

THE DOJ GIVES STATES A GIFT¹

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The United States Department of Justice (“DOJ”) gave states and the online gaming community a big present, made public two days before Christmas 2011. President Barack Obama’s administration declared that the Wire Act,² the major federal anti-gambling statute used against Internet gambling, applies only to bets on sports events and races.³ Additionally, the DOJ no longer cares if a communication wire carrying legal intra-state wagers happens to cross temporarily into another state.⁴ This opens the door for states to legalize almost every form of Internet gambling for their residents and to authorize online wagers from residents of other states and nations.

The Wire Act was enacted in 1961 as part of Attorney General Robert F. Kennedy’s war on organized crime.⁵ It was designed to aid the states in their public policies, which, at the time, were almost entirely prohibitory against all commercial gaming. For example, in 1961 only Nevada allowed any form of off-track betting.⁶ The Wire Act was consciously designed to aid the states in fighting illegal bookmaking.⁷ The statute’s purpose was to cut “the Wire” – the name organized criminals gave to the telegraph wire used by illegal bookies to get race results before their bettors.⁸ The target of the Wire Act was so specific that prosecutors were fortunate Congress had included the words “sports events,” thus allowing the Act to be used against illegal sports books as well.⁹

The 2011 Christmas announcement allows states, which are desperate to find ways to raise revenue without raising taxes, to legalize almost any form of intra-state gambling. However, this does not include sports betting because of

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² 18 U.S.C. § 1084 (1994).

³ Whether Proposals By Illinois and New York to Use the Internet and Out-Of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act, Op. O.L.C. WL 6848433 (2011) [hereinafter Wire Act Memo].

⁴ *Id.*

⁵ DAVID G. SCHWARTZ, CUTTING THE WIRE: GAMBLING PROHIBITION AND THE INTERNET 7 (2005).

⁶ See, e.g., *Pivotal Dates in Gambling History*, AM. GAMING ASS’N., <http://www.american-gaming.org/industry-resources/research/fact-sheets/pivotal-dates-gambling-history> (last visited Mar. 20, 2013).

⁷ H.R. REP. NO. 87-967 (1961), reprinted in 1961 U.S.C.C.A.N. 2631, 2631.

⁸ SCHWARTZ, *supra* note 5, at 6–7.

⁹ I. NELSON ROSE & MARTIN D. OWENS, JR., INTERNET GAMING LAW 117 (2d ed. 2009).

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another federal statute, the Professional and Amateur Sports Protection Act (“PASPA”).¹⁰ Under PASPA, sports betting cannot be introduced into a state that does not already have it.¹¹ However, New Jersey is challenging PASPA in court,¹² and the California State Senate has already passed a bill to legalize sports betting.¹³

Historically, it has always been up to individual states to decide their own public policies toward gambling. For example, Utah and Nevada share a common border; yet they have completely different gaming laws.¹⁴ Until recently, the role of the federal government was limited to helping states enforce their public policies. Congress only acts when it has to, as with interstate horseracing and tribal gaming, or when the states have asked for federal assistance, as with the Wire Act and other statutes designed to fight organized crime.

The federal anti-gambling statutes are enforcement statutes; they do not change the substantive laws of gambling. With the exception of PASPA, no act of Congress makes illegal any form of gambling that is legal under state law. PASPA is limited to sports betting¹⁵ and is of questionable constitutionality.¹⁶ All other federal statutes, with only two exceptions, are facially limited to gambling that is illegal under federal or state law.¹⁷ For example, the Travel Act¹⁸ makes it a federal crime to travel or use any facility in interstate or foreign commerce to carry on “unlawful activity,” which is defined as a business enterprise involving gambling “in violation of the laws of the State in which they are committed or of the United States.” Only the federal anti-lottery statutes¹⁹ and the Wire Act can apply to gambling that is legal under state law.

The federal anti-lottery laws have not proven to be much of a barrier to state lotteries. Long before Powerball, states found ways of getting around the federal prohibitions on interstate lotteries, by having only information, not money, cross state lines.²⁰ The Wire Act, on the other hand, scared the states out of legalizing other forms of gambling online, or linking games across state

¹⁰ 28 U.S.C. § 3702 (1992).

