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Answers to Questions for the Record
Legislative Hearing on H.R. 707: The “Restoration of America’s Wire Act”
Before the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations
U.S. House of Representatives Committee on the Judiciary
March 25, 2015

Questions for all Panelists:

1. Have you, or any member of your family or household, been in the employ of any entity involved in gambling, Internet gambling, or financial or other services related to Internet gambling? If so, please provide details.

Prof. John Kindt Answer:

No. I have not “been in the employ of any entity involved in gambling, Internet gambling, or financial or other services related to Internet gambling.” To the best of my knowledge, no member of my family or household has “been in the employ of any entity involved in gambling, Internet gambling, or financial or other services related to Internet gambling.”

Please note that all of the several volumes of the United States International Gambling® Report series, which I cited during the hearing, have the following proviso on the back of each volume’s title page: “Any author or editorial financial returns generated by this collection were pre-assigned to go directly to 501(c)(3) charity.” (Emphasis added.)

2. Has the organization on whose behalf you testified before the Subcommittee received any funds or other support directly, or indirectly, from any entity involved in gambling, Internet gambling, or financial or other services related to Internet gambling? If so, please provide details.

Prof. John Kindt Answer:

I did not testify on behalf of any organization.

My testimony was predicated on more than a quarter century of my academic research on gambling issues. My research and law review publications on gambling issues, of course, predated the 1995-1999 U.S. National Gambling Impact Study Commission, and my publications in economics journals and law review publications have continued subsequent to the U.S. Gambling Commission.
Questions for the Record: Congressman Doug Collins (GA-09):

1. Georgia’s lottery is unique in that it funds the HOPE scholarship, a program that has helped millions of Georgians. My priority in reviewing this legislation is to ensure that Georgia’s lottery continues to be able to undertake the same activities they were able to prior to the 2011 DOJ decision. Based on your reading of the bill, would H.R. 707 allow Georgia’s lottery to continue functioning as it did prior to the 2011 DOJ decision? Would it create restrictions on certain activities that were permissible under the Wire Act even before the DOJ decision?

Prof. John Kindt Answer:

Based on my reading of the bill, H.R. 707 should allow Georgia’s lottery to continue functioning as it did prior to the 2011 DOJ decision.

Having many relatives in Georgia and having received two of my graduate degrees from the University of Georgia, I have been able to follow Georgia’s lottery issues since before the Georgia Lottery’s inception.

The net effect of H.R. 707 should be to protect lottery revenues. Despite any naïve manifestations by lottery officials to the contrary, state lotteries cannot hope to compete with the explosion of Internet gambling sites which will proliferate unless H.R. 707 is enacted. Absent enactment of the current restrictions in H.R. 707, real time gambling on cell phones and computers will decimate state lotteries and their revenues.

It should be noted that as confirmed by the Atlanta Journal Constitution beginning in 1996, the Georgia Lottery has continued to create some of the nation’s highest rates of gambling addiction—including among young people. See Charles Walston, Staff Writer, Teens Laying Their Futures on the Line, ATLANTA J.-CONST., Feb. 25, 1996, at C4 [hereinafter Teen Gambling].

2. Should H.R. 707 be enacted, will Georgia’s state-licensed computer-generated retail lottery sales be affected? What effect would the enactment of the bill have on Georgia’s lottery system and other similar systems?

Prof. John Kindt Answer:

While it is difficult to predict future regulatory interpretations, H.R. 707 should create a level playing field with regard to many lottery issues, such as state-licensed computer-generated retail lottery sales.
Enactment of the bill should place Georgia’s lottery system and other similar systems on an equal footing. Despite embracing new technologies, the Georgia Lottery will soon be at a competitive disadvantage as other venues and private interests necessarily outpace the Georgia Lottery with newer online technologies. Absent the enactment of H.R. 707, the Georgia Lottery and similar state lotteries will be forever relegated to a huge competitive disadvantage with private real-time gambling technologies (which are functionally unusable by state lotteries).

As I understand H.R. 707, this bill would re-confirm the Wire Act’s previous nationwide standards and promote stability of expectations for all lotteries. See, 18 U.S.C. § 1084.

3. Millions of dollars each year are generated for the HOPE Scholarship and Pre-K programs through the existing internet sales distribution channel and current lottery game offerings by the Georgia lottery. Given the educational scholarships that rely on funding from the state lottery, do you believe it would be appropriate to create a mechanism in the legislation to ensure the scholarship program in Georgia and other similar programs wouldn’t lose funding streams for those programs? Please explain.

