Christmas in 2011, the Justice Department issued a legal opinion reversing its long-held position that the Wire Act (18 U.S.C. § 1084) bars Internet gambling – effectively permitting states to authorize non-sports wagering over the Internet.

In throwing open the doors to Internet gambling, the Department apparently did not consult with Congress. It did not seek input from local officials. It did not give the public the chance to comment. There is no indication that the significant social, economic and law enforcement issues were even considered.

Whether we will have casinos in the pockets of American citizens – with gambling available 24/7 at the flick of a button – is a major decision.

It is a decision we believe should be done the right way. We urge Congress to hit the “reset button” and restore our government’s long-standing interpretation of the Wire Act, leaving any changes to laws governing Internet gambling to be considered under regular order.

At the same time, law enforcement should do what it can to shut down rogue sites, and tell Congress what additional authorities and resources it needs to get the job done.

Allow me to make three points.

1. Internet Gambling Takes Gambling Too Far.

There is a big difference between having to go *to* a casino to place a bet, and having the casino come to you.

When someone goes to a casino, it takes physical initiative. Once at a casino, individuals can be identified to make sure they are who they say they are and are not under-aged. Casinos are highly controlled environments. Security cameras mark every move, and professionals watch patrons to make sure they are not getting in over their heads. None of these protections are available to the same extent when gambling is done over the Internet.

2. Internet Gambling is Susceptible to Criminal Activity.

In a November 13, 2009, letter to then-Financial Services Committee Ranking Member Spencer Bachus, the FBI’s Cyber Crimes Division reported that: 1. “[T]he technology exists

to manipulate online poker”; 2. “[O]nline poker [can] be used to transfer ill-gotten gains from one person to another or several other people”; 3. Technology to prevent minors and problem gamblers from participating can be defeated; and, 4. The Agency’s law enforcement resources are focused on higher priorities than policing the Internet gambling market.

3. Internet Gambling Threatens Society’s Most Vulnerable

The sheer speed at which games can be played online is of significant concern. On the Internet, there is none of the time-consuming activity which comes with playing in the real world – the moving of chips, the human interaction, the changing of players, clearing of tables, etc. In a virtual casino, it all happens in the blink of an eye, bringing with it the potential that players will lose significant sums before they know what has happened.

If we have learned anything about the Internet, it is that when it comes to technology, kids will find ways to outsmart their parents. Even a cursory comparison between social gaming sites and Internet gambling sites reveals similarities that may make these sites attractive to young people. Gaming experts say that Internet gambling is, in part, intended to draw the younger generation into gambling.

For the parents of young children here today, we all know how addictive social gaming can be. One only has to look at the enormous success of the social game “Candy Crush” to get a glimpse of what may be looming on the horizon. In a single calendar year from its introduction, Candy Crush was played online a total of 150 BILLION times.

And, don’t parents preparing to send their sons and daughters off to college have enough to worry about without having to wonder whether their kids will be betting away tuition or student loan dollars or running up credit card debt playing online poker?

Poker “Carve-Out”

Allow me a moment to discuss why we oppose a poker “carve-out”. At the outset, I would be remiss if I failed to make clear how much respect we have for the Chairman Emeritus of this Committee, Mr. Barton, and his significant legislative record. On the issue of online poker however, I hope we can agree to disagree agreeably.

Poker does involve more skill than other casino games. But, ironically, this skill element may make it more susceptible to manipulation in the online world. All of the law enforcement issues with Internet gambling are also present with Internet poker – and when it comes to the potential for fraud and money laundering, the risks may be amplified since participants are playing each other as opposed to “the house.”

Consider how easy it is for either side in a poker game to simply fold. Now consider who is sitting on the receiving end of the winning pot. In short; it could include criminal elements utilizing the game to launder funds.

Online poker is especially attractive to young males – raising questions as to how many student loans, how many tuition payments, and how much credit card debt could get run up in dorm rooms and fraternity houses.

You may hear today from some others on the panel that “all we want is a poker carve-out”. But, make no mistake about it – and prior industry history will bear this out – if you authorize poker, it won’t be long before other industry players will tell you they “need more”. In fact, one of our industry colleagues has already asked the Nevada State Gaming Control Board for permission to go beyond poker and offer full blown online gambling.

Some in our industry will suggest that Internet gaming is a \$3 billion activity in this country which needs to be licensed and regulated to protect Americans who play online poker.

However, according to a study commissioned by the American Gaming Association, the market for all Internet gambling is actually somewhat less – it is \$2.6 billion and falling. But, here is the point: Online poker comprises less than 10% of this figure.

Online poker has been on a rapid decline, dropping 85% from \$1.6 billion in 2006 to \$219 million today. To put this in perspective, the online poker market across the whole country is about one-third the size of the Lawrenceburg, Indiana casino market.

Given all this, it is unclear to us how legalizing a \$219 million poker market will do anything to “protect the integrity” of the \$2.4 billion Internet gambling market which is unrelated to poker – much of which may be comprised of sports betting.

Plus, it is somewhat incongruous to argue on one hand that Internet gambling **must** be legalized because technology cannot prevent Americans from playing, and then claim on the other that we can rely on technology to keep kids off, promote responsible gambling, and prevent Internet gambling from being used for fraud, money laundering and other criminal purposes.

Some have and will compare our efforts to stop Internet gambling to Prohibition in the 1920s. Quite simply, no one is talking about outlawing gambling, as alcohol was outlawed in the 18th Amendment. Americans can continue gambling – whether it be playing poker in their own homes or in those of their friends, or placing bets at any of the over 1,500 casinos, horse tracks, dog tracks, resorts and cruise ships in our country; or buying a lottery ticket at any of hundreds of thousands of convenience stores.

The fact Internet gambling can be used by certain states to bring in revenue without raising taxes does not mean it is the right thing to do. By wide majorities, the American public knows it is not right.

Opposition to Internet gambling is bi-partisan; it cuts across all demographic groups, and all regions of the country. Even libertarians oppose it. Americans know instinctively that there is a big difference between going to a casino to bet and having the casino come to you.

In our opinion, time is of the essence. Congress should step in now and call “time out” – before it is too late. It should restore the longstanding policy banning Internet gambling to where it was before the Department of Justice reversed course in 2011, and thus provide Congress and the public the opportunity to more fully examine and consider the serious issues involved – whether it be the potential for money laundering, terrorism financing,

fraud and other criminal activity; underage betting; exploitation of those with gambling addictions, and the impact on jobs and economic growth.

Thank you, Mr. Chairman. I look forward to answering any questions you or the other members of the Subcommittee may have.

Mr. TERRY. Thank you. Mr. Pappas, you are now recognized for 5 minutes.

STATEMENT OF JOHN PAPPAS

Mr. PAPPAS. Thank you. Chairman Terry, Ranking Member Schakowsky, and distinguished members of this committee, I would like to thank you for holding this hearing and for allowing me to testify.

I have the great honor of serving as Executive Director of the Poker Players Alliance, an organization of 1.2 million American poker enthusiasts. Poker players are passionate about the freedom to play this game, and I have little doubt that every member of this subcommittee has heard from poker activists in their home states urging Congress to enact a sensible federal policy that licenses and regulates Internet poker.

It is my hope that the committee will respond by taking up legislation introduced by Congressman Joe Barton, H.R. 2666, the Internet Poker Freedom Act. The PPA stands in strong support of Congressman Barton's bill, and I congratulate the Chairman Emeritus for his leadership on this issue, and the poker player community thanks God that you are on our side.

The Internet Poker Freedom Act focuses on corralling the current unregulated marketplace and turning it into a system that is safe to consume and accountable to regulators and our government. The bill mandates technologies to protect consumers from fraud, eliminate underage access and mitigate problem gambling. Mr. Barton's bill does not force any state to participate in the federal system, and it allows states to implement their own online gaming regulations. This is especially important given that three states, Nevada, Delaware and New Jersey, have authorized and are regulating Internet poker and Internet gaming today.

While the PPA would prefer the passage of a federal Internet poker bill, we strongly support the rights of states to pursue Internet gaming opportunities in the absence of a federal law.

The adoption of regulated Internet gaming in the United States means the policymakers can no longer consider regulated Internet gaming as a theoretical. It is not a theory, it is a reality, and it is here today. Not only can we reference the current U.S. regulated market, we also have the benefit from learning from Europe where it has been regulated for more than 10 years. Of course, there are those who advocate for a ban on Internet poker and Internet gaming. This misguided approach would only serve to harm the most vulnerable populations that regulation properly protects.

I would like to take a moment to provide the subcommittee with information on how a combination of regulation and technology can meet these challenges. Due to time constraints, I urge you to review my submitted testimony for a more in-depth review of these facts.

With respect to underage access, gaming site operators are required to implement state-of-the-art age verification software before being licensed and before accounts are opened and bets are settled. Failure to undertake rigorous age verification would result in the loss of a license and the closure of a business. While the U.S. market is still very new, it is notable that in Nevada, which began

accepting Internet poker play in April of this year, there has not been a single reported incident of underage access.

Another important matter is to ensure we are appropriately addressing problem gambling. Comprehensive research on the issue concludes that online gaming operators have effective and sophisticated tools to prevent and combat problem gaming. Most regulated online gaming markets require their licensees to employ these technologies to monitor their players and combat against problem gaming abuse.

Finally, opponents of Internet gaming have claimed that the activity is vulnerable to fraud and criminality. Let me say that prohibition will just play into the hands of the criminal element just as it did in the 1920s when alcohol was banned. It is far better for the players' financial fate if the safety and security of their Internet gaming transactions are in the hands of the U.S. banking system and responsible, regulated American gaming corporations.

Again, I ask that you refer to my submitted testimony for greater details on these issues, and I welcome the opportunity to discuss them further in the Q&A portion of this hearing. In closing, it might be useful to focus on the questions that are not before the committee right now. First, this committee is not deciding whether Americans will gamble on the Internet. Millions of them do so today, and except in a few states where the activity is licensed, they are playing on offshore sites with uneven regulation at best.

Second, the committee need not ask if Internet gaming can be successfully regulated. It is successfully regulated today in European jurisdictions, and here in the United States, online casino and poker games are regulated in three states and online lottery and horse bets are successfully regulated in dozens more. The question before this committee is who, if anyone, will provide U.S. players with a safe and well-regulated place to play poker on the Internet. We continue to urge Congress to enact the Barton bill and thus accomplish this federally. At a minimum, we urge Congress to do nothing to prevent the states from licensing and regulating Internet poker.

Once again, Mr. Chairman, members of the committee, I thank you for the opportunity to testify, and I look forward to answering your questions.

[The prepared statement of Mr. Pappas follows:]



www.theppa.org

TESTIMONY OF JOHN A. PAPPAS

on behalf of

THE POKER PLAYERS ALLIANCE

UNITED STATES HOUSE SUBCOMMITTEE

on

Commerce, Manufacturing and Trade

“The State of Online Gaming”

December 10, 2013

Chairman Terry, Ranking Member Schakowsky, and distinguished members of the subcommittee, I would like to thank you for holding this hearing and allowing me to testify. I have the great honor of serving as Executive Director of the Poker Players Alliance (PPA), an organization of 1.2 million American poker enthusiasts. These individuals, along with countless more Americans, enjoy this great game of skill in commercial and Tribal casinos, in their homes, in bars, in charitable games, and on the Internet. Much has changed since the last time this subcommittee met to discuss Internet gaming. I am pleased to serve as a resource to help you better understand how Internet poker and Internet gaming are already being regulated effectively in the United States and throughout the world.

Poker players are passionate about the freedom to play this game and I have little doubt that every member of this subcommittee has heard from poker activists in their home states urging Congress to enact a sensible federal policy that licenses and regulates Internet poker. As an organization, the PPA has been at the forefront of advocating for strong consumer protections and accountability. It is my hope that the committee will respond by taking up legislation introduced by Congressman Barton, H.R. 2666, the Internet Poker Freedom Act. The PPA stands in strong support of Congressman Barton's bill and I would like to take a moment to congratulate the Chairman Emeritus for his leadership on this issue.

The Internet Poker Freedom Act is not about the expansion of gambling in America. It focuses on corralling the current unregulated marketplace and turning it into a system that is safe for consumers and accountable to regulators and our government. The bill mandates technologies to protect consumers from fraud, eliminate underage access, and mitigate compulsive gambling

behaviors. It provides for an open and competitive market that will foster innovation and ensures Indian Tribes have the same rights to apply for a license as other entities.

A key component of Mr. Barton's bill is that it preserves states' rights. The bill does not force any state to participate in an interstate Internet poker system and, equally as important, it allows states to implement their own online gaming regulations. This is especially important given that this year, three states – Nevada, Delaware and New Jersey -- have authorized and are regulating Internet poker and Internet gaming. Further, just last week, North Carolina joined a handful of other states that offer their lotteries over the Internet. And of course, for many years, horse bettors have been able to wager through the Internet in more than two dozen states. While the PPA would prefer the passage of a federal Internet poker bill, like H.R. 2666, that would unify multiple states under a single system, we strongly support the rights of states to pursue Internet gaming opportunities and our membership is urging state governments to do just that in the absence of a federal law.

The activity of the states is significant. It reflects the realities of our modern-day society. More and more, Americans are turning to the Internet for nearly all forms of recreation and activity. Just a decade ago, at this time of year, Americans would be picking up their family holiday photos from the local drugstore or photo center. On the way home, they might stop at the video store and pick up a movie for the family to enjoy that evening. Long past are those days. Americans now turn to the Internet for a variety of services. From creating their holiday cards online and streaming Miracle on 34th Street to playing in a Texas Hold'em poker tournament, the Internet has transformed the way we live.

While some may fear that the advent of Internet gaming would destroy or “cannibalize” brick-and-mortar casinos, the experience in Europe shows the opposite. In the United Kingdom, where online gaming is *not* tied to the land-based industry and has become a multi-billion dollar industry, the brick-and-mortar industry has still shown strong year on year growth. The gross gaming yield of the offline casino industry has risen from £597.7m in 2001 to £803.4m in 2011.¹ This is also the case in Belgium, where online gaming is tied to the land-based industry; and since the regulation of online gaming in the country, there has been a 77% increase² in turnover of the total gaming market.

A recent analysis of U.S. state and Canadian provincial casino revenue from 2006 to 2011 showed that online poker and offline casino gaming are complementary, suggesting that the presence of online poker increases the demand for offline gaming. The researchers found that a market with an additional \$1 million in casino revenue would receive an additional \$2.7 thousand in online poker revenue, revealing that the larger the online poker market, the larger the offline gambling market and vice versa. It also shows that a reduced online poker market has a negative effect on the size of the offline gaming industry.³

Establishing a regulatory regime for online gaming in the U.S. will result in an open and competitive licensed market which would be attractive to both local casino licensees and worldwide operators. It would also minimize unlicensed activities, generate significant tax revenue for the federal government and states and create thousands of high tech jobs. In New

¹ H2 Gambling Capita, *UK Gambling Turnover* (April 4, 2012).

² H2 Gambling Capita, *Belgium Gross Gambling Turnover* (January 1, 2013).

³ Kahlil Simeon Philander and Ingo Fielder, *Online Poker in North America: Empirical Evidence on its Complementary Effect on the Offline Gambling Market* (March 14, 2012).

Jersey, where regulated online gaming launched in November, Governor Chris Christie is predicting that it will generate \$1 billion in casino revenue by July of 2014.

The adoption of regulated Internet gaming in the states means policymakers in the U.S. can no longer consider regulated Internet gaming as a theoretical. It is not a theory; it is reality. Not only can we now reference the current U.S. regulated Internet gaming market, we also have the benefit of learning from Europe, where Internet gaming has been regulated for more than ten years. Today, in the U.S. and in regulated markets throughout the world, it is required that Internet gaming companies consent to audits, implementation of anti-money laundering compliance programs and multi-step identity verification processes, bot detection, and other regulatory measures. These operators employ “best of breed” technologies that protect minors and problem gamblers, ensure that the games are fair, and that sites block players in prohibited jurisdictions. Additionally, regulated operators are accountable to the players, regulators, and law enforcement, and they are continually reviewed to ensure they are meeting (and exceeding) the prescribed technical safeguards.

Of course, there are those who will advocate for a ban on Internet poker and Internet gaming. Let me tell you that this is a foolhardy proposition which would only serve to harm the vulnerable populations that regulation properly protects. As a player organization, the Poker Players Alliance takes consumer protections very seriously. Given the unjustifiable position of Internet gaming prohibitionist; I would argue that we are advocating for a far more reasonable and effective approach to consumer protections than those who would simply stick their heads in the sand.

I would like to take a moment to address some of their allegations head-on and provide the subcommittee with facts, not rhetoric, on how a combination of regulation and technology can meet these challenges.

Restricting underage access to Internet gaming websites is something that all regulated operators address. The U. S. states that currently regulate Internet gaming and regulated markets in Europe require very high standards of identity verification. Gaming site operators are required to undertake age verification before accounts are opened and bets settled. Therefore, anyone who is placing a bet on a website will have to have proved that they are over the age of 21 in the U.S. and 18 in Europe. These requirements are a condition of operators' licenses issued by their various regulators; and regulators can and do regularly test the efficacy of operators' age verification mechanisms. Failure to undertake rigorous age verification could result in the loss of the license and closure of the business.

All online betting companies require customers to open an account to make a bet. Let me be clear: to open an account for real-money play, a player does not have to merely prove that he or she is an adult; the would-be player has to prove that he or she is a specific adult whose identity can be verified through existing third-party databases, such as credit reporting agencies. Identity verification and know-your-customer requirements in the regulated online gaming space are as robust as those in the online banking space. The suggestion by some that you can open an account as "John Smith" just because you have John Smith's credit card information is simply wrong. In all likelihood, you will need to know, for example, the date and amount of John

Smith's last mortgage payment and other similarly granular information. The reason for this is obvious; it is the same incentive banks have for securing their websites to protect against stolen funds. If someone can log-in to an online gaming site pretending to be someone they are not, they will likely steal money which will ultimately have to be paid by the operator. Age verification is an important element of identity verification because, in a regulated environment, failure to do so will result in a revoked license.

While the U.S. market is still very new, it is notable that in Nevada, which began accepting Internet poker play in April of this year, there has not been a single reported incident of underage access. Even more impressive, however, is what we have learned from Europe's history of regulation. In late 2011, the European Commission sought feedback on the effectiveness of its online age controls as part of its review of Internet gaming.⁴ A response was submitted by the Children's Charities' Coalition on Internet Safety. Their response stated:

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

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

⁴ European Commission Green paper on on-line gambling in the internal market 22, 2011 ("EC Green Paper").

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

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

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

- The European Union concluded in a formal report that "it is difficult to draw a direct link between remote gambling and the likelihood of becoming an addicted gambler."⁵
- A British Gambling Prevalence Survey found that addiction rates for online gambling in the UK were lower than for some types of off-line games.⁶
- Researchers at Harvard Medical School's Division on Addiction Studies have summarized the evidence of the UK study as follows: "The case of Internet gambling provides little evidence that exposure is the primary driving force behind the prevalence and intensity of gambling."⁷

Most regulated online gaming markets have required their licensees to ensure that measures are in place to prevent and combat issues associated with problem gaming. These measures have

⁵ European Commission *Green paper on on-line gambling in the internal market 22, 2011 ("EC Green Paper")*.

⁶ Addiction rates among past year gamblers. *British Gambling Prevalence Survey 2007*, National Centre for Social Research, Sept 2007.

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

proven to be more effective than the measures available in the offline gaming market. Such measures include:

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

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

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

With that said, under a regulated market, the opportunity for a fraudulent money laundering scheme to flourish is minimal. To date, looking again at Europe, there have been no significant instances of money laundering through Internet gaming sites. A study conducted by Dr. Michael Levi, professor of criminology at the Cardiff School of Social Sciences⁸, concluded that, “compared to methods of customer identification and monitoring in the off-line gaming and financial services sector, the scope for substantial abuse of e-gaming for laundering purposes is modest.” The study pointed to both the ability to record and track Internet gaming transactions and banking regulations to which authorized companies would be required to adhere. Further, the sophistication of identity verification and the requirement that regulated sites implement these technologies would make it extremely difficult for someone to move money anonymously on an Internet gaming site.

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

The one instance that some alarmists point to as a particular Anti-Money Laundering (AML) vulnerability would be the instance where one player in a poker game attempts to lose money to

⁸ Michael Levi, Ph.D., D.Sc. (Econ.) *Money Laundering Risks and e-Gaming: A European Overview and Assessment*. 2009

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

In closing, it might be useful to focus on the questions that are NOT before this committee right now. First, this committee is not deciding whether Americans will gamble on the Internet – millions of them do, and except in the few states where the activity is licensed, they do it on offshore sites with uneven regulation at best. Second, this committee need not ask the question of whether Internet gaming can be successfully regulated; today, it is successfully regulated in many European jurisdictions, online casino and poker games are regulated in three states, and online lottery and horse bets are successfully regulated in dozens more. As I see it, the question before this committee is who, if anyone, will provide U.S. players with a safe and well-regulated place to play poker on the Internet. We continue to urge Congress to enact the Barton bill and thus accomplish this federally; at a minimum, we urge Congress to do nothing to prevent states from licensing and regulating Internet poker.

Once again, Mr. Chairman and Members of the Committee, I thank you for this opportunity to testify on behalf of my members and your constituents, and I will be pleased to answer any questions you may have.

Mr. TERRY. Thank you. Mr. Bernal, you are now recognized for 5 minutes.

STATEMENT OF LES BERNAL

Mr. BERNAL. Good afternoon. My name is Les Bernal. I am the National Director for Stop Predatory Gambling, and our mission is to end government sponsorship and promotion of gambling. I appreciate the invitation to be here today.

As you consider Internet gambling, I ask you to imagine yourself sitting down with your kids, your grandchildren, your nieces and nephews, in front of a video game, and encouraging them to put their money into it, to play it over and over again, but you knew they could never win, yet you kept encouraging them to do it.

You would never do that, but for the last 40 years in American life, that is exactly what government has been doing by sponsoring and promoting casinos and state lotteries. The more citizens put their money into these games, the more money they are going to lose. Government in this case is not merely permitting private, consensual behavior. This is a public policy. This is a government program that actively sponsors gambling and promotes it by granting monopolies and awarding regulatory advantages to favored firms.

Government-sponsored gambling is a public policy that has failed, and it has failed because, one, it has transformed gambling from a private and local activity into the public voice of American government such that ever-increasing appeals to gamble and ever-expanding opportunities to gamble now constitute the main ways that our government communicates with us on a daily basis.

Government-sponsored gambling has also failed because it has failed to deliver on its promises to fund education, to lower taxes, to pay for needed public services. Just look at the evidence from your own states.

But thirdly, most importantly of all, government-sponsored gambling has failed because it has contributed to patterns of inequality in America, increasing the divide in our country between the haves and the have-nots. Now, there are many forces currently contributing to the rise of inequality such as globalization and technological change that cannot be directly controlled by public policy. But government-sponsored gambling is a public policy and it exists only because policymakers want it to exist.

So whether it is Internet gambling or other forms of government-sponsored gambling, this is a public policy that is based on cheating and exploiting citizens. The best example is slot machines. The machine is mathematically designed that you will lose your money the longer you play it. From the get-go, the more you play, the more you lose, and the big money in Internet gambling is in online slots which make up the 65 to 80 percent of all gambling traffic. And you should know that in the brick-and-mortar business, 75 percent of that money they make is coming from slots. It is all about slot machines. And there are countless stories about how government-sponsored slots are cheating and exploiting citizens, but I am going to share just one. In 2004, New York Times reporter Gary Rivlin toured the headquarters of International Gaming Technology, known as IGT. They are America's biggest maker of elec-

tronic slot machines, and today they design the leading platform for Internet gaming.

Rivlin, the New York Times reporter, tells a story of his visit to the IGT building. "Most of the time most of the people I met inside IGT told me they never played slot machines on their own time. Even one corporate PR staff couldn't resist shaking her head in disbelief as she described scenes of people lining up to play a new machine. 'It was unbelievable to me,' she told me. And when I asked one IGT artist if he ever plays, he acted as if I insulted him. 'Slots are for losers,' he spat and then coming to his senses begged me to consider that an off-the-record comment to a New York Times reporter."

"Slots are for losers," he said, and many of these losers are your constituents. In government's partnership with gambling, there is one kind of loser who is the most lucrative of all, the problem gambler. We refer these people as the expendable Americans because everyone else is going to benefit from the public dollars that come in from people's gambling losses, but this money, we have read it, millions of America is expendable, the addicts.

Gambling operators spend millions of dollars on public relations and research to create the public impression they are not exploiting citizens. Yet, despite all this money, there are two questions they never answer, and maybe we will get that at this hearing today. The first one is how much gambling revenue comes from problem gamblers? And the second question is, what percentage of gambling revenue comes from people who follow "responsible gambling codes of conduct"? We hear that a lot, responsible gambling. How much of the revenues come from people who actually practice that?

So on the last page of my written testimony, there are 11 different studies, 11 different independent studies that show 40 to 60 percent of their profits, gambling profits, come from problem gamblers. That list was compiled as part of a recent report entitled Why Casinos Matter written by the Institute for American Values.

The second question, gamblers who manage to follow responsible gambling codes of conduct, they contribute a mere 4 percent of gambling revenues.

So in closing, government's partnership with gambling has failed. The evidence is all around us that it has been a failed experiment, and sponsoring Internet gambling would be the biggest failure of them all. Just like we wouldn't encourage our own kids or grandchildren to put their money into a video game they would never win, it is time our government stopped cheating and exploiting our own citizens by sponsoring gambling.

[The prepared statement of Mr. Bernal follows:]



100 Maryland Avenue NE, Room 310, Washington, DC 20002 (202) 567-6996

Testimony of Les Bernal, National Director, Stop Predatory Gambling

Before the Subcommittee on Commerce, Manufacturing, and Trade

December 10, 2013

Thank you Mr. Chairman and members of the Subcommittee on Commerce, Manufacturing, and Trade for the opportunity to testify about whether government should sponsor internet casinos.

My name is Les Bernal and I am the National Director of Stop Predatory Gambling, a 501c3 organization. We are a national transpartisan coalition of more than 500,000 citizens and groups from diverse backgrounds, religious faiths, political convictions, and life circumstances. We are the most diverse movement in the nation, an affirmation that most Americans share basic core principles and values regardless of their position along the political spectrum.

We have dedicated ourselves to a fundamental national reform – to stop government from sponsoring and promoting gambling.

In 1999, as government's partnership with gambling began to metastasize, the federally-funded National Gambling Impact Study Commission concluded its intensive investigation of gambling in America with a call for a moratorium on further expansion. That recommendation was willfully ignored as many states began promoting more and more extreme forms of gambling in many more locations: \$50 lottery scratch off tickets; Keno games 1500 times a week at the corner convenience store; regional casinos just a short drive away where citizens can lose their money playing slot machines several times a week instead of 1-2 times a year; and now the latest lobbying push is for internet casinos so every bedroom can be turned into an Atlantic City casino and every smart phone can be a portable slot machine, 24 hours a day. And, nearly all of it is targeted at middle-to-low income citizens.

Whether or not you personally participate in government's gambling program, it is a public policy that is having a major impact on our nation as a whole. It is affecting our health, our economics, our politics, our ideas and social values. It appears to be connected in important ways

to the rise of American inequality. And because these changes are new and still developing, they tend to be only partially and often poorly understood by opinion leaders and the general public alike, especially those who have little if any interaction with government sponsored gambling themselves.

I respectfully ask the Committee members to consider these two questions as you examine the issue of government-sponsored gambling on the internet:

- 1) The very fact that state governments have now begun promoting internet gambling to their own citizens invites the question has government sponsorship of casinos and lotteries failed?
- 2) And why would any reasonable person believe the result will be any different if internet gambling is allowed to be sponsored and promoted by the government?

Has government sponsorship of casinos and lotteries failed?

The evidence shows overwhelmingly the answer is yes. While most people understand lotteries are an extension of government, many citizens don't fully realize that the same is true for casinos. Casinos are the creation of state government and its public policies. They are instituted by the states to create a new revenue source separate from direct taxation and in the process, they create regional monopolies for the casinos. They regulate with a finger on the scale, looking to maximize revenues and often in ways that discriminate against other legal businesses. They rescue casinos from bankruptcy. Without the legal, administrative, regulatory, and promotional privileges provided by state governments, casinos would not be spreading into mainstream American life as they are today and would likely still exist only on the fringes of the society.

