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Myths and Facts about the Wire Act

Separating Fact from Fiction

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Myth: The 1961 Federal Wire was intended to ban all online gambling.

Fact: At the time of the Wire Act's passage, members of Congress clearly understood that it applied only to interstate sports betting.

In 1961, the House Judiciary Committee report accompanying the Wire Act was titled, "Sporting Events—Transmission of Bets, Wagers, and Related Information."¹ During the Senate hearings on the Wire Act, Assistant Attorney General Herbert J. Miller was asked if the bill applied to other forms of gambling, such as numbers games conducted via the telephone. He responded: "This bill, of course, would not cover that because it is limited to sporting events or contests."² None of the amendments made to the bill after this exchange suggested that it was intended to be applicable to anything other than wagering on sporting events or contests.³

Supporters of an online gambling ban claim the term "contests" in the Wire Act was meant to include all gambling, not just beyond sports wagering, but the historical evidence shows otherwise. The Wire Act references only bets and wagers on sporting events or contests. It was one bill in a package of bills recommended by Attorney General Robert F. Kennedy to fight organized crime. The language of other bills in that legislative package details numerous forms of gambling, while the Wire Act only refers to bets on sporting events or contests. For example, the Interstate Transportation of Wagering Paraphernalia Act expressly lists wagering activities as bookmaking, wagering pools for sporting events, numbers games, policy games (daily lotteries), bolita, or "similar games." Similarly, the Wagering Paraphernalia Act explicitly addressed gambling activities, including a "numbers racket," a lottery-style game.

The Senate report accompanying the Wire Act notes:

We have drafted this statute carefully to protect the freedom of the press. Press information is not vital to the gamblers, but it is important to the American public. Therefore, this bill carries an exception for legitimate news reporting of sporting events. There is nothing in this bill which would in any way affect the press, radio, or TV in its reporting of sporting events.⁴

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If the bill had been meant to apply to all gambling, it would make little sense for Congress to seek to protect freedom of the press when reporting on sporting events in the context of the Wire Act.

Myth: The Wire Act was intended to prevent states from legalizing online gambling.

Fact: All those involved in drafting the Wire Act specifically noted the purpose of the bill was to assist the states in enforcing their laws pertaining to gambling.

In testimony before the House Judiciary Committee, Attorney General Kennedy described the purpose of the Wire Act as to “to assist the various States in enforcement of *their laws* pertaining to gambling and bookmaking.”⁵ [Emphasis added]

The Senate⁶ and House⁷ reports on the Wire Act echo Kennedy’s statement, both noting (in identical language) that the “purpose of the bill is to assist the various States and the District of Columbia in the enforcement of *their laws* pertaining to gambling.” [Emphasis added]

Myth: The 2011 Department of Justice (DOJ) memo reversed the longstanding interpretation of the 1961 Wire Act.

Fact: The interpretation that the Wire Act applies to all online gambling lasted only from 2002 until 2011.

The understanding that the Wire Act applied only to interstate sports wagering conducted via telegraph or telephone lines stood until the early 1990s. It was President Bill Clinton’s Justice Department that first used the Wire Act to prosecute sports betting on the Internet.⁸ It was not until 2002 that the DOJ, under George W. Bush, decided the Wire Act applied to all online gambling, not only sports betting.⁹ This decision ignored both Congressional history and court decisions to the contrary and provided no rationale for the reinterpretation.¹⁰

Myth: The DOJ changed federal law without the consent of Congress.

Fact: Congress has considered no less than five bills to amend the Wire Act to broaden its scope beyond sports betting. Clearly, members of Congress believe the bill, as written, is limited to sports gambling.