Prof. John Kindt Answer:

H.R. 707 does not need any special legislative language regarding using funds for educational purposes or scholarships. Prior to the 2011 DOJ ruling, the uses for lottery funds for Georgia HOPE programs and other designated state programs were solely at the discretion of the state legislatures. H.R. 707 should re-establish the pre-2011 stability of expectations.

Without H.R. 707, pre-existing state lottery revenues are going to be cannibalized and decimated by an explosion of various Internet gambling sites offering a cornucopia of deceptive gambling games.

The entire country needs H.R. 707 to protect strategic economic and financial stability. Of course all of the individual states, including Georgia, are benefited by H.R. 707.

Questions for John Kindt:

1. During the hearing, my colleague, Rep. Ted Poe, asked a question regarding the right of states to offer Internet gambling. Inasmuch as you were unable to respond at that time, would you provide your assessment as to the impact the OLC opinion has on the 10th Amendment rights of states who do not wish to permit online casinos to operate within their borders?
Prof. John Kindt Answer:

First, I believe that an overwhelming majority of academic experts would conclude that the 2011 OLC/DOJ Opinion reinterpreting the Wire Act does not have the force of law. However, in contravention of the best interests and 10th Amendment rights of the individual 50 states, the OLC Opinion’s ambiguities are currently being misused by Internet gambling interests to leverage huge financial gains via legally-questionable Internet gambling activities.

The legal obfuscations created by the OLC Opinion give states and private Internet gambling entities some credence to argue that they can force their online gambling operations into all 50 states, regardless of individual state laws prohibiting various or all forms of Internet gambling. Accordingly, the OLC Opinion catalyzes Internet gambling entities wishing to circumvent “the 10th Amendment rights of states who do not wish to permit online casinos to operate within their borders.” (See question, supra.) States not wishing to allow online gambling operations will have their 10th Amendment rights violated by any state permitting various types of online gambling.

Despite hearing technological and regulatory promises that Internet gambling could be regulated and kept within geographic confines, the 1999 U.S. National Gambling Impact Study Commission (NGISC or U.S. Gambling Commission) concluded that Internet gambling could not be regulated—and that the existing total prohibition needed to be enhanced via new legislative enforcement mechanisms for financial institutions and criminal justice entities—including via the Wire Act (see, e.g., NGISC Recommendation 5-1).

Monitoring technological developments regarding online gambling subsequent to the 1999 U.S. Gambling Commission, my colleagues and I are unaware of any regulatory technology which cannot be circumvented by disreputable organizations—and even teenage gamblers.

2. If the 10th Amendment puts out of the reach of the federal government Internet gambling which originates and ends within the same state, does that mean the 10th Amendment similarly puts out of the reach of the federal government actions by individuals who transmit or distribute child pornography over the Internet where such transmissions originate and end within the same state?

Prof. John Kindt Answer:

This analogy comparing child pornography to Internet gambling is both appropriate and definitive to the issues.

Most academics would probably conclude that the 10th Amendment does not apply in the scenario of Internet gambling, because by definition, Internet gambling crosses borders.
Congress should enact the provisions of H.R. 707 because it benefits the entire country. Internet gambling can definitely be considered interstate commerce as the financial assets inherent in Internet gambling definitely cross state lines—thus granting Congress regulatory authority. It is common knowledge that the U.S. Supreme Court has been liberal in granting Congress authority over activities impacting interstate commerce, and Internet gambling should be federally prohibited—as the only quasi-regulation.

The technological evidence reviewed by my colleagues and myself indicates that it is virtually impossible for a state to keep Internet gambling confined within its borders. Arguendo, if it were theoretically possible to keep Internet gambling geographically confined, the social and economic detriments associated with Internet gambling are so onerous and regionally widespread as to demand federal jurisdiction and oversight.

For a summary of Congressional determinations that “casino capitalism” and the gambling philosophy led to the 2007-08 Wall Street meltdown and the Great Recession, see Financial WMDs, a.k.a., *The Bet That Blew Up Wall Street, 60 Minutes*, broadcast dates Aug. 27 & 30, 2009 (Steve Kroft reporting) (available at YouTube under “credit default swaps,” at the 60 Minutes website, and at [www.cbsnews.com/search/financial-wmds/](http://www.cbsnews.com/search/financial-wmds/)).

