

**Testimony of Michelle Minton**  
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**Before the House Judiciary Subcommittee on**  
**Crime, Terrorism, and Homeland Security**  
**Hearing on H.R. 707, “The Restoration of America’s Wire Act”**

March 25, 2015

Chairman Sensenbrenner, ranking member Jackson Lee, and members of the Subcommittee, thank you for the opportunity to present testimony on behalf of my organization, the Competitive Enterprise Institute (CEI), at this hearing considering online intrastate gambling and the effects of the proposed national prohibition on Internet wagering.

We believe the proposal has significant implications for consumer safety, Internet freedom, and federalism. I am grateful for the opportunity to express these views and address the concerns Members have expressed about allowing States to move toward legalization and regulation of this form of online commerce.

The issue of the morality of gambling has largely been settled in America. All but two states have some form of legalized betting—including lotteries, casinos, horse racing, poker rooms, or bingo parlors. Since the dawn of the Republic, the determination of what kinds of gambling are legal and how they should be regulated has largely been left up to the States. However, beginning in the 1990s, with the increasing use of the Internet, some in Congress began to assert that the Federal government has the right and responsibility to ban gambling in this new medium in order to protect vulnerable individuals such as minors, those with addictions, and states that do not want online gambling available to their residents.

Since 2007 the Competitive Enterprise Institute has made the case that no government should have the right to take away individual citizens’ right to decide what they do in the privacy of their own home and with their own money. Additionally, we note that attempts to involve the Federal government in regulation of online gambling represents a grave threat to the continued freedom of Internet commerce as well as States’ ability to decide their own laws and regulations.

We understand Members’ concerns regarding vulnerable consumers, crime, and the ability for States to keep online gambling within their borders. But we must emphatically point out that the campaign in support of a Federal online gambling prohibition has relied on fear mongering and misinformation. The technology and long history of online gambling regulation around the world show that such fears are exaggerated and the concerns that have been raised can be easily

addressed. I am grateful for the opportunity to address these misconceptions and the understandable concerns about state-based online gambling.

### **The Department of Justice Unilaterally Reinterprets the 1961 Wire Act**

The stated purpose of H.R. 707 is to “restore” the 1961 Wire Act to what the bill’s cosponsors claim was its original intent. As I thoroughly explain in my University of Nevada, Las Vegas study, *The Original Intent of the Wire Act and Its Implications for State-based Legalization of Internet Gambling*, the 1961 Wire Act was understood by Congress and the Department of Justice as a narrowly focused law with the purpose of targeting the Mafia’s telephone-run sports gambling racket. (See addendum) As Attorney General Robert F. Kennedy phrased it when testifying on the bill in Congress, the Wire Act was created “to assist the various States in enforcement of their laws pertaining to gambling and bookmaking. It would prohibit the use of wire communications facilities for the transmission of *certain gambling information* in interstate and foreign commerce.”<sup>1</sup> [Emphasis added]

That the Department of Justice at the time—the chief architect of the Wire Act—intended to narrowly apply the law only to sports betting is reflected during Senate hearings on the bill. When Senator Estes Kefauver (D-Tenn.) asked Assistant Attorney General Herbert J. Miller if the Act applied to telephone gambling activities not related to sporting events or contests, Miller responded: “This bill, of course, would not cover that because it is limited to sporting events or contests.”<sup>2</sup>

It wasn’t until the 1990s, as the Internet grew and subsequently Internet gambling became more popular in America, that prosecutors began using the Wire Act against online gambling offenses. In 2000 the Clinton administration took the position that the Wire Act prohibited *certain* sports – related gambling activities online, such as dog and horse racing.<sup>3</sup> However, in 2002 the Department of Justice under President George W. Bush shifted its position to holding that the law not only prohibited online sports betting, but also banned “casino-style gambling” online.<sup>4</sup>

Then in 2009 officials from the New York State Division of the Lottery and the Office of the Governor of the State of Illinois asked the DOJ if their States’ use of the use of the internet to sell lottery tickets would violate the Wire Act. Two years later the Office of Legal Counsel (OLC) responded with a memo, stating that the Wire Act was not applicable to the activities of the lotteries because it only applies to online sports gambling. This memo clarified federal law and paved the way for States to legalize intrastate non-sports wagering online.

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<sup>1</sup> Robert F. Kennedy, Statement before the Subcommittee of the House Committee on the Judiciary, in Support of Legislation to Curb Organized Crime and Racketeering, May 17, 1961, [www.justice.gov/ag/rfkspeeches/1961/05-17-1961.pdf](http://www.justice.gov/ag/rfkspeeches/1961/05-17-1961.pdf).

<sup>2</sup> The Attorney General’s Program to Curb Organized Crime and Racketeering: Hearings on S. 1653, S. 1654, S. 1655, S. 1656, S. 1657, S. 1658, S. 1665 Before the Senate Committee on the Judiciary, 87th Cong. 12 (1961).

