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VIRTUAL LAS VEGAS: REGULATE OR PROHIBIT?

With online gambling becoming increasingly accessible and popular, state and federal politicians are asking themselves how to make the prohibition on online gambling effective. Nevertheless, questions still linger as to whether outright prohibition is truly the right answer.

Introduction

¶ 1 Las Vegas has officially entered the homes of millions of Americans. Online gambling is posing a significant threat to traditional gambling establishments, as we know them. However, along with this gambling invasion, comes a divisive, policy-driven political debate over what role the United States government should take in this flourishing business. The question state and federal politicians are asking themselves is not whether to regulate online gambling, as it is currently prohibited in America, but how to make that prohibition effective. Nevertheless, questions still linger about whether outright prohibition is truly the right answer

¶ 2 Regardless of its legality, online gambling is big business and it is growing every minute. Over 1,200 offshore Web sites takes bets, and some analysts estimate that these sites collectively earned \$2 billion in revenue last year. By 2006, these same analysts project that this revenue amount will triple in size bringing in \$6 billion.¹ One might ask, if gambling is illegal how are Americans able to still gamble online? Easy, the servers for gambling Web sites are located in exotic locals, such as Antigua, that do not prohibit online gambling. Until recently, the process for foreigners to come in and obtain a license and run a gambling web site from these countries was relatively painless. Now, however, countries are becoming more conscious of the perils of allowing such activities (e.g. fraud, money laundering) within their country's borders and are taking more serious measures to adequately regulate the industry.²

¶ 3 Gambling has been around since Biblical times, and so have the vices that many believe are inextricably linked to this activity. Therefore, gambling in the U.S. is only permitted to operate within strictly regulated guidelines. But, these restrictions are really only applicable to brick and mortar gambling establishments. The Internet offers a brand new, and ever-expanding forum that has seemed to elude the government's strict regulations. And with other countries

permitting online gambling, this business is truly international in scope.

¶ 4 The 50 individual states all have laws regarding gambling, but it is becoming increasingly clear that the federal government that must address the issue of online gambling. However, the federal government is not sure how to effectively address the problem. Congress is resolved to prohibit online gambling in America, but that resolve has not, as of yet, produced any successful legislation. This is because Congress is split whether they should expand already existing gambling legislation to incorporate newer technology, or to create brand new legislation to specifically address online gambling. No matter what course Congress takes all realize that the federal government cannot eradicate online gambling across the globe given the inconsistency in laws among the several countries involved in online gambling. Faced with this challenge Congress must try to prevent access and participation on the sites by the American public.³

Policy Concerns

¶ 5 The long-standing concerns that many American's have harbored about gambling throughout our history are only heightened by the anonymous and private nature of online gambling. The probability for dishonest online gambling operations is high considering they lack all of the regulations their counterparts, brick-and-mortar casinos, are governed by. Many say this lack of regulation is the exact reason why online gambling, more so than the traditional "casino" gambling, encourages the vices that society seeks to erase.⁴

¶ 6 For example, when gambling online, minors do not have the protection of casino officials verifying their age at the door, so as to prevent them from succumbing to all of gambling's ills.⁵ Moreover, the potential for fraud and the inability to recognize and control gambling addicts online, provide further motivation for the government to prohibit all gambling over the Internet.⁶ The federal government, propelled by these concerns established a commission to study the specific impact of online gambling. This commission, referred to as the National Gambling Impact Study Commission, produced a report that added several other factors to the already long list of policy reasons to encourage outright prohibition of online gambling.⁷ These factors include, 1) the potential for abuse by gambling operators who can alter, move, or entirely remove sites within minutes; 2) the ability of computer hackers or gambling operators to tamper with gambling software to manipulate games to their benefit; and 3) the provision of an additional means for individuals to launder money.⁸ The government considers the dual protection of anonymity and encryption provided by the Internet to online

gambling as a source of many concerns and raises enough issues regarding criminal activities that online gambling should be prohibited and criminalized within the 50 states.⁹

