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The Federal Government Should Leave Gamblers Alone

Why the Market Can Best Discipline Online Gambling

By Eli Lehrer

July 2008

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Executive Summary

In the United States, residents of 48 states can gamble legally, and no major city in the continental U.S. is located more than a short drive from a gambling venue. Yet a number of laws continue to restrict Americans' ability to gamble on the Internet. The three main laws are:

- 1) The Wire Act, which limits interstate transmission of sporting results for the purpose of betting;
- 2) The Professional and Amateur Sports Protection Act, which bars certain states from legalizing gambling; and
- 3) The Unlawful Internet Gambling Enforcement Act (UIGEA), which does not directly restrict gambling but instead deputizes banks, credit unions, and credit card companies to block illegal online gaming transactions.

These laws have become increasingly burdensome and unworkable. This paper looks at four options to deal with them:

Prohibition. A total prohibition would outlaw all Internet gambling. This option fails to take Americans clearly expressed preferences into account, and would result in a loss of individual freedom.

The Status Quo. A status quo regulation would result in leaving matters of settled law as they are in the summer of 2008. In particular, it would involve clarifications that make betting on skilled games (like poker and bridge) legal, leave house-banked games like blackjack and slots in a legal gray area, and enforce UIGEA in relation to sports betting. This would, essentially, decide all outstanding legal questions in favor of more liberal approaches. As a short-term measure this solution makes sense and is consistent with current law. In the long term, however, it does not appear sustainable.

Political Regulation: A political regulatory system would involve setting up a government agency to regulate all online gambling. Proposals currently before Congress leave a great deal to be desired; they threaten to create a burdensome regulatory environment that would do nothing to protect consumers, and lack the flexibility that an evolving market requires.

Market Discipline: A system of market discipline is the preferred option. It would leave much regulation of gambling to market forces. Government would enforce laws against force and fraud and collect taxes from gambling companies the same as from any other businesses. Gambling site operators would, as a practical matter, submit to substantive oversight of non-skilled games but would have some choice of regulatory authority. This system fits in best with the nature of the Internet and the long-term interests of the public.

In short, the federal government should leave gamblers and gambling site operators alone.

Introduction

Gambling predates human civilization.¹ It exists in every major world culture, on every continent, and at every level of society. Neither Judaism nor Christianity forbids it. At-home gambling goes on everywhere, and no major city in the continental United States lies more than a few hours' drive from a gambling venue. Thus, gambling's spread to the Internet should not be surprising. Hundreds of Internet sites—many American-owned and -managed, though mostly based in England or the Caribbean—allow individuals to place bets on everything from the turn of a card to the outcome of a sporting event.

Like all other economic activity, Internet gambling requires some basic rules. Currently, American gambling regulation exists primarily at the state level, but Congress has repeatedly legislated in ways that impact Internet gambling. Two major federal laws affect Internet gambling: the Unlawful Internet Gambling Enforcement Act (UIGEA) and the Wire Act.² Both deserve rethinking.

The Unlawful Internet Gambling Enforcement Act, enacted in 2006 and set to come in force in the fall of 2008, seeks to exert a vigorous federal role in banning any Internet gambling activities that might violate state law.³ The proposed regulations to implement UIGEA would require payment processors—banks and credit card companies—to block any “illegal” online gambling transaction⁴—but the Act gives no substantive guidance as to which transactions it bans. Thus, UIGEA will very likely lead to enormous administrative costs, blocking of legal transactions, and blocking of things like offshore reinsurance contracts and eBay auctions which the law's framers never intended to block. This would impose significant costs on the banking system and could destabilize a myriad of financial institutions.