Government's partnership with gambling has failed in at least three major ways:

- 1) **It has transformed gambling from a private and local activity into the public voice of American government, such that ever-increasing appeals to gamble, and ever-expanding opportunities to gamble, now constitute the main ways that our government communicates with us on a daily basis.**
- 2) **It has failed to deliver on its over-hyped promises to fund education, lower taxes, or pay for needed public services.**

There is not a state in the country that can point to its gambling program and say it delivered on what was promised citizens. The list of failures seems almost endless...here are two of the most

recent. The four Ohio casinos are on pace to gross about \$868 million this fiscal year, less than half of what was promised in 2009. The Ohio Department of Taxation estimated in 2009, before the vote, that the casinos would generate \$1.9 billion in annual tax revenue.¹

Last month, Atlantic City officials announced the city itself could face bankruptcy after a recent decision by a New Jersey Tax Court to award the city's largest employer and taxpayer - Borgata Casino - a \$48.8 million property-tax reduction, plus interest, that the city will have to refund. At the same time the casino was reducing its tax liability it was securing the privilege of the first online gambling license in the state.

Atlantic City's substantial decline in gambling revenue since 2006 has already triggered a wave of successful tax-assessment appeals by several casinos between 2009 and 2012. At least two - Atlantic Club and Golden Nugget - said last week they planned to seek new assessments to lower their tax liability even more, shifting the burden to residential and other smaller property taxpayers to make up the city's projected revenue loss.²

But not only have they failed to provide the promised revenue, in many instances, some states are subsidizing failing casinos. When casinos come up short, states usually provide new infusions of money, reduced taxes, reduced funding for gambling addiction measures, or other concessions such as lifting smoking bans, in order to sustain revenues and profitability. Rhode Island, Delaware, and New Jersey have all taken special steps to help casinos that might otherwise fail.

Is there a better example how government's partnership with gambling has failed than Atlantic City? After 40 years of casinos and billions of dollars spent and lost in the city, Atlantic City still has a 30% poverty rate and 18% unemployment rate.ⁱⁱⁱ

3) Perhaps most importantly of all, government-sponsored gambling has contributed to patterns of inequality in America.

As gambling has spread into economically distressed communities, it has lured more Americans in the lower rungs of the income ladder. Low-income workers, retirees, minorities, and the disabled make up disproportionately large shares of regional casino patrons and lottery players.^{iv}

In this way, state-sponsored gambling creates a stratified pattern that parallels the separate and unequal life patterns in education, marriage, work, and play that increasingly divide America into haves and have-nots.^v Those in the upper ranks of the income distribution rarely, if ever, make it a weekly habit to gamble at the local casino or buy lottery tickets regularly. Those in the lower ranks of the income distribution often do. Those in the upper ranks rarely, if ever, contribute a large share of their income to the state's take of gambling revenues. Those in the lower ranks do.

Despite the false claims by gambling operators and the public officials that their player base is from the well-to-do, the abundance of penny and nickel slot machines as well as the locations where regional casinos and lottery retailers are positioned reveals who their audience really is.

Many forces currently contributing to the rise of inequality, such as globalization and technological change, cannot be directly controlled by public policy. But government-sponsored gambling *is* a public policy – and it exists only because policy makers want it to exist.

Why would any reasonable person believe the result will be any different if internet gambling is allowed to be sponsored and promoted by the government?

The fact that states are now forcing internet gambling onto their citizens underscores how extreme government's promotion of gambling has become and how badly the policy has failed. And forcing is the right word: on the day before NJ state government kicked off its internet gambling program, Farleigh Dickinson University released a poll showing voters in the state are still opposed to making casino gambling so accessible to their families.^{vi}

Young People and Gambling

According to a *Wall Street Journal* report, only 1.8 million people played poker for money in the U.S. in 2010- that is only ½ of 1% of all Americans.^{vii} The reason for the costly lobbying push is gambling operators want tens of millions of Americans, especially our nation's youth, to lose their money gambling online...a lot more than a tiny ½ of 1%.

No demographic is a bigger target for the casino operators lobbying for internet gambling than America's kids. In a very short time, social gaming has mushroomed into a multi-billion dollar industry. Zynga which accounts for 12 per cent of all Facebook's revenues due to its games such as Farmville, launched Zynga Slots in the UK in June 2012, while the world's biggest online gambling company, bwin.party, announced it launched its own social gaming operation.^{viii}

It's patently untrue when proponents say "regulating" internet gambling would lessen the amount of addicted citizens. Land-based casinos- owned by most of the very same gambling operators lobbying for internet casinos – take as much as 60% of their profits from problem gamblers.^{ix} With their long track record of exploiting problem gamblers as a major part of their business model, how can any credible person conclude giving these casino operators the exclusive right to run internet casinos would have a different result?

It's well-established that the younger the children start gambling, the more likely it is they will become habitual gamblers and also problem gamblers.^x By government sponsoring online gambling, it sets up these kids to be problem gamblers as they go through life.

Internet gambling is the most addictive form of gambling. Almost 1 out of 2 internet gamblers (42.7%) can be classified as problem gamblers, according to a report by prominent international gambling addiction researcher Dr. Robert Williams who presented at the National Council on Problem Gambling Conference in 2011.^{xi}

Internet Gambling Represents an Epic Expansion of Government's Partnership with Gambling

The latest push for internet gambling is another example of the casino gambling lobby's playbook which has been based on presenting seemingly-innocuous gambling bills to legislators, yet in reality resulted in epic expansions of casino gambling onto Main Street across America.

The current lobbying campaign purports to fix something not broken: no one presently is barred in the United States from playing poker online—they just can't legally gamble on it for money or other assets of value. People can, however, play poker online without wagering assets or, if wager they must, they can wager valueless points, for example, and still entertain themselves, compete, sharpen skills, and gain prestige as superior players. Thus, the bill's true purpose is *not* to enable online poker but to enable online *gambling*.

This kind of deceptive campaign was used in 1988 when Congress passed the Indian Gaming "Regulatory" Act which many members were led to believe they were supporting small tribal bingo parlors and card clubs in rural areas of the country. In reality, IGRA was the starting gun for the massive and unrelenting wave of casino gambling that has spread across most states.

Because of the purposely vague way the proponents of IGRA defined the various forms of gambling permitted under the law, casino interests pushed the scope of the law to unimaginable proportions never intended by Congress. While nearly every state has its own story about the failure of IGRA, Connecticut's may be Exhibit A. Anxious to take advantage of the state's position between the metro New York and Boston population centers, gambling interests used IGRA to build two of the biggest casinos in the world, hijacking the state's "Las Vegas Night" law which had allowed charities to conduct occasional social, small stakes gambling nights for fundraising purposes.^{xii}

Another highly-relevant example of the casino gambling lobby's playbook in action is "bingo." Like "poker," most would consider bingo a less extreme form of gambling. Yet in a deliberate effort to circumvent gambling laws, casino interests designed "electronic bingo machines" which are virtually indistinguishable from casino-style slot machines and forced them into states across the U.S. that permitted traditional bingo games.^{xiii} A similar "slotification" of online poker is entirely predictable.

Internet poker casinos represent a very minor portion of the casino business, largely because the house collects a small part ("the rake") of each pot. For example, live poker in Nevada makes only a tiny piece of overall gambling revenue.^{xiv} The major profits to be had are in online slots

which make up 65%-80% of all gambling traffic.^{xv} Legalizing internet poker casinos is simply to build the framework for casino interests to bring in online slots.

The ultimate goal for gambling proponents is to legalize casino gambling on social media platforms like Facebook which would represent the biggest expansion of casino gambling in history, opening a Las Vegas casino in every bedroom, office, dorm room and smart phone in America, 24 hours a day, seven days a week, 365 days a year.

Internet gambling lobbyists are fond of saying people are already experiencing problem gambling on the internet and argue it is a reason why it should be legalized. Think about the logic of that argument: this is the only social problem where the solution is we need *more* of it. There isn't one harmful, shady activity in the entire United States that we need to increase and officially promote on the grounds that some of the social problems related to it are "already here."

While some people are gambling online already, it's very few. To draw people to their internet casino sites and encourage citizens to gamble online, New Jersey casino operators are now running aggressive ad campaigns on all forms of media.^{xvi}

"Prohibition didn't work."

The policy failure of alcohol prohibition is often held up by gambling operators to rationalize expanding government's partnership with gambling. While the prohibition of alcohol may have been a failed policy, commercial gambling was successfully criminalized nearly everywhere in the United States for most of the 20th century.

But what about this so-called "freedom to gamble" argument? Is it the government's job to prohibit whether people want to gamble? While citizens have every right to engage in a destructive obsession, the government has no business encouraging them. Government, in this case, is not merely permitting private, consensual behavior. It is granting monopolies and awarding regulatory advantages to favored firms.

The misleading cry for "regulation" by those who would gain the privilege of such a monopoly begs this question: if the illegal online gambling operators supposedly cannot be controlled, how can you control and regulate the ones you license? If you can't shut out the illegal operators, how would you possibly shut down licensed operators who don't follow the rules?

There are also some who argue that the amount of illegal gambling will go down if government gets into the gambling business. Whether it is lotteries, casinos or internet gambling, *there is no*

evidence from any jurisdiction that illegal gambling has gone down after legalizing commercial gambling.

With the zeal of a teetotaler, there is one memorable and telling trait that those who employ the “Prohibition doesn’t work” message have in common: they don’t gamble themselves. Gary Loveman, CEO of Caesars, Jim Murren, CEO of MGM and Steve Wynn, just to name a few, don’t lose their money gambling on slot machines or other casino games.^{xvii}

Even the people who design the slot machines don’t use them themselves. In 2004 *New York Times* reporter Gary Rivlin toured the headquarters of International Gaming Technology (IGT), America’s biggest maker of electronic slot machines, and who today has designed a leading platform for internet gambling. Rivlin tells the story of his visit to the IGT building: “Most of the people I met inside I.G.T. told me they never played slot machines on their own time. Even one corporate P.R. staff member couldn’t resist shaking her head in disbelief as she described scenes of people lining up to play a new machine. “It was unbelievable to me,” she told me. When I asked one I.G.T. artist if he ever plays, he acted as if I had insulted him. “Slots are for losers,” he spat, and then, coming to his senses, begged me to consider that an off-the-record comment.”^{xviii}

Slots are for losers, he said. The problem here is that some of those “losers” happen to be your constituents.

“We’re providing people entertainment”

David Blankenhorn, a scholar and President of The Institute for American Values in Manhattan, wrote a wonderful column recently examining the highly misleading claim that government’s partnership with gambling is simply nothing more than offering citizens “entertainment.” Here is an excerpt from his column in the Winter 2014 edition of *The American Interest*:

“To hear them tell it, it’s all about how we choose to “entertain” ourselves. Some choose the opera, others prefer baseball games, and some choose casinos. The gambler—sorry, the person being “entertained” by the casino—is alleged to be saying, in effect, “I enjoy betting, and I pay for the pleasure, just as you pay for travel or the theater.”

Sorry. Entertainment, as a dictionary will tell you, is activity that aims to delight, amuse or please. Sometimes it involves a financial exchange (buying a concert ticket), and sometimes it doesn’t (playing charades). When a financial exchange is involved, the exchange (buying the ticket) exists only to facilitate something else (enjoying the concert). But gambling is always and in essence a financial exchange. Any entertainment connected to the exchange—any pleasure, excitement or stimulation—stems from the

exchange itself and cannot exist without it. (Would people go to casinos if no one could win or lose money in them?)

Gambling, then, is a non-instrumental financial exchange, which takes place not in order to facilitate something else, but for its own sake. Conflating the terms “gambling” and “entertainment” therefore constitutes a category mistake. It is disingenuous to claim that the former can be a sub-category of the latter. There is some subtlety to acknowledge here, just as there is subtlety in other comparisons of non-alike experiences. For example, some people prone to violence may be delighted or entertained by killing their enemies. Some people suffering from depression may derive pleasure from getting drunk with their friends. But neither murderers nor drunkards have ever proposed that murder and drunkenness are simply two forms of entertainment, because to do so would constitute an obvious attempt to mislead.

All forms of casino gambling have in common numerous characteristics that don’t exist in actual entertainments, such as attending your daughter’s soccer game or listening to music. For example:

- No other form of “entertainment” causes significant harm to people who “enjoy” it frequently, including the loss of thousands of dollars per hour.
- No other form of “entertainment” depends on profits generated by those who suffer from problems of addiction linked to the entertainment.
- No other form of “entertainment” is often urged (and typically refuses) to provide information to those being entertained about its risks.
- No other purported form of “entertainment” requires such high levels of taxation, regulation and government oversight when it constitutes a business as opposed to a private, small scale activity and, most regrettable of all:
- No other form of “entertainment”, in recent times, is heavily promoted by government.

Here is the rule of thumb: If a practice is basically dishonest, its advocates will speak of it dishonestly. They will call it by wrong names. They will allege that its purposes are other than what they are. They will engage in this fraudulent language partly to hide the dishonesty of the actual activity, and partly because they themselves are at least somewhat ashamed of what they are doing.¹⁹

A primary reason why gambling operators promote the impression they represent “entertainment” is to hide the fact that a large proportion of casino revenue comes from problem and pathological gamblers. Problem gamblers account for 40 to 60 percent of slot machine revenues.^{xx} Casual gamblers, despite all the public relations by gambling interests to the contrary, are virtually irrelevant to their profits. A Canadian study found that people who follow responsible gambling guidelines made up 75% of the players *but contributed only 4 percent of net gambling revenue.*^{xxi}

(At the end of my testimony is a copy of the must-read Appendix from “Why Casinos Matter” which offers eleven independent, respected studies that researched the question of “How Much Gambling Revenue Comes from Problem Gamblers?”)

“Only 1% of Americans have a problem”

For many years, gambling operators have avoided denying their business practices led to life-changing addictions for millions of Americans. Instead, they have deliberately sought to minimize the problem. One way they have tried to achieve this is by promoting the notion that only 1% of Americans are hurt by government sponsorship of gambling, notwithstanding the fact they funded the research.

At the 2011 National Conference on Problem Gambling in Boston, I appeared on a panel with Christine Reilly, a spokeswoman for the National Center of Responsible Gaming (NCRG) which does casino-funded gambling addiction research. After Reilly repeated the 1% claim again, I turned to the audience of more than 500 problem gambling treatment professionals from across the U.S. and asked them to raise their hand if they, the people who are on the front lines of helping those with dealing with gambling addiction in America, believe that number was a true indicator of what was happening across the country. *Not a single hand went up in the entire ballroom.*

The NCRG promotes itself as an organization that funds peer-reviewed, independent research on gambling addiction. However, a recent analysis by Barbara Whitehead of The Institute for American Values found

“NCRG’s research funding and agenda is largely devoted to scientific investigations into the biology of pathological gambling, including its diagnosis and treatment. Of the 200 peer reviewed studies it has funded, not a single one investigates the interplay between gamblers and the gambling machines; the addictive nature of modern gambling machines; or the industry’s own research into designing more addictive machines.

Many scholars have criticized the one percent figure as misleading. It is based on a survey of the general adult population—a significant proportion of whom do not gamble

at all. Moreover, it counts only the most severe form of problem gambling—typically people who exhibit three or more clinical symptoms used in the scoring diagnosis of mental health disorders. It excludes gamblers who have less severe gambling problems and people whose lives and livelihoods may be adversely affected by their gambling but who do not meet any of the criteria of a mental health diagnosis.”

Conclusion

Internet gambling presents an opportunity for us as a country to reexamine government sponsorship of gambling. Who has really benefitted from this policy over the last forty years? Only one group can be considered a “winner” and it is the gambling operators themselves.

Government’s experiment with gambling has failed and it’s time we took government back out of the gambling business.

**Appendix excerpted from “Why Casinos Matter” by Barbara Whitehead,
Institute for American Values, September 2013**

How Much Gambling Revenue Comes from Problem Gamblers?

Proponents of casino gambling often say that casinos provide entertainment for many Americans who enjoy occasional gambling. They almost never say that a large proportion of casino revenue comes from problem and pathological gamblers.

Evidence from scholarly studies on the relationship between casino income and problem gambling consistently and robustly points to the conclusion that casinos disproportionately rely on problem and pathological gamblers for their revenue base.

Evidence from Direct Estimates

1. About 35 to 50 percent of casino revenues derive from problem and pathological gamblers.

Source: Earl L. Grinols and J.D. Omorov, “Development or Dreamfield Delusions? Assessing Casino Gambling’s Costs and Benefits,” *Journal of Law and Commerce* 16, no. 1 (1996): 60.

2. About 33.1 to 55 percent of casino revenues derive from problem gamblers (Alberta: 37.2 percent; British Columbia: 33.1; Nova Scotia: 48.7; Iowa: 38.4; New York: 41; Washington: 55).

Sources: Henry R. Lesieur, “Pathological and Problem Gambling: Costs and Social Policy,” Testimony before the Rhode Island House Gambling Commission, October 15, 2002. Henry R. Lesieur, “Costs and Treatments of Pathological Gambling,” *Annals of the American Academy of Political and Social Science* 556, no. 153 (March 1998):

3. About 37.3 percent of gambling expenditure was accounted for by residents with gambling problems.

Source: Tremayne, Kell, Helen Masterman-Smith, and Jan McMillen, *Survey of the Nature and Extent of Gambling and Problem Gambling in the ACT* (Sydney: University of Western Sydney, Australian Institute for Gambling Research, 2001), 10.

4. About 38.4 percent of gaming machine and casino table game revenue derives from problem gamblers.

Source: Australian Government Productivity Commission, *Australia's Gambling Industries, Inquiry Report*, no. 10 (Canberra: Australian Government Productivity Commission, 1999), vol. 3: appendices, 12, http://www.pc.gov.au/__data/assets/pdf_file/0006/82554/gambling3.pdf.

5. About 47.5 percent of gaming machine and casino table game revenue derives from problem gamblers.

Source: Tremayne, Kell, Helen Masterman-Smith, and Jan McMillen, *Survey of the Nature and Extent of Gambling and Problem Gambling in the ACT* (Sydney: University of Western Sydney, Australian Institute for Gambling Research, 2001), derived from p. 114, table 25.

Evidence from Relative Gambling Losses

6. About 50.2 percent of casino revenues derive from problem gamblers.

Australian problem players lose 17 times more than non-problem players. Nine percent of machine players are problem gamblers. Implies 62.7 percent of machine revenue is from problem gamblers. $.627 * .8 = 50.2$ percent. (The .8 multiplier in this note and notes 7–11 derives from 80 percent of casino revenues coming from slot machines.)

Source: Henry R. Lesieur, "Pathological and Problem Gambling: Costs and Social Policy," Testimony before the Rhode Island House Gambling Commission, October 15, 2002.

7. About 54.2 percent of casino revenues derive from problem gamblers. Nova Scotian problem players lose 16 times more than non-problem players. Sixteen percent of machine players are problem gamblers. Implies 67.8 percent of machine revenue is from problem gamblers. $.678 * .8 = 54.2$ percent.

Source: Henry R. Lesieur, "Pathological and Problem Gambling: Costs and Social Policy," Testimony before the Rhode Island House Gambling Commission, October 15, 2002.

Evidence from Gambling Machine Revenue Shares

8. About 33.8 percent of casino revenues derive from problem gamblers.

About 42.3 percent of EGM (electronic gaming machine) revenue came from people with gambling problems.

Source: Australian Government Productivity Commission, *Australia's Gambling Industries, Inquiry Report*, no. 10 (Canberra: Australian Government Productivity Commission, 1999); $0.8 \cdot 42.3 \Rightarrow 33.8$ percent.

9. About 38.6 percent of casino revenues derive from problem gamblers.

About 48.2 percent of EGM revenue came from people with gambling problems.

Source: Tremayne, Kell, Helen Masterman-Smith, and Jan McMillen, *Survey of the Nature and Extent of Gambling and Problem Gambling in the ACT* (Sydney: University of Western Sydney, Australian Institute for Gambling Research, 2001), 114; $0.8 \cdot 48.2 \Rightarrow 38.6$ percent.

10. About 48 percent of casino revenues derive from problem gamblers.

Given the variability associated with different sample sizes and methods for calculating the shares, the combined risk category CPGI 3+ [Canadian Problem Gambling Index] probably gives a more reliable estimate of the relative spending of higher risk gamblers. It ranges from 42 to 74 percent [of total gaming machine spending], with an average of 60 percent.

Source: Australian Government Productivity Commission, *Gambling: Productivity Committee Inquiry Report*, no. 50 (Canberra: Australian Government Productivity Commission, 2010), vol. 2, app.B, B11, http://www.pc.gov.au/__data/assets/pdf_file/0003/95682/gambling-report-volume2.pdf; $0.6 \cdot 8 \Rightarrow 48$ percent.

11. About 49.6 percent of casino revenues derive from problem gamblers.

About 62 percent of machine revenue is derived from problem gamblers.

Source: Robert Williams and Robert Wood, *The Demographic Sources of Ontario Gaming Revenue, Final Report*, prepared for Ontario Problem Gambling Research Centre (Ontario:

Ontario Problem Gambling Research Centre, 2004), 42, table 17. "Proportion of Revenue Derived from Problem Gamblers as a Function of Type of Gambling": $0.8 \times .62 \Rightarrow 49.6\%$

ⁱ *The Columbus Dispatch*, Dec. 8, 2013 <http://www.dispatch.com/content/stories/local/2013/12/08/casinos-fall-short-of-revenue-projections.html>

ⁱⁱ "Stung by tax ruling, Atlantic City braces for the worst," By Suzette Parmley, *Philly Inquirer* Staff Writer, October 28, 2013

ⁱⁱⁱ "Millions spent on casinos didn't help Atlantic City," *USA Today*, June 11, 2013 <http://www.usatoday.com/story/news/nation/2013/06/11/atlantic-city-casinos-money-squandered/2412791/>

^{iv} "Why Casinos Matter" by Barbara Whitehead, Institute for American Values, Sept. 2013

^v "Why Casinos Matter" by Barbara Whitehead, Institute for American Values, Sept. 2013

^{vi} Farleigh Dickinson University PublicMind Poll, Dec. 2013 <http://publicmind.fdu.edu/2013/doubt/>

^{vii} *The Wall Street Journal*, April 18, 2011, <http://blogs.wsj.com/in-charge/2011/04/18/time-to-fold-em/>

^{viii} *The Daily Mail UK*, July 15, 2012. "Facebook 'creating a generation of gambling addicts because of site's Las Vegas style games.'" <http://www.dailymail.co.uk/news/article-2174024/Facebook-creating-generation-gambling-addicts-sites-Las-Vegas-style-games.html>

^x National Council on Problem Gambling, 2012. <http://www.ncpgambling.org/14a/pages/index.cfm?pageid=3390#kidsteens>

^{xi} "Internet Gambling: Prevalence, Patterns, Problems, and Policy Options," by Dr. Robert Williams, <http://www.gamblingresearch.org/content/research.php?appid=2285>

^{xii} *Boston Globe Magazine*, Charlie Pierce. "High Stakes." July 30, 2006 http://www.boston.com/news/globe/magazine/articles/2006/07/30/high_stakes/

^{xiii} "Is It Bingo, Or A Slot Machine?" *Gambling and the Law*, Professor I. Nelson Rose, Whittier Law School, 2002. <http://www.gamblingandthelaw.com/columns/90-82nigcregulations.html>

^{xiv} *Card Player*, December 3, 2012. <http://www.cardplayer.com/poker-news/14556-commercial-casinos-in-full-court-press-to-legalize-online-poker-during-lame-duck>

^{xv} "Why are online slots so popular?" *Casino City Times*, June 8, 2011. <http://www.casinocitytimes.com/news/article/why-are-online-slots-so-popular-197594>

^{xvi} "Bet on it: Online gaming ads to swamp market," *Ashbury Park Press* (NJ), Dec. 2, 2013 <http://www.app.com/article/20131202/NJNEWS10/312020013/Bet-Online-gaming-ads-swamp-market>

^{xvii} "The Smartest Guys NOT in the Room," <http://www.youtube.com/watch?v=a0IVTsTrgcs>, 2012

^{xviii} **The Tug of the Newfangled Slot Machines** by Gary Rivlin, *The NY Times Magazine*, May 9, 2004

^{xix} "Wanna Bet," Winter 2014 edition of *The American Interest*, by David Blankenhorn, Institute for American Values
New York's Promise: Why Sponsoring Casinos Is a Regressive Policy of a Great State," by David Blankenhorn, Institute for American Values, Oct. 2013

^{xx} "Addiction By Design," by Dr. Natasha Schull of The Massachusetts Institute of Technology, 2012.
<http://press.princeton.edu/titles/9156.html>

^{xxi} "Addiction By Design," by Dr. Natasha Schull of The Massachusetts Institute of Technology, 2012.
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Mr. TERRY. Thank you. Dr. Volberg? You are recognized for 5 minutes.

STATEMENT OF RACHEL VOLBERG

Ms. VOLBERG. Thank you, Chairman Terry, Ranking Member Schakowsky, and members of the subcommittee. I would like to thank you for inviting me to testify this morning. My remarks today will focus on the likelihood of an increase in problem gambling in the wake of the introduction of online gambling, in possible changes in those most vulnerable to developing problems and on additional measures that could be adopted to protect consumers and minimize harm.

The bill before you, H.R. 2666, provides for federal oversight of states and tribes that would issue licenses for online poker. H.R. 2666 includes several laudatory requirements for addressing problem gambling and responsible gambling including provision for a federally managed self-exclusion program. H.R. 2666 requires states and tribes to adopt practices that the Federal Government recommends to protect consumers and amends the Public Health Service Act to give SAMHSA authority to address gambling addiction.

While these are welcomed improvements over an earlier version, I remain concerned that while H.R. 2666 authorizes SAMHSA to establish and implement programs for the identification, prevention and treatment of problem gambling, there is no specific mention of research or any provision to assure that research on online gambling and its impacts will be undertaken.

There is substantial research internationally showing that problem gambling rates are three to four times higher among online gamblers compared to those who gamble but not online. It is quite likely that there will be an increase in problem gambling prevalence in the United States as online gambling participation increases and as inexperienced players encounter difficulties controlling their involvement.

Although these new problem gamblers may eventually overcome the difficulties related to their gambling, most of the financial, psychological, social, work, school, and legal harms associated with problem gambling cannot be undone.

Problem gambling is not distributed evenly throughout the population, and some groups are more vulnerable than others. Generally speaking, males, adolescents, some racial and ethnic groups and people with low income and education have the highest rates of problem gambling. However, in some countries, rates of online gambling participation are higher among women and older adults compared with more traditional forms of gambling, and these new groups of gamblers may be particularly vulnerable to developing problems going forward.

Understanding who is vulnerable has relevance to both gambling policy and the development of effective interventions. Beyond likely increases in prevalence, risk profiles may also change, and it would be important to be prepared to address the needs of new groups of problem gamblers as these emerge in an online environment.

Constructing public policy and developing effective interventions requires empirical evidence which in turn requires research. Inter-

nationally, research serves an increasingly critical role in informing gambling policy and regulation. However, the roughly \$3 million that is spent annually on gambling research in the United States means that we know very little about how gambling in our country can be most safely provided.

My own experience suggests that redressing this issue requires enshrining both consumer protection and the role of research in legislation that permits new forms of gambling. Most such legislation emphasizes revenue generation, and mention is rarely made of consumer protections.

That is why I am particularly proud of the legislation that was passed 2 years ago in my home State of Massachusetts. The Expanded Gaming Act makes it clear that the intention of the statute is to provide the greatest possible economic benefits while reducing to the maximum the potentially negative consequences of introducing casino gambling to the Commonwealth. The effort to reduce negative consequences includes establishment of a public health trust fund from which 5 percent of the tax revenues generated annually by the three new casinos will be distributed for problem gambling research, prevention, and treatment.

Thank you for the opportunity to testify, and I look forward to answering your questions.

[The prepared statement of Ms. Volberg follows:]

Testimony of Rachel A. Volberg

Associate Professor

School of Public Health & Health Sciences

University of Massachusetts Amherst

Before the House Energy and Commerce Committee

Subcommittee on Commerce, Manufacturing, and Trade

Hearing on

"The State of Online Gaming"

Rayburn House Office Building, Washington, DC

December 10, 2013

Summary of Testimony

Online gambling is a fluid and dynamic market characterized by significant inter-jurisdictional inconsistencies. As a result, policymakers, operators and other stakeholders face substantial ambiguities about the best approach to legalizing and regulating online gambling. My testimony today addresses several issues: (1) whether there will be an increase in the number of problem gamblers as a result of legalizing online gambling; (2) vulnerable populations; (3) the importance of funding research as well as treatment and prevention; and (4) the importance of balancing revenue generation and consumer protection.