¹¹ 28 U.S.C. § 3704 (1992).

¹² The first lawsuit filed to challenge PASPA in federal court was dismissed in March 2011 due to a lack of standing; *Interactive Media Entm’t & Gaming Ass’n, Inc. v. Holder*, Civ. Action, No. 09-1301 (GEB), 2011 WL 802106, at *1 (D.N.J. Mar. 7, 2011). The New Jersey Legislature then put sports betting on the November 2011 ballot. It passed and the Legislature approved a bill, signed by the governor. In August 2012, the professional and college sports leagues filed suit, *Nat’l Collegiate Athletic Ass’n v. Christie*, 3:12-cv-04947 (MAS) (LHG) (D.N.J. Aug. 7, 2012).

¹³ Sen. Bill No. 1390, 2011-2012 Reg. Sess. (Cal. 2012).

¹⁴ Compare NEV. REV. STAT. ch. 462-66, with UTAH CODE ANN. 1953 §§ 76-10-1101 to 1109 (West 2012).

¹⁵ See 28 U.S.C. § 3702 (1992).

¹⁶ For example, PASPA allows ten states to have sports betting, but it prohibits the other forty states from authorizing or engaging in the same activities.

¹⁷ 18 U.S.C. §§ 1301-07 (1994); 18 U.S.C. § 1804 (1994).

¹⁸ 18 U.S.C. § 1952.

¹⁹ 18 U.S.C. §§ 1301-07 (1994); 18 U.S.C. § 1804 (1994).

²⁰ See, e.g., 18 U.S.C. § 1301 (1994) (indicating state lotteries are now expressly allowed to have multi-state lotteries); see also Publication 78 Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code, IRS Pub. 78, 2008 WL 3533564 (2008) (indicating that the Multi-State Lottery Association is a recognized public charity).

lines. After the DOJ's 2011 Christmas announcement, the threat of the Wire Act to state-legal gaming is limited to sports betting.

The only barrier blocking states from legalizing Internet poker and other non-lottery games was the DOJ's expansive view of the Wire Act. Thus, now that the DOJ has limited the scope of the Wire Act to cover only cross-border sports bets, there is no federal law preventing a state from authorizing intra-state online games. It is even likely that states may now enter into compacts with other states and nations to pool players interstate and internationally.²¹

The DOJ opinion requires that gambling be legal under state laws.²² It will take some time for legislatures to react to this gift from the Obama Administration, but many of the state lotteries can set up online games quickly.

The 2011 Christmas announcement stemmed from the Illinois and New York state lotteries' request for clarification from the DOJ. Those state lotteries – along with the state lotteries of Minnesota, New Hampshire, North Dakota and Virginia – had been selling intrastate subscriptions online for years.²³ The Illinois and New York lotteries wanted to know if they could use out-of-state payment processors for those Internet purchases. Technically, the only question being decided was, “[w]hether proposals by Illinois and New York to use the Internet and out-of-state transaction processors to sell lottery tickets to in-state adults violated the Wire Act.” The DOJ's answer was far beyond what they were hoping for. Now, states can not only sell lottery ticket subscriptions over the Internet and use out-of-state payment processors, but they can also operate any game legal under state law, so long as it is not considered sports betting.²⁴

State lotteries, emboldened by this decision and under pressure to raise revenue for state governments, have begun selling individual tickets. It is estimated that online sales will increase overall state lottery sales by as much as 15%.²⁵ In March 2012, the Illinois Lottery became the first state lottery to go beyond subscriptions, selling more than \$1.14 million in individual state lottery tickets the first week.²⁶ The big question is not whether, but when, state lotteries will start selling instant tickets. Putting an instant ticket like a scratcher on a video screen makes the home computer game almost indistinguishable from a slot machine.

Most state lotteries will likely start with Internet variations of the games they already sell with paper tickets and in-store computer terminals. But the games will quickly become more interesting for players. People in their 20s and 30s who have the world's best games on their pocket phone are not interested in playing games where you choose a number and wait days to see whether you

²¹ See U.S. CONST. art. I, § 10, cl. 3. The only possible federal barrier to non-lottery games conducted across state lines is the Compact Clause of the U.S. Constitution, discussed below. *Id.*

²² See Wire Act Memo, *supra* note 3.