3. If a licensed online gambling site rejects an individual because his age or location is not verified, what is to stop that individual from migrating to an illegal offshore online casino?

Prof. John Kindt Answer:

Despite the 2011 OLC Opinion, individuals trying to access illegal offshore online casinos will frequently find the access points blocked by the U.S. Department of Homeland Security (DHS). These sites often have DHS warnings also posted as part of the blocking mechanisms.

By virtue of these DHS policies and efforts blocking illegal offshore online casinos, no one trying to access these various sites can claim ignorance of their illegality or of the dangers of offshore online casinos.

In concert with criminal justice authorities, these DHS policies and efforts have been effective not only in protecting U.S. citizens from ubiquitous gambling scams, but also in suppressing money laundering and other criminal initiatives by organized crime and terrorist organizations.

Determined individuals, including teens, can obviously find mechanisms to bypass some safeguards utilized by DHS and other regulatory agencies. A fortiori, this problem argues for more effective blocking and enforcement mechanisms.
4. Is there any technology of which you are aware that can determine whether an individual betting over the Internet is inebriated?

Prof. John Kindt Answer:

I am unaware of any technology that can determine whether an individual betting over the Internet is inebriated.

In a well-known case, the one-time owner of the Philadelphia Eagles football franchise, Leonard Tose, gambled away his football team and his asset base while he was publicly inebriated. A fortiori, inebriated online gamblers could easily be isolated in their homes and absent any deterrents to losing their entire assets to online gambling companies.

5. If online gambling becomes legal on a widespread basis, what impact will that have on the number of minors addicted to gambling?

Prof. John Kindt Answer:

Pursuant to the criteria of the American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (4th to 5th eds., 1994 et seq.), and subsequent to the 1999 U.S. Gambling Commission, the studies have generally reported increases in the combined numbers of U.S. addicted gamblers and problem gamblers at 2% to 3% for the middle-aged and older populations—but 100% greater at 4% to 6% for minors and college students. For historical perspective, see Teen Gambling, supra.

Among young people, in particular, widespread legalized Internet gambling would create an explosion in the numbers of addicted gamblers and problem gamblers. Young gamblers would be fueled by three recognized factors.

First, young people have grown up in the Internet generation and are absorbed with all manner of online electronics, video games, apps, and cell phones. For two decades, gambling lobbyists have hailed and promoted Internet gambling as the “killer app” of the worldwide web. Legalized Internet gambling would place real time gambling on every cell phone and throughout social media sites (which are already exploring how to best exploit numerous new gambling technologies).

Secondly, young people have not been educated regarding the dangers of gambling addiction. With drug addiction there are needle marks; with alcohol addiction there is alcohol on the breath; but with gambling addiction there are only empty bank accounts—making gambling the “hidden addiction.” Compounding this problem is the factor that young people are risk takers and they think they are “bullet proof.”
Thirdly, unlike 20 years ago, young people are growing up amid the proliferation of casinos and electronic slot machines. Young people are attracted to sports but then are easily seduced into sports gambling. Accordingly, the last two years have seen an explosion in dubious “daily sports gambling” which arguably is allowed via a loophole in the 2006 Unlawful Internet Gambling Enforcement Act (UIGEA). This alleged UIGEA loophole needs to be closed via clarifying legislation.

6. Below are screen shots of domestic websites which offer “free to play” online slot machines. Can you explain how these websites work, and whether there are any minimum age requirements imposed by the sites?

Prof. John Kindt Answer:

It is a simple step to lure a player from a “game” for free—into a “gamble” for money.

These “Free to Play” U.S. Slots for Tots sites are designed to maximize the seduction of young people via marketing to the sociological and psychological factors enumerated in the previous answer, namely: (1) the fascination/focus of young people with all things electronic, particularly electronic “games,” (2) naïve youth as risk takers, and (3) the allurement of sports (usually combined with sexual allurement).

The “Free to Play” marketing is designed to launch the player into first-time participation, and of course, there is “no such thing as a free lunch.” The so-called business model for these websites is that the “free” must necessarily lead to some loss of monetary value by the player—who is manipulated psychologically by the play to transform into a “gambler.” In legal terminology, a gambler must somehow lose “consideration” to the website’s owners.

In addition, this “Free to Play” marketing is also a common mechanism to subvert existing anti-gambling laws. Any signs restricting young people from playing are almost invariably window dressing and lack any bona fide enforcement mechanisms.