The 1961 Wire Act bans almost all interstate sports betting. To a large extent, it bars any effort to transmit results that could be useful for gambling as a business across state lines. Although it might be read to prohibit a larger spectrum of activities, courts have interpreted it only to apply to sports betting other than bets on animal racing.⁵ Combined with the 1992 Professional and Amateur Sports Protection Act (PASPA)—the brainchild of former NBA player and U.S. Senator Bill Bradley, passed by overwhelming majorities in the House and Senate—which prohibits states from legalizing betting on any sports besides Jai-Alai and animal racing, the Wire Act helps create a near-total ban on sports betting outside of Nevada.⁶

The Unlawful Internet Gambling Enforcement Act would require payment processors to block any “illegal” online gambling transaction⁴ but gives no substantive guidance as to which transactions it bans.

The confluence of these three laws has produced an inherently uncertain and unstable environment for Internet gambling. While sports betting appears clearly illegal, nothing else is clear. A long term solution must address all forms of betting and set out clear rules. This paper looks at four major alternatives:

While sports betting appears clearly illegal, nothing else is clear. A long term solution must address all forms of betting and set out clear rules.

- 1. Prohibition.** Prohibition would entail an all-out ban on Internet gambling impacting both players and gaming facility operators, which would require significant law enforcement resources. It would provide clearer and more enforceable rules than those currently in force, but it would entail serious restrictions on individual freedom.
- 2. Status Quo.** Through a mix of regulatory and statutory action, the status quo would decide issues in favor of maintaining current standards. Most sports betting would face a clear ban, skill games like poker and bridge would be legal on the Internet and taxed, and house-banked games of chance would exist in a gray area.
- 3. Political Regulation.** A political regulatory approach would involve the federal government setting up a system for regulating Internet gambling specifically. Nearly all online gambling, although probably not sports betting, would fall under this system and would be legal throughout the United States. However, this approach will likely prove both inflexible for those subject to it and easy to evade for those not subject to it.
- 4. Market Discipline.** A market-regulatory approach would involve a largely free market for the regulation of gambling. The government would enforce anti-fraud laws and general business regulations for gambling businesses the same as for all other businesses. Market forces, voluntary agreements, private corporations, and some state-level agencies would serve to regulate all—or almost all—gambling transactions. Federal laws concerning gambling *per se* would face repeal.

Prohibition and federal political regulation have fatal flaws that render them impractical and unworkable at any time. The status quo approach—clearly legalizing skill games but otherwise leaving things alone—offers the best hope for *short term* reform, while at the same time the nation should move toward the market discipline approach in the longer term.

Prohibition

Sen. Richard Shelby (R-Ala.) made a succinct case for prohibition during a 2003 Senate debate over gambling previous version of UIGEA that would have applied the Wire Act more broadly:

Off-shore Internet casinos continue to proliferate and illegal Internet gambling continues unabated, despite the fact that no state has yet authorized a virtual casino. The very nature of Internet gambling defies regulation at the state or local level ...Clearly, the casinos themselves are out of the reach of even federal authorities [under current laws], and can be expected to continue to flaunt U.S. Law.⁷

Modern court interpretations of the Constitution's Commerce Clause almost certainly give the federal government authority to outlaw nearly all interstate betting. To be effective, an Internet gambling prohibition would have to include civil and criminal penalties for both bankers and online gamblers.

In theory, someone who, as a business, transmits the odds of a single horse race over the Internet can face two years in prison as a result of the UIGEA's plain text:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.⁸

The status quo approach—clearly legalizing skill games but otherwise leaving things alone—offers the best hope for short term reform, while at the same time the nation should move toward the market discipline approach in the longer term.

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Extensions of the Wire Act's blanket prohibitions on sports betting would be a first step to prohibit online gambling. Legislation proposed in the late 1990s and early 2000s would have done just this by amending the Wire Act to ban all interstate betting except with some very narrow exceptions for charity raffles, including online card rooms and slot machines.⁹ Sports betting, which the Wire Act already prohibits on an interstate basis, remains illegal in 49 states and the District of Columbia, but 48 states allow other types of gambling. Thus, extending the Wire Act would outlaw activities that are legal almost everywhere, which would constitute a gross federal imposition upon state prerogatives.

In addition, an effective prohibition regime would need to control demand as well as supply, and thus would necessarily include penalties on people who gamble online. This would entail significant restrictions on individual freedom.