Good morning Chairman Terry, Ranking Member Schakowsky, and Members of the Subcommittee. Thank you for inviting me to testify this morning. My name is Rachel Volberg. I am an Associate Professor at the University of Massachusetts Amherst School of Public Health and Health Sciences. I have specialized in population studies of gambling and problem gambling for 28 years.

The Current Situation and Recent Developments

Online gambling has only existed since 1995 and, around the world, jurisdictions continue to experiment with a range of approaches to legalization. Some jurisdictions prohibit most or all forms of online gambling; at the other end of the spectrum are governments that permit nearly all forms of online gambling. In the middle are jurisdictions that have put in some legal restrictions, those that provide for a domestic online market with patronage restricted to their own citizens, those that also prohibit residents from accessing online gambling outside the country, and those that operate online gambling but prohibit their own residents from accessing the sites (Williams, Wood, & Parke, 2012; Wood & Williams, 2009).

For many years, the United States lay at the prohibition end of this spectrum. As recently as 2006, Congress passed the Unlawful Internet Gambling Enforcement Act (UIGEA) which made it illegal for financial transaction providers to transfer funds to online gambling sites. In the wake of this legislation, a significant number of online gambling sites stopped taking bets from U.S. citizens. Despite the law, many U.S. players were able to circumvent UIGEA by using non-U.S. financial transaction intermediaries to place bets. While overall participation in online gambling in the United States is quite low (estimates range from 0.3% to 3.0%) (Rasmussen Reports, 2006; Welte, Barnes, Wieczorek, Tidwell, & Parker, 2002), a recent survey of international online gamblers found that 25% of the respondents were from the United States (Wood & Williams, 2009).

In December 2011, the Department of Justice issued a ruling declaring that the Wire Act, the major federal anti-gambling statute, applied only to bets on sports events and races. This announcement opened the door for individual states to offer any form of already legal intra-state gambling in an online format. In the two years since the DOJ ruling, Nevada passed legislation legalizing online poker while Delaware and New Jersey legalized online gambling more generally. Eight other states, including California, Hawaii, Illinois, Iowa, Massachusetts, Mississippi, Pennsylvania and Texas are considering legislation to authorize online gambling in 2014. Two states, Georgia and Illinois, now allow sales of lottery tickets online with Florida and Massachusetts considering a similar move (National Conference of State Legislatures, 2013).

H.R. 2666 provides for Federal oversight of state and tribal agencies that will issue licenses for online poker through a newly-established Office of Internet Poker Oversight within the Department of Commerce. This office will have the responsibility to prescribe minimum standards for qualifying these state and tribal agencies although each agency will establish its own requirements for the development of a Compulsive Gaming, Responsible Gaming, and Self-Exclusion Program that licensees will need to implement as a condition of licensure. H.R. 2666 does include several minimum requirements such as informational materials about responsible gaming and self-exclusion; individualized responsible gaming options such as self-imposed limits on deposits, time and bet amounts, and access to funds; and a self-exclusion program. H.R. 2666 also requires state and tribal agencies to adopt any additional practices that the Department of Commerce recommends to protect consumers, specifically citing the National Council on Problem Gambling's Internet Responsible Gambling Standards, and amends the Public Health Service Act to give SAMHSA authority to address problem gambling.

While these are improvements over an earlier version of this bill, the approach proposed in H.R. 2666 still guarantees that requirements for programs to prevent and mitigate gambling-related

problems will vary significantly across the states. There is already tremendous variability in existing efforts to address problem gambling in the United States, with per capita expenditures on problem gambling services, including prevention, treatment and research, ranging from \$1.42 in Delaware to less than one cent in Colorado (Marotta, Armentano, Vander Linden, & Whyte, 2013). With each state responsible for its own consumer protection and harm minimization requirements, and with states invariably competing with one another for players and revenues, some states will implement far less restrictive online gambling regimes than others and players, migrating to these less restrictive sites, will not benefit from the tools that are put in place to protect consumers and prevent gambling problems. While competition among online gambling providers ensures a cost-efficient and appealing consumer product, a free market is likely to come at the cost of less player protection (Williams, West, & Simpson, 2012).

Finally, while establishing minimum consumer protections at the federal level will be helpful, these measures will not be adequate without a mechanism to adequately fund prevention, treatment and, most importantly, research on problem gambling in the United States. While the language in H.R. 2666 directing SAMHSA to take primary responsibility to address problem gambling is a good first step, the United States lags far behind other countries in addressing problem gambling. As I testified two years ago before this committee, state funding for problem gambling prevention, treatment and, most especially, research in the United States is approximately one-twentieth of the level in countries such as Australia and Canada and there is no dedicated federal funding for problem gambling services at all (Volberg, 2011).

A Likely Increase in Problem and Pathological Gambling

Prevalence (or total stock) of a disorder is determined by incidence, or the inflow of new cases, duration, and the outflow of current cases through recovery, migration or death (Abbott, 2006). In the study of clinical disorders, pathological gambling (renamed disordered gambling in the DSM-V) is considered a chronic disorder. Chronic disorders strongly tend to recur once fully developed, constituting a lifelong vulnerability. This vulnerability to relapse may be effectively treated and kept in check. But a period in which the individual is relatively free of symptoms does not mean that the person is free of the disorder.

There is substantial research showing that the prevalence of problem gambling is three to four times higher among online gamblers compared to non-Internet gamblers (Griffiths & Barnes, 2008; Jonsson, 2012; Ladd & Petry, 2002; Wood & Williams, 2007, 2009). In a California survey that I directed in 2006, although only 2% of our respondents had ever gambled on the Internet, 11% of these individuals were classified as pathological gamblers and another 19% were classified as subclinical problem gamblers. In a logistic regression analysis that controlled for individual demographics and co-occurring behaviors and disorders, respondents who had gambled on the Internet in the past year were ten times more likely to be a problem or pathological gambler compared with those who had not gambled on the Internet (Volberg, Nysse-Carris, & Gerstein, 2006).

One reason that legalization of online gambling may lead to an increase in the rate of problem gambling is that legalization provides tacit governmental approval for these activities and leads citizens to assume that the products are safe. This in turn typically leads to an increase in overall participation, as is also seen in the legalization/decriminalization of prostitution, abortion, and cannabis (Alan Guttmacher Institute, 2008; Jakobsson & Kotsadam, 2011; MacCoun, 2010; Wardle, Griffiths, Orford, Moody, & Volberg, 2011). Increases in overall gambling participation are reliably associated with

increases, at least temporarily, in the prevalence of problem gambling (Grun & McKeigue, 2000; Lund, 2008; Williams, Volberg, & Stevens, 2012).

Another reason that legalization is likely to increase rates of problem gambling is because the nature of online gambling makes it inherently more problematic than most other forms of gambling. Greater convenience, easier access, the solitary nature of play, the ability to play when intoxicated, the lack of realistic cash markers, and the ability to play multiple sites and/or games simultaneously are all features that contribute to a diminution in players' ability to control their involvement. Another challenge is that online problem gamblers have a much more difficult time avoiding gambling venues which are available at the click of a mouse (Schull, 2005; Wood, Williams, & Lawton, 2007).

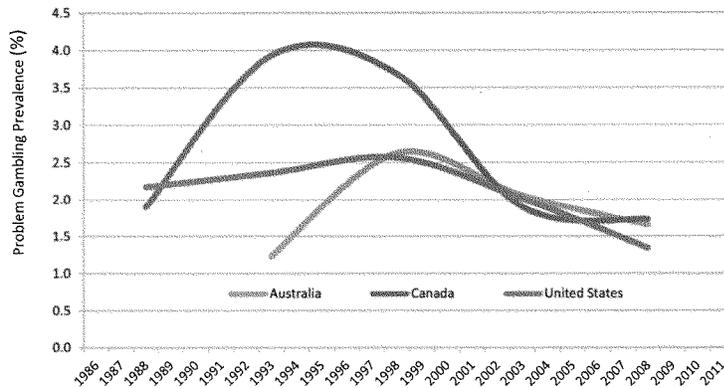
Most things that go up usually come down and this is as true in epidemiology as in other realms. Epidemiological research strongly suggests that problem gambling prevalence does eventually level out and decline, even if accessibility continues to increase (Williams, Volberg et al., 2012). Greater public awareness, expanding services for problem gamblers and regulatory, industry and public health measures are among the likely contributors to such declines. What is not known is how quickly these and other factors can have a significant impact. It is also not known if these factors can prevent problem escalation even if introduced concurrently with increased access to gambling (Abbott, 2005; Abbott, Volberg, Bellringer, & Reith, 2004).

For many years, it was widely assumed that as gambling opportunities increased, there would be corresponding increases in the prevalence of problem gambling and related harms. Evidence from studies of gaming industry employees (Guttentag, Harrigan, & Smith, 2012; Hing & Gainsbury, 2011; Shaffer, Vander Bilt, & Hall, 1999; Wu & Wong, 2008) as well as population surveys in the United States and other countries (Abbott & Volberg, 2000; Gerstein, Volberg, Harwood, & Christiansen, 1999; Pearce, Mason, Hiscock, & Day, 2008; Productivity Commission, 1999; Sévigny, Ladouceur, Jacques, & Cantinotti,

2008; Shaffer, LaBrie, & LaPlante, 2004; Storer, Abbott, & Stubbs, 2009; Welte, Wieczorek, Barnes, Tidwell, & Hoffman, 2004) led researchers to conclude that there was a link between the availability of gambling and the prevalence of problem gambling.

All of the studies cited above are single cross-sectional surveys rather than studies that examine changes in problem gambling prevalence in the same jurisdiction over time. A recent study that I undertook with two Canadian colleagues looked all of the 202 problem gambling prevalence studies that were carried out internationally between 1975 and 2012; developed weights to adjust for the main methodological differences that independently influence problem gambling prevalence rates obtained in surveys; and applied these weights to create standardized problem gambling prevalence rates for all of the studies (Williams, Volberg et al., 2012). The following chart presents our summarized results for the Australian states, the Canadian provinces and the U.S. states.

Standardized Problem Gambling Prevalence Rates over Time (5 Year Smoothed Averages)



Stated generally, we found that problem gambling rates started increasing in North America and Australia beginning in the late 1980s to early 1990s and achieved a peak in the late 1990s and early 2000s. This period is roughly coincident with the most rapid introduction and expansion of gambling opportunities in these countries, the greatest increase in per capita gambling expenditure and significant increases in the overall rate of gambling participation. There has been a general worldwide downward trend in both gambling participation and problem gambling rates beginning in the late 1990s for North America and the early 2000s for Australia and other countries. Current rates are now very similar to what they were in the late 1980s prior to the expansion of casino and slot machine gambling.

Considering that gambling availability has increased in most jurisdictions over the past 30 years, these results provide support both for the contention that increased gambling availability is related to increased problem gambling and the contention that populations tend to adapt over time. We believe that there are several mechanisms likely responsible for decreasing problem gambling prevalence, including increased awareness of the potential harms of gambling (creating less susceptibility); decreased overall participation in gambling (due to greater wariness as well as the novelty having worn off); people being removed from the population pool of problem gamblers due to severe adverse consequences deriving from their gambling (e.g., bankruptcy, incarceration, suicide); increased industry and/or government efforts to provide gambling more safely, to enact programs to prevent problem gambling, and to provide treatment resources; and the increasing age of the population.

Although problem gamblers may eventually overcome difficulties related to their gambling, most of the financial, psychological, social, work/school and legal harms associated with problem gambling cannot be undone (Gainsbury & Wood, 2011; Williams, Wood et al., 2012). Given this scenario, it is essential that regulatory policies take account of likely increases in problem gambling in the wake of the legalization of online gambling in the United States.

Protecting Vulnerable Populations

Problem gambling is not distributed evenly throughout the population and there is good evidence that some groups in the population are more vulnerable to developing gambling-related problems than others. Internationally, males, adolescents and young adults, non-majority ethnic groups, and individuals with low income, low occupational status and less formal education have been found to be at higher risk for problem gambling. In relation to online gambling, concerns about vulnerable groups tend to focus rather narrowly on young men and early youth surveys in North America found that people in their mid to late teenage years had higher prevalence rates than adults.

However, there is emerging evidence that online gamblers may be different from those who gamble in other ways. For example, several studies have found that rates of online gambling are higher among women than among men (Ialomiteanu & Adlaf, 2001; Svensson & Romild, 2011; Wardle, Moody, Griffiths, Orford, & Volberg, 2011). With older adults showing the fastest growth in adoption of online technologies, it is possible that this subgroup in the population may be at increasing risk. This is particularly true since older adults tend to have the lowest levels of participation in traditional forms of gambling.

In an analysis of surveys in several states that I conducted some years ago, I found that there had been a marked increase in the proportion of problem gamblers who were women in half of these jurisdictions while, in the others, the proportion of problem gamblers who were men had increased (Volberg, 2004). In three of the states, the proportion of problem gamblers who were non-Caucasian (mainly Native American) had also increased significantly. These were all states that had substantial growth in the number of tribal casinos and 'casino-style' charitable gambling operations. From these studies, it appears that changes in the availability of particular *types* of gambling are instrumental in altering the demographic characteristics of problem gamblers.

In considering vulnerable populations, it is important to take note of some groups in the population with 'bimodal' patterns of gambling participation. Compared to other groups in the population, members of these groups are less likely to gamble, overall. However, those who do gamble do so heavily. Groups in this category include some ethnic minorities and recent immigrant groups (e.g., African Americans in the U.S., Pacific Islanders in New Zealand and Eastern European immigrants in Sweden). These appear to be sectors of the population in the early stages of introduction to high risk forms of gambling. Some of these groups have exceedingly high levels of problem gambling (Abbott, 2001; Abbott, Volberg, & Rönnerberg, 2004; Martins, Ghandour, & Storr, 2011; Welte, Barnes, Tidwell, & Hoffman, 2008).

Understanding who is vulnerable to developing gambling-related problems has relevance to both gambling policy and the development of effective interventions to prevent difficulties and assist those with problems. For example, legislation and policies that significantly enhance access to slot machines, table games and other continuous gambling forms can be expected to generate increases in disordered gambling. Risk profiles are also likely to change, with disproportionate increases among women and some other population sectors including ethnic and new immigrant minorities. Problem gambling may also move 'up market,' becoming somewhat more evenly distributed throughout socioeconomic strata and age groups.

The Importance of Funding Research

Formulating public policy is never easy. To construct *rational* public policy, decisions must be based on accurate assessments of the likely impacts of any given action. However, to make such assessments requires information which requires, in turn, empirical research.

Internationally, research serves an increasingly critical role in informing gambling policy and regulation. This work goes well beyond questions of problem gambling prevalence to address critical issues related to the provision and regulation of commercial gambling—issues such as the positive and negative impacts of legalized gambling, effectiveness of self-exclusion and pre-commitment programs and the impact of changes to gambling technology on players and profits. While experience in other jurisdictions clearly shows that independent research can play a vital role in minimizing the harms and maximizing the benefits associated with the provision of legal gambling, the miniscule amount spent on gambling research in the United States means that we know very little about how gambling in our country can be most safely provided.

As I noted above, other countries spend far greater amounts on problem gambling services than the United States. Two years ago before this committee, I noted that funding for problem gambling services per capita in the United States is approximately one-twentieth the level in some other countries (Volberg, 2011). In my testimony, I was comparing per-capita funding for problem gambling services in the U.S. in 2004 with per-capita funding for these services in several other countries, including Canada, Australia, New Zealand and South Africa (Volberg, 2009). Since 2004, spending on problem gambling services in Canada has grown from \$44 million (USD) to \$80 million (USD) (Canadian Partnership for Responsible Gambling, 2011) while the new government in the Australian state of Victoria has pledged to spend \$31 million (USD) annually over the next five years on problem gambling services, up from \$10 million (USD) in 2004 (Victorian Liberal Nationals Coalition, 2010). Although spending on problem

gambling services in the United States has risen since 2004, from approximately \$25 million to \$61 million, this increase is primarily due to the number of states that have legalized casino gambling since that time and are now providing publicly funded problem gambling services (Marotta et al., 2013).

In addition to spending far more on problem gambling services in general, other countries dedicate substantially greater revenues to research on problem gambling. The proportion of overall expenditures on problem gambling services that goes to research ranges from 10% in Victoria, Australia to 25% in Sweden. The most recent survey of funding for problem gambling services in the United States found that less than 3% of the \$61 million that states spent overall went to research (Marotta et al., 2013).

In my home state of Massachusetts, the Expanded Gaming Act of 2011 requires that the Massachusetts Gaming Commission establish an annual research agenda to assist in understanding the social and economic effects of casino gambling in Massachusetts and in minimizing the harmful impacts. With the further requirement that the Commission and its Gaming Policy Advisory Committee make annual, scientifically-based recommendations to the Legislature, the new law is unique in enshrining the role of research in enhancing responsible gambling and mitigating problem gambling in Massachusetts. While the Public Health Trust Fund that will support programs dedicated to addressing problem gambling (including the annual research agenda) has not yet been established, the Massachusetts Gaming Commission has elected to spend significant resources of its own to conduct a Baseline Study prior to the introduction of casinos in Massachusetts. These research findings will help inform how monies from the Public Health Trust Fund are expended, assist in assessing community-level impacts, improve problem gambling prevention and treatment, and provide all of the stakeholders in Massachusetts with a neutral database for strategic analysis and decision-making.

We have learned some recent salutary lessons about the willingness of state governments to provide help for vulnerable populations. Such funding tends to be highly vulnerable to changes in government and in economic circumstances, as recent decisions by several states to reduce or eliminate existing funding for problem gambling services demonstrate (Berzon, 2011). To ensure the long-term budgetary health of such programs, language is needed within any federal bill legalizing online gambling to assure that a reasonable level of funding for problem gambling services is made available and preserved over time and to also assure that research will be undertaken to keep the federal government as well as state governments informed about new developments and emerging best practices in preventing and treating problem gambling.

Finally, I believe that separating research from other mitigation efforts, such as treatment and prevention, is important in order to focus beyond narrow concerns with disability and consider the full spectrum of gambling behavior and the broad array of institutions concerned with these activities from an empirical perspective. At the federal level, this approach is clearly reflected in the separation between the Substance Abuse and Mental Health Services Administration (SAMHSA) which oversees prevention and treatment issues and the National Institutes of Health (NIH) and the National Science Foundation (NSF) where basic research is carried out.

Balancing Revenues and Consumer Protection

Across many jurisdictions, gambling operators and governments are constrained by the profit motive in their willingness and ability to minimize and mitigate the harms arising from the introduction of new forms of gambling. The extent to which best practices for problem gambling minimization and mitigation will be adopted is often influenced by pressures from politicians, senior officials, industry lobby groups and other advocates.

Governments, in particular, face conflicting incentives in relation to gambling legalization between maximizing revenues from gambling operations and protecting the health of their citizens. Most legislation legalizing gambling in the United States has emphasized the importance of revenues; rarely is mention made of the importance of consumer protection. However, as one New Zealand regulator told me some years ago, “if it isn’t in the legislation, then regulators can’t regulate it.” He was pointing to the importance, in the New Zealand Gambling Act of 2003, of the multiple aims of the legislation. These were to control the growth of gambling, prevent and minimize the harm caused by gambling, ensure that money from gambling benefits the community, and facilitate community involvement in decisions about the provision of gambling. To my knowledge, this was the first time that any legislation recognized consumer protection and the role of communities as essential elements in the regulation of gambling.

That is why I am proud of the legislation that was passed two years ago in Massachusetts. In addition to permitting three casinos and one slot parlor, the Expanded Gaming Act—like the New Zealand Gambling Act of 2003—makes it clear that the intention in introducing casino gambling in Massachusetts is to provide the greatest possible economic development benefits and revenues to the people of the Commonwealth while reducing to the maximum extent possible the potentially negative or unintended consequences of the new legislation. The effort to reduce the potentially negative consequences of casino gambling in Massachusetts includes establishment of a Public Health Trust Fund, where 5% of the tax revenues generated annually by the new casinos will be deposited and from which monies will be distributed for problem gambling research, prevention and treatment.

Conclusion

While online gambling offers better possibilities, compared to land-based forms of gambling, to implement player protection measures, there are unmistakable challenges in providing these tools and ensuring that the players most in need of protection actually use them. If online poker is legalized at the federal level in the United States, it will be important to ensure that these tools are available to players on all licensed sites. It will also be important to establish an independent agency through which these tools are made available to players in order to overcome the reluctance demonstrated to date by the online gambling industry to implement cross-operator player protection tools (Dragicevic, 2011).

Online gambling is clearly here to stay and will continue to evolve with competition among Internet gambling sites, with new demographic groups such as women and older adults entering the market, and with a growing number of jurisdictions legalizing and regulating these activities. The question is what governments can and will do to create a safety net for their citizens, to minimize the likely increase in the number of problem gamblers, to provide treatment for those afflicted, and to ensure that research is undertaken to understand the impacts of online gambling on society (Gainsbury & Wood, 2011).

Thank you again for the opportunity to testify. I look forward to answering your questions and to assisting the Subcommittee in its future deliberations.

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Witness Background Statement

I am an Associate Professor in the School of Public Health and Health Sciences at the University of Massachusetts Amherst. For the past 28 years, I have specialized in conducting population studies of gambling and problem gambling. At UMass Amherst, I am the Principal Investigator of the *Social and Economic Impacts of Gambling in Massachusetts* (SEIGMA) study (www.umass.edu/seigma). This is a large multidisciplinary, multi-year project funded by the Massachusetts Gaming Commission whose findings will assist in assessing a broad array of community, regional and state-level impacts of the introduction of casinos in Massachusetts, improve problem gambling prevention and treatment efforts, and provide all of the stakeholders in Massachusetts with a neutral database for strategic analysis and decision-making.

In addition to my position at the University of Massachusetts, I am President of Gemini Research, Ltd., a Massachusetts-based company established in 1992. I also hold a professorial appointment at the Auckland University of Technology in New Zealand.

Over the past five years, my projects have been funded under grants or contracts with government agencies in Australia, Britain, Canada, New Zealand, Singapore and Sweden. I have completed several small consulting assignments for gaming operators or suppliers in this period, including review of a proposal to evaluate a responsible gambling program for Betfair, a British online gaming company.

Mr. TERRY. Well, thank you, Dr. Volberg. Mr. Eggert, you are now recognized for your 5 minutes.

STATEMENT OF KURT EGGERT

Mr. EGGERT. Thank you, Mr. Chairman, and madam ranking member and members of the committee. I appreciate you inviting me back. I was here 2 years ago at a similar hearing and testified similarly. I talk about consumer protection and gambling, and gambling is a consumer industry which means that consumer protection should be hard-wired into every aspect of its regulation. And so I would like to talk about what I consider three very important aspects of consumer protection that should be considered in legalizing Internet gambling.

Number one is that gamblers should always be provided with all of the information that they need in order to make good decisions about whether, when, where and how to gamble. They should be given the information they need to be good shoppers. It used to be that we looked down on gamblers and treated them as like lesser, you know, almost evil people. And now they are just consumers. It is like buying a car, and if you are buying a car, you get to have information about gas mileage. In the same way, if you are buying gambling, you should get all the information you need.

A crucial piece of information for slot machines is the hold percentage. Every slot machine is designed to have a specific hold percentage which is the amount that the casino on average keeps of the bet, returning the rest in winnings. Why don't we get to know that every time we use a slot machine? That is basic information that every consumer should have any time they play a slot machine, either on the Internet or in land-based casinos.

It is especially important for Internet slots because you are not in a casino. You haven't picked the slot machine based on the staff or the ambiance or the floor shows. You are just sitting in front of your computer, and so if you are looking to decide where to play, the hold percentage of the slot machine should be paramount. And so any Internet slot machine should tell you as you shop and as you gamble what hold percentage you are facing.

The second rule of consumer protection Internet gambling concerns bots, poker bots. What these are are consumer software programs designed to play poker, and I think it is important that players shouldn't lose money to poker bots that can play better than they can, unless they want to. If you choose to say I want to go against the best bot in the world, then more power to you. But you should get to know that that is what you are doing.

Now, there was a poker bot ring in Sweden in the last year that, as far as I can tell from the news, won like a million dollars or more in just a couple months. If bots are strong enough and good enough to do that, they are a significant threat and we have to address that problem. Bot-makers are getting better all the time. There is a bot playing Limit Texas Hold'em that, according to the New York Times, can beat most people in the world. There is a new company that says they designed a neural network bot that can play No Limit Texas Hold'em as well as most people.

And so as computers get better, as neural networks get better, making bots is going to get easier and easier. And the day will

come where some kid in their garage with a high-powered computer can make a bot that can defeat most human players. It will be a challenge to stop that, and if we can't stop that, we have to give players some defense so that they know if they are playing a bot or if they are playing somebody who plays abnormally well like a bot might, so what I would recommend is we would have ratings for poker players so that you can tell when you are facing a much, much better player that may well be a bot.

A third important aspect of consumer protection is giving players the power to self-exclude and to limit their play, either by the day, week or month by how long they play or how much they bet and give them this kind of protection so that they can control their betting. It is a consumer industry. Consumers should be empowered to make good decisions. And so the industry should give them the tools they need to make good decisions.

In my testimony I talk a lot about what the different states have done and what Congressman Barton's bill has done, and I would be happy to answer questions about that further. But again, I thank you for allowing me to testify.

[The prepared statement of Mr. Eggert follows.]

Testimony of Kurt Eggert
Professor of Law
Chapman University Dale E. Fowler School of Law

Before the

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

At a Hearing Entitled:

"The State of Online Gaming"

Rayburn House Office Building, Washington, DC
December 10, 2013

Witness Background Statement

Kurt Eggert is a Professor of Law at Chapman University Dale E. Fowler School of Law in Orange, California, where he teaches gambling law, among other courses, and directs the Alona Cortese Elder Law Center. As a law professor, he has testified before Congressional committees of both the House and Senate on gambling and other consumer protection issues, and formerly was a member of the Federal Reserve Board's Consumer Advisory Council, where he chaired the Subcommittee on Consumer Credit. Professor Eggert has written on gambling law issues and spoken on them in conferences in the United States, Canada and Europe. Before joining the Chapman faculty, Professor Eggert was a staff attorney at Bet Tzedek Legal Services, a non-profit legal services provider, and also an adjunct professor at Loyola Law School in Los Angeles, California. Professor Eggert holds a J.D. from the University of California at Berkeley, and a B.A. from Rice University. While clinical programs at Chapman University School of Law have received Federal grants unrelated to the subject matter of this testimony, Professor Eggert has not personally received any Federal grants nor has he received any compensation in connection with his testimony.

Executive Summary

This testimony concerns consumer protection in Internet gambling. First it examines the central elements of internet gambling consumer protection, namely: (1) Ensuring that gamblers are fully informed of all significant aspects of games that affect their decision whether, when, how, and where to gamble; (2) Preventing poker gamblers, to the extent practicable, from losing to other Internet gamblers using an unfair advantage, such as employing a poker bot or engaging in collusion with other players; and (3) Providing Internet gamblers with useful tools to control their Internet gambling, such as giving them online methods to track their gambling wins and losses, providing them with self-exclusion programs that easily allow them to prevent themselves from gambling, and giving them tools to limit the amount of time, deposits into their accounts, or wagers, on a daily, weekly, monthly, annual, or lifetime basis.

The testimony then discusses the most significant developments of the last two years for consumer protection in Internet gambling, namely the increases in strength and sophistication of poker “bots,” computer software systems that can play poker on the internet, and the legalization and introduction of Internet gambling in three states. The testimony discusses the difficulty in detecting and preventing poker bots in Internet gambling, and the various regulatory methods that could be used, with varying success. While gambling sites and regulators may defend against poker bots with gusto, if Internet poker becomes a large and lucrative target, some enterprise poker bot creators will no doubt find ways to exploit holes in the poker sites defenses.

The testimony also discusses the widely differing consumer protection regimes contained in the initial regulations of the three states that currently offer legal Internet gambling and in a proposed federal bill. Delaware has few regulations that even seem to address consumer protection or

responsible gambling tools of any type. New Jersey provides more tools for gambler protection, but so far seems to fail to offer a crucial consumer protection, information for gamblers about specific hold percentages for its Internet slot machines. Nevada allows only Internet poker and has more robust consumer protection and responsible gaming regulations than Delaware, but it is not clear how its prohibition against poker bots will be enforced. H.R. 2666, a federal Internet poker bill, has the seeds of good consumer protection, but seems to put most of the decision-making regarding that protection in the hands of the state and tribal regulatory agencies, which seem to be given the power to choose to strong or weak consumer protection.