7. Below are screen shots of online slot machines offered by offshore gambling operators. At what age group(s) do you believe these games are targeted, and is there any federal law which would prevent an online casino licensed by a state or offered by an Indian tribe from migrating players of the “free to play” online slots to “pay to play” online slots such as the ones below?

Prof. John Kindt Answer:

As presented, these types of screen shots from offshore online gambling operators appear to be aimed primarily at young people—including minors. Migrating “free to play” gamers into “pay
to play” gamblers is the business model for online casinos offered by offshore gambling operators.

Most offshore online slot machines would likely be marketed toward the “cream markets” for online gambling, and these targeted cream markets include the following:

1. young people, who are seduced because of their naiveties;
2. senior citizens, who are also derogatorily referred to in the gambling industry as the “golden grays” because they have retirement assets and time;
3. sports gamblers, who are enticed to combine sports with focused gambling; and
4. addicted and problem gamblers, who according to loss statistics account for 35% to 55% of gambling industry revenues.

As evidenced by the alleged loophole for “daily sports gambling” in the Unlawful Internet Gambling Enforcement Act, any carve-outs or exceptions in gambling legislation and/or regulations will be exploited—because the enormous gambling monies to be siphoned out of the public outweigh any legal risk.

To the best of my knowledge, there is no absolute “federal law which would prevent an online casino licensed by a state or offered by an Indian tribe from migrating players of the ‘free to play’ online slots to ‘pay to play’ online slots.” See question, supra.

“Follow the Money”—the gambling industry’s model is to have everything “Pay to Play.”

8. As you may be aware, the State of New Jersey recently attempted to institute intrastate wagering on sporting events, but the State’s efforts were struck down by federal courts. What did the district court and court of appeals conclude in National Collegiate Athletic Ass’n v. Christie, 926 F. Supp. 2d 551 (2013), with respect to whether the 10th Amendment protects an unqualified right of the states to authorize and conduct intrastate gambling activities?

Prof. John Kindt Answer:

In Christie the U.S. Federal District Court determined that the 10th Amendment does not protect an unqualified right of any of the 50 states to authorize and conduct intrastate gambling activities.

Specifically referring to the 1992 Professional and Amateur Sports Protection Act (PASPA), the U.S. District Court held that: “PASPA does not violate the Tenth Amendment because it does not force New Jersey to take any legislative, executive or regulatory action. PASPA also does not raise the political accountability concerns outlined by the Supreme Court’s Tenth Amendment jurisprudence.” Christie, supra, at 555. PASPA, 28 U.S.C. § 3701 (effective Oct. 28, 1992).
On appeal to the U.S. Court of Appeals for the Third Circuit, the Court of Appeals affirmed the U.S. District Court and concluded that PASPA did not violate the 10th Amendment. *National Collegiate Athletic Ass’n v. Gov. of New Jersey*, 730 F.3d 200, 204 (3d Cir. 2013).

Therefore, as I have read and interpreted the provisions in H.R. 707, I believe that H.R. 707 conforms with judicial precedent and will pass any court challenge predicated on the 10th Amendment.

9. Below is an article describing online games being offered by the Georgia Lottery. How do these games differ from online slots, if at all? See *GTECH boosts Georgia Lottery’s ‘einstant’ online options*, Feb. 4, 2015.

**Prof. John Kindt Answer:**

It is problematic to differentiate the online games being offered in 2015 by the Georgia Lottery from online slots. The Georgia Lottery games also exemplify not only how the 2011 OLC Opinion is being exploited, but also how any exceptions or carve-outs in future legislation can also be exploited. Legislation directed toward gambling activities needs to be strictly drafted and interpreted.

The article’s references to the Georgia Lottery’s alleged goals to interface the lottery directly to an individual’s financial e-accounts and credit cards, as well as the “Italian technology” connection, raise serious concerns which demand federal jurisdiction and action.

The fact that the Georgia Lottery has apparently ill-advisedly embroiled itself in so many problematic technological areas and judgmental errors also supports the need for federal oversight in areas not addressed by H.R. 707.

Per the findings of the U.S. National Gambling Impact Study Commission, the Georgia Lottery’s 2015 online efforts apparently violate multiple ethical and managerial tenets of a well-run lottery.

While industry-oriented blog-type articles do not appear subject to traditional journalistic oversight for accuracy, the mere numbers of alleged bureaucratic errors and the consequent social costs to Georgia taxpayers dictates the reversal of these managerial lottery errors—otherwise, the resignation or removal of the responsible Georgia Lottery bureaucrats.