Although far more burdensome on just about everybody else, prohibition would provide clear rules for financial institutions, which would not have a difficult time deciding which transactions to block and which to allow. However, ease of compliance and enforcement alone is not a sound basis for policy.¹⁰

It would accomplish nothing. Obviously fraudulent pyramid schemes continue to flourish on the Internet despite the fact that government taking action against them is highly popular.¹¹

It would also be costly and intrusive to enforce. A total prohibition on Internet gambling hardly appears to make any sense in any modern social context, anyway. Gambling in some form is legal in 48 states and Washington, D.C., and 47 states have private or mostly private gambling facilities.¹² In short, the United States has already made a decision in favor of widespread legal gambling.

The Status Quo—Skill Games Are Legal, Sports Betting Illegal, Other Games “Gray”

A status quo reform approach would maintain the current state of gambling law, while seeking to clarify matters of settled law in favor of greater liberality. It would implement the Unlawful Internet Gambling Enforcement Act as written with regard to most sports betting, provide clarification as to the legality of betting on skill games like poker and bridge, and leave house-banked games like baccarat, craps, and roulette in

a legal gray area. While far from ideal as a long-term solution, maintaining the status quo does have the short-run advantage that, unlike prohibition and political regulation, it would not make things worse.

For a variety of social and cultural reasons, sports betting remains illegal throughout the United States, with federal support for those bans.¹³ The 1992 Professional and Amateur Sports Protection Act bans any state that did not allow sports betting at the time of its passage from doing anything to “sponsor, operate, advertise, promote, license, or authorize by law or compact” any sports gambling except in sports where it was already widespread, such as horse and dog racing and Jai Alai.¹⁴ The Wire Act, likewise, prohibits any interstate transmission of information useful for these types of gambling. Only one state, Nevada, currently allows sports betting and three more—Delaware, Montana, and Oregon, which briefly ran lottery games involving sporting event results during the late 1980s and early 1990s—retain the option to legalize it.

To date, there has been no serious effort to overturn the status quo, and no state has frontally challenged the 1992 law in court.¹⁵ Furthermore, none of the states that could legalize sports betting have made any serious efforts to do so, even though all four of them currently have full casinos, race-track casinos, or both.¹⁶

Although no less cumbersome, the Unlawful Internet Gambling Enforcement Act appears somewhat easier to enforce and more “prudent” with regard to sports betting for at least two reasons. First, because of the complexity of betting on sports, only some online casinos offer sports betting, so the field of potential enforcement would be smaller.

Second, there is a case—albeit a weak one for reasons discussed below—that sports betting holds a potential for adverse social consequences such as the degradation of sport and widespread bribery of athletes. This does not apply to other types of betting, which if administered properly, depend almost entirely on skill (poker, bridge) or luck (roulette, slot machines) and never *directly* impact anyone outside of the game.¹⁷

While the status quo would continue UIGEA’s ban on sports betting, it would also ideally involve the clear legalization of skill games. The language of the prohibition applies only to “sporting event[s]” and “game[s] predominantly subject to chance”—language that appears to exclude games of skill like poker and bridge.¹⁸ To avoid any ambiguity—

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The status quo appears inherently unstable. While tenable as a medium-term situation, a nation governed by law should not have laws on its books that are unclear and subject to capricious enforcement—or non-enforcement.

which gambling advocates believe exists—Congress could legalize games of skill. One bill currently before the House of Representatives, the Skill Game Protection Act (SGPA, H.R. 2610), introduced by Rep. Robert Wexler (D-Fla.), would clarify this while imposing some limited federal efforts to collect taxes, combat fraud, and provide services to problem gamblers. The bill would clearly legalize games that people can already play at home in every state—games that involve no “house” but instead, involve players competing against one another.

However, any legislation with a realistic chance of passage would have to set up new regulations and include such political compromises as new programs for helping problem gamblers and the like. Thus, rather than legislate, the executive branch could solve the problem itself by issuing a statement—either from the Department of the Treasury or from the Federal Reserve—that UIEGA does not apply to games of skill.