- In 1995 Sen. Jon Kyl (R-Ariz.) introduced the Crime Prevention Act, which included an amendment to the Wire Act to broaden the activities and technologies covered by the law.¹¹
- In 1996 Rep. Tim Johnson (D-S.D.) introduced the Computer Gambling Prevention Act, which would amend the Wire Act by striking the words “on any sporting event or contest.”¹²
- In 1997 Sen. Kyl introduced the Internet Gambling Prohibition Act, which added a definition of “bets and wagers” that included contests, sports, and games of chance. He said the bill “dispels any ambiguity by making it clear that all betting, including sports betting, is illegal. Currently, non-sports betting is interpreted as legal under the Wire Act.”¹³

- In 1999 Sen. Kyl reintroduced the Internet Gambling Prohibition Act in 1999.¹⁴
- In 2002, Rep. Bob Goodlatte (R-Va.) introduced the Combating Illegal Gambling Reform and Modernization Act, which added a definition of “bets and wagers” to the Wire Act to broaden it to ban all forms of gambling, including games of chance.

Myth: The DOJ does not have the authority to interpret the law.

Fact: Under administrative law, federal agencies can interpret ambiguous laws.

The Justice Department is not the first federal agency to interpret, or “reinterpret,” a statute that has become subject to multiple reasonable interpretations.¹⁵ The administrative law principle known as the *Chevron* deference requires courts to defer to interpretations of statutes made by those government agencies charged with enforcing them, unless such interpretations are unreasonable.¹⁶ Considering the number of bills introduced in Congress meant to “clarify” the meaning of the Wire Act, it clearly meets the standard for ambiguity and there is abundant evidence from legislative history and case law for its interpretation to be considered reasonable.

Notes

¹ H.R. REP. 87-967, H.R. Rep. No. 967, 87TH Congress, 1st Session, 1961, 1961 U.S.C.C.A.N. 2631, 1961 WL 4794 (Leg. Hist.)*2631 P.L. 87-216, SPORTING EVENTS – TRANSMISSION OF BETS, WAGERS, AND RELATED INFORMATION.

² 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 S. Comm. on the Judiciary, 87th Cong. 12 (1961)

³ Senate Report No. 87-588, at 2 (July 24, 1961).

⁴ *Ibid*, p. 3.

⁵ Robert F. Kennedy, Statement before the Subcommittee No. 5 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.

⁶ *Ibid*, p. 2.

⁷ H.R. Rep. 87-967 at 2.

⁸ Statement of Administration Policy: H.R. 3125—Internet Gambling Prohibition Act of 2000 William J. Clinton, <http://www.presidency.ucsb.edu/ws/index.php?pid=74772>.

⁹ Letter from Michael Chertoff, Assistant Attorney General to Dennis K. Neilander, Chairman Nevada Gaming Control Board August 23, 2002, Tab 3, <http://gaming.nv.gov/modules/showdocument.aspx?documentid=28>.

¹⁰ Jeff Simpson, “Internet Experts Slam DOJ Letter.” *Casino City Times*, September 3, 2002, <http://www.casinocitytimes.com/news/article/internet-experts-slam-justice-dept-letter-120787>.

¹¹ Crime Prevention Act of 1995, S. 1495, Title XV, 104th Congress (1996) 1st Session

¹² Computer Gambling Prevention Act of 1996, H.R. 3526 104th Congress (1996) 2nd Session

¹³ Jon Kyl introductory remarks on the Internet Gambling Prohibition Act of 1997. S. 474, 105th Cong., 1st Session, <http://www.gpo.gov/fdsys/pkg/CREC-1997-03-19/html/CREC-1997-03-19-pt1-PgS2553.htm>.

¹⁴ Internet Gambling Prohibition Act of 1999 (S. 692), 106th Congress, Second Session, <https://www.govtrack.us/congress/bills/106/s692>.

¹⁵ David Kemp, “Chevron Deference: Your Guide to Understanding Two of Today’s SCOTUS Decisions,” *Justia Law Blog* (see items on *Astrue v. Capato* and *Holder v. Martinez Gutierrez*), May 21, 2012, <https://lawblog.justia.com/2012/05/21/chevron-deference-your-guide-to-understanding-two-of-todays-scotus-decisions/>.

¹⁶ “The Chevron Deference,” *Legal Information Institute, Cornell University*, https://www.law.cornell.edu/wex/chevron_deference.