<sup>3</sup> Statement of Administration Policy: H.R. 3125 – Internet Gambling Prohibition Act of 2000, July 17, 2000.

<sup>4</sup> Letter from The United States Department of Justice, Criminal Division to Mr. Dennis K. Neilander, Chairman, Nevada Gaming Control Board August 23, 2002.

Regardless of the original intent of the Wire Act's authors, it is the prerogative of Congress to amend existing laws as they see fit.

Moreover, a national online gambling ban will do nothing to address concerns regarding potential harms related to online gambling. In fact, by preventing States from regulating the activity and implementing consumer protections, a federal ban would put Americans at greater risk than in a system where states are allowed to decide if and how they will regulate online gambling.

### **Bans Do Not Work**

A national Internet gambling ban will strip away consumer protections instituted by States and push Americans back into the thriving online gambling black market. Americans will continue to spend billions of dollars gambling online—money that could yield revenue that otherwise might have gone to states that choose to legalize the activity. At least 85 other countries, including those adjacent to U.S. borders, have some form of legalized online gambling and most have managed to regulate the activity in a way that protects their citizens from crime and holds licensed website operators accountable. There is no reason that states cannot regulate online gambling.

Some, such as the Coalition to Stop Internet Gambling—a nonprofit funded by Sands Casino owner, Sheldon Adelson, contend that the DOJ Office of Legal Counsel's 2011 memo opened the “flood gates” for online gambling in America. But the OLC decision simply allowed states to pass legislation to implement licensing and regulatory oversight for online gambling. Additionally, the decision allowed states to require certain consumer protections for online gambling websites operating within their borders. Currently, three states—Delaware, Nevada, and New Jersey—have legalized online gambling within their borders.

Online gambling in America took off concurrently with the increase in Internet usage in the 1990s and became a multi-billion-dollar business long before 2011. By 1997 consumers had spent an estimated \$1 billion worldwide on Internet gambling, with around 60 percent coming from the U.S.<sup>5</sup> Between 2003 and 2010, Americans spent \$30 billion gambling on foreign-owned and -operated gambling sites.<sup>6</sup>

### **Technology Offers Solutions**

Some in Congress have expressed concerns that limiting online gambling activities to adults and residents of states that have legalized the activity relies on the available technology. For example, in order for a New Jersey website to block a player from Utah, it must be able to determine where each player is located. This fear, while understandable, is groundless. The global market for legal online gambling has fueled a vibrant market for technological solutions that have been used effectively by nations licensing and regulating online gambling. Site

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<sup>5</sup> Scott Olson, “Betting No End to Internet Gambling,” *Journal of Technology Law and Policy*, Vol. 4, No. 1, Spring 1999, <http://jtlp.org/vol4/issue1/olson.html>.

<sup>6</sup> American Gaming Association, *Online Gambling Five Years After UIGEA*, 2011, [http://www.americangaming.org/sites/default/files/uploads/docs/whitepapers/final\\_online\\_gambling\\_white\\_paper\\_5-18-11.pdf](http://www.americangaming.org/sites/default/files/uploads/docs/whitepapers/final_online_gambling_white_paper_5-18-11.pdf).

operators can determine the location of a visitor in numerous ways, such as using IP data, Wi-Fi triangulation, GPS data, and carrier data. Determining the identity and age of a customer requires similarly sophisticated techniques. In New Jersey, for example, sites may ask for a player's Social Security number, as well as a copy of a utility bill, state-issued ID, or proof that the person is who she says she is. Websites licensed by one of the States where online gambling is legal will block players until their age, location, and identity are verified because the laws of these states require them to do so. Failure to comply with the state's laws may result in hefty fines or the loss of a company's license to operate.

The technology available to verify player identity may even be *more effective* than traditional off-line methods, which usually amount to a visual scan of an I.D. Certainly, the strategies used by online gambling sites to verify identity are far more robust than those used by other sites, which require little more than credit card information for customers to open an account and spend unlimited amounts of money.

However, as with any form of restricted goods or services, there always will be a small number of people motivated enough to bypass the restrictions put in place. Kids will find a way to get a hold of alcohol or sneak into casinos. It is possible that someone sophisticated and motivated enough might bypass the restrictions put in place for online gambling websites, though there is no evidence this has happened even once in states where online gambling is legal. However, it is much difficult for someone to access legal and regulated gambling websites than to access black market websites. Furthermore, breaches are easier to spot on websites regulated by the States than on websites operated from overseas.