Moreover, it is hard to figure out why these games should be illegal while online poker is legal. While it is pretty clear that Texas hold ‘em and duplicate bridge mostly involve skill, other games raise much closer questions: Three-card poker and Blackjack are both house-banked games that involve some skill but would remain subject to UIEGA’s restrictions even if SGPA were to become law. Nonetheless, the line between them and other games seems slight: When playing the single deck game a blackjack player who counts cards can make a living doing so. Any blackjack player, furthermore, can *almost* break even in the long run simply by following basic strategy consistently—the house advantage is about .44 of one percent.¹⁹ In the long run, therefore, legalizing skill games while making everything else illegal or even “gray” seems inconsistent and perverse.

Thus, the status quo appears inherently unstable. While tenable as a medium-term situation, a nation governed by law should not have laws on its books that are unclear and subject to capricious enforcement—or non-enforcement. Furthermore, the types of “skill games” legalization proposed to date simply do not go far enough.

Political Regulation

Political regulation of gaming would attempt to create formal government regulations over the online gaming environment. It would likely increase the number of trustworthy games available to gamblers in the short run while simultaneously reducing opportunities for casino operators. While political regulation would eliminate much of the uncertainty involved in

the status quo while allowing far more freedom than a total prohibition, it may ultimately lack the flexibility needed to make online gaming enjoyable for consumers and profitable for operators. The next few pages evaluate current political regulation proposals' viability.

The leading proposal to regulate online gambling, the Internet Gambling Regulation and Enforcement Act (H.R. 2046), sponsored by Rep. Barney Frank (D-Mass.), would create broad federal regulatory guidelines systems for online gaming, while leaving most of the particulars to administrative rulemaking.²⁰ The core of the bill—section 5383—establishes requirements largely analogous to those in states and foreign jurisdictions that allow gambling. Applicants would need to file financial statements and disclosures of financial condition, and submit to background checks. People with criminal records involving financial or gambling related crimes would always be denied licenses.²¹ Program administrators could also add any other factors they want.²²

This is problematic. Since it lacks a “shall issue” clause—which would require the government to issue licenses to anyone meeting certain criteria—the proposed federal system could ultimately lead to arbitrary denial of licenses. The statute, as written, is awfully vague about the types of games permitted and prohibited. Regulators would need to walk a very fine line in order to decide exactly what the licenses would allow and what they would not.

In the physical world, this process of regulatory trial and error implied in the regulations seems “workable” if burdensome. After all, setting up a new casino requires acquiring real estate and gaming equipment (tables and machines) and hiring a crew of slot attendants, cocktail servers, counters, casino marketers, managers, and dealers—not the mention the army of hotel, retail, entertainment, service, professional, and artistic staff that accompany most modern casinos. In the real world, the economic “long run”—the time it takes to acquire and deploy new land, labor materials, and capital goods—takes quite some time. Adding regulations of gambling *per se* will not always significantly increase the time or energy it takes to set up a bricks-and-mortar casino operation.

Online, on the other hand, the “long run” may be a mere few minutes. An Internet casino does not necessarily need to add or redeploy many resources to introduce a new game and it does not need building permits to expand its “premises” (that is, increase the capacity of its servers). A real-world casino operator would never think of ripping out all

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of his slot machines at once and replacing them with poker tables—but an online casino could do just that by changing a few lines of code. Gambling machines, which real world authorities inspect in every detail, would be almost impossible to inspect the same way when deployed on the Internet—after a government agent inspected computer code, nothing stops an operator from changing it. Online casinos also provide venues for innovative enterprises, such as prediction markets, which allow people to place bets on election results and other current events.²³ All of these factors create an environment in which regulatory delays of any sort become much more costly and could even threaten to destroy the viability of casino businesses.