Governmental Regulation

State Action

¶ 7 For the most part, gambling legislation is largely a matter of state law. Two states, Utah and Hawaii, prohibit all gambling within their borders, but other states are not as strict and even cooperate in state-run lotteries. In the end, with the exception of Utah and Hawaii, every state has legalized some form of gambling.¹⁰ Gambling on the Internet, however, presents a much different issue. Many states that prohibit traditional gambling within their borders are not as quick to embrace the idea of permitting their citizens to participate in on-line gambling.¹¹

¶ 8 Online gambling is banned completely by specific legislation in three states--Nevada, Louisiana, and Illinois.¹² Four states--Minnesota, New York, Missouri, and Wisconsin--have actually taken steps to litigate against parties involved in online gambling by means of already existing laws.¹³ However, for the most part, state regulation does not pose a significant threat to online gambling establishments because their enforcement has not generally been successful.¹⁴ Because of this, many states have looked to the federal government to address the public's concerns regarding online gambling within their respective states.¹⁵

Federal Action

¶ 9 A split exists within the federal government as to what path the United States government should take in fighting against online gambling. Currently, according to the Department of Justice, there are four federal statutes the government can employ to enforce the illegality of Internet gambling within the United States.¹⁶ The main law prevailing over online gambling is actually a law that was, at first, created to curb interstate gambling.¹⁷ The "Wire Act of 1961" specifically makes it illegal for gambling providers to offer or to take bets from gamblers over telephone lines or through other wire devices unless that specific act is authorized by a particular state.¹⁸ The term "through other wire devices" gives the Department of Justice the leeway to prosecute interstate, or international gambling transactions executed over the Internet. Additionally, this law covers more than just the taking and/or placing of bets on the Internet. It also embraces the knowing "use" of the Internet in connection with a gambling business.¹⁹ The government, through various prosecutions, has interpreted this law as prohibiting "not only the act of gambling, but also transmission of any information that makes it

possible to bet in the first place.²⁰

¶ 10 However, with the further development of wireless communications, the effectiveness of this bill in curbing online gambling may be in jeopardy. In 1995, responding to this concern, Senator Kyl introduced legislation, the Internet Gambling Prohibition Act (IGPA), to specifically prohibit online gambling.²¹ This bill died in committee.²² In the years following, bills mirroring the IPGA were introduced in both the House and the Senate, but with no success.²³ This legislative failure is due in large part to the significant divide in Congress over the effectiveness of not only the IPGA, but also the effectiveness of an outright ban on online gambling. Many politicians express concerns that specifically prohibiting online gambling through legislation such as the IPGA will have no other effect than to turn away scrupulous operators. In addition to this overarching concern, Congress also expressed hesitation because of Indian tribe gaming issues, and possible jurisdictional issues.²⁴

¶ 11 For now, online gambling is still, technically, illegal in the United States under the Wire Act, but this foundation is shaky at best, and definitely does not eradicate online gambling, or even come close to putting a dent in it. Why? Because prohibiting online gambling in the United States forces the judicial system to wrestle with international jurisdictional issues, along with the online gambling itself. Prohibiting online gambling outright would be much easier if this view was supported by an international coalition. Much to the dismay of American politicians, a coalition of this sort of organization is nowhere near fruition; in fact, many foreign countries support online gambling and profit from its existence.²⁵

International Action

¶ 12 A majority of the international community permitting online gambling does so in the form of a licensing program. Antigua and the Caribbean Islands are two major countries operating such licensing programs.²⁶ The 1994 Antigua and Barbuda Free Trade and Processing Zone Area Act opened the window in Antigua for online gaming enthusiasts to gamble online outside of American restrictions.²⁷ Under this act, a commission is established to create a tax-free zone where industries, including gambling profits, are tax-free. However, a business, including an online gambling operator, must obtain a license from this commission to receive these tax benefits.²⁸

¶ 13 To ward off unscrupulous online casino operators, the Antiguan government has buttressed this with The Antigua and Barbuda Standard Conditions for the Licensing of Virtual Casino Wagering and Sports Book Wagering in the Antigua and Barbuda Free Trade and