It is clear that we are moving toward multi-state Internet gambling, which will complicate matters regarding consumer protection. Gamblers in strong consumer protection states may find themselves gambling across state lines without the consumer protections they are familiar with. Gamblers may have excluded themselves from Internet gambling in one jurisdiction, only to find themselves tempted by it in another. Gamblers who have set up robust responsible gambling limits in their home states may find themselves enticed to violate those limits merely by gambling across state lines. Any move toward interstate Internet gambling should take these concerns seriously and attempt to provide sufficient consumer protection for U.S. gamblers.

Mr. Chairman, Members of the Committee

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

Thank you for inviting me to testify and talk about the issues that arise in the legalization of Internet gambling in general and Internet poker, specifically. I testified before this committee two years ago and submitted lengthy testimony on the subject of consumer protection in Internet gambling.¹ For a more complete discussion of the principles behind consumer protection in the gambling industry, I would refer you back to that previous testimony. In this testimony, I would like to focus on the developments that have occurred since then and what those developments mean for the future of Internet gambling.

As I did in my testimony last time, I would like to discuss consumer protection as applied to the gambling industry. I have spent much of my professional life working life dealing with consumer protection issues in many different industries and areas. I have litigated cases against Health Maintenance Organizations that cheat elderly patients, air conditioning companies that violated consumer protection laws, and scam artists who forged the names of elderly homeowners to steal their homes. I have written extensively about the mortgage markets and their treatment of borrowers, and have testified to Congress, to the Financial Crisis Inquiry Commission and to the California State Legislature on mortgage and consumer protection issues, and was on a board that advised the Federal

¹ Testimony of Kurt Eggert Before the House Energy and Commerce Committee Subcommittee on Commerce, Manufacturing, and Trade At a Hearing Entitled: "Internet Gaming: Is There a Safe Bet?" October 25, 2011, available at: http://democrats.energycommerce.house.gov/sites/default/files/image_uploads/Testimony_CMT_10.25.11_Eggert.pdf

Reserve Board regarding consumer finance issues. I have also been researching, writing, and speaking about gambling law issues, including consumer protection in the gambling industry for more than a decade, and have lectured in the United States, Canada, and Europe on gambling issues.²

Many consumer protection issues arise in Internet gambling, from privacy issues to theft of gamblers' money held by Internet gambling organizations. With much of the current Internet gambling conducted by small, off-shore websites, gamblers have often fallen victim to fraud and deception. In the last decade, a former poker champion and consultant to a top online poker site made millions by using "God mode" software that allowed him to see the hole cards in other players' hands.³ At about the same time, a different poker site admitted that a poker cheater had "cracked its software" and was able to see opponents' "hole cards," and refunded \$1.6 million to the victims of the cheating.⁴ In another scandal, one of the world's largest online poker sites, was accused of being essentially a Ponzi-scheme, with company executives looting customer accounts, anticipating, no doubt, that further deposits would cover the losses. One of that poker site's founders entered into a plea bargain regarding criminal charges involving that poker site.⁵ Later, that same poker site was acquired by another online poker site, which agreed to pay more than \$500 million in part to repay former U.S.-based customers.⁶

² 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.

³ Justin Peters, The Online Poker Cheating Scandal That Keeps Going and Going, Slate.com, May 29, 2013, available at http://www.slate.com/blogs/crime/2013/05/29/ultimatepoker_and_ultimatebet_the_online_poker_scandal_that_never_ends.html.

⁴ Gilbert M. Gaul, Cheating Scandals Raise New Questions about Honesty, Security of Internet Gambling, Washington Post, November 30, 2008, available at: http://articles.washingtonpost.com/2008-11-30/news/36886192_1_internet-poker-online-poker-absolute-poker

⁵ Simon Bowers, Ray Bitar, Full Tilt Poker Founder, Strikes Deal with US Prosecutors, The Guardian, April 9, 2013, available at: <http://www.theguardian.com/uk/2013/apr/09/ray-bitar-full-tilt-poker-pleads-guilty>

⁶ Larry Neumeister, PokerStars, Full Tilt Poker Reach Settlement With Government to Repay Players, Huffington Post, July 31, 2012, available at: http://www.huffingtonpost.com/2012/07/31/pokerstars-full-tilt-poker_n_1724253.html

These scandals point to the need for strict government regulation of Internet gambling and demonstrate the problem of leaving American poker players to play only in poorly-regulated online gambling sites located in foreign countries. Scandals like these, as well as the quest for profits, have spurred the call for legalizing online gambling in the United States. Advocates for legalizing online gambling argue that US citizens will gamble online whatever the legal regime, and it is better to have them gamble at websites hosted by well-funded American casinos subject to federal and/or state regulation that designed to prevent the cheating or mistreatment of gamblers.

While privacy and the protection of players' deposited funds are important consumer protection concerns, this testimony will focus on three salient consumer protection issues in the gambling world. This testimony will analyze how well the three states with up-and-running Internet gambling have addressed these concerns and whether the federal poker bill proposed by Congressman Barton would improve consumer protection for Internet poker players. The consumer protection goals this testimony focuses on are: (1) Ensuring that gamblers are fully informed of all significant aspects of games that affect their decision whether, when, how, and where to gamble; (2) Preventing poker gamblers, to the extent practicable, from losing to other Internet gamblers using an unfair advantage, such as employing a poker bot or engaging in collusion with other players; and (3) Providing Internet gamblers with useful tools to control their Internet gambling, such as giving them online methods to track their gambling wins and losses, providing them with self-exclusions programs that easily allow them to prevent themselves from gambling, and giving them responsible gambling tools to limit the amount of time, deposits into their accounts, or wagers, on a daily, weekly, monthly, annual, or lifetime basis.

While these concerns exist in bricks and mortar gambling establishments, they are especially problematic in Internet gambling. Internet gambling puts a casino in the home computers, laptops, or tablets in most Americans' houses and even in the smart phones in their pockets. With Internet gambling on smart phones, gamblers typically only seconds away from being able to gamble, whether

they are in the city park or their church parking lot. With this greater access should come better tools for consumers to control their gambling, to understand the cost of their gambling and to make better decisions regarding their gambling.

Consumer Protection by Informing Gamblers: The Case of the Hold Percentage

In any commercial gambling operation, gamblers should be fully informed about every aspect of the game that significantly affects their decision where, when, how and whether to play. For example, one of the most important aspects of slot machine play for gamblers is the hold percentage, the amount on average that slot machines keep of players' bets, returning the rest to players in winnings. Slot machine hold percentages can vary tremendously, from 1% to over 20%, depending on the rules of the jurisdiction. Because the hold percentage is the true average cost of the slot machines, with the rest of the wager returned, on average, to gamblers, it should in all cases be disclosed to gamblers at all times, both when they are shopping for which slot machine to play and while they are playing.⁷ In today's casinos, two slots machines could be sitting side by side, one essentially charging five times as much as the other, without the consumer being able to determine the difference in prices.

Disclosing the hold percentage is important in any form of slot machine, whether Internet or physical, but it is especially pertinent in Internet gambling. While gamblers may favor one casino over another based on the amenities of the casinos, their ambiance, the friendliness of the staff, and their proximity, Internet casinos lack all of these aspects, by and large. And so, for the internet gambler, the one crucial element of slots gambling is the slot machine itself, which includes the look and theme of the machine, its hit percentage (how often the machine returns some winnings) and its hold percentage (its

⁷ For a more complete discussion of the hold percentage as the true cost of slot machines and the importance of disclosure, 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>.

true cost, given that slot machines return the majority of the amount wagered back to the gambler on average). Gamblers can easily determine the look and theme of the slot machine and, during a relatively brief amount of time, can gain a rough idea of the hit percentage of a slot machine. However, it is difficult for slot players to determine the hold percentage of a slot machine while playing it. A slot machine that seems very tight (with a high hold percentage) may just have a very low hit percentage and give the occasional high payout. A slot machine that seems loose may have a high hit percentage but have few large payouts to give, and so holds a much higher percentage of wagers.⁸ Casinos can decrease the hold percentage of a slot machine by increasing the size of big payouts.⁹ Given that the hold percentage of slot machines is one of the most important aspects of slot play, slot gamblers should always be informed about the hold percentages of any machine they play, and an Internet gambling regulatory regime should be judged by how well it mandates the provision of this information for gamblers, both while they are shopping and while they are playing.

Poker Bots and What to Do About Them

For Internet poker, the average wins or losses of a player are not determined by the hold percentage of the casino, but rather by the strength or weakness of the players they play against. Casinos that provide poker make their money through a “rake,” the casino’s portion of the amount bet. While the rake is typically a greater percentage and so more of a factor in low stakes Internet games than in high stakes games,¹⁰ the biggest determinant of players’ wins and losses, besides their luck in the cards, is their skill, with the worst players losing money much faster than the best players are

⁸ 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).

⁹ Steve Bourie, Slot Machines, in *American Casino Guide* 32 (Steve Bourie ed., 2011).

¹⁰ Phillip Newall, *The Intelligent Poker Player*, 357 (2011).

making it.¹¹ Skill is a crucial part of the game, and players work hard to increase their poker knowledge, their ability to gauge the probable cards of their opponents, and their ability to read “tells” of opponents.¹²

Playing against more skillful players is not only an inevitable part of poker, it is also useful to help players improve their game. However, “inevitable” and “useful” change to “predatory” when a gambler is not playing against a more skillful player, but rather is unwittingly playing against a much stronger poker “bot,” a computer program designed to play poker. The first poker bots were not a great threat to reasonably skilled poker players. However, one of the most dramatic changes in the last few years in Internet gambling has been the rapid advances made in Artificial Intelligence as applied to poker. Poker is an intriguing subject to Artificial Intelligence researchers, as it presents challenges different and more difficult than games such as chess where there is no luck and each player has complete information as to the state of the game. “Incomplete information games such as Poker became a field of interest for the AI [Artificial Intelligence] research community over the last decade. This game presents unique challenges when compared to other strategy games like chess or checkers. In the latter, players are always aware of the full state of the game. On the other hand, Poker’s game state includes hidden information, since each player can only see his/her cards and the community cards, making Poker a game which is much more difficult to analyze. Poker is also a stochastic game, i.e., it comprises the element of chance.”¹³ The speed of development of poker bots can be seen in how

¹¹ Nate Silver, *The Signal and the Noise*, 317 (2012).

¹² A “tell” is a physical action or attribute that gives some indication to opponents of a player’s hand. It can be something as simple as how he or she throws chips into the pot. See David Sklansky and Mason Malmuth, *Hold’Em Poker for Advanced Players*, 208 (1999).

¹³ Teófilo, et. al., *Computing Card Probabilities in Texas Hold’Em*, CISTI 2013 at 988, available at: http://paginas.fe.up.pt/~niadr/PUBLICATIONS/2013/TeofiloReisLopesCardoso_ComputingCardProbabilitiesInTexasHoldem.pdf

poker bots competing in poker bot competitions are improving from one year to the next at a statistically significant rate.¹⁴

That bots can extract significant winnings against human players can be seen in the recent detection of bots in Swedish Internet poker, where Svenska Spel, the state gambling operator and only allowed operator of Internet poker in Sweden, is reportedly seeking the return of 10,000,000 Swedish Krona, or about \$1.5 million, from suspected poker bot operators.¹⁵ The use of bots was first reported by a player, and the bots had allegedly operated for over six months.¹⁶

The rate of improvement in poker bots seems to have sped dramatically in recent years with the use of neural networks in the creation of poker bots. Neural networks, modeled after the complex interconnectedness of the human brain, are complex computer algorithms that develop gaming strategies by performing a mind-numbing set of calculations that replicate the actions of a poker game. In effect, neural networks can play billions, if not trillions, of games of poker and learn what strategies work and what do not through a massive set of trial and error. Rather than merely import strategies created by human players, neural networks can develop their own strategies and test them in endless games with themselves.

How effective neural networks can be at poker can be seen in the example of a new casino machine called Texas Hold 'Em Heads Up Poker, which was designed by a Norwegian engineer named Fredrik Dahl, who had previously designed backgammon playing software used by some of the top players in the world.¹⁷ Dahl set up competing neural networks, taught them the basic rules of poker,

¹⁴ Philip Newall, *The Intelligent Poker Player*, 222 (2011).

¹⁵ Radio Sweden, *Investigation widens into poker "bot" cheating*, August 24, 2013, available at: <http://sverigesradio.se/sida/artikel.aspx?programid=2054&artikel=5626175>

¹⁶ Nick Jones, *Over \$500,000 Repaid to Victims of Bot Ring on Svenska Spel*, *Pokerfuse*, June 20, 2013, available at: <http://pokerfuse.com/news/poker-room-news/over-500000-repaid-to-victims-of-bot-ring-on-svenska-spel/>

¹⁷ For a discussion of Dahl's Texas Hold'Em poker bot, upon which this description is based, see: Michael Kaplan, *The Steely Headless King of Texas Hold'Em*, *The New York Times*, September 5, 2013, available at: <http://www.nytimes.com/2013/09/08/magazine/poker-computer.html>

and then watched them compete with each other, learning with each round of competition how to improve. He noted that the computers learned how to engage in sophisticated bluffing methods and were better after playing five billions hands than they were after two billion hands. Using these neural networks, Dahl has created a poker bot so powerful that it reportedly can beat all but a handful of the best players in the world at the limit version of Texas Hold'Em. In fact, the poker bot plays so well, that it appears that before it is used in a casino, it is being "dumbed down" so that it will play the same against strong players as against weak ones and therefore not excessively exploit weaker players, and so that it will not always make the best move. The game employs multiple neural networks, to increase its unpredictability, and uses different networks with greater expertise in certain situations.

While Dahl's poker bot plays limit Texas Hold'Em, which is a simpler form of poker for computer programmers than No Limit Hold'Em, others are working to create neural networks that can outplay humans at No Limit Texas Hold'Em. One company claims to have already done just that. According to a poker news website, "Snowie Games, famed for its leading backgammon product, recently unveiled its first software product under the new PokerSnowie brand. Poker Coach promises to teach players 'perfect' game-theoretical No Limit Hold'em using a proprietary neural network system that Snowie claims gives the best NL strategy advice in the world."¹⁸ Like Dahl's poker bot, the PokerSnowie system was built using neural networks that taught themselves how to play. PokerSnowie's creators claim that it can play a broad range of games,¹⁹ and that it is based on trillions of hands of poker that the neural networks have played.²⁰

¹⁸ Nick Jones, Review: Poker Snowie Promises "Perfect Gameplay" Training With New GTO-Based Learning Software, Pokerfuse Independent Online Poker News, October 1, 2013, available at: <http://pokerfuse.com/features/reviews/review-poker-snowie-promises-perfect-gameplay-training-with-new-gto-based-learning-software-01-10/>

¹⁹ "PokerSnowie is artificial intelligence-based software for no-limit Hold'em Poker. It has learned to play no-limit, from heads-up games to full ring games (10 players), and knows how to play from short stacks all the way up to very deep stacks (400 big blinds)." <http://www.pokersnowie.com/about/technology-training.html>

²⁰ <http://www.pokersnowie.com/about/weaknesses.html>

Like many commercial enterprises, the poker bots created by Dahl and by PokerSnowie may turn out to be more hype than substance. Only time and human testing will demonstrate whether these neural networks can keep up with or beat the best human players. However, given the short amount of time that poker bots have been available, the improvement in poker bots has been astonishing, and it seems only a matter of time before computers will be able to outplay humans at most forms of poker.

Given the improvement in poker bots, human players will increasingly turn to poker bots for instruction on how to improve their play. Just as the best backgammon and chess players use computer programs to gain a deeper understanding of the game, so too will humans turn to computers to learn better poker. PokerSnowie and a competitor, Neo Poker, bill themselves as systems whereby players can improve their games by practicing against a poker bot and also by having their play critiqued by the poker bot.²¹ Philip Newall's 2011 book, *The Intelligent Poker Player*, contains an entire chapter devoted to the lessons that human players can learn from bots, and the bots available today appear far stronger than the ones he examined in writing his book.²²

Given the likelihood that poker bots will overtake human players in the near future, to the extent they have not done so already, how to deal with bots in Internet poker is a significant consumer protection issue. One possibility is to make the use of bots a crime, and attempt to use the power of prosecution to deter the use of bots. However, prosecuting poker bot operators appears at first glance to be a difficult enterprise. Unless police can somehow seize the computers with incriminating software itself, evidence of the use of bots may be merely circumstantial. Prosecutors may be able to point only to patterns of play by various players, which may not convince a jury to convict the players of using bots if humans could exhibit the same patterns of play.

²¹ For an Internet review of Neo Poker, see <http://www.pokerlistings.com/neo-bot-poker-the-next-step-in-artificial-poker-intelligence>.

²² Philip Newall, *The Intelligent Poker Play*, 221 (2011).

Another possibility to protect consumers is for a regulator to order poker sites to detect bots, and sanction poker sites that fail to do so. In 2011, Senator Alfonse D'Amato, Chairman of the Poker Players Alliance, in a supplemental memorandum to this committee, laid out the major methods of detecting bots, all of which seem to be methods that a skilled bot-maker could regularly defeat.²³ The first level of defense is monitoring the movement of the mouse and hence the cursor on the screen, to see if they appear human or computer-driven. However, it would be easy for a bot creator to capture tens of thousands of human cursor movements, and instruct the bot to mimic that behavior. The second method identified is "introducing subtle changes to the player's screen," with the assumption that human players will not be bothered by these changes whereas poker bot software is "typically matched to the pixel-specific graphics of a particular poker operator's software" to allow the bot to recognize cards. The D'Amato Memorandum also discusses the use of a CAPTCHA challenge, whereby the player must recognize distorted letters and type them in, a task supposedly easy for humans and difficult for computers. Computers, however, are impressive at pattern recognition, and should be able to recognize cards even if the colors change slightly. The basic CAPTCHA systems can also be defeated by computer analysis.²⁴

The D'Amato Memorandum also argues that poker sites "constantly monitor the marketplace to see what bot programs are being sold." Then, the poker site's software that allows players access to the poker site checks players' computer for any of the publicly available poker bots. This should provide some protection, except to the extent that poker bot runners develop their own "private-label" bots, modify bots purchased publicly, or run the bots somehow outside the detection of the poker site.

²³ Sen. Al D'Amato, Committee Follow Up Memo from Alfonse D'Amato – PPA, November 7, 2011, available at: <http://www.scribd.com/doc/72737574/Committee-Follow-Up-Memo-from-Alfonse-D-Amato-PPA-11-07-2011>

²⁴ See, for example, Lorenzi, et. al., Attacking Image Based CAPTCHAs Using Image Recognition Techniques, Lecture Notes in Computer Science, Vol. 7671, pp. 327 (2012).

The D'Amato Memorandum also argues that poker bots, like poker players, "develop recognizable patterns of play – folding, checking, or raising a particular percentage of the time in a particular situation," and that bot operators seek to maximize their profits by "running the same bot as multiple players at multiple tables on a particular site." This similarity in player "fingerprints," their patterns of play, would demonstrate to the site that the multiple players are merely bots run by one person or bot ring. However, poker bots created by neural networks would likely be much harder to trace using this method. The neural networks bot deployed by Fredrik Dahl deploys multiple neural networks, trading them in and out at random intervals or when one neural network might be better. Such a multiple neural-networks bot would not have a static fingerprint, as it would be changing its style of play depending on which neural network was in charge.

If neural networks do prove to be effective in creating poker bots that can outplay human players, then for poker sites to prevent players from constantly losing to poker bots, poker sites need to be effective in detecting poker bots, stopping them from playing, seizing any ill-gotten gains, and possibly turning poker bot operators over to the authorities for prosecution. One great problem with consumer protection and poker bots, however, is that it is almost impossible for gamblers to know if poker sites are successfully controlling poker bots. Poker sites are loath to discuss the methods they use to detect poker bots for an obvious reason: If poker sites publish their methods of detecting bots, such publication will give poker bot creators a roadmap on how to circumvent the poker site's protections. Poker sites have other motivations against educating consumers about their efforts to detect bots. If poker sites are not able to detect bots, such inability would likely deter some gamblers from playing on the site. If poker sites report that they have detected a significant number of bots on their site, gamblers might worry that the site is infested with bots and so not play. As a result, according to the conversations of gamblers that appear on such poker discussion sites as 2+2, poker sites often seem opaque on the poker bot issue, not telling gamblers what they are doing to prevent bots, how many

bots they have found, or what they have done when they found them.²⁵ It may difficult for poker players to trust the promises of poker sites that they are detecting bots, when poker players have little but those promises to rely on.

One solution to poker bots would be to give human players warning when they are playing against a significantly better player, which might be a poker bot, by using a rating system for poker players like the one that exists in the chess world. This would provide protection against high-skill poker bots because players could see the skill level of their opponents before they play against them. When I proposed this rating system the last time I testified to this committee, I faced opposition from numerous members of the poker-playing community, who argued that the ability to judge the skill level of opponents is itself an important skill in poker playing, and rating players would remove or reduce this aspect of the game. Perhaps a more important element to skilled players is that providing ratings to players might frighten away the “fish,” inexperienced or otherwise inept players who are the provide much of the money flowing into Internet poker. According to Nate Silver, himself a former part-time professional poker player, “Poker abides by a ‘trickle up’ theory of wealth: the bottom 10 percent of players are losing money quickly enough to support a relatively large middle class of break-even players.”²⁶ In other words, scare away the fish, and the rest of the players have much more trouble winning or even breaking even. Those who would draft poker regulation must decide whether the threat of poker bots is severe enough to justify instituting a rating system, whether a rating system would itself harm the “ecology” of Internet poker, and whether educating inexperienced or inept players is worth the effect it might have on more experienced players and the income of poker sites. Normally, consumer protection attempts to prevent inexperienced or inept consumers from being

²⁵ TwoPlusTwo.com bills itself as “the world’s largest poker strategy resource online and in print,” and hosts numerous threads of conversations regarding poker at: <http://www.twoplustwo.com/>

²⁶ Nate Silver, *The Signal and the Noise*, 317 (2012),

taken, and it would be an unusual consumer protection regime that worked to ensure that inexperienced and inept gamblers did not realize their limitations.

Providing Internet Gamblers With Tools to Control Their Gambling: Self-Exclusion and Self-Imposed Responsible Gambling Limits

Another important area of consumer protection in Internet gambling is mandating that Internet gambling sites provide their customers with straightforward, practical, and easily-understood and implemented methods to control their gambling and prevent themselves from engaging in excessive gambling. A central principle of consumer protection is consumer sovereignty, the idea that consumers should be in charge of their own purchasing decisions and be empowered to make the best decisions practicable.²⁷ One element of giving players control over their own gambling is to allow them to self-exclude themselves from Internet gambling, to decide that they are worse off if they are free to gamble, and so choose to make themselves unable to gamble, even if later they choose to gamble.²⁸ Another, parallel method is to allow players to set limits on the amount of time spent, in deposits into their gambling accounts, or in amounts wagered in gambling, and set up a system that imposes those self-selected limits on gamblers even if later they should choose to gamble more.

While there is much scientific study needed to determine their exact effect on problem gambling, the initial evidence is that such programs are useful in allowing gamblers to control their gambling. Even if these programs do not prevent problem gambling, therefore, they are useful

²⁷ 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".

²⁸ For the philosophical implications of choosing to restrict oneself, and a discussion of that issue in the context of gambling, see: 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.

consumer protection tools in that they give consumers the power to control their purchases and to make good shopping decisions. One analysis of self-imposed gambling limits concluded that: "Once the limit had been imposed, self-limiters markedly reduced both their gaming frequency as well as the amount wagered. In addition, self-limitation prompted a considerable share of gamers to restrict themselves to one form of gaming (e.g. classic sports betting) or to stop playing altogether."²⁹ Given this usefulness, all gambling regulation should mandate the gamblers have access to self-exclusion programs and to responsible gambling control tools that allow them easily to set limits on the amount of time they spend gambling, the amount they deposit in their accounts, the amount, if any, of credit they receive to gamble, and the amount they wager, with the limits set in increments of daily, weekly, monthly, annually, or lifetime.

Changes in the Internet Gambling Landscape: Internet Gambling Goes "Live"

The most significant recent development in Internet gambling in the United States is the legalization and introduction of Internet gambling in three states, so far. For years, the U.S. Department of Justice had interpreted the Wire Act to reach beyond its ostensible subject, sporting events, and ban other forms of Internet gambling. In December, 2011, the DoJ's Office of Legal Counsel released an opinion that forms of gambling that do not involve a sporting event are not barred by the Wire Act, which essentially freed Internet gambling from most federal restriction. As a result, states realized that they could move forward with intrastate gambling. While many states are taking steps toward legalizing some form of intrastate gambling, those who have actually succeeded in starting Internet gambling are

²⁹ Bwin.party digital entertainment: Outcome of a Paradigm Shift – New Ways for the Scientific Analysis of Online Gaming: Implications for Addiction Research and Responsible Gaming, 15 (2013), reporting on results of studies in cooperation with The Division of Addiction of Harvard Medical School, available at: <http://www.bwinparty.com/AboutUs/missionAndStrategy/~media/2355C94A54954A8CA0988BD2F02C3859.ashx> See also Nelson, et. al., Real Limits in the Virtual World: Self-Limiting Behavior of Internet Gamblers, *J. Gambling Studies* 24:463 (2008), finding that self-limiting programs "appear to be promising options for Internet gamblers at-risk for gambling problems."

Nevada, which by regulation only permits poker online, Delaware, which allows poker, slots and table games, and New Jersey, which allows a broad array of forms of Internet gambling.

On a parallel track, on July 11, 2013, Congressman Barton introduced a new bill, the “Internet Poker Freedom Act of 2013,” that would set up a system of licensing Internet poker across the nation, subject to the assent of states and Indian tribes.³⁰ At issue, then, is which direction the legalization of Internet gambling should proceed, through state by state legalization and regulation, or by a federal approach. To decide that question, it is instructive to examine the various sets of regulations, Nevada’s, Delaware’s, New Jersey’s, and the proposed federal regulation in H.R. 2666, to determine how well each accomplishes the goal of consumer protection. The next section of this testimony will examine each set of published regulations and see what consumer protection or lack thereof is imbedded in each.

Nevada’s Internet Poker Regulations:

Nevada so far has allowed only Internet poker, and so the only house advantage that need be disclosed is the house rake from poker games.³¹ Nevada has in place rules regarding poker bots, and requires operators of Interactive gaming, including online gaming, to “maintain, implement and comply with” standards set by the chairman of the state gaming control board, including among the minimum standards controls “Reasonably ensuring that interactive gaming is engaged in between human individuals only” and “Reasonably ensuring that interactive gaming is conducted fairly and honestly, including the prevention of collusion between authorized players.”³² It is not clear from the regulations what “reasonably ensuring” means in the context of poker bots and collusion. If sites discover that they are powerless to prevent poker bots from playing, is doing nothing “reasonable”? If some poker bots

³⁰ H.R.2666 - 113th Congress (2013-2014): Internet Poker Freedom Act of 2013. Hereinafter H.R. 2666.

³¹ Nevada’s Internet gaming regulations are located in Regulation 5A, available at <http://gaming.nv.gov/modules/showdocument.aspx?documentid=2942>. The following citations are to Regulation 5A.

³² 5A.070, sec.6-7.

win millions, but not enough to cause players to cease playing, and further detection would cost poker sites millions is failing to spend the further millions “reasonably ensuring”? The regulations also require operators to promote “responsible interactive gaming and preventing individuals who have self-excluded from engaging in interactive gaming.”³³ The regulations also require operators to give players “Clear and concise explanation of all fees” and “The rules of play of a game. . .”³⁴

The Nevada regulations also appear to provide for both self-exclusion and tools of self-limitation, requiring that operators ensure that players have the ability “through their gaming account, to select responsible gambling options,” including (a) loss limits for a specific time; (b) deposit limits for a set time; (c) limits on dollar amounts for tournament entries in a set time; (d) poker buy in limits for a set time, outside of tournament play; (e) time limits on the total amount of play time during a specified time period; and (f) “Time based exclusion from gambling settings.”³⁵ Nevada’s self-exclusion from online gambling appears of minimal duration, though, in that operators cannot reopen a self-excluded gambler’s account “until a reasonable amount of time of not less than 30 days has passed since the individual self-excluded.”³⁶ In short, Nevada seems to mandate useful self-control tools for gamblers, but with a poor self-exclusion system. While Nevada requires poker sites to “reasonably ensure” that poker bots are not used, it is less than clear what that mandate will mean in practice.