Even more importantly, no online regulatory regime—no matter how well constructed or run—can ever regulate *everybody*. The global nature of the Internet allows any website in the world to remain accessible to potential users everywhere in the world. So long as anybody *anywhere* wishes to gamble online, he or she will continue to have the option to do so. So long as its proprietors can pay taxes, some government will want to grant it a blessing. As a result, any system that is burdensome will become unenforceable as well. This places enormous pressure on systems that restrict online gaming beyond the decisions of consumers and entrepreneurs.²⁴

Market Discipline

A market regulatory system for Internet gambling would have three major attributes:

1. Repeal of most federal gambling laws;
2. Application of existing laws against force and fraud to gambling; and
3. Private choice of regulator for players and operators.

Repeal of federal gambling laws. The process of setting up a market-regulatory system for Internet gambling would begin by getting the government out of the way. The federal government would eliminate most of its gambling-specific laws. In particular, Congress would repeal the Unlawful Internet Gambling Enforcement Act, Professional and Amateur Sports Protection Act, and Wire Act. UIGEA, poorly conceived and unenforceable, clearly carries the worst consequences. While it may

actually do the least to restrict gambling—everything UIGEA discourages is already illegal—it imposes an enormous liability and burdens banks, credit card companies, and credit unions. It should be the first to go.

Repealing the Wire Act and PASPA—the two laws that ban most sports betting—would have few consequences at first. Current law clearly bans all sports betting in at least 46 states while only one state, Nevada, has clearly legal statewide sports betting.²⁵

On the other hand, the current *de facto* national ban on sports betting appears nonsensical for at least three reasons.

First, whatever “corrupting” consequences sports betting might carry have already impacted American sport. Since Nevada, the United Kingdom, and a variety of Caribbean jurisdictions already allow sports betting, any gambler wishing to encourage teams to throw games or modify a spread already has all the necessary incentives. Team players, coaches, and owners, likewise, can easily and legally place bets in all of these jurisdictions. However, given the enormous amounts of money involved in professional sports, the size of payoffs needed to create a decent return on investment is extremely high.

Second, to the extent that problems exist in sports as a result of gambling, it is difficult to see why government, rather than teams and leagues (which are very big businesses), should have to confront them. And gambling need not affect play, anyhow. For example, several major European soccer leagues facilitate gambling while simultaneously maintaining a very high level of play and fan interest. In other words, nothing about sports is *inherently* inconsistent with gambling. Leagues that do not like gambling can and do severely punish players and coaches who engage in it—for example, all-time Major League Baseball hit leader Pete Rose remains banned from the Hall of Fame because of his gambling. It is unclear why the government should help—or hinder—any sports league’s own efforts to limit sports gambling when it is already clearly inconsistent with the league’s own rules and traditions.

Finally, there is no practical reason why people should not be allowed to bet on sporting events. When government allows bets on the turn of a card but not on the outcome of a football game, it conveys no discernable message other than favoritism toward the will of sports league owners. If it allows one type of gambling activity, there is no logical reason why it should ban the other.

Any gambler wishing to encourage teams to throw games or modify a spread already has all the necessary incentives.

The repeal of gambling-specific federal laws would not reduce online gambling to an anarchic “Wild West.”

Application of existing laws against force and fraud to gambling. The repeal of gambling-specific federal laws would not reduce online gambling to an anarchic “Wild West.” A market-regulated system would still involve government enforcement of general business regulations, including laws against force and fraud, which would then be coupled with a naturally evolving system of competitive third-party regulation. And, like any other business, gambling businesses would be subjected to all general business regulations—they would pay taxes, follow workplace regulations, and obey every other stricture of the modern regulatory state.

Private choice of regulator for players and operators. As a practical matter, online gambling operations involved with house-banked games—such as Blackjack, slots, and craps, where players compete against the house rather than other players—would likely submit to some sort of third-party oversight.²⁶ (Games of skill like poker and bridge do not necessarily need external regulators since players will not participate in them if they are run dishonestly or simply feel unlucky.) Online casinos would choose among competing third party regulators—including purpose-created firms; existing accounting and consulting firms; and existing governmental regulators, such as those currently operating in Nevada and Montana.²⁷