### **Bans Do Not Protect Consumers**

Some have expressed concerns that allowing states to legalize online gambling will result in an increase in problem gambling, minors gambling, and online crime. It seems intuitive that as gambling becomes more available the rate of problem gambling will increase, but research has shown this is not the case. While greater opportunity for gambling does correlate with a temporary increase in disordered behavior, it is just that—temporary. Worldwide rates of problem gambling have been declining since the late 1990s.<sup>7</sup> The prevalence of pathological gambling has remained relatively stable or declined during the last 35 years despite unprecedented increases in the availability of gambling activities, according to Harvard addiction expert Howard J. Shaffer.<sup>8</sup>

Online casinos may even be better than brick-and-mortar casinos at identifying disordered gambling patterns. While there always will be a small portion of the population who show signs

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<sup>7</sup> Robert J. Williams, "The Population Prevalence of Problem Gambling: Methodological influences, standardized rates, jurisdictional differences, and worldwide trends," Report Prepared for the Ontario Problem Gambling Research Centre and the Ontario Ministry of Health and Long Term Care, May 8, 2012, <https://www.uleth.ca/dspace/bitstream/handle/10133/3068/2012-PREVALENCE-OPGRC%20%282%29.pdf?sequence=3>.

<sup>8</sup> Howard J. Shaffer and Ryan Martin, *Disordered Gambling: Etiology, Trajectory And Clinical Considerations*, 2011 [http://thescholarship.ecu.edu/bitstream/handle/10342/2974/Shaffer%2520%26%2520Martin%2520%2528in%2520press%2529\\_Annual%2520Review%2520of%2520Clin.%2520Psy.%5B1%5D.pdf?sequence=1](http://thescholarship.ecu.edu/bitstream/handle/10342/2974/Shaffer%2520%26%2520Martin%2520%2528in%2520press%2529_Annual%2520Review%2520of%2520Clin.%2520Psy.%5B1%5D.pdf?sequence=1).

of pathological behavior, it is not a reason to ban an activity for everyone. In fact, it is a good argument for implementing licensing and regulatory schemes that require websites to implement strategies to identify and respond to potential problem gambling—something the three states currently offering online gambling already require.

**Crime thrives in the black market:** Fears that legalizing online gambling will put American consumers at greater risk of becoming victims of crime or facilitate money laundering and funding of terrorist activities are overblown. While it is possible that criminals might try to cheat unwitting players and terrorists might try to use online gambling websites to move money around, it is highly unlikely this kind of criminal activity will occur on websites operated and licensed within the U.S. with governmental oversight. Americans gambling online are far more likely to encounter criminals on black market websites. As National Fraternal Order of Police President Chuck Canterbury notes

A national ban on all online gaming would just drive online gaming further and further underground and put more and more people at risk ... We want to keep our citizens and our officers safe. And the best way to do this is to drive black market online gaming into the light and scrutiny of a regulated system that is safe, fun and fair.<sup>9</sup>

### **Federalism and Internet Freedom**

In order to maintain our “laboratories of democracy” state governments must retain sovereignty over matters of intrastate commerce—regardless of how one feels about gambling in general or online gambling specifically. For most of American history, the legalization and regulation of gambling has been left to states to decide.

Some, such as Texas Governor Rick Perry argue that the Internet is a stateless territory, “transcending state boundaries” and that States cannot control this form of online commerce.<sup>10</sup> This raises the worrying precedent the Restoration of America’s Wire Act would set. If we concede that *no* online commerce is intrastate, that means Congress has the right to intervene in *any* form of online commerce—opening the door for federal lawmakers to interfere with or ban all sorts of online transactions. Today it is Internet gambling; tomorrow a lawmaker may take issue with online sales of ammunition, tobacco, or certain foods and beverages seen as “harmful.”

Furthermore, in addition to the three states that legalized casino-style gambling online, 11 states have some form of legal online lottery offerings, including online lottery ticket sales, subscriptions, and online real-time games like pull-tabs (see addendum). Should RAWA pass, States would lose millions in tax revenue.

### **Personal Freedom**

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<sup>9</sup> Chuck Canterbury, “Online gambling ban benefits criminals,” *The Hill*, March 28, 2014, <http://thehill.com/blogs/congress-blog/judicial/201949-online-gambling-ban-benefits-criminals>.

<sup>10</sup> Rick Perry, *Online Gambling’s Other Cost*, National Review. May 12, 2014 [www.nationalreview.com/article/378430/online-gamblings-other-cost-rick-perry](http://www.nationalreview.com/article/378430/online-gamblings-other-cost-rick-perry)

So long as an activity does not harm the rights of another person, no government entity should be able to prohibit an adult from voluntarily participating in it. While we understand that some Members of Congress may have a moral objection to gambling, it is neither Congress's responsibility nor its right to legislate morality. Certainly, when the residents of several states decide that legal online gambling should be legal within their borders and their state representatives enact legislation to allow this, Federal officials should not overturn those democratically enacted laws.

### **Conclusion**

It is human nature to fear the unknown and thus understandable that lawmakers would have concerns about this new and growing industry. I hope my testimony has shown that a national ban like the one proposed by H.R. 707 would not protect consumers from the potential harms associated with online gambling and would, in fact, make these harms harder to address by pushing it into a black market. Furthermore, it puts at risk one of America's fundamental principles, the ability for state and local lawmakers to determine what regulations work for their state and reflect the will of their constituents.