Processing Zone.²⁹ These regulations establish certain restrictions that specifically prohibit the transfer of a license to a third party and the falsification or willful omission of any information required as condition for licensing.³⁰ To fight fraudulent sites, these regulations also require the testing of software used to operate online gambling sites.³¹ Antigua, due to the great revenue they receive from the licenses, has a strong impetus to attract legitimate online gambling operators. Recently, however, Antigua uncovered money-laundering problems with Russian banks involved in online gambling based in their country.³² Antigua's commission on betting and gambling immediately responded by moving forward to update their current licensing system by demanding more personal disclosures from license applicants and more diligent reporting of suspicious financial transactions.³³ Antigua, and many other countries, have chosen to embrace online gambling, regulate and legitimize it, and make it a profitable enterprise for the country. This path is one many Americans think the United States should consider, given the questionable success the government has had thus far in preventing Americans from "gambling in their living rooms."

What should the US do?

¶ 14 Internet gambling has been, and will continue to grow at an enormous rate. It will never completely disappear, regardless of how many Senators and Representatives beg and plead for this to happen. The fact of the matter is that with the invention of a technology that connects individuals worldwide in a matter of seconds, come many new issues that are no longer under the complete control of any one country. The Internet, and online gambling, is an international undertaking, and therefore is not affected by the actions of one country acting on its own. Any force to prohibit, or even regulate the industry effectively must be made via an international commission that takes action as one entity. Seeing as this is an ideal concept that does not seem possible in the near future, perhaps it is possible to consider what, if anything, the American government can do to address online gambling? Many answer this question with one word: Regulation.

¶ 15 There is a growing sentiment in America that the Internet and technology associated with it is growing at such an alarming rate, that it is outright impossible to prohibit online gambling from occurring. Further, if the government continues to outright prohibit it, instead of acknowledging its existence and taking steps to regulate it, the negative aspects that instigated this prohibition initially will only be exacerbated, and not eradicated. The United States government should, instead, focus on protecting the gambler from his/her own vices, and from the fraudulent actions of others. By taking an active role in regulating the Internet gambling

industry, the government can do just this.

¶ 16 If America were to allow online gambling to occur within its borders, politicians could establish regulation to address the policy concerns associated with gambling. Measures could be demanded of web sites to ensure and verify to appropriate authorities that their gamblers are of legal age. Additionally, mandatory, monitoring software could be implemented by the web site operators that could aid in detecting gamblers showing signs of addiction. Furthermore, to fund these concepts and any additional regulation found necessary, the government could impose licensing fees and collect taxes from these online gambling web sites, very similar to the system already established in Antigua.

¶ 17 The United States has many valid reasons for placing an outright ban on all online gambling. However no matter how powerful the reasons, the ever-changing technology behind the Internet makes it impossible. By addressing these reasons in the form of a regulation, the government will at least have a fighting chance at ensuring that these issues are even remotely addressed and considered by both the gambler, and the online gambling establishment. Denying the inherent power associated with online gambling is no way for the United States government to act. If they continue to do so, it is probable that the very citizens they seek to protect from gambling's vices, will be inevitably injured by them. Adequate protection will only come in the form of regulation, not prohibition.

By: Cara Franklin

Footnotes

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- [5.](#) *Id.*
- [6.](#) *Id.*
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- [8.](#) *Id.*
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- [13.](#) *Id.* at 156.
- [14.](#) Karadbil, *supra* note x, at 426.
- [15.](#) Bruce P. Keller, *Essay: The Game's the Same: Why Gambling in Cyberspace Violates Federal Law*, 108 *Yale L. J.* 1569, 1577 (1999).
- [16.](#) Karadbil, *supra* note x, at 426-427.
- [17.](#) *Id.*
- [18.](#) 18 USC ■ 1081-1084 (West 1998).
- [19.](#) Keller, *supra* note xv, at 1581.
- [20.](#) *Id.*
- [21.](#) Kelly, *supra* note xi, at 134.

[22.](#) *Id.*

[23.](#) Karadbil, *supra* note x, at 427-432.

[24.](#) *Id.* at 432.

[25.](#) *Id.* at 433.

[26.](#) Kelly, *supra* note xi, at 125.

[27.](#) *Id.* at 128.

[28.](#) *Id.*

[29.](#) *Id.*

[30.](#) *Id.*

[31.](#) *Id.*

[32.](#) Batt, *supra* note ii.

[33.](#) *Id.*