This model of regulatory competition is already at work in at least one part of the gambling industry. All major cruise ship operators self-regulate their on-board casinos on a day-to-day basis, but, under an industry code of conduct, agree to use machines and follow rules approved in Nevada, New Jersey, or England; keep children out of their casinos; and audit gaming operations.²⁸ The cruise industry’s oligopolistic structure—the enormous capital expenses necessary for entry limit the number of firms involved—makes this an imperfect analogue for online gaming,²⁹ yet it does show that competitive self-regulation can work. In fact, private gaming regulation might even become stricter in some respects than current government regulation—a government regulator’s failure to police a given private firm does not besmirch the reputation of an entire industry, while it would reflect horribly on operators who chose such an overly lax regulator.

Conclusion

Attempts to prohibit online gambling will fail and impose enormous restrictions on Americans' liberty. Maintaining the status quo, while it would not make things worse, appears inherently unstable and unsustainable. Purely governmental regulation is inherently unsuited to cope with the complex, multi-faceted nature of online gambling. The final alternative, competitive market regulation, appears to be the best medium-to long-term alternative and the only system capable of coping with the difficulty of regulating online gambling in a productive fashion. Gambling will not go away. Those who participate in it must find clear rules as it moves inexorably towards the Internet. Market forces provide the best option toward that aim.

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Notes

- 1 The earliest known gambling devices are older than the earliest known cities. See e.g. David Schwartz, *Roll the Bones: The History of Gambling*, Gotham Books, 2007, pp. 6-7.
- 2 The Wire Act is 18 U.S.C. § 1084 and 31 U.S.C. § 5361-5367.
- 3 For more on UIGEA, see Eli Lehrer, “Time to Fold the Unlawful Internet Gaming Enforcement Act,” *OnPoint* No. 133, Competitive Enterprise Institute, March 27, 2008.
- 4 The regulations are docket Number Treas-DO-2007-0015, the law 31 U.S.C. § 5361–5367.
- 5 See *United States v. McDonough*, 835 F.2d 1103, 1105 n. 7 (5th Cir. 1988); see also *Martin v. United States*, 389 F.2d 895, 898 n. 6 (5th Cir. 1968), cert. denied, 391 U.S. 919 (1968).
- 6 PAPSA 26 USC 3701.
- 7 As quoted in *Technology Law Journal*, “Senate Committee Holds Hearing on Internet Gaming Bill,” March 18, 2003. <http://www.techlawjournal.com/topstories/2003/20030318.asp>.
- 8 *Ibid.*
- 9 e.g. The Unlawful Internet Gambling Enforcement Act of 2005 (H.R. 4411, 2005) and S. 627 the Unlawful Internet Gambling Funding Prohibition Act of 2004. Also, see S. 474 the Internet Gambling Prohibition Act (1997.)
- 10 Moreover, an Internet gambling ban would not end Internet gambling altogether—a dubious goal to begin with. To discourage payment processors from doing business with online gambling sites, Congress could enact legislation to prohibit both credit card issuers and online merchants themselves from taking action against consumers—through litigation or credit report action—following payment disputes. This would, understandably, make banks extremely reluctant to create merchant accounts for online casinos or even honor checks and ACH transactions involving them. Federal Trade Commission rulings applying this standard to 1-900 (pay-per-call) numbers ended their widespread commercial use in the United States and caused major telephone companies to stop providing them. This action would be manifestly unfair in that it would force banks and credit card companies to eat some individual gambling debts. See Federal Trade Commission. “900 Numbers: FTC Rule Helps Consumers,” <http://www.ftc.gov/bcp/conline/pubs/tmarkg/nine.shtm>. In fact, 900 number owners can sue to recover unpaid bills but they cannot go after either telephone companies’ or users’ telephone services.
- 11 For information on pyramid schemes see: High Yield Investment Plan Information Center, <http://www.hyip.com/>.
- 12 American Gaming Association, “States With Gaming,” http://www.americangaming.org/Industry/factsheets/general_info_detail.cfv?id=15, April, 2007.
- 13 28 U.S.C. § 3701.
- 14 28 U.S.C. § 3702.
- 15 See e.g. Gamblinglaw.com, “Online Sports Gambling Law,” <http://www.gambling-law-us.com/Federal-Laws/sports-protection.htm>.
- 16 *Ibid.*
- 17 Of course, these games can have indirect consequences: Professional gamblers and casino owners/investors can acquire wealth as a result of their skill and/or business acumen. Problem gambling, likewise, can devastate families. Recreational gamblers can find relaxation and enjoyment through their activities.
- 18 31 U.S.C. § 5362(1)(B).
- 19 Legalizing blackjack raises a host of other questions. For example, some slot machines in the United Kingdom and in the Nordic countries allow players to manipulate the wheels following an initial spin, thus adding an element of skill. It would be difficult to construct a consistent law that legalized blackjack but not computer simulations of these machines. Blackjack, likewise, gives players the option of placing an almost-all-luck “insurance” side bet on the dealer’s hand. It is difficult to conceive of a consistent law that legalizes this type of bet but not bets on the spin of a roulette wheel or the throw of craps dice. Thus, enforcing UIGEA and maintaining the status quo involves setting a path toward outlawing “non-skill” games. How the government might accomplish this is not appear clear. See e.g. Rick Blaine, *Blackjack Blueprint*, Huntington Press, 2006, p. 7.
- 20 H.R. 2046 (2007.) Internet Gambling Regulation and Enforcement Act of 2007.
- 21 H.R. 2046 (2007) 5383 (h)(1).