³³ The regulations go on to note that “Such internal controls shall include provisions for substantial compliance with Regulation 5.170,” so apparently only substantial compliance is necessary. 5A.070.9.

³⁴ 5A.119.100, 1-2.

³⁵ 5A.120.13

³⁶ 5A.130.1(d).

Delaware's Internet Gambling Regulations

Delaware has a self-exclusion system that appears to be the opposite of Nevada's.³⁷ While Delaware's self-exclusion program provides for long-lasting exclusion, it seems designed to shame gamblers who seek its protection and be as difficult as possible to engage in. A Delaware gambler can self-exclude for a period of one year, five years, or seek a lifetime self-exclusion.³⁸ To self-exclude, a Delaware gambler must present him or herself to the State Lottery Office, present identification, have his or her photo taken, state that they are seeking self-exclusion because they are problem gamblers, and certify the truth of that statement.³⁹ To remove himself or herself from the self-exclusion list, even after the term of self-exclusion, the excluded person has to deliver a request for removal, apparently by hand, to the lottery office. One wonders why someone has to admit to being a problem-gambler in order to self-exclude, an admission that could haunt the gambler in subsequent divorce, child-custody or other litigation. And why is presenting oneself in an office to have one's photo taken necessary for self-exclusion in Internet gambling? In short, Delaware seems determined to make the self-exclusion process as onerous and shaming as possible.

Other than self-exclusion, Delaware's Internet gambling regulations are virtually silent on many of the issues at the heart of consumer protection in Internet gambling. There seems to be no requirement that gambling providers give gamblers the information gamblers need to make informed gambling decisions. There is no expressed requirement that providers reveal the hold percentages of Internet slot machines. There appear to be no regulations governing the use or abolition of poker bots. There appears to be no system of providing gamblers tools for responsible gambling limitations on gambling amounts, time spent gambling, short term gambling time outs, or poker tournaments, such as

³⁷ Delaware's regulations governing Internet gambling are included in the Delaware State Lottery Office Internet Lottery Rules and Regulations, effective September 10, 2013, and are available at: <http://www.delottery.com/pdf/InternetLotteryRules.pdf>

³⁸ Delaware State Lottery Office Internet Lottery Rules and Regulations 13.14.2

³⁹ 13.11-13.14.

appear in the Nevada regulations. Most regulation seems left in the hands of the Internet gambling provider.

New Jersey's Internet Gambling Regulations

New Jersey has also legalized and issued regulations for a broad array of Internet gambling.⁴⁰ New Jersey requires casino licensees to provide a method whereby the gambler can limit the amount of money they can deposit in their account and the length of time they have to wait to gamble after they reach that deposit limit, as well as methods of suspending gambling "for any number of hours or days."⁴¹ New Jersey's regulations provide that, to self-exclude for life, the Internet self-excluder must deliver a completed request for self-exclusion in person. Otherwise, a person may seek Internet self-exclusion through his or her own Internet gaming account.⁴² Internet self-exclusion can be for one year, five years, or lifetime.⁴³ As in Delaware, the gambler has to state that he or she is seeking self-exclusion because of being a problem Internet gambler, and certify the accuracy of that statement.⁴⁴

The Internet manager is required to notify the Division upon detecting any person engaged in cheating or collusion.⁴⁵ Providers are also required to inform patrons of their right to "set responsible gaming limits and to self-exclude" and to suspend their accounts for no less than 72 hours.⁴⁶ Internet gamblers are to be given, on demand, "detailed account activity" of their last six months wagering, and,

⁴⁰ New Jersey law governing Internet gambling law is contain in Article 6C, available at: <http://www.nj.gov/casinos/actreg/act/docs/cca-article06C.pdf>, and the regulations are contained in N.J.A.C. 13:690 available at <http://www.nj.gov/oag/ge/docs/Regulations/CHAPTER690.pdf> and its self-exclusion program in N.J.A.C. 13:69G, available at: <http://www.nj.gov/oag/ge/chapter69G.htm>

⁴¹ Article 6C, Sec. 5:12-95.25(b).

⁴² 13:69G-2.2(c)

⁴³ 13:69G-2.2(d)2.

⁴⁴ 13:69G-2.2(d)5.

⁴⁵ 13:690-1.2(i)1.

⁴⁶ 13:690-1.2(i)9-10

upon player request, a summary statement for the last year, including deposits, withdrawals, wins or losses, beginning and end balances, and the a history of any self-imposed responsible gaming limits.⁴⁷ When a patron has lifetime deposits that exceed \$2,500, they are barred from further Internet wagering until they acknowledge that they have met that limit, that they can establish gaming limits or close their account and can call a (800) number for gambling addiction help.⁴⁸ Patrons can suspend their accounts for a period not less than 72 hours.⁴⁹ Internet gambling systems must be capable of allowing their patrons to set responsible gambling limits, such as daily, weekly, and monthly deposit and spend limits, and daily time limits on gambling.⁵⁰ Before a patron plays on any Internet system, the provider must make available "All charges imposed on patrons, such as fees, rake, and vigorish."⁵¹ The self-limitation tools appear to be fairly robust, if they are enforced, and the self-exclusion program can be done on the Internet, though it still involves the admission that one is a problem gambler.

Players are "Prohibited from utilizing automated computerized software or other equivalent mechanism, such as a 'bot,' to engage in play."⁵² In practice, this will likely mean that players caught using poker bots will be treated with the same harsh results as players caught cheating at cards in actual casinos, to the extent that they can be caught. The rules could be clearer, though, on the responsibility of the gaming providers to ensure that players are not using bots or engaging in collusion. The gaming provider is all required to give gamblers a complete explanation of all fees and charges imposed on them related to gaming.⁵³

The Proposed Federal Response: H.R. 2666

⁴⁷ 13.690-1.3(i)

⁴⁸ 13.690-1.4(s)

⁴⁹ 13.690-1.4(j)1

⁵⁰ 13.690-1.4(n)

⁵¹ 13.690.1.5(j)

⁵² 13.690-1.2(l)3.v

⁵³ 13.690-1.2(l)4

In response to the developments in Internet gambling, Congressman Barton has introduced H.R. 2666, which would legalize Internet poker on a federal basis and provide for a mechanism of regulating it, working with states and tribes.⁵⁴ H.R. 2666 is based on giving a large amount of regulatory power to “Qualified Regulatory Authorities” (“QRAs), that are either state regulatory agencies, “designated regulatory authorities of a federally recognized Indian tribe authorized to game” or the Office of Internet Poker Oversight.⁵⁵ Each “poker facility” must demonstrate to the appropriate QRA that the facility maintains “appropriate safeguards and mechanisms, in accordance with standards established by the qualified regulatory authority, including appropriate safeguards and mechanism to . . . ensure, to a reasonable degree of certainty, that Internet poker games are fair and honest, and to prevent, to a reasonable degree of certainty, cheating, including collusion, and use of cheating devices, including use of software programs (sometimes referred to as “bots”) that make bets or wagers according to algorithms.”⁵⁶

While H.R. 266 has the seed of many good ideas on how to provide consumer protection to gamblers, it leaves much of the implementation of those ideas in the hands of the QRAs that will actually oversee licensees, which may leave gamblers unprotected when gambling on Internet sites in jurisdictions where consumer protection for gamblers is not favored or enforced. H.R. 2666 requires each QRA to establish “requirements for the development of a gambling addiction, responsible gaming, and self exclusion program that each licensee . . . shall implement as a condition of licensure.”⁵⁷ Each QRA can determine the manner of placement on self-exclusion lists.⁵⁸ While the Secretary “shall make the master list [of self-excluded patrons from all jurisdictions] available to al QRAs and licensees, it is not clear that QRAs or licensees have to follow the self-exclusions from other jurisdictions. It is important to

⁵⁴ The text of H.R. 2666 is available at: <http://beta.congress.gov/bill/113th/house-bill/2666/text>

⁵⁵ H.R. 2666, Sec. 101 (15)

⁵⁶ H.R. 2666, Sec. 104(d)(9).

⁵⁷ H.R. 2666, Sec. 106(a).

⁵⁸ H.R. 2666, Sec 106(c), (1)(C)(i)

note, however, that each QRA establishes its own requirements for responsible gaming, giving the individual QRAs great leeway in developing strong or weak responsible gambling programs.

H.R. 2666 also provides that each QRA shall require licensees to “make continuously available individualized responsible gaming options that any customer may choose, including allowing customers to self-limit their deposit, time and bet amounts, as well as self-limit their access to the issuance of credit, check cashing, or direct mail marketing by the licensee, in each case as and to the extent that the qualified regulatory authority may consider appropriate.”⁵⁹ The words “in each case as and to the extent that the [QRA] may consider appropriate” puts great power in the hands of the QRA to create robust self-limitation tools for gamblers, or, alternatively weak or even non-existent ones. In other words, if the QRA deems responsible gaming tools to be unnecessary or inappropriate, the QRA appears to be free not to force licensees to provide those options.

The consumer protection mandated by H.R. 2666 is subject to change and improvement as there is the requirement to “ensure that the qualified regulatory authority adopt any practices that the Secretary recommends to protect consumers, taking into account the National Council on Problem Gambling Internet Responsible Gambling Standards.”⁶⁰ To aid in the study of problem and other gambling issues, H.R. 2666 requires making available to the public, and presumably scientific researchers, “datasets on player behavior from customer tracking data collected or generated by loyalty programs, player tracking software, online gambling transactions, or any other information system. . . . The data shall retain information on player characteristics including gender, age and region of residence, player behavior including frequency of play, length of play, speed of play, denomination of play,

⁵⁹ H.R. 2666, Sec. 106(b)(3)

⁶⁰ H.R. 2666, Sec. 106(b)(6)

amounts wagered and, if applicable, number of lines or hands played and characteristics of games played.”⁶¹

H.R. 2666 bans the use of credit cards on Internet poker wagers, discouraging gamblers from playing poker on credit.⁶² And H.R. 2666 specifically bans poker bots, stating that there are to be no “cheating devices,” which includes any mechanical device or software for use in obtaining an advantage “where such advantage is prohibited or otherwise violates the rules of play established by the licensee.”⁶³ “BOTS.—A software program that makes bets or wagers according to an algorithm shall constitute a type of cheating device under this subsection.”⁶⁴ H.R. 2666 enforces this ban by allowing a court to enter a permanent injunction against a violator barring them from betting again,⁶⁵ but more importantly, provides for criminal penalties of a fine or imprisonment, or both, for such violation.⁶⁶ While H.R. 2666 has many elements of consumer protection in poker regulation, it leaves much of the implementation of those elements in the hands of the QRAs.

The National Development of Internet Gambling

There currently are two models for the development of national internet gambling. One is a state by state system, where each state determines whether to engage in Internet gambling, establishes its rules and consumer protection for its state, and then perhaps enters into compacts with other states to allow gamblers from that state to bet. The alternative model is have federal Internet regulation, perhaps with a strong core of regulations and a strong central regulator, or perhaps leaving much of the regulation to the states and tribes. One great hazard of the state by state with interstate compacts method is that it

⁶¹ H.R. 2666, Sec. 106(g)

⁶² H.R. 2666, Sec. 107(b)

⁶³ H.R. 2666, Sec. 110(a)(2)

⁶⁴ H.R. 2666, Sec. 110(b)(2)

⁶⁵ H.R. 2666, Sec. 110(c)

⁶⁶ H.R. 2666, Sec. 110(d)

make it more difficult for consumers to protect themselves or to understand what consumer protections are in place if they gamble on out-of-state sites. Imagine that a strong consumer protection state enters into a compact with a weak consumer protection state. If the strong consumer protection state's citizens gamble on a gambling site in the weak consumer protection state, they may find themselves victimized by the challenges and problems that consumer protection is supposed to prevent. If Nevada has a compact with Delaware and a Nevada citizen wants to self-exclude from any Internet casinos available to him or her, does that citizen have to fly to Delaware and visit the Delaware gambling authority's office to do so? If a Nevada gambler sets up effective safe gambling limits, but then Nevada compacts with Delaware, which seems to have no limits, the Nevada gambler may find himself or herself bereft of the very gambling control tools that Nevada promised.

A federal Internet gambling law and regulation could avoid that problem by mandating national consumer protection measures for gamblers nationwide, allowing gamblers to self-exclude on the Internet from all Internet gambling nationwide, provide national responsible gambling tools that are available to all gamblers and are enforced in all Internet casinos in the nation, have a national system for the detection and prevention of poker bots, and require Internet casinos around the country to provide sufficient information for gamblers to make informed decisions regarding where, when, how and how much to wager, including providing the hold percentages for all slot machines both while gamblers are shopping and while they are gambling. H.R. 2666 falls short of that goal, however, in that it leaves much of the regulatory decision-making to the state and tribal QRAs. While H.R. 2666 aspires to greater consumer protection, it should be strengthened to ensure it will provide more consumer protection than state by state compacts.

Conclusion

In any design of Internet gambling regulation, it is important to keep consumer protection issues at the forefront, as gambling is by its nature an industry designed to cater to consumers. Consumer protection requires, among other things, that gamblers be given sufficient information to make informed decisions about their gambling options, both while they are shopping and deciding where to gamble and during the actual gambling process itself. They need to be protected, to the extent practicable, from unwittingly losing poker games to poker bots, unless there are methods to allow them to avoid poker bots with much stronger games than theirs. And Internet gamblers need to be provided self-exclusion and responsible gambling tools that allow them to control their gambling and avoid excessive gambling. The three states that have introduced Internet gambling have widely varying consumer protection regimes, and no doubt as other states legalize Internet gambling, some will provide more and some less consumer protection. Such uneven levels of consumer protection is harmful to gamblers once they can cross state lines on the Internet. One way to solve this problem would be to have strong central federal regulation.

Mr. TERRY. Well, thank you for your return performance, sticking with kind of a show theme. Thank you all for your testimony, and now it is time to begin our questions. And my first one, because you are a law professor, I want to ask you this question——

Mr. EGGERT. Guilty as charged.

Mr. TERRY. This is a DOJ opinion about the Wire Act. People tell me it is the law. Can you work us through as quickly as you can as a law professor, is that the law?

Mr. EGGERT. Well, the law is what the courts and the people enforcing the law say it is to some extent. I think that is——

Mr. TERRY. Good point.

Mr. EGGERT. I think it is a valid interpretation of the law. The DOJ's position, I think you can make a strong argument that it is the correct one. And so it isn't the law itself but it is not a horrible misinterpretation of the law.

Mr. TERRY. What happens if New Jersey or Nevada or Texas goes forward and there is a new administration next year or I mean in a couple years or there will be and the DOJ goes back to the previous four administrations' interpretations of the Wire Act?

Mr. EGGERT. Then you would have an interesting battle between the states, which I think at that point would be loath to give up their flourishing Internet industry, and they and the DOJ would have to fight it out in the courts. And ultimately the courts would determine who was correct.

Mr. TERRY. And that would be a ripe one for the Supreme Court to probably take up on a fast track.

Mr. EGGERT. I would think so.

Mr. TERRY. Yes, legally, it is just very interesting, and as a former lawyer, those are the type of issues that kind of get my attention but also as a father they get my attention, and probably starting at about 8, my kids became pretty savvy shoppers with my credit card online. In fact, it is to the point where I just say you go to the Web site and do it yourself.

Ms. SCHAKOWSKY. Add to cart.

Mr. TERRY. Add to cart. Yes, on Dad's credit card which they think is theirs. And in fact, they at least for their lacrosse equipment, does that all the time. My card is already in there. And so they go get their new set of lacrosse gloves or pads or whatever, and then the next day I open up my email and see the receipt and call them and say what the heck did you do?

But Mr. Abboud and then to Mr. Pappas as well, how do we prevent the children who, as Mr. Abboud said and when you said that it hit right at home, how do we really know if a minor is playing, if they are using Dad's credit card or Mom's and how do we prevent that? Mr. Abboud first.

Mr. ABBOD. Don't legalize it and——

Mr. TERRY. OK. Mr. Pappas?

Mr. ABBOD [continuing]. Shut down the illegal operators that are here that are operating today. You can get into a long, technological discussion about whether you can or can't prevent minors from getting involved, and I think some people believe you can, some people believe you can't. I have seen the technological demonstrations. I think they are a barrier to market. I think by the time someone has to go through all of that, they will find that if

you don't shut down the illegal sites, that is where they will end up.

But also when you speak to children I think with respect to Congressman Barton whom I have tremendous respect for, and for Mr. Pappas to my left, I think their intentions about poker are very clear. But I don't think that is the intent of the legalization of on-line gaming. I think that the unclear nature of what the Wire Act means was hopefully Congress would take action. And I think that using the poker analogy, for the industry to go state by state, particularly in Nevada, to try to scare Congress into acting, was probably the worst bluff in the history of poker.

In Nevada, almost shamefully, they rushed it through the legislature with an emergency declaration, passed unanimously by both houses. We need to pass this poker bill now. We need to set the precedent. It is just poker. It is just poker. It is just poker. Nine months later it turns out it wasn't just poker. They have the ability without the act of the legislature to do full online gaming because it wasn't sustainable. Poker is not a sustainable market. It is fine if people want to play poker online. If it is safe they can probably do it. But it is about this. It is about slot machines geared toward children, Marvel comics, Iron Man, kiddie slots. You know, this stuff is not what we are about. That is where the industry is going to go, and unless you—

Mr. TERRY. All right. Let me—

Mr. ABBOD [continuing]. Shut down those illegal sites and unless we restore the Wire Act—

Mr. TERRY. I want to save some time—

Mr. ABBOD [continuing]. We keep—

Mr. TERRY [continuing]. For Mr. Pappas on that. And by the way, when I got on one of my iPads, they did download an app for slots. I deleted it, but they weren't gambling but it was just a regular app. Mr. Pappas.

Mr. PAPPAS. I appreciate the opportunity to respond, and I think it is important that we recognize that age verification technology exists, not only in Internet gaming but in all forms of e-commerce that are age restricted. When you talked about your children buying lacrosse products, those aren't age-restricted products. Therefore, there wasn't an age-verification system in place for them to make that purchase. If a person wants to make a deposit on an Internet gaming Web site, they would have to go through tremendous and rigorous levels in order to be able to make that deposit, proving that they are not only who they are, saying who they are, this is Jon Pappas depositing, but that Jon Pappas is actually 21 years of age.

And as I mentioned in my testimony, underage access in Nevada where this has been going on since April is zero. There has not been one reported incident of underage access in the State of Nevada and further—

Mr. TERRY. How do you know, though?

Mr. PAPPAS [continuing]. Looking at the European—

Mr. TERRY. That is one of the questions I have is how do you know, though?

Mr. PAPPAS. Because regulators actively seek to try to get on the sites themselves, and if there was a parent or a child was able to

access a site and I would suspect if they lost money on that site, the parent would have to report that to the authorities, to the regulators as well as to the credit agencies, and they would either get a refund for the money. None of that has been recorded. And if you look at the European experience which has been going on for a decade, in 2011, the European Children's Charities Coalition on Internet Safety notified the European Commission that since 2007 they have not been made aware of a single instance where a child has beaten the system and gotten online to gamble.

The fact is age verification is here. It is working very effectively today. I welcome any way that we can improve it to ensure that children don't have access to these sites because I think that is extremely important. But I will say that it has been working very effectively already.

Mr. TERRY. Thank you. My time is up. Now the ranking member of the committee, you are recognized for 5 minutes for your questions.

Ms. SCHAKOWSKY. Well, first of all, let me congratulate the panel, every one of you. I found myself nodding as the arguments are compelling.

But Mr. Abboud, you gave very passionate testimony I think, but I just want to mention this that the Venetian Casino is owned and operated by Sands and Mr. Sheldon Adelson, and there is actually promotion of mobile casino wagering. A direct quote from the Venetian, "Is there anything you can't do on a smart phone or tablet nowadays? Mobile casino gaming is available to you on property during your stay, and you can even play from your room." That is one quote, and the other is they also promote on their Web site a mobile sports betting app for smart phones, tablets and PCs, and they tout that the app "allows you to wager anywhere in Nevada" which is not a far cry from anywhere in the United States.

So I just want to say that—feels to me a little hypocritical. But having said that, I wanted to ask about, Mr. Eggert, the consumer protections. Do you feel that it is possible to make sure that the consumer protections are built into legislation sufficiently to protect people from the potential abuses of online gambling?

Mr. EGGERT. I think that there are good consumer protection devices that can be built in. I am not sure if you can ever have a perfect system. I think the problem of poker bots is going to be a difficult one, and I don't know that there is a good consumer protection solution to bots. But I think for slot machines, we can certainly have better protection than we have in almost any place in the country, specifically better information about hold percentages, and I think you can also design good methods for people to control their gambling that should be hard-wired into it.

So we can do a lot better, but I don't think you can have a perfect system.

Ms. SCHAKOWSKY. I also wanted to ask, was it Mr. Abboud talking about its public policy? Were you the one that was talking about how now we have turned gambling into—no, that was you, well, here is the thing. I was in the state legislature. We were often sold the lottery and other kinds of gambling revenue as helping our schools and in Illinois supposedly for education. I know that for a time it really displaced money that would ordinarily go for the gen-

eral revenue funds to education. I think that was corrected now in Illinois. But what is the history of that and do these revenues, which are significant, actually help us to fund the needed priorities for our governments?

Mr. BERNAL. Sure. So without question the answer to that is it has failed to produce the revenues that they have promised. No one can name a state in this country, whether it is from Georgia to Washington State, where people have said, in Georgia they are going to fund scholarships through their lottery, and then in the end what you see happening is low-income people losing money to pay for middle-class kids to go to college. And now that revenue hasn't sustained itself. So now they are going to turn to slot machines in Georgia.

Ms. SCHAKOWSKY. So have there actually been studies that would show us?

Mr. BERNAL. Oh, yes.

Ms. SCHAKOWSKY. Do you have studies—

Mr. BERNAL. The Rockefeller Institute in Albany. SUNY University up in Albany has done a great study, more so than any other entity out there, has done a great breakdown of the fact that gambling is not a sustainable revenue source from a governmental standpoint.

Ms. SCHAKOWSKY. OK. And Dr. Volberg, Mr. Bernal also cited some studies about the amount of revenue that comes from problem gamblers. Is there a way, do you think, that would actually work that could address that problem?

Ms. VOLBERG. Yes, the—

Mr. TERRY. Microphone.

Ms. VOLBERG. Oh, sorry. The issue of the proportion of revenues that come from problem gamblers has been a contentious one, and Mr. Bernal's testimony lists quite a number of different studies that have been done. But the challenge is that the ratios are different in different jurisdictions. So the industry's approach to trying to address the issue of how much they depend on problem gamblers has been to try to expand the pool of people who gamble occasionally so that you have more people who are contributing to the pot, if you will. But I think in the end, the industry is going to be dependent to a significant degree on people who spent more than many of us think they should on their gambling involvement.

Ms. SCHAKOWSKY. If I could make just one more comment, in Illinois the lottery manager was just directed to expand the promotion beyond low-income people to people who have more revenue. Thank you.

Mr. TERRY. The chair recognizes the Full Committee Vice Chair, Ms. Blackburn.

Mrs. BLACKBURN. Thank you, Mr. Chairman, and as a point I think just kind of a reality touch point to this hearing, Mr. Barton, who we all dearly love, got off on a little bit of a tangent when he did his opening statement this morning and said he thinks that God is in favor of his online poker bill because his flight got in early and, you know, he thinks he had angel wings to help get him here.

But I would encourage the gentleman from Texas to remember he only need look at the number of his bill, 2666, to remember that

the devil is in the details, so just as a point of careful guidance and instruction.

Mr. BARTON. At least you were listening to me.

Mrs. BLACKBURN. Mr. Barton, I am always listening. We women do that very well. Woo, yes. OK. Back to the questioning. Aren't you all glad you came? We are glad you came because I don't know if it is Mr. Eggert, the botnet that is out there spamming our Twitter accounts or what, but indeed they are very active and we fully realize that.

Some of you may be aware that Congressman Welch and I are co-chairs of a privacy working group, and Ms. Schakowsky is a part of this. And I have to tell you, it is a bipartisan group. It is a part of this committee. We are enjoying the education that we are getting on privacy issues and concerns from our constituents, and we are learning a lot. And one of the things that we have really taken note of is how incredibly complex the expectations of privacy are from constituents and from different participants in the industry. And we are seeking to work through this in our working group sessions.

So Mr. Freeman and Mr. Pappas, I want to come to you, Mr. Freeman, let us start with you. What are the expectations a consumer will have of privacy for their participation and their information if they log onto one of the sites? First you, and Mr. Pappas, if you will follow him?

Mr. FREEMAN. Thank you, Congresswoman. I think many were expecting Andy and I to have the fireworks today, so I am thrilled to see you and Mr. Barton taking the stage. When it comes to privacy, that is obviously an area that we value significantly. Consumer protection, a topic that has been a primary issue here today, should be an issue, and it is an issue we believe in very passionately. The only way to address privacy, the only way to address consumer protection, is through effective regulation. The black market is the one area where these issues won't be addressed.

With online gaming, all of this is voluntary. People are going on, they are providing the information themselves. They are choosing to enter that information in there, and through the regulatory bodies, the protection of that information is assured. That is what makes this situation unique in that sense, that one, people are choosing to do this in a voluntary manner, and two, the regulators are assuring that this information is protected.

Mrs. BLACKBURN. OK.

Mr. PAPPAS. First, let me start by saying that the messages you have been receiving via Twitter and Facebook I assure you are from real people who live and reside in your district and care passionately about their right to play online. Secondly, the issues of privacy and data security for Internet gaming are no different than they would be for any other e-commerce company, be it Amazon or Facebook. We believe that licensed entities would have to require all of the same privacy and data security laws that every other American company must apply. You know, today we have a situation where American consumers, except for those in the three states where it is authorized, are playing on offshore sites and they are not subject to any U.S. law or regulation. So we are asking for a federal law or state laws that ensure that the sites are author-

ized, regulated and that those sites are adhering to all the strong data privacy laws that this Congress or states come up with.

Mrs. BLACKBURN. OK, thank you. Mr. Chairman, I have got two other questions I am going to submit because of time. One pertains to Mr. Abboud's testimony and the November 13 FBI Crimes Division letter, and then the other pertains to the 2009 British hacker, Ashley Mitchell, when he was posing as an administrator for Zynga poker games. With that I yield back.

Mr. TERRY. Thank you. Now recognized for 5 minutes, the gentleman from Vermont.

Mr. WELCH. Thank you very much. Folks are going to gamble. They like to do it, and any way they can, they will. And there obviously are legitimate reasons and then there are some folks that get overwhelmed by it just like with any other kind of activity. So anything that we do has to include some protections. You have been trying to do that in Las Vegas as I understand it.

But I want to direct these questions to Professor Volberg and Professor Eggert. How do we ensure that minimizing the harm is baked in as a priority from the start and not simply laid on afterwards, after the fact, and the harm is done? I mean, if we get at it from the beginning with some sensible plan, that has in my view more prospect for being successful in helping more people. If you could—

Mr. EGGERT. I think that the way you do that is you plan it before you legalize the Internet gambling. It should be something that should be written into the regulations from day one. I think there is a lot of room. I am with Dr. Volberg on this, a lot of research to see what helps with problem gamblers. But as far as consumer protection, it is pretty straightforward what information people need and want in order to gamble, and they should be provided that.

One of my concerns about the state-by-state approach is that I am worried that it will be a race to the bottom with states with weak protections will win out over states with stronger protections, and any federal program has to take that into account and prevent it from happening.

Mr. WELCH. OK. Dr. Volberg?

Ms. VOLBERG. I guess I would echo Professor Eggert's remarks. I think you do have to start, even before the regulations, you have to bake the language into the legislation that says this is not just about raising revenues or paying for other programs. This is about consumer protection and making sure that what we put in place is going to work.

Mr. WELCH. OK. Thank you. Mr. Freeman and Mr. Pappas, you are advocates for this. What are your views on having as part of any authorization, A, consumer protections, and B, some help to problem gamblers. We can start with you, Mr. Freeman. Go ahead.

Mr. FREEMAN. It is not often an industry comes before you asking for regulation. That is what the gaming industry is doing today, asking for some very specific points around age verification, around consumer protection, and around duties of responsible gaming. The way to do that is obviously through regulation.

To the previous point that was made, the way our industry behaves, being regulated in Nevada and Mississippi and countless

states around the country, we are actually held to the highest standard because any state in which we do business can punish us for what we do in another market. So we actually have a race to the top in that sense, and it has worked for an extended period of time for our industry.

Mr. WELCH. All right. Mr. Pappas?

Mr. PAPPAS. Most definitely. I mean, I represent a consumer-driven organization, so consumer protection is paramount to our concern, and that is why we believe a regulated market is going to far better protect consumers than a prohibition or even the status quo.

So we believe that regulation, that lawmakers should require that regulators implement best-of-breed technologies and that it gives the companies the flexibility to innovate and be all of the potential problems that have been raised, and I think that that is the best way to proceed, with lawmakers setting the standards, regulators enforcing those standards and companies innovating and making them even better.

Mr. WELCH. OK. And Mr. Abboud, you raised some legitimate concerns I think that are on the minds, obviously, of lawmakers in the states and also here. I mean, is it your view that there really are no protections that could be part of any authorizing legislation that would get the job done so it is better not to do it at all?

Mr. ABBOUD. Well, as I said, when the Wire Act was overturned, that is not the day that the Internet became safe. And it is an issue that we study. It is an issue that we study every day. But we don't feel that the technology there is to safeguard consumers to the extent—

Mr. WELCH. Well, let me ask this. If the technology were there, then would you have a different point of view?

Mr. ABBOUD. I don't think this is a market that we would ever go into. We just think that turning every device into a casino takes gambling too far.

Mr. WELCH. So what would be the proper limit, as you see it?

Mr. ABBOUD. None. We talked about the European model. We have something in the United States that they don't have, billions and billions of dollars of brick-and-mortar casinos that generate jobs, that generate a lot of livelihoods for a lot of people across the country, based on shows, conventions, trade shows, all those types of things. Europe doesn't have that. Simply because Europe stepped forward and pandered to the lowest common denominator is not something our industry should follow.

Mr. WELCH. OK. Thank you. I yield back.

Mr. TERRY. Thank you, Mr. Welch. I now recognize the vice chairman of the subcommittee, Mr. Lance, for 5 minutes.

Mr. LANCE. Thank you very much, Mr. Chairman, and I think this is a very important panel, and I respect everyone who is on the panel. I hope to participate in the hearing for its full length. I do have a Health Subcommittee as well, but I certainly am deeply interested in the views of everyone on the panel.

To Mr. Pappas, you have stated in your testimony that the bill does not force any state to participate in an intrastate Internet poker system, and equally as important it allows states to implement their own online gaming regulations. As you are aware, New

Jersey has begun Internet gambling. Would this legislation in your view in any way preempt what New Jersey is currently doing?

Mr. PAPPAS. Mr. Barton's bill, H.R. 2666, would not in any way restrict the ability of Nevada or any other state to provide—

Mr. TERRY. I think your microphone is off.

Mr. PAPPAS. Oh. You are right. I am sorry. Mr. Barton's bill would not restrict in any way the ability of New Jersey or any other state to provide house-banked casino games, lottery tickets or any other games other than poker. However, with poker it would require that the state would have to become an authorized federal body, authorized by the Federal Government to continue to do that. Given that New Jersey is known for being one of the most robust gaming regulations in the country—

Mr. LANCE. And heavily regulated.

Mr. PAPPAS. And heavily regulated, that they would easily meet if not exceed whatever standards the Federal Government sets aside.

Mr. LANCE. Thank you. And then to Mr. Freeman and Mr. Abboud, regarding the DOJ opinion as it concerns the Wire Act, I know you reach a different conclusion ultimately, but is it the view of both of you that there needs to be statutory legislation in this regard as opposed merely to an opinion from the current DOJ? First Mr. Freeman and then Mr. Abboud.

Mr. FREEMAN. It is our opinion that the online gaming environment would be better with Congress' putting in place some minimum thresholds in the areas that I discussed of age verification, of geolocation and others. Without that, states are moving forward. They are putting in place as your state is doing very comprehensive regulations. I think they are showing an ability to regulate this market effectively.

Mr. LANCE. Thank you. Mr. Abboud?

Mr. ABOUD. Well, as I stated previously, we think that the Wire Act being overturned can be overturned at any moment by any administration. The states that are going forward are doing so with great risk as are my fellow industry members are going forward with great risk. So that is why I am here today asking for the Wire Act to be restored so that we can take away that ambiguity.

Mr. LANCE. And you would restore it in such a way that this would not be permitted?

Mr. ABOUD. Correct.

Mr. LANCE. And Mr. Freeman, you would modify it to permit it with certain federal regulations?

Mr. FREEMAN. Again, putting in place those minimum standards. In the absence of that, or even with the changes that are recommended, people are going to continue to game. As we mentioned before, in 2012 nearly \$3 billion was spent. Fixing the Wire Act does nothing to change the desire that has been referenced.

Mr. LANCE. I tend to agree with that, and certainly I believe in New Jersey we have tried to be responsible. And let me repeat that I believe that New Jersey regulation is strict, and we have had a generation of experience in this regard. But I certainly respect both of your points of view on this issue.

Mr. Pappas, regarding Congressman Barton's legislation, would it in any way prevent New Jersey from offering games of chance such as blackjack or slots?

Mr. PAPPAS. No, sir, it would not restrict the ability for any house-banked games. Poker would be the only place where New Jersey would have to consult with the federal law.

Mr. LANCE. And from your perspective, that consultation would be relatively easy and seamless and it is likely that New Jersey could continue to do what it is currently doing?

Mr. PAPPAS. That would be our hope. As an organization, we fought very hard for the New Jersey law and we support that law. We also support Mr. Barton's law, and we hope that they can work together.

Mr. LANCE. Thank you. Let me say that from my perspective, the governor of New Jersey, my close friend Governor Christie, and the legislature of New Jersey and those who administer our laws in New Jersey try to work in a comprehensive fashion and we try to work with all of those who are interested in this issue including all of those on this panel, and I want to thank the panel. And Mr. Abboud, you certainly represent a very great corporation in this country, Sands, and I deeply respect that. Thank you, Mr. Chairman.

Mr. TERRY. Thank you, Mr. Lance. And now the Chairman Emeritus for the Full Committee, Mr. Joe Barton. You are recognized.

Mr. BARTON. Well, thank you, Mr. Chairman. Let me start out. I was being somewhat flippant when I talked about God being for this bill. Obviously, God doesn't care a fig one way or the other about our bill, but I will say as a practicing Christian that God does give men and women free will, and I think we ought to have a law that reflects free will in this issue.

I did not say in my opening statement but we do have some representatives of the Indian casinos and the Indian Gaming Association in the room. And they were invited to present testimony and to be a part of the panel. And it is a voluntary basis. So they were invited, and they chose not to. But obviously Indian gaming is a huge part of this issue since almost as much and perhaps more people play in Indian casinos than in non-Indian casinos.

Mr. Freeman, in your testimony you gave the list of things that you said federal legislation should include or accomplish. In listening to you I believe that my bill, H.R. 2666, hits all those points. Do you agree with that?

Mr. FREEMAN. Mr. Barton, your bill certainly hits those points and others. There are points we would certainly like to see added to that, and I am happy to discuss those with you.

Mr. BARTON. OK. And Mr. Abboud, I am glad that you are here and you represent the Sands Corporation. The first hotel casino that I stayed in as a young man when I went to Las Vegas for the first time was the old Sands, and just last year I held a political fundraising event at the Venetian which I believe is a property of the current Sands Corporation. And so I have great respect for the company that you represent.

Ms. Schakowsky pointed out in her questioning some advertising material. I would like to put that up on the board, up on the

screen, that Cantor Gaming, which is a vendor of the Sands and does the Venetian, has on that particular slide right there.

[Slide shown.]

Mr. BARTON. "Is there anything you can't do on a smart phone or tablet nowadays. Mobile casino gaming is available to you on property during your stay. You can even play from your room." And then the next one, which is again at the Venetian. It talks about their sports book, that you can wager from anywhere in Nevada. Now, I want to be fair on the first slide about the gaming. It does not allow you to play poker from your room for some reason. You can do slots or roulette or Wheel of Fortune or whatever. I would like to hear your comments on this because what you are advertising here, as Ms. Schakowsky pointed out, is the same thing that we are talking about in my bill for poker only. It is just a matter of how wide the geography is or the wireless connection.

Mr. ABOUD. Well, that is why we are here today, and I appreciate the opportunity to respond to what Congressman Schakowsky said because it is all about human interaction, right? Congressman, all of you, have the right to eyeball me and determine whether or not I am telling the truth, and you can hold me accountable. It doesn't happen with a lot of online gaming opportunities, does it?

And it is also about the location. That is a very controlled environment in a regulated state, in a regulated casino, that can only be done within the four walls of our building. You have to go up to Congress Terry, if he works at the cage, to fill out the application, have an eyeball-to-eyeball experience, make sure you aren't on the self-exclusion list, make sure that we don't think you have had too much to drink, a whole series—

Mr. BARTON. I don't want you to filibuster the last 30 seconds. What your company is advertising here, except for the geography, is the same thing that my bill does, and my bill is poker only. Poker only. Now, I have never met a professional roulette player. I have never met a professional slots player. But there are lots of professional poker players because it is a game of skill. Now, if we are the final table here, Mr. Long, myself, Mr. Harper, Mr. Terry, Ms. Schakowsky, I have got a high probability I can tell you which one of us comes out the winner at the final table because I have played with Billy Long, and I think he probably beats me. Now, I have never played with Jan, so I don't know. She may be a sleeper. But poker is a game of skill, and all my bill does is allow free will at the state level if the governor allows it for people who want to play poker online. And I again appreciate Mr. Terry for his holding this hearing, and I am going to stay and hear the other questions. And maybe, if given an opportunity, I would like a second round for myself, if that is—

Mr. TERRY. The gentlelady from Illinois and I will discuss that. Mr. Harper, you are recognized for 5 minutes.

Mr. HARPER. Thank you, Mr. Chairman, and I thank each of you for being here on what is a very important topic and one that has created a little bit of a division, OK? Quite a divide. But you know, we have of course legal gambling in the State of Mississippi. It is a big industry, on average about \$2.2 billion worth of revenue a year or spent on gambling in Mississippi versus maybe, what, \$10 billion a year on average in Nevada perhaps? But it is a tourism-

driven business. The brick-and-mortar issues very important there, and it is a destination so that what you see is not just a casino but you see restaurants, golf courses, water parks, I mean other things that are there that draw that. This brings none of that. And my concern, I guess my overriding concern I have is if we address this issue and we do what Mr. Barton proposes or what others may propose, is how are we doing anything to address what is the underlying problem or the background problem of offshore and out-of-country illegal sites? We are not addressing that. And certainly if we restore the Wire Act and give it some teeth, perhaps we can do it. But it would seem to me that this bill, the problem that I have, one of the problems I have with it is if we make it legal and then states can opt out, it would seem to me if you were going to go that route, the better thing would be to make it illegal and let the state legislatures opt in, at least might give some better safeguards, not that I am proposing that, but I am just saying versus what we are seeing here.

So my concern I guess is, and I will start with you if I can, Mr. Abboud, what in your view would it take for the United States to be able to efficiently and effectively regulate Internet gambling and control the offshore illegal sites? Do we have the ability to do that if we were to have the will to do that?

Mr. ABBOUD. Thank you, Congressman. I think that we do. Government is doing it with online pharmacies today. They shut down 1,200 illegal online pharmacies. To say that we can't do it is not a plausible answer. And I think when it comes to the safety of the industry and the integrity of it, it is the FBI that has testified before Congress and sent letters saying that there is no guarantee that you can prevent youth from gambling.

And with all due respect to Congressman Barton, I am a big fan of his. When you all are playing poker together around a table, you can't show each other your cards. You can't collude against each other because it is human interaction. I don't know what happens online. No one has proven to me that you can't collude against each other.

This is in its infancy, in its infancy. And it is a rush to market, as I said before, because the Wire Act was overturned. That is not the day the Internet became safe. It is not a safe place for a lot of different transactions. And I said before, this is a play to the youth of America, and this is going to be our Joe Camel moment. And if we do not behave responsibly and protect ourselves against what could prey on youth and other people, it could very well be the demise of our industry. And to go forward would be irresponsible.

Mr. HARPER. Wouldn't it seem that the best place to start then is let us go ahead and do everything we can within our power from a technological standpoint to shut down the illegal sites?

Mr. ABBOUD. Absolutely. And there has not been enough discussion but that I think everyone on this panel is in agreement to shut down the illegal sites. And it is essential. If that is all that came out of this whole process, we would all be a lot better off. But we haven't done anything, and the industry, including my company and everyone on this panel and including the no-casino people, have not done enough to push for that effort.

Mr. HARPER. And if you don't address that, of course if you make it legal across the board and there is going to be additional regulatory burden and responsibilities and costs which would seem to be something that the players would incur, would that not then naturally drive them to the cheaper site in their views?

Mr. ABBOD. Well, I think—

Mr. HARPER. If you haven't stopped the offshore illegal sites.

Mr. ABBOD. Thank you. I think if it was to be legalized today and we don't shut off the illegal operators, I think that the industry as it exists today is at an unfair advantage because they will be operating in the regulated environment. There is nothing that is going to prevent the illegal operator for what we call giving away the market, giving away the house, adding more incentives, making it easier to get online. They will go down to the bottom, and it will be easier to go to the illegal sites unless we shut them down, unless it is a complete uniform shutdown of Internet gaming.

Mr. HARPER. I thank each of you for being here. My time is expired and yield.

Mr. TERRY. Thank you. And now the gentleman from Ohio, Mr. Johnson, is recognized.

Mr. JOHNSON. I thank you, Mr. Chairman. You know, I believe strongly that states' rights plays a predominant role in the decisions that we will make about gaming. I think the state governors, the legislatures, the people of the states are in a better position to be able to decide what they want than regulators here in Washington, D.C. But I also understand, being an IT geek myself, that the Internet has opened the door to a different kind of technology that has to be looked at and evaluated.

Mr. Freeman, let us start with you. The AGA has changed its position on Internet gaming over the years. What is its current position on Internet poker and online gaming? Do you want a federal law or do you want the states to be in charge of that?

Mr. FREEMAN. The AGA's position was adopted in 2010, and that is the current position of the organization. We support a Federal Government role here in regulating this. We support a poker solution at the federal level, and we support the ability of states to opt-in as to whether or not they choose to want to offer that game.

In the absence of federal action, states have moved forward with this. We have begun to see states like New Jersey do this in a very effective manner, along with Nevada and Delaware. And it is true, the industry is increasingly interested in what New Jersey is doing because they are proving they can do it effectively. And that is of great interest to us.

Mr. JOHNSON. Yes. You know, my concern from a technological perspective is to say we are going to regulate it is one thing. To do it effectively and protect the innocent—I do believe that gambling is an enticement to some who would see a potential quick fix to a financial problem. I understand that. I also understand though that we don't outlaw prescription drugs because some people fall victim to addictions to prescription drugs. It is all about the choice, and I firmly believe that the American people have the ability to make those kinds of decisions.

My concern is how the technology, how protections would be put in place to protect minors, to protect children, to protect the situa-

tion that our chairman talked about where his kid uses his credit card and goes out a couple hundred thousand dollars away without him knowing about it, because we know today that minors, young people, others that should not get to certain restricted adult sites and other sites are able to do so because again, being an IT geek myself, I know that there is no perfect security.

So those of you that are proponents, you can just sound off one at a time if you want to. How do you propose to make sure that our innocent young people aren't the ones, and maybe people like my chairman who wind up with a couple of hundred thousand dollar gambling debt that he didn't know was going to be on his credit card, to fall victim?

Mr. PAPPAS. If I can respond first, and thank you for the question, I think it is very important that we look at these issues and that we see how regulation can solve them. Again, we are not talking about a theoretical, can this be regulated. This is being regulated today in three states, and it has been regulated in European jurisdictions for over 10 years. Ten years. This is not in its infancy. This is a mature industry that has dealt with these issues for over a decade and responded to them accordingly.

With respect to underage access, I have already mentioned to you that there has not been a single reported incident of underage access because of these tight age-verification technologies that are available. It is not simply going on and clicking here. I am 18 or I am 21, let me gamble. You have to go through multi-layer age verification to not only prove that you are who you say you are but that you are of the approved age. So it is certainly not like any other form of e-commerce that is not age restricted. This is very restrictive.

In terms of problem gambling, there are very specific ways to address it, and I would argue, and this may blow people's minds, I would argue that it is easier to protect problem gamblers online than it is in the brick-and-mortar casino. I could walk into the Venetian tomorrow with \$1,000 in my pocket, play roulette, play craps and play poker and walk out and not a single person knows I was in the casino and I lost \$1,000. Online it is impossible. They know every moment you are on the site. They know every game you are playing, every wager you are making, every win you are making, every loss you are making. It is tracked and recorded in real time, and regulators recognize that that wealth of data is gold in terms of properly regulating and ensuring that it is not abused.

Mr. JOHNSON. I appreciate your passion, and my time has run out. I would simply point out we have got a prime example with HealthCare.gov. Regulated does not necessarily equal secure.

Mr. TERRY. Thank you, Mr. Johnson. At this time I recognize Mr. Long from Missouri.

Mr. LONG. Thank you, Mr. Chairman, and Mr. Johnson, with your comments about the chairman, I am going to miss you on this subcommittee.

Mr. TERRY. Oh, and by the—

Mr. LONG. I want one of those credit cards where you get \$100,000 on there or whatever that is.

Mr. TERRY. To clarify for the record, he was not gambling. He was buying lacrosse stuff and iTunes.

Mr. LONG. Mr. Abboud, I got a question for you. Unfortunately during these hearings, we can now go back and pull the transcript immediately, so I thought I heard you saying, correct me if I am wrong, but when you were talking to Mr. Terry early on, I think he did the first questioning after you all gave your openings. I thought I understand you to say that you are OK if poker is legalized on the Internet as long as it is not expanded to include all forms of gambling.

Mr. ABBLOUD. No, we are, for the record, we are opposed to all forms of Internet gaming.

Mr. LONG. OK. I will have to go back and listen to that because that is what I thought I heard. Mr. Eggert, as far as these poker bots are concerned, these are computer programs that they operate how? Is this the people running the site has someone playing against you or is this someone in their apartment that hooks up to a computer and acts like they are a living, breathing person playing a living, breathing person in another state or another country or how do they work?

Mr. EGGERT. They can be both types. There have been poker sites that have used bots to stimulate games so that there are more people to sit down at a game.

Mr. LONG. Kind of like a shell in a casino then?

Mr. EGGERT. Right.

Mr. LONG. OK.

Mr. EGGERT. And you know there they should be telling people it is a bot, but they haven't always done that. But the bots that are of most concern are not from the site, are ones that people have designed. They are running on their home computers so it looks like they are playing, but actually the decisions they are making, whether to bet or raise or fold are being made by the computer software and not by a human.

Mr. LONG. OK. And Mr. Freeman, for you, a few years ago, I think back 10 years ago, there was a guy whose name was Money-maker, believe it or not, that won the world series of poker which he had gotten in on what they call a satellite. He played 40 bucks or something to play a tournament, ended up winning 6 or 7 million, whatever it was.

So that really put jet fuel into the whole Internet poker thing which it thrived for several years until the Black Friday shutdown. But during the course of that there were some very high-profile cheating scandals where the operators of these sites were actually looking at your cards, at the other people they were playing cards, and with the skill of the poker players, I think 60 Minutes did a special on that. If this legislation goes through, how can people be assured that that type of activity does not continue or starts in again I guess?

Mr. FREEMAN. Yes, Congressman, I think you speak to exactly the market we all want to prevent. In those days with companies based in Costa Rica and elsewhere around the world, where we didn't have the protections, we didn't have the regulations built in, there were a lot of scary things that took place. What we are talking about is a regulated environment with licensed companies. It was a real reason that licensed companies don't want to see underage people online. There is a real reason licensed companies don't

want to see cheating take place. That is because they can lose their license, not just of their online facility but their brick-and-mortar facility in which it has already been mentioned they have invested billions of dollars. You have a moral and a business incentive for the industry to do this in the most proper, regulated, and effective manner, and that is what will assure, rather than the black market, that is what will assure that consumers are protected.

Mr. LONG. I know with your American Gaming Association that you represent several members that I assume they all have brick-and-mortar facilities, do they not?

Mr. FREEMAN. Everyone within our association on the operator's side has a brick-and-mortar facility. We also have all the leading manufacturers in the industry as well.

Mr. LONG. And I know you can't say into the future, but as your best guess, if this legislation did pass and people were authorized to open up online poker only casinos, let us say, do you visualize that being an MGM, a Caesars, a Sands, a Wynn? Will it be the operators that are out there now in the brick-and-mortar market-places or will it be smaller operators?

Mr. FREEMAN. Yes, I think that goes back to Congressman Harper's point before. How do we protect the brick-and-mortar investments that have taken place in Mississippi and Missouri and elsewhere? You already have these facilities standing. How do we make sure that they thrive? We allow them to tap into the new market. If we don't allow them to tap into the new market, we can assure that they go the way of Borders and Blockbuster and others if they can't adapt, if they can't keep up with innovation.

Mr. LONG. Yes, but my question is do you think they will be the only ones that would—

Mr. FREEMAN. I think it is up to states to determine how they want to structure this. In New Jersey they have structured it in such a way where the brick-and-mortar facilities are the only ones that can offer it.

Mr. LONG. One quick question because I don't have time to go to someone else so I will ask you. Nevada apparently has online poker now, New Jersey is going forward and Delaware I believe were the three. But let us say that they all three had it tomorrow. Can those people in Nevada own—do you have to be a resident of those states, number one, to play when you are physically in those states? And can you play if you are in Nevada and New Jersey has it now, let us say, could someone in Nevada play against someone in New Jersey or do Jersey people all play against Jersey people and Nevada against Nevada or Delaware?

Mr. TERRY. The gentleman's time is over, but I will give you 10 seconds—

Mr. FREEMAN. Thank you.

Mr. TERRY [continuing]. To order.

Mr. FREEMAN. I also have two points.

Mr. TERRY. To answer.

Mr. FREEMAN. One, you don't have to be a resident of the state. You have to be within the boundaries of the state as identified by geolocation companies, number one. Number two, on your point about can these states work together. They probably can. They

have not reached agreements to date, but that option is there for New Jersey, Delaware and Nevada to begin to work together.

Mr. LONG. OK. Thank you.

Mr. TERRY. Thank you, and that concludes time for questions. I do have a unanimous consent request to include the following items for the record, one, statement of the National Indian Gaming Association; number two, statement of Lyle Beckwith on behalf of the National Association of Convenience Stores; number three, statement of Mr. Thackston.

VOICE. Yes.

Mr. TERRY. Independent software engineer. Number four, exchange of correspondence between the late Mr. C.W. Bill Young of Florida and the FBI. Hearing no objections, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. TERRY. And the next item of business is that we have, we as the members, have the right to submit questions to you, written questions. We will hopefully have those done within the next couple weeks, and I would appreciate about 14 business days. We don't hold you to an exact standard, but appreciate if you would get written questions from the members, from this committee, that you, within about 14 days, have them back to us. I would appreciate that.

And I just want to thank all of our witnesses for being here. This was a good discussion. Sometimes we made it a little light, but this is an extremely important issue. I will make this comment. When Mr. Barton first introduced this bill, a lot of us thought it was pretty way out there. But with this decision by the Justice Department, it makes it a very relevant question and one that we have to deal with.

Mr. BARTON. Would the gentleman yield a moment?

Mr. TERRY. Absolutely.

Mr. BARTON. Well, my first bill that I introduced in this committee was to repeal the Natural Gas Policy Act of wellhead pricing on natural gas, and that was at that time way out there because John Dingell was chairman.

Mr. TERRY. Good point.

Mr. BARTON. That happened. About 5 or 6 years ago I started an effort and held a hearing on the BCS, and everybody thought that was crazy. Well, thankfully this is the last year of the BCS, and we are going to a modified playoff. So Mr. Chairman, the time is coming for this bill.

Mr. TERRY. We have always thought of you on the cutting edge.

Mr. BARTON. So time is on our side. Thank you, again chairman for holding the hearing.

Mr. TERRY. Well, thank you. And so again, I thank all of our witnesses, and we are adjourned.

[Whereupon, at 2:18 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]



NATIONAL INDIAN GAMING ASSOCIATION

Rebuilding Communities Through Indian Self-Reliance

STATEMENT FROM THE NATIONAL INDIAN GAMING ASSOCIATION

**HOUSE COMMITTEE ON ENERGY AND COMMERCE,
THE SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE
HEARING ON "THE STATE OF ONLINE GAMING"
DECEMBER 10, 2013, 12:30 P.M.
2123 RAYBURN HOUSE OFFICE BUILDING**

Introduction

As Chairman and chief spokesperson for the National Indian Gaming Association (NIGA) and its 184 Member Tribes across the country, I submit this Statement to the Subcommittee On Commerce, Manufacturing, and Trade, on the "State of Online Gaming." NIGA would like to thank Chairman Terry, Ranking Member Schakowsky and members of the Subcommittee for this opportunity to provide our views on federal proposals to legalize Internet gambling in the United States.

NIGA is an intertribal association united behind the mission of protecting tribal sovereignty and preserving the ability of Tribes to attain governmental and economic self-sufficiency through gaming and other economic endeavors.

Summary of Statement

Indian Country recognizes the concerns raised by having various federal, state and tribal government Internet gaming models. The consensus amongst NIGA's member Tribes is that any legalization of internet gaming must acknowledge the U.S. Constitution's recognition of Indian Nations as governments. Under no circumstances should any federal law, or state law, consider Indian gaming – and tribal Internet gaming – as commercial gaming. Unlike commercial gaming, all of the net revenues generated by Indian gaming are required by IGRA to be reinvested into tribal government programs and services, to help neighboring communities, and to promote the general welfare of tribal communities. 25 U.S.C. §2710(b)(B)(3).

If Congress moves to legalize Internet gaming, federal legislation should acknowledge the inherent right of all federally recognized tribes, as governments not subject to taxation, to engage and regulate tribal Internet gaming. To limit the adverse impacts on existing Indian gaming properties, all federal internet gaming

legislation should be explored and fully considered through the normal legislative process.

Indian Tribes and the Constitution

Indian tribes are independent self-governing entities exercising full authority and control over their lands, citizens, and visitors to their lands. European nations acknowledged tribes as sovereigns, entering into treaties with tribes to establish 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, and the U.S. entered into hundreds of treaties with tribal governments—taking ceded tribal homelands to help build this great nation. Despite this acknowledgement and incurred treaty obligations, past federal policies resulted in a loss of tribal homelands, suppressed Indian culture and religion, and sought out the destruction of tribal governments. The aftermath of these policies continues to plague Indian country to this day.

Background: Indian Gaming and IGRA

Tribal governments and our people persisted in the 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.

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 public safety, and promote the general welfare of Indian and nearby communities.

State governments and commercial gaming operations challenged tribal authority to conduct Indian gaming. These challenges culminated in the Supreme Court *California v. Cabazon Band of Mission Indians* decision. The *Cabazon* Court upheld the inherent right of tribes, as governments, to conduct gaming on their lands free from state control or interference.

One year later, Congress enacted the Indian Gaming Regulatory Act (IGRA). The stated goals of IGRA include strengthening tribal governments, the promotion of tribal economic development and self-sufficiency, 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. While the Act was a diminishment of Tribal sovereignty, for 25 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

Tribal leaders and the Indian gaming regulators and managers have made IGRA work for Indian Country. Indian gaming generated gross revenues of \$27.2 billion in 2012. The net revenues have been invested directly back into Indian Country, and it is helping put a new face on our communities. Tribal governments use gaming dollars to build roads, hospitals, schools, courthouses, water projects, communications services, and many other critical community infrastructure projects. Gaming revenues have also enabled Tribes to diversify our economies beyond gaming. Because of capital provided by gaming, tribes have invested in renewable energy projects, retail operations, manufacturing and other ventures.

For many tribes, Indian gaming is first and foremost about jobs. In 2012, Indian gaming was responsible for more than 300,000 direct American jobs. In many cases, Native Nations are THE largest employer in their region. Spending by Tribal operations generated an additional 230,000 indirect jobs. When all is considered, Indian gaming created over 650,000 American jobs nationwide.

In addition, Indian gaming saved thousands of American jobs during the recession. Tribal governments protected local jobs for policemen, teachers, firefighters, nurses and many others. Throughout the United States, Indian country has been there to help America through the deep recession that our Nation endured, creating jobs and putting money back into the economy.