- 22 Ibid. For example, New Jersey, a major gaming state, has revoked gaming licenses for issues like “cleanliness, layoffs, and poor consumer service.” See Associated Press. “Atlantic City: No Renewal for Tropicana License,” *The New York Times*, December 13, 2007. Furthermore, all states except Nevada, Washington State, and Montana impose *de facto* or *de jure* limitations on the number of casino or racing licenses granted. Montana, however, severely limits the activities that can go on in casinos and typically prohibits them from having more than 20 slots. Washington State has licensed everyone who meets the qualifications for running a card room but restricts other types of gambling.
- 23 For more on prediction markets, (from their leading academic proponent), see Robin Hanson, “Idea Futures: Encouraging and Honest Consensus,” *Extropy*, 3(2), pp. 7-17, December 1995, <http://hanson.gmu.edu/ideafutures.html>.
- 24 It also means that no one system will ever satisfy everyone or allow entrepreneurs and consumers to engage in every legal, non-criminal activity they desire. For example, a gambling system that would allow people to place bets on substantive issues—such as who will win the presidential election or whether a terrorist attack will take place—would need a trusted third party to arbitrate disputes involving the wording of questions. This type of regulation seems drastically different from the work of assuring that a casino has the money to pay off blackjack bets. See Hanson, “Idea Futures.”
- 25 28 U.S.C. § 3704(a)(3). New Jersey, which could have legalized sports betting in a 10-year window after the passage of PASPA never did so.
- 26 It is not relevant whether Congress mandates this or develops a system for “certifying” gambling regulators the way it certifies higher education accreditation agencies. Any system that Congress proclaims would become optional anyway since any operator who disliked it could relocate outside of the United States. Likewise, it seems very unlikely that an unknown gambling site could offer slot machines or craps on a profitable basis unless some trusted third party vouched for its credibility. Online casinos affiliated with well known real-world casino operators would not have this problem, but since all real-world casino operators face some level of government regulation, it is highly likely that existing governmental regulators would insist on monitoring them as well.
- 27 Since these state regulators would then have to engage themselves in businesses well outside their own boundaries, compete with private firms, and collect fees for doing so, some states might decide to spin them off into private firms.
- 28 See Cruise Lines International Association, “Technical and Regulatory Gambling Guidelines,” http://www.cruising.org/industry/gambling_guidelines.cfm.
- 29 John Brokoop. “Gambling on Cruiseships,” *Casino City Times*, <http://www.casinocitytimes.com/article.cfm?contentandcontributorid=542>, January 22, 2002.

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