Native Nations Regulating Indian Gaming

We continue to achieve our success because tribal governments do gaming right. In 2012 alone, Tribal leaders invested close to \$350 million in a seamless system of regulation. With three levels of regulation, tribal, state and federal, Indian gaming is the most regulated industry in the nation. Tribes directly employed 6,000 tribal gaming regulators, auditors and other compliance personnel. These men and women do the hard work of protecting the integrity of Indian gaming operations 24 hours a day, seven days a week.

NIGA Principles on Federal Legalization of Internet Gambling

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

Starting in 2010, NIGA and Tribal governments across the country worked to build a consensus position on Internet gaming. Working with regional tribal gaming organizations and the National Congress of American Indians (NCAI), we have adopted standing Resolutions opposing any federal Internet gaming legislation unless the legislation acknowledges the following principles:

- All tribal governments should have the right to operate and regulate tribal government Internet gaming—and not be treated as commercial operators
- Tribes should have the right to authorize or prohibit Internet gaming within their borders, and state government decisions on this topic should not bind tribal governments
- Tribal Internet gaming must be available to customers where Internet gaming is not criminally prohibited
- Tribal Internet gaming revenues must not be subject to taxation
- Existing tribal rights under IGRA and tribal-state compacts must be respected
- Federal legislation must not open up IGRA for amendments
- Federal legalization of Internet gaming must provide positive economic benefits for Indian country

These principles are supported by the U.S. Constitution, and maintain the current federal policy supporting the use of gaming by federally recognized Indian tribes to strengthen tribal governments and economic self-sufficiency.

Specific Comments on H.R. 2666, the Internet Poker Freedom Act of 2013

H.R. 2666 makes several improvements over past federal bills to legalize Internet gaming. However, in accordance with our standing Resolution, NIGA opposes H.R. 2666 as currently drafted.

Positive provisions in H.R. 2666 that could garner tribal government support include Section 104(a)(3) (state prohibitions will “not apply to the acceptance of bets or wagers from persons located within tribal lands...”) and Section 103 (provisions authorizing the National Indian Gaming Commission (NIGC) to work with tribal governments under the bill’s regulatory scheme.

H.R. 2666 includes provisions that violate the principles that tribal governments have united behind in our Resolution. The bill limits licensees of Internet poker to entities that have operated a gaming facility that has 500 or more slot machines in 1 location or 175 or more poker tables in 1 location. More than half of the 246 tribal governments that currently operate Indian gaming facilities would be ineligible under these criteria. It would also prevent all tribes that operate only Class II gaming from participating. Finally, these limitations would prevent all tribes that currently do not conduct Indian gaming from participating in Internet

gaming. This limitation on some of the most disadvantaged tribal communities is not acceptable.

As with past federal Internet gambling bills, Section 111(e)(1) of H.R. 2666 could be viewed as permitting the violation of exclusivity provisions in some tribal – state gaming compacts. Tribal governments have invested significant resources to reach compact agreements, and continue to make significant investments based on these agreements. Federal legislation that would disturb established and successful compact agreements would set a dangerous precedent for not only Indian Tribes, but also for the settled expectations of the States that negotiated with the Tribes.

While H.R. 2666 is limited to legalizing Internet poker, it is silent on non-poker Internet gambling. The legislative process should consider the relevant provisions of the Wire Act and / or other federal laws that could impact the Internet gaming debate.

H.R. 2666 does not address taxation of Internet poker revenue. The Subcommittee should add a provision specifically acknowledging the tribal government Internet gaming revenues are not subject to federal or state taxation, acknowledging that such revenues are used solely to fund tribal government programs and services and the needs of nearby communities.

We urge this Subcommittee and other committees of jurisdiction to first obtain the views of the Departments of Justice, Interior, Commerce, and Treasury, as well as the views of the National Indian Gaming Commission and other regulatory experts before making this significant policy change. These agencies will provide Congress with vital information on the feasibility of regulating Internet gaming in the United States.

Conclusion

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 our way of life. Federally legalizing Internet gaming in the United States has the potential to threaten the American jobs and precious government revenues that are created by Indian gaming.

At the same time, we acknowledge that U.S. citizens engage in offshore Internet gaming. In addition, several states and tribal governments have entered the new industry.

While federal legislation to legalize Internet gaming has potential to protect consumers of Internet gaming and provide a uniform regulatory system, it should not jeopardize the gains that tribal governments have fought so hard to attain and should not come at the cost of tribal sovereignty.

We again thank you for this opportunity to provide a statement on this important issue. NIGA looks forward to working with the Subcommittee to address the vital concerns of tribal governments and the national regulatory concerns related to internet gambling.

Ernest L. Stevens, Chairman
National Indian Gaming Association
224 2nd Street, SE
Washington, D.C. 20003

**STATEMENT FOR THE RECORD OF LYLE BECKWITH
SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS
NATIONAL ASSOCIATION OF CONVENIENCE STORES (NACS)
BEFORE THE
COMMERCE, MANUFACTURING AND TRADE SUBCOMMITTEE
OF THE
HOUSE COMMITTEE ON ENERGY AND COMMERCE
ON
"THE STATE OF ONLINE GAMING"
DECEMBER 10, 2013**

My name is Lyle Beckwith. I am the Senior Vice President, Government Affairs for the National Association of Convenience Stores (NACS) and I appreciate this opportunity to present NACS' views regarding Internet gambling law and regulation. NACS is an international trade association representing more than 2,200 retail and 1,600 supplier company members. NACS member companies do business in nearly 50 countries worldwide, with the majority of members based in the United States. The U.S. convenience store industry, with more than 149,000 stores across the country, posted \$700 billion in total sales in 2012, of which \$501 billion were motor fuels sales. The majority of NACS members are small, independent operators. More than 70 percent of our total membership is composed of companies that operate ten stores or less, and more than 60 percent of our membership operates a single store.

The convenience store industry in the United States sells more lottery tickets than any other channel of trade in the country. Those sales are an important part of the economic viability of convenience stores not because the sale of tickets earns the store a lot of money, it doesn't, but because the sale of lottery tickets gives customers more reasons to go into the store and, in the process, customers often buy other items. Those ancillary sales are tremendously important. Convenience stores have profit margins of just more than 1 percent and an average store makes less than \$40,000 per year in annual pre-tax profits. Those numbers don't leave a lot of room to lose consumer foot-traffic and the resulting ancillary sales.

Unfortunately, our industry's sales are threatened and consumers are threatened in other ways by the impending explosion of Internet gambling. In this testimony, we'd like to cover how we got to this point, the problems with the Department of Justice's change in its legal views, what things will look like if Congress doesn't act, and the looming public policy threats that inaction will bring.

I. Background

The Wire Act became law in 1961 and during the first fifty years that law was in effect the U.S. Department of Justice took the view that gambling by use of the wires – everything from phone lines to, late, the Internet – was illegal. The Department brought prosecutions to enforce the Wire Act and testified before Congress on its view of the law.

Importantly, the Department maintained its view that the Wire Act prohibited gambling over the Internet during the early 2000s when Congress was considering legislation to create additional tools to curb illegal Internet gaming. Congress eventually did pass such legislation and the Unlawful Internet Gaming Enforcement Act (UIGEA) became law. UIGEA did not define the universe of gaming that was illegal on the Internet because Congress understand that the Department of Justice had fully formed views on that issue and that other than some limited exceptions – such as for off-track betting on horse races which was dealt with specifically in a separate law – the Wire Act clearly prohibited nearly all forms of gambling on the Internet.

From 2006, when UIGEA passed, to December 2011, the only questions involved how the prohibitions on Internet gaming could be enforced and the effectiveness of that enforcement. But in December 2011, the Department of Justice abruptly reversed the position it had held for fifty years and undercut the law that Congress had passed relying upon the Department's legal

views. This remarkable move turned Internet gambling law and regulation on its head. Overnight, we went from a nation in which gambling on the Internet was illegal under federal law to one in which states could authorize any and every form of gambling on the Internet that they chose.

Now, several states allow gambling on the Internet and many more are actively considering it. And, according to the Department of Justice, not only does federal law not bar these activities, we are left without any federal regulation to limit what states can do. This is a remarkable, and perhaps unprecedented, turn of events. The Internet, of course, does not recognize state boundaries which means that we are moving down the road toward every home and office in the nation being an instant gambling hall.

II. Problems with the DOJ Opinion

Before looking at what it means to bring legal gambling to every corner of the country, it may be helpful to briefly discuss what the Department of Justice got wrong. Exhibit A to this testimony is a brief white paper which goes into more detail on the legal questions involved, but it's helpful to point out a few points of that analysis here. The first is that the Department ignored other laws that grew up around the Wire Act to reinforce the illegality of Internet gambling – and particularly of Internet lotteries.

For example, the Interstate Transportation of Wagering Paraphernalia Act of 1961 bars lotteries and several other forms of gambling from being sent through interstate commerce. And federal courts have ruled on more than one occasion that any communication over the Internet – even if that communication is initiated and received in the same state – is a communication through interstate commerce. In other words, the Internet is inherently interstate.

In addition, the Anti-Lottery Act and Interstate Wagering Amendment of 1994 makes Internet lotteries illegal in the United States. Unfortunately, the Department did not deal with either law in its opinion on the Wire Act. That left the false impression that Internet lotteries are legal under federal law when they clearly are not – and, of course, the interplay between these laws and the Wire Act itself may have led the Department to a different conclusion even on the Wire Act.

To change fifty years of legal positions and undercut Congress' work on UIGEA is one thing, but to do that without even considering other relevant laws undercuts the Department's credibility. The upshot is that federal prosecutors have been given bad guidance. And, no one is in a position to challenge that bad guidance because the Department has significant prosecutorial discretion. Rather than a legal opinion, what the Department issued in December 2011 amounts to legislation. With one fell swoop it struck down its position on the Wire Act and essentially expunged the Interstate Transportation of Wagering Paraphernalia Act, the Anti-Lottery Act, and the Unlawful Internet Gaming Enforcement Act from the U.S. Code. Of course, legislating is not supposed to be the province of the Department of Justice.

III. The Current Trajectory for Internet Gambling

Without Congressional action, the Department of Justice has set the country on a course for widespread gambling on the Internet. We can look to Europe to get a sense of what this looks like. In the United Kingdom, for example, the UK lottery has been online for years. Exhibit B to this testimony gives you a sense of what happens when lotteries go online and Internet gaming is allowed to flourish. It is tempting to think that the only thing available at the UK lottery website is a chance to win the lottery but that would be wrong. The UK lottery website offers gambling of virtually all sorts imaginable. Not only does the website offer people the chance to pick numbers for a lottery, play instant win games and the like, it also offers games called "Battleship," "Monopoly," "Mousetrap," "Snakes and Ladders," "Christmas Presents," "Scrabble," "Snow Me the Money," "Hangman," "Connect Four," "Zombie Escape" and many more.

Not only is the variety of gambling games available on the "lottery" website remarkable but it is difficult not to notice that a great many of these games are named after very popular children's games. Is that the model we want in the United States? With every state able to authorize any and every gambling game on the Internet and without federal regulation or limitations, that is what will happen here.

In fact, we are getting close. The Delaware lottery already promotes "table games" on its website. These games are offered on other websites – those for the Delaware Park Racetrack, Dover Downs, and the Harrington Raceway – but the official Delaware lottery website lists the games and prominently links to those websites.

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

The technology raises serious questions about the ability of gambling websites to accurately determine where customers are when they gamble, and there are also many questions about just how diligent gambling websites will be in trying to limit gambling to a particular state. More gamblers mean more revenue for the website even if they are outside the state where that gambling is supposedly legal. This question will be more troubling if state-run lotteries are involved. While states might credibly enforce the law against private gambling websites to try to ensure strong efforts are being made to limit players from out of state, will state lotteries really police themselves as effectively? That doesn't seem likely. Nor does it seem likely given the

Department of Justice's legal opinion that it can be counted on to police state-run lotteries and keep them from luring in out of state bettors.

The result will be that states with public policy concerns about gambling will be overridden and people within those states' borders will be able to gamble anywhere in those states on computers, tablets and smart phones. Longstanding objections to Internet gambling from states like Utah, Virginia and others will be rendered moot as people gamble from wherever they like. And money will flow to favored state lotteries and away from less popular state lotteries. That may mean small state lottery revenues suffer while big state revenues jump – or perhaps bettors will move their money in other ways. Regardless, states that rely on these revenues will be placing them at significant risk as people become able to spend their money in other states without having to travel outside their homes to do so.

And this will happen without any effective regulatory structure. States will be the regulators for their own state lotteries, but when the state is the direct seller of tickets, how effective will that regulation be? Will state lottery commission really crack down on themselves if their own websites don't do enough to prevent out of state gambling or to prevent children from gambling? The bare Department of Justice opinion doesn't answer these questions – it merely strips away decades of legal protections without providing anything in its place.

IV. Public Policy Problems with Internet Gambling

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

But the problems go far beyond that and extend to other forms of gaming as well. Verifying age – and, thereby, preventing children from gambling – is a difficult problem on the Internet. Convenience stores check driver's licenses and other forms of identification more than any other sector in the U.S. economy. Our industry handles about 160 million transactions every day and a significant number of those are for age-restricted products. In fact, our industry checks more IDs each day than the Transportation Security Administration which checks about 2 million IDs every day. Age-restricted products include not only lottery tickets, but alcohol, tobacco and other adult products. There is no way to be as effective verifying someone's age on the Internet as in-person verification because there are complex difficulties in confirming that the person at a computer is the same person that is providing a form of identification.

Research from the Harvard School of Public Health and the Annenberg Public Policy Center indicate a nearly 600% increase in gambling in post-secondary institutions between 2001 and 2005, with over 15% of students engaging in gambling each week in 2005. The reasons cited are the spread of legalized casino gambling and internet gambling – the study was done prior to UIGEA, an era to which the Department of Justice is retaking us. Young people are

often drawn to the video game style of internet gaming sites and seem comfortable playing (and paying) online.

Another study found that youths with gambling problems reported having a preference for lottery tickets compared to other forms of gambling. The study also found that lottery tickets are an addictive activity that introduces youth to the exciting properties of gambling.¹

A Connecticut Council on Problem Gambling study demonstrated that one out of ten high school kids were compulsive gamblers and the rate of problem gambling among high school students was more than twice the rate of adults. The study also found that lottery was among the most popular forms of gambling for these kids.²

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

For years, many tobacco-selling websites verified age by making someone click a button that said the customer was eighteen years old – and that was the full extent of age verification. But that is where the Department of Justice is leading us on Internet gambling. It took years for Congress to pass legislation to help make some impact on the problems with age verification for

¹ Jennifer Felsher, Jeffrey Derevensky, Rina Gupta, "Lottery participation by youth with gambling problems: are lottery tickets a gateway to other gambling venues?" *International Gambling Studies*, Vol. 4, November 2004.

² Rani A. Desai, et. al. "Gambling Behavior among High School Students in the State of Connecticut," *CT Council on Problem Gambling*, May 15, 2007.

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

⁴ *Id.*

⁵ Rubin, R, et al., Online Tobacco Sales Grow, States Lose, Forrester Research, Inc., *Tobacco Control*, April 27, 2001. 290(10):1356-59, September 10, 2003.

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

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

online tobacco sales. Allowing similar problems to flourish on Internet gambling could allow children to fall into addiction and create financial debts that none of us wants them to incur.

Experience overseas demonstrates that these problems will be present with online gaming. A 2009 study Commissioned by the National Lottery Commission for the United Kingdom found that a fifth of schoolchildren are gambling illegally even though gaming companies are required to carry out stringent checks to prevent children playing addictive games.

And putting gambling on the Internet also threatens to exacerbate issues for problem gamblers. It is far easier to gamble too much in the privacy one's home than it is to go to a nearby store (in the case of lottery tickets) or travel to a not-so-nearby casino in order to gamble. And the normal human interaction necessary to engage in gambling in the brick-and-mortar context provides some social limitations that can be helpful to reducing the amount of problem gambling. None of those impediments exist on the Internet. And, already, 43% of callers to the 1-800-GAMBLER national hotline indicated problems with lottery gambling.⁸ Not only that, but allowing online gambling (especially lotteries) would have a disproportionate impact on lower income families. The annual amount spent, or per capita play, by gamblers is actually highest for lower income households (\$597 per year), exceeding any other income category, and more than double the amount for the highest earners (\$289 per year, on average). In addition, households earning just \$10,000 spend twice the amount on gambling as households earning \$90,000. Put another way, the lowest-earning households spend about 10.8 percent of income on gambling, versus 0.7 percent of income for the highest earners.⁹

While some will cynically argue that nothing can be done to reduce gambling online, the facts show otherwise. A survey published in by the Gambling Commission, for example, found that one third of gambling websites allowed underage betting. UIGEA, however, reduced the prevalence of youth gambling. One year after passing UIGEA, the University of Pennsylvania found that Internet gambling among college students significantly declined.¹⁰ Unfortunately, the Department of Justice, through a single legal opinion, has undermined UIGEA and opened the doors to widespread and unchecked Internet gambling.

* * *

The time for Congress to do something about this problem is now – before the problem grows out of control. Once gambling revenues started flowing, particularly from state lotteries, it will only get harder for Congress to act to protect children and curb growing gambling addiction. The window for Internet gambling must be closed or at least narrowed.

⁸ According to Gambling Free Tennessee Alliance.

⁹ National Center for Policy Analysis Task Force on Taxing the Poor, "Taxing the Poor," June 22, 2007.

¹⁰ "Card Playing Down Among College-Age Youth: Internet Gambling Also Declines," *Annenberg Public Policy Center of the University of Pennsylvania*, October 18, 2007.

EXHIBIT A

Internet Lotteries Remain Illegal**I. Introduction**

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

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

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

II. Interstate Transportation of Wagering Paraphernalia Act

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

² 18 U.S.C. § 1084 (2006).

³ State Lottery Opinion, at 1.

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

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

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

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

⁴ 18 U.S.C. § 1953(a) (2006).

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

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

⁷ *Fabrizio*, 385 U.S. at 269.

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

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

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

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

⁹ *Id.*

¹⁰ *Fabrizio*, 385 U.S. at 266.

¹¹ *Id.*

¹² *Id.* at 267.

¹³ *Id.* at 271.

¹⁴ *Id.*

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

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

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

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

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

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

¹⁷ 196 F. 3d. 1137 (10th Cir. 1999).

¹⁸ *Id.* at 1138-39.

¹⁹ *Id.*

²⁰ *Id.* at 1139.

²¹ 534 F.2d 1020 (2d Cir. 1976).

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

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

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

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

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

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

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

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

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

²⁴ 799 F. 2d 225 (5th Cir. 1986).

²⁵ *Id.* at 227.

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

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

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

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

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

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

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

²⁸ *Id.* at 157.

²⁹ 869 F.2d 184 (2d Cir. 1989).

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

³¹ 18 U.S.C. § 1301 (2006).

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

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

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

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

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

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

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

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

IV. Unlawful Internet Gambling Enforcement Act of 2006

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

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

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

³³ 31 U.S.C. §§ 5361-5367 (2006).

³⁴ State Lottery Opinion, at 3.

³⁵ UIGEA § 5361(b).

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

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

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

V. Conclusion

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

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

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

Online lotteries have been illegal under federal law for decades. The Department's new interpretation of the Wire Act did not make online lotteries legal. Other federal laws still bar states from operating lotteries on the Internet. Federal case law and legislative history regarding federal anti-gambling statutes support this position. Consequently, states are not allowed to use the Internet to sell lottery tickets to consumers.

EXHIBIT B

Filter by game type

- [Instant Wins \(35\)](#)
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Filter by theme

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Filter by top prize

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- [£15,001-£70,000 \(9\)](#)
- [£70,001-£250,000 \(10\)](#)
- [£250,001-£1m \(7\)](#)
- [£1m-£10m \(2\)](#)
- [Over £10m \(1\)](#)

Filter by launch date

- [Latest \(22\)](#)
- [Old favourites \(17\)](#)

Filter by price per play

- [Over £2 \(6\)](#)
- [£2 \(19\)](#)
- [£1 \(12\)](#)
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Christmas Millionaire **£5.00**
5 games to play and 15 chances to win
Win up to £1,000,000
[Play now](#)
[Try now](#)



75 Ball Bingo **£3.00**
Grab your dabber and be bolded pink...
Win up to £300,000
[Play now](#)
[Try now](#)



NEW **BATTLESHIP** **£2.00**
Two ways to play: sink the ships to win
Win up to £60,000
[Play now](#)
[Try now](#)



NEW **MONOPOLY Gold** **£2.00**
Roll the dice, collect properties to win
Win up to £50,000
[Play now](#)
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Super Rich **£5.00**
14 chances to be super rich!
Win £100,000 every year for 12 years!
[Play now](#)
[Try now](#)



Bejeweled **£3.00**
Roll the dice to collect Gems or Instant Prizes
Win up to £300,000
[Play now](#)
[Try now](#)



Diamond 7s **£2.00**
Click and reveal to win up to 7 times
Win up to £70,000
[Play now](#)
[Try now](#)



NEW **MOUSE TRAP** **£1.00**
Move around the board to fill your prize table
Win up to £8,000
[Play now](#)
[Try now](#)



x10 Multiplier **£3.00**
Your day could get 10 times better
Win up to £275,000
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Christmas Presents **£2.00**
Roll the dice and play for Christmas cash
Win up to £70,000
[Play now](#)
[Try now](#)



Festive Fortune **£2.00**
Match the seasonal symbols to win
Win up to £75,000
[Play now](#)
[Try now](#)



NEW **Snakes and Ladders** **£1.00**
Roll the dice to move around the board
Win up to £10,000
[Play now](#)
[Try now](#)



Snow Me The Money **£2.00**
Match two symbols in a row to win
Win up to £80,000
[Play now](#)
[Try now](#)



Scrabble **£2.00**
Will your chosen tiles spell you prizes?
Win up to £75,000
[Play now](#)
[Try now](#)



Classic Snakes and Ladders **£2.00**
Roll the dice and move around the board
Win up to £50,000
[Play now](#)
[Try now](#)



Christmas Cracker **£1.00**
Choose your character and match 3 gifts to win
Win up to £10,000
[Play now](#)
[Try now](#)



Lucky Lines £2.00
 Reveal a line of lucky symbols to win
Win up to £40,000
[Play now](#)
[Try now](#)



90 Ball Bingo £2.00
 Be a dab hand with 3 ways to play
Win up to £100,000
[Play now](#)
[Try now](#)



£250,000 £2.00
 Win up to 8 times in 3 colourful games
Win up to £250,000
[Play now](#)
[Try now](#)



£100,000 £1.00
 Match 3 to win
Win up to £100,000
[Play now](#)
[Try now](#)



MONOPOLY BONUS £2.00
 Reveal 3 matching symbols to win!
Win up to £100,000
[Play now](#)
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Money Lines £2.00
 Are you in line for a big win?
Win up to £50,000
[Play now](#)
[Try now](#)



Cash Rich £2.00
 Click and reveal for 8 chances to win!
Win £25,000 every year for 10 years!
[Play now](#)
[Try now](#)



CONNECT 4 £1.00
 Connect four counters to win
Win up to £8,000
[Play now](#)
[Try now](#)



£500,000 £3.00
 Will you unlock the mystery game?
Win up to £500,000
[Play now](#)
[Try now](#)



NEW Bullseye £1.00
 Match 3 to win
Win up to £5,000
[Play now](#)
[Try now](#)



Hangman £1.00
 Reveal letters and complete a word to win
Win up to £15,000
[Play now](#)
[Try now](#)



Fast £50 £1.00
 Click and reveal - match 3 cash values to win!
Win up to £8,000
[Play now](#)
[Try now](#)



Money Multiplier £2.00
 Match 3 in a game. Will you multiply your prize?
Win up to £100,000
[Play now](#)
[Try now](#)



Lucky Stars £1.00
 Simply match two star signs to win
Win up to £12,000
[Play now](#)
[Try now](#)



Cash Alley 50p
 Knock down cans to reveal up to £1,000
Win up to £1,000
[Play now](#)
[Try now](#)



Pluck a Duck 25p
 Click on the ducks to hook up to £500
Win up to £500
[Play now](#)
[Try now](#)



Buried Treasure £1.00
 Piece together the treasure to win
Win up to £18,000
 Play now
 Try now



Zombie Escape £2.00
 Will you find what you need to escape the city?
Win up to £60,000
 Play now
 Try now



Penalty Payout £2.00
 Penalties mean prizes in this game of two halves.
Win up to £90,000
 Play now
 Try now



EuroMillions £2.00
 Become a EuroMillionaire
 Includes the UK Millionaire Raffle
£26,000,000*
Tue 10 Dec 13
 Play now



Lotto £2.00
 Includes the Lotto raffle
£2,200,000*
Wed 11 Dec 13
 Play now



Thunderball £1.00
 Best chance to win £500k on a £1 game
£500,000**
Wed 11 Dec 13
 Play now



Lotto HotPicks £1.00
 Pick and match
£130,000**
Wed 11 Dec 13
 Play now

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* Estimated jackpot.

** In exceptional circumstances and depending on the number of winners overall and per prize category, prizes may be less than stated. See Game Procedures for details.

Δ Game Rules and Procedures apply.

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WRITTEN REMARKS OF JIM THACKSTON

INDEPENDENT SOFTWARE ENGINEER

FOR THE RECORD, HOUSE SUBCOMMITTEE ON COMMERCE, MANUFACTURING,
AND TRADE HEARING

"THE STATE OF ONLINE GAMING"

TUESDAY, DECEMBER 10TH, 2013

MY NAME IS JIM THACKSTON. I AM AN INDEPENDENT SOFTWARE ENGINEER WITH MORE THAN 20 YEARS OF EXPERIENCE IN THE FIELD. I EARNED A BACHELOR OF SCIENCE DEGREE IN MECHANICAL ENGINEERING FROM THE UNIVERSITY OF SOUTH FLORIDA AND A MASTER OF SCIENCE DEGREE IN AEROSPACE ENGINEERING FROM THE GEORGIA INSTITUTE OF TECHNOLOGY.

MY RELEVANT WORK EXPERIENCE INCLUDES ENGINEERING WORK INVOLVING SOFTWARE DEVELOPMENT WHILE EMPLOYED AS A TURBOMACHINERY ENGINEER IN NASA'S PROPULSION LABORATORY AT THE GEORGE C MARSHALL SPACE FLIGHT CENTER.

SUBSEQUENT SOFTWARE ENGINEERING WORK INCLUDED BUILDING AND MAINTAINING COMPONENTS OF A US AIR FORCE COMBAT MISSION PLANNING SYSTEM AND A NUMBER OTHER PROJECTS AS A SUBCONTRACTOR FOR COMPANIES IN THE GLOBAL ACCOUNTING, TELECOMMUNICATIONS, MANUFACTURING, AND ENERGY INDUSTRIES.

MY EXPERIENCE WITH INTERNET POKER BEGAN IN 2004 WHEN I WAS LOOKING OVER THE SHOULDER OF AN INDIVIDUAL WHO WAS PLAYING REAL-

MONEY INTERNET POKER. HE WAS PLAYING AT A NINE-SEAT VIRTUAL TABLE WHERE ONE OF THE OTHER PLAYERS WAS APPARENTLY LOCATED IN LONDON, ENGLAND. AS A TECHNOLOGY PROFESSIONAL, MY FIRST THOUGHT UPON OBSERVING THE GAME WAS 'WHAT AN INTERESTING WAY TO MOVE MONEY ACROSS AN INTERNATIONAL BORDER OUTSIDE THE CONVENTIONAL BANKING SYSTEM.' THIS REALIZATION HAS SINCE GUIDED ALL OF MY WORK RELATED TO INTERNET POKER.

AS A SOFTWARE ENGINEER, I UNDERSTAND HOW HACKERS CAN MANIPULATE COMPUTER SOFTWARE AND HARDWARE AND EXPLOIT THE PROPERTIES OF THE INTERNET.

IN APRIL 2005, I BEGAN DEVELOPING A STRATEGY FOCUSED ON FINDING A SOLUTION TO THE MONEY LAUNDERING VULNERABILITY THAT WOULD SATISFY LAW ENFORCEMENT AND COUNTERTERRORISM AUTHORITIES.

I REACHED OUT TO THE POKER INDUSTRY TO INFORM THEM OF THE PROBLEM AND THE IMPORTANCE OF DEVELOPING A SOLUTION PROACTIVELY. MY EFFORT WAS MET WITH DENIAL.

AS TIME PROGRESSED, I BEGAN TO REALIZE THAT NO LAW ENFORCEMENT, COUNTERTERRORISM, OR OTHER SECURITY AGENCY ANYWHERE IN THE WORLD TRULY UNDERSTOOD THE SCOPE OF THE PROBLEM. I CONCLUDED THAT THE ONLY WAY TO CONVINCE THE INTERNET POKER INDUSTRY AND LAW ENFORCEMENT WAS TO BUILD WORKING SOFTWARE TECHNOLOGY THAT DEMONSTRATED THE VULNERABILITY.

I APPROACHED THE PROBLEM BY PLACING MYSELF IN THE ROLE OF A MONEY LAUNDERER WORKING WITH A TERROR ORGANIZATION SEEKING TO MOVE MONEY FROM THE UNITED STATES TO EUROPE AND BEYOND. ON THE BASIS THAT THE ACTIVITY MUST REMAIN UNDETECTED BY LAW ENFORCEMENT AND COUNTERTERRORISM AUTHORITIES AS WELL AS THE INTERNET POKER WEBSITES OPERATORS AND THEIR REGULATORS, I DEVELOPED A LIST OF CONSTRAINTS. THE MOST LIMITING WAS THE ASSUMPTION THAT INTERNET POKER WEBSITES WERE FOLLOWING EVERY LAW AND REGULATION TO THE LETTER AND THAT THEY EMPLOYED BOTH AUTOMATED AND HUMAN ANTI-COLLUSION SYSTEMS. I CONSIDERED A COUNTERMEASURE THAT THE WEBSITE MIGHT DEPLOY AGAINST ME AND THEN BUILT A COUNTER-COUNTERMEASURE TO OVERCOME IT. I KEPT ESCALATING THE POSSIBLE COUNTERMEASURES UNTIL, IN NOVEMBER 2007, I DISCOVERED A COUNTER-COUNTERMEASURE THAT NEITHER THE POKER WEBSITES NOR THEIR REGULATORS COULD STOP. IN LIGHT OF THIS DISCOVERY, I ABANDONED ANY NOTION OF HELPING THE LEGALIZATION EFFORT AS I COULD NOT IN GOOD CONSCIENCE PROMOTE AN ACTIVITY THAT I KNEW WOULD EVENTUALLY BE EXPLOITED BY CRIMINALS OR TERRORISTS.

RECOGNIZING THAT GOVERNMENT AGENCIES MIGHT NOT FULLY UNDERSTAND THE PROBLEM, I CONTACTED THE US TREASURY'S OFFICE OF TERROR FINANCING AND FINANCIAL CRIMES. I SPOKE TO AN OFFICIAL WHO SAID THEY ALREADY KNEW THAT POKER COULD BE USED TO LAUNDER MONEY. BUT WHEN I DESCRIBED MY PROCESS OF CONSIDERING COUNTERMEASURES AND BUILDING COUNTER-COUNTERMEASURES, HE BECAME MORE INTERESTED AND HE INSTRUCTED ME TO TAKE THE ISSUE TO THE FBI'S TAMPA FIELD OFFICE.

BECAUSE MY TECHNOLOGY COULD ONLY BE USED TO LAUNDER MONEY, I WAS RELUCTANT TO JUST WALK INTO AN FBI OFFICE OFF THE STREET, SO ON DECEMBER 20TH, 2007, I MET WITH FLORIDA ATTORNEY GENERAL BILL MCCOLLUM SEEKING A LETTER ASSURING THE FBI THAT I BUILT THE TECHNOLOGY ONLY TO DEMONSTRATE THE VULNERABILITY. INSTEAD OF OFFERING A LETTER, HIS OFFICE SENT MY BRIEFING MATERIALS TO THE DEPARTMENT OF HOMELAND SECURITY'S OFFICE OF INTELLIGENCE AND ANALYSIS. ACCORDING TO THE ATTORNEY GENERAL'S DEPUTY CHIEF OF STAFF, THE UNDERSECRETARY FOR INTELLIGENCE AND ANALYSIS WAS TO BE BRIEFED ON MY TECHNOLOGY ON MARCH 7TH, 2008. I DO NOT KNOW IF MY MATERIAL WAS EVER REVIEWED BY HOMELAND SECURITY TECHNOLOGY EXPERTS.

IN MAY, 2009, I WAS CALLED TO WASHINGTON DC TO EXPLAIN MY TECHNOLOGY TO STAFF MEMBERS FROM THE HOUSE FINANCIAL SERVICES COMMITTEE.

ON JUNE 25TH, 2009, I BRIEFED TWO REPRESENTATIVES OF THE FBI'S CONGRESSIONAL AFFAIRS OFFICE, TWO REPRESENTATIVES FROM THE TREASURY DEPARTMENT, AND A REPRESENTATIVE FROM THE DEPARTMENT OF JUSTICE MONEY LAUNDERING AND ASSET FORFEITURE OFFICE. IN THE BRIEFING, I EXPLAINED HOW A TERROR ORGANIZATION COULD USE FIFTY FIVE MONEY MULE ACCOUNTS TO MOVE APPROXIMATELY \$240,000 PER MONTH FROM THE UNITED STATES TO EUROPE IN A WAY INVISIBLE TO POKER WEBSITE COUNTERMEASURES INCLUDING ANTI-COLLUSION AND GEO-LOCATION SYSTEMS. FOR THOSE UNFAMILIAR, THE TERM 'MONEY MULE' REFERS TO A

PERSON HIRED BY A TERROR OR CRIMINAL ORGANIZATION TO OPEN A BANK ACCOUNT AND INTERNET POKER ACCOUNT UNDER A LEGITIMATE IDENTITY. IN MY BRIEFING EXAMPLE, THE FIFTY FIVE LEGITIMATE ACCOUNTS WOULD BE PLAYED IN GROUPS OF FOUR AT NINE-SEAT VIRTUAL POKER TABLES. TWO COLLUDING ACCOUNTS ARE DESIGNATED WINNERS AND TWO ARE DESIGNATED LOSERS. THE OTHER FIVE PLAYERS ARE INNOCENT BYSTANDERS. MY TECHNOLOGY INCLUDES A SOFTWARE COMPONENT THAT STRATEGICALLY SELECTS WHICH ACCOUNTS SHOULD PLAY IN A SERIES OF GAMES DESIGNED TO MOVE MONEY IN A PARTICULAR DIRECTION. FOR THE FIFTY FIVE ACCOUNTS, A MAXIMUM OF 341,055 DIFFERENT FOUR-PLAYER ACCOUNT COMBINATIONS CAN BE PRESENTED TO A POKER WEBSITE'S ANTI-COLLUSION SYSTEM. INCREASE THE NUMBER OF MULE ACCOUNTS TO 100 AND THE NUMBER OF COMBINATIONS INCREASES TO 3,921,225.

GAMING INDUSTRY ADVOCATES AND REGULATORS PROMOTE THE IDEA THAT THE HUGE VOLUMES OF DATA COLLECTED INCLUDING EVERY CARD DEALT TO A PLAYER AND EVERY BET MADE AS AN ADVANTAGE TO LAW ENFORCEMENT AND REGULATORS. AS MY SYSTEM CLEARLY DEMONSTRATES, IT IS EASY FOR MONEY LAUNDERERS TO USE SIMILAR, PUBLICALLY AVAILABLE INFORMATION TO DEVELOP SOFTWARE ALGORITHMS AND EMPLOY SKILLED PLAYERS TO PRESENT NORMAL PATTERNS TO DEFEAT ANY ANTI-COLLUSION SYSTEM.

IN THE JUNE 25TH 2009 BRIEFING, I EXPLAINED THE PROBLEM IN VERY GENERAL TERMS BY COMPARING INTERNET POKER TO POKER GAMES PLAYED IN A BRICK AND MORTAR CASINO. IN THE BRICK AND MORTAR CASE, ALL POKER PLAYERS MUST COME INTO AN ENVIRONMENT THAT IS UNDER THE COMPLETE CONTROL OF THE CASINO AND ITS REGULATORS. PLAYERS

EXCHANGE MONEY FOR CHIPS AT THE SAME CASHIER WINDOW AND SIT AT THE SAME PHYSICAL TABLE. THE GAME IS PLAYED ENTIRELY WITHIN THE SAME LEGAL AND REGULATORY JURISDICTION. WITH INTERNET POKER, THE SITUATION IS REVERSED. PLAYERS INVITE THE INTERNET POKER WEBSITE ONTO THEIR COMPUTERS. I EXPLAINED THAT IT IS IMPOSSIBLE FOR A POKER WEBSITE OR ITS REGULATORS TO EVER HAVE AS MUCH CONTROL OVER THE PLAYER'S COMPUTER HARDWARE AND SOFTWARE AND THE ENVIRONMENT IN WHICH THEY OPERATE THAN THE POKER PLAYER.

USING AN EXAMPLE INVOLVING A DRUG TRAFFICKING ORGANIZATION, I DESCRIBED THE DIFFICULTIES LAW ENFORCEMENT AUTHORITIES WOULD ENCOUNTER SHOULD A MONEY MULE BE DISCOVERED. IN THE SCENARIO, A PERSON IS ARRESTED FOR A CRIME AND AUTHORITIES FIND EVIDENCE INDICATING THAT INTERNET POKER MIGHT HAVE A CONNECTION TO THE CRIME.

BECAUSE THE POKER WEBSITE OPERATORS FOLLOW EVERY LAW AND REGULATION, INVESTIGATORS KNOW EVERY DETAIL OF THE LAST INTERNET POKER GAME INVOLVING THE SUSPECT'S ACCOUNT INCLUDING THE IDENTITIES AND BETTING HISTORIES OF ALL EIGHT OTHER PLAYERS AT THE TABLE DURING THE TIME THE SUSPECT WAS PLAYING. IN THE JUNE 25TH 2009 EXAMPLE, THE INFORMATION PROVIDED BY THE POKER WEBSITE INCLUDES THE IDENTITIES OF FOUR PAST PLAYERS. THESE ARE PLAYERS WHO HAVE LEFT THE TABLE BUT WERE PLAYING DURING THE TIME THE SUSPECT PLAYER WAS ACTIVE.

CONSIDER THE FOLLOWING INTERROGATION:

THE INVESTIGATOR ASKS: 'WHEN WAS THE LAST TIME YOU PLAYED POKER?'

THE SUSPECT RESPONDS: 'I'VE NEVER PLAYED POKER.'

THE INVESTIGATOR ASKS: 'WHO ARE THE OTHER COLLUDERS AT THIS POKER TABLE?'

THE SUSPECT RESPONDS: 'I DON'T KNOW. I'VE NEVER PLAYED POKER. I WAS JUST PAID CASH BY AN INDIVIDUAL I DO NOT KNOW. HE TOLD ME TO OPEN A BANK ACCOUNT AND A PLAYER ACCOUNT ON A POKER WEBSITE - NEITHER OF WHICH IS ILLEGAL.'

THE SUSPECT IS TELLING THE TRUTH, LEAVING LAW ENFORCEMENT NO CHOICE BUT TO INVESTIGATE ALL EIGHT OF THE OTHER PLAYERS AT THE TABLE PLUS, IN THIS EXAMPLE, THE FOUR PAST PLAYERS. THIS IS NECESSARY BECAUSE THE SUSPECT IS A MONEY MULE WORKING FOR, BUT ESSENTIALLY SEPARATED FROM, THE DRUG TRAFFICKER LEADERSHIP. THE MONEY MULE SERVES ONLY AS A SACRIFICE TO LAW ENFORCEMENT - BUT ONE THAT HAS A LEGITIMATE IDENTITY. THE MULE'S POKER ACCOUNTS ARE ACTUALLY PLAYED FROM OFFSHORE LOCATIONS BY HIGHER LEVEL CARTEL OPERATIVES USING CUSTOM-BUILT SOFTWARE RUNNING ON MODIFIED COMPUTER HARDWARE. IN THE BRIEFING, I POINTED OUT THE ADDITIONAL INVESTIGATIVE BURDEN IF ANY OF THE INTERNET POKER ACCOUNTS, LEGITIMATE OR NOT, ARE PHYSICALLY LOCATED IN A FOREIGN JURISDICTION.

IT IS IMPORTANT TO NOTE THAT NINE OF THE THIRTEEN PLAYER ACCOUNTS IN THIS SCENARIO ARE INNOCENT. TO FIND THE OTHER THREE COLLUDERS, LAW ENFORCEMENT OFFICIALS WOULD HAVE TO SERVE SEARCH WARRANTS ON NINE INNOCENT PEOPLE BASED ON NO OTHER EVIDENCE THAN THEM BEING UNLUCKY ENOUGH TO HAVE PLAYED AT A CORRUPT TABLE. IN LATER MEETING WITH FBI SPECIAL AGENTS, I WAS TOLD THAT A JUDGE WOULD NEVER ISSUE SEARCH WARRANTS BASED ON SUCH THIN EVIDENCE.

A KEY OBJECTIVE OF MY BRIEFING WAS TO MAKE THE POINT THAT GEO-LOCATION TECHNOLOGIES, INCLUDING SOFTWARE DESIGNED TO IDENTIFY THE PHYSICAL LOCATION OF A COMPUTER USING NETWORK IP ADDRESSES, ARE INEFFECTIVE. IN MY SCENARIO, THE DRUG TRAFFICKER POKER PLAYERS WERE LOCATED IN COSTA RICA BUT THE GEO-LOCATION SOFTWARE EMPLOYED BY THE POKER WEBSITE WOULD REPORT THAT THE COMPUTER IS AT THE ADDRESS OF RECORD OF THE MONEY MULE.

ON OCTOBER 19TH, 2009, REPRESENTATIVE SPENCER BACHUS SENT A LETTER TO FBI DIRECTOR ROBERT MUELLER INQUIRING ABOUT INTERNET POKER AND MONEY LAUNDERING. THE NOVEMBER 13TH, 2009 RESPONSE FROM THE FBI'S CYBER DIVISION SUPPORTED MOST OF MY FINDINGS BUT THERE WERE NOTABLE OMISSIONS SUGGESTING GAPS IN THE FBI'S KNOWLEDGE.

IN 2011, I DESCRIBED MY TECHNOLOGY AND TECHNIQUES AND SOME OF THE DIFFICULTIES I ENCOUNTERED TRYING TO EXPLAIN THE MONEY LAUNDERING THREAT TO AN INTERNATIONALLY RECOGNIZED CYBER SECURITY AND CYBER TERRORISM EXPERT. HE SUGGESTED I WRITE ABOUT THE PROBLEM FROM THE PERSPECTIVE OF THE TERROR ORGANIZATION - AS AN INSIDER. ON THIS

ADVICE I WROTE A BUSINESS PLAN EXECUTIVE SUMMARY FOR A HYPOTHETICAL BANKING ENTERPRISE THAT I CALLED 'THE BANK OF AL QAEDA'. IT DESCRIBES MY BRIEFING SCENARIO AS THOUGH THE TERROR ORGANIZATION WAS SEEKING INVESTMENT MONEY TO LAUNCH THE BUSINESS. RECENTLY, I WROTE A COMPANION SUMMARY ENTITLED 'THE NARCO STATE BANK' WRITTEN FROM THE PERSPECTIVE OF A DRUG CARTEL. THE BRIBING OF CUSTOMS, BORDER PATROL, AND TRANSPORTATION SECURITY AGENTS WOULD BE THE PRIMARY ACTIVITY OF THIS HYPOTHETICAL BUSINESS. IN THE SUMMARY, I POSE THE FOLLOWING QUESTION:

WHICH METHOD OF PASSING \$150,000 IN BRIBE MONEY TO A CORRUPT FEDERAL OR STATE OFFICIAL IS THE MOST DIFFICULT TO DETECT?

A. A SINGLE CASH PAYMENT WHERE THE BRIBED OFFICIAL IS FORCED TO EXPOSE THE MONEY TO CASH TRANSACTION REPORTING MECHANISMS;

B. A WIRE TRANSFER FROM A DRUG CARTEL SHELL COMPANY TO THE BRIBED OFFICIAL'S BANK ACCOUNT;

C. ONE OR MORE CASH-OUTS OF INTERNET POKER 'WINNINGS' WHERE THE WINNINGS ARE THE RESULT OF NARCO STATE BANK EXPERT POKER PLAYERS USING MONEY MULE ACCOUNTS TO PUSH TO THE BRIBED OFFICIAL'S POKER ACCOUNT.

THE ANSWER IS C. SUPPOSE, FOR EXAMPLE, THAT INTERNET POKER IS LEGAL IN CALIFORNIA AND THE BRIBE TARGET WORKS THE US-MEXICO BORDER, THE NARCO STATE BANK WOULD USE CALIFORNIA MONEY MULE

ACCOUNTS TO FEED BRIBE MONEY INTO THE POKER WEBSITE LIQUIDITY POOL. THE BRIBE TARGET IS TOLD TO CREATE AN INTERNET POKER ACCOUNT IN HIS OR HER NAME AND DEPOSIT AN INITIAL BRIBE OF A FEW THOUSAND DOLLARS. NARCO STATE OPERATIVES WOULD THEN PLAY THE ACCOUNT ALONG WITH FEEDER MULE ACCOUNTS. OVER TIME, NARCO STATE EXPERTS COULD MOVE THE BRIBED OFFICIAL'S ACCOUNT FROM LOWER TO HIGHER STAKES GAMES AND EVENTUALLY CASH-OUT WINNINGS TO THE BRIBED OFFICIAL'S BANK ACCOUNT. TAXES ARE PAID ON THE WINNINGS AND THE PERFECT BRIBE IS COMPLETE.

IF A CORRUPT OFFICIAL IS FOUND BY LAW ENFORCEMENT, CONSIDER THE DIFFICULTY FACED BY PROSECUTORS. THE CORRUPT OFFICIAL IS ASKED 'WHERE DID YOU GET THE \$150,000?' THE ANSWER WOULD BE: 'I WON IT PLAYING POKER.' WHEN LAW ENFORCEMENT OFFICIALS REVIEW ALL OF THE RECORDS KEPT BY THE POKER WEBSITE, THE SUSPECT'S EXPLANATION FOR THE \$150,000 IS CONFIRMED. THE SCENARIO IS A DEFENSE ATTORNEY'S DREAM. SIMPLY PUT, IT WOULD NOT BE UNUSUAL FOR A PERSON EARNING A CUSTOMS OR BORDER PATROL AGENT'S SALARY TO ALSO BE A GOOD POKER PLAYER.

AROUND THIS TIME, I POSTED MY RESEARCH AT [HTTP://WWW.UNDETECTABLELAUNDERING.COM](http://www.undetectedlaundry.com), A WEBSITE I CREATED TO ALLOW POLICY MAKERS AND LAW ENFORCEMENT OFFICIALS EASY ACCESS.

ON APRIL 23RD, 2012, I CONDUCTED A LIVE DEMONSTRATION OF THE MONEY LAUNDERING TECHNOLOGY SHOWING HOW AGE VERIFICATION AND GEO-LOCATION TECHNOLOGIES ARE EASILY BREACHED. THE DEMONSTRATION WAS

CONDUCTED IN THE CAPITOL HILL OFFICE OF CONGRESSMAN GREGG HARPER AND WAS WITNESSED BY KEY MEMBERS OF HIS STAFF AND PROFESSIONAL STAFF FROM THE HOUSE ENERGY & COMMERCE COMMITTEE. ON MAY 9TH, 2012, I REPEATED THE DEMONSTRATION FOR THE DIRECTOR OF THE CENTER FOR COMPUTER SECURITY RESEARCH AT MISSISSIPPI STATE UNIVERSITY. BASED ON FEEDBACK FROM THE MISSISSIPPI STATE DEMONSTRATION, I DECIDED TO TAKE THE ISSUE TO THE FBI'S TAMPA FIELD OFFICE. AFTER A LATE NOVEMBER 2012 MEETING WITH A TOP TAMPA FBI CYBERCRIMES EXPERT, I RECEIVED A MESSAGE ASKING ME TO REMOVE THE UNDETECTABLELAUNDERING.COM WEBSITE FROM PUBLIC VIEW. I COMPLIED IMMEDIATELY.

DURING 2012, I FOLLOWED THE INTERNET POKER LEGALIZATION EFFORTS IN NEVADA, NEW JERSEY, AND DELAWARE. CONCERNED BY THE FBI REQUEST, I FAXED THE EMAIL I RECEIVED FROM THE FBI AND SOME OF MY RESEARCH MATERIAL TO A.G. BURNETT, CHAIRMAN OF THE NEVADA GAMING CONTROL BOARD ON DECEMBER 12TH, 2012. I ALSO CONTACTED NEW JERSEY STATE OFFICIALS IN AN ATTEMPT TO ALERT THEM TO THE PROBLEM BEFORE GOVERNOR CHRISTIE SIGNED AN INTERNET GAMBLING BILL. I SENT AN EMAIL TO A CONSTITUENT RELATIONS ACCOUNT AND SENT A FAX DIRECTLY TO GOVERNOR CHRISTIE'S OFFICE. I RECEIVED NO RESPONSE. ONCE THE NEW JERSEY BILL BECAME LAW, I ATTEMPTED TO ALERT NEW JERSEY REGULATORS. THE OUTREACH WAS IGNORED.

IN MAY, 2013, I FORMALLY BRIEFED SENIOR FBI OFFICIALS AT FBI HEADQUARTERS IN WASHINGTON DC. THE BRIEFING WAS HOSTED BY THE SECTION CHIEF OF THE UNIT RESPONSIBLE FOR ENFORCING ALL US

GAMBLING LAWS INCLUDING THE WIRE ACT. AFTER THE BRIEFING, I TURNED OVER ALL OF MY RESEARCH MATERIAL EXCEPT FOR THE SOFTWARE SOURCE CODE.

ON AUGUST 7TH, 2013, CONGRESSMAN C.W. BILL YOUNG SENT A LETTER ON MY BEHALF TO FBI DIRECTOR ROBERT MUELLER INQUIRING ABOUT THE FBI TAMPA FIELD OFFICE ACTIVITY AND THE MAY 2013 BRIEFING. PRIOR TO RECEIVING THE FBI RESPONSE ON SEPTEMBER 30TH, 2013, I SHOWED THE YOUNG LETTER TO DAVID REBUCK, DIRECTOR OF THE NEW JERSEY DIVISION OF GAMING ENFORCEMENT. DURING THE IN-PERSON ENCOUNTER, I DESCRIBED MY PAST ATTEMPTS TO ALERT HIS SUBORDINATES TO THE FBI'S CONCERNS. HE SAID HE WOULD REVIEW THE STATE COMMUNICATIONS LOGS AND REVIEW MY EMAILS AND OTHER CONTACTS. AFTER RECEIVING THE FBI RESPONSE CONFIRMING MY ASSERTION THAT INTERNET POKER MONEY LAUNDERING COULD INDEED BE MADE UNDETECTABLE, I SENT EMAIL MESSAGES WITH ATTACHMENTS TO BOTH DAVID REBUCK AND A.G. BURNETT.

I RECEIVED NO RESPONSE. HAVING EXHAUSTED ALL OTHER OPTIONS, I PLACED [HTTP://WWW.UNDETECTABLELAUNDERING.COM](http://www.undetectedlaundering.com) BACK INTO PUBLIC VIEW ON OCTOBER 20TH, 2013.

I HAVE PROVED, USING SCIENTIFICALLY REPEATABLE METHODS, THAT MANY ASSERTIONS MADE BY INTERNET POKER LEGALIZATION ADVOCATES ARE FALSE. IT IS SIMPLY NOT POSSIBLE TO USE IP ADDRESS, CELL TOWER TRIANGULATION, OR ANY OTHER GEO-LOCATION TECHNOLOGY TO RELIABLY DETERMINE THE PHYSICAL LOCATION OF AN INTERNET POKER PLAYER. TERROR AND CRIME ORGANIZATIONS CAN USE SOFTWARE ALGORITHMS TO

STRATEGICALLY CONSTRUCT POKER GAMES THAT PRESENT NORMAL PATTERNS OF PLAY TO ANTI-COLLUSION SYSTEMS AND AT THE SAME TIME ENSURE THAT MONEY IS MOVED TO SPECIFIED INTERNET POKER ACCOUNTS.

EXPANDING LEGAL INTERNET POKER IN A MARKET AS BIG AS THE UNITED STATES WILL GUARANTEE THE OCCURRENCE OF CRIMINAL ACTIVITY BECAUSE THE MASSIVE AMOUNT OF 'CLEAN' MONEY DEPOSITED INTO LEGAL INTERNET POKER ACCOUNTS WILL PROVE IRRESISTIBLE TO CRIMINAL OR TERROR ORGANIZATIONS.

C.W. BILL YOUNG
13TH DISTRICT, FLORIDA

COMMITTEE ON
APPROPRIATIONS
CHAIRMAN
SUBCOMMITTEE ON DEFENSE
SUBCOMMITTEE ON
MILITARY CONSTRUCTION AND
VETERANS AFFAIRS

www.house.gov/young

2407 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0913
(202) 225-8861

DISTRICT OFFICE:
9210 112TH STREET
SEMINOLE, FL 33772-2809
(727) 392-4100

Congress of the United States
House of Representatives
Washington, DC 20515-0913

August 7, 2013

The Honorable Robert S. Mueller, Jr.
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue N.W.
Washington, D.C. 20535

Dear Director Mueller:

As you are aware, Nevada, Delaware, and New Jersey have legalized internet poker and other states appear poised to follow. In Congress, hearings have been held and legislation has been introduced that would direct the federal government to develop regulations for internet gambling.

In December, 2012, Jim Thackston, a constituent of Florida's 13th Congressional District that I have the privilege to represent, was asked by the Tampa FBI Field Office to remove from public view a website describing how terror or crime organizations could use internet poker to launder money in ways undetectable to internet poker websites and their regulators.

In May, 2013, FBI Headquarters personnel responsible for enforcing the Wire Act of 1961 were formally briefed by Mr. Thackston on the money laundering problem detailed in the website in question. To ensure Congress has a full understanding of potential unintended consequences arising from legalized internet poker, I request your answers to the following questions:

- Based on the FBI's understanding of Nevada, Delaware, and New Jersey internet gambling poker regulations and countermeasures, could a person – other than the individual who opens an internet poker account – use technology which is undetectable to poker website operators and their regulators to play games from a physical location outside the United States?
- Could the technologies and techniques described by Mr. Thackston enable money laundering with the potential to escape detection by poker website operators and their regulators?
- Has the FBI developed a position on this matter?

I would greatly appreciate your timely response to this inquiry. With best wishes and personal regards, I am

Very truly yours,



C. W. Bill Young
Member of Congress



U.S. Department of Justice
Federal Bureau of Investigation

Washington, D. C. 20535-0001

SEP 20 2013

The Honorable C. W. Bill Young
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Young:

I am writing in response to your August 7, 2013, letter to the FBI. You requested information regarding money laundering via online gambling.

Online casinos are vulnerable to a wide array of criminal schemes. For example, criminals may participate in games with exclusively criminal players, exchanging money to launder criminal proceeds; or a criminal might intentionally lose a game to a public official in order to effect a bribe payment. Transnational organized crime (TOC) groups might exploit legal online gambling to generate revenue, steal personally identifiable information (PII), and engage in public corruption. TOC groups could hire hackers to rig games in favor of TOC members playing a particular game—depriving the game operators of revenue. TOC groups could also use intrusions to steal PII from players, which the groups could employ in future financial fraud schemes.

Money launderers are resourceful and find innovative ways to exploit any medium available to launder illicit funds. Even well-regulated entities, such as US banks, are commonly unwitting conduits for money laundering. Similarly, physical casinos remain popular venues for money laundering, despite regulation and the implementation of anti-money laundering and compliance programs. Online gambling, therefore, may provide more opportunities for criminals to launder illicit proceeds with increased anonymity. Individuals may use a wide array of mechanisms to conceal their physical location, or give the appearance of operating in a different jurisdiction, when accessing a website. Many of these methods could be detected and thwarted by a prudent online casino, for example, by blocking software designed to enable online anonymity. However, some sophisticated methods would be difficult to readily identify or deter.

Many US-based groups have experience running their own illegal gambling operations, including offshore operations, and some have leveraged new technology to conduct complex multimillion dollar illegal online gambling ventures. If legalized gambling expands to more states, TOC groups may draw upon their experience with their illegal gambling operations to legitimize at least a portion of their enterprise.

The Honorable C. W. Bill Young

If you have any additional concerns, please contact the FBI's Office of Congressional Affairs at (202) 324-5051. I thank you for your inquiry, and I hope this information will be helpful to you.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Britt Johnson", with a horizontal line extending to the right.

J. Britt Johnson
Deputy Assistant Director
Criminal Investigative Division