²³ See 20 ILL. COMP. STAT. 1605 / 7.12 (2012); N.Y. COMP. CODES R. & REGS. tit. 21, § 2804.12 (2005); N.D. CENT. CODE ANN. § 53-12.1-13 (West 2005); MINN. STAT. ANN. § 299L.09 (West 2005); N.H. CODE ADMIN. R. SW 5001.02 (2010); VA. CODE ANN. (Lexis-Nexis) § 58.1-4007.2 (2006).

²⁴ See Wire Act Memo, *supra* note 3.

²⁵ Rob Jennings, *States Gamble on Web Lottery Sales*, USA TODAY, June 10, 2011, at 3A.

²⁶ Dave McKinney, *Lottery Winners Include Illinois Schools – Pocketing \$31.5 Million*, SUN-TIMES, May 4, 2012, § News, at 2.

have won. State lotteries will soon be offering games as entertaining as Angry Birds® for real money, like instant lotteries.

Some states will follow the lead of government lotteries in Canada and elsewhere by setting up online poker and casino games, if state legislatures do not intervene to allow private companies to own and operate the online games. A state may decide to run the games as a government monopoly, as is usually done in Europe.²⁷ Although internet poker run by a state lottery might bring in more revenue in the long run for a state, state legislators and governors are desperate for cash now. Selling licenses to companies and Indian tribes brings in money immediately, long before the games are actually in operation. The fights will be over who gets the licenses.

There are also political considerations. In 2011, the Council of the District of Columbia authorized a government monopoly: the operator was to be the D.C. Lottery, but the games were to be run by a private company.²⁸ In February 2012, the Council reversed its decision, folding to political pressure on how the decisions had been made to legalize and to give the lucrative contract to a single company.²⁹ In Nevada, where there is no state lottery, the licenses will go to privately owned casinos and their established, already licensed suppliers.

Legal gambling in the U.S. is so prevalent that it is easy for legislatures to say, “we’ve already got casinos, racetracks and a state lottery. What’s the big deal about Internet poker?” Of course, because there is so much legal gambling in the U.S., casino and racetrack owners, and even state lotteries, respond, “Internet poker is fine, as long as we get to run it.”

State lawmakers are not proposing legalization to protect local operators; they do so solely to raise money. Even in large states like California, the existing card clubs, tribal casinos, and racetrack do not have nearly enough financial strength to outbid outsiders like large Nevada casino companies and foreign Internet gambling operators.

Only outside companies, like Caesars Entertainment, can produce the approximately \$100 million that a state the size of California will request. However, California’s long-established and politically powerful card clubs and tribal casinos will not quietly accept an outsider establishing a competing operation that brings legal gambling into every home in the state. Thus, all legislative proposals in the Golden State include selling licenses to local operators, as well as outside companies.³⁰

Political deals will be made eventually because there is so much money at stake. In states like Nevada and New Jersey, where the local operators are big money, the land-based casino companies will get the Internet gambling licenses. In Connecticut, the winners will undoubtedly be the two tribes operating casinos, which also happen to be the state’s largest employers. In states like California, local operators will get at least two licenses, one for a consortium of

²⁷ See, e.g., EU: Case C-42/07, *Liga Portuguesa de Futebol Profissional, Bwin International Ltd. v. Departamento de Jogos da Santa Casa da Misericórdia de Lisboa*, 2009 E.C.R. I-07633.

²⁸ See Tom Howell, Jr., *Online Gambling Proponent Trying to Avoid Complete Repeal*, WASH. TIMES, Feb. 7, 2012, at 13A.

²⁹ *Id.*

³⁰ E.g., Sen. Bill No. 1463, 2011-12 Reg. Sess. (Cal. 2012).

Spring 2013]

THE DOJ GIVES STATES A GIFT

5

card clubs and another for gaming tribes, while at least one will be sold to the highest bidder.

The big losers will probably be federally recognized tribes with small gaming operations remote from population centers. Under the Indian Gaming Regulatory Act, tribes can offer any form of gambling permitted by the state, only on their own land.³¹ Who would drive five hours to play Internet blackjack if the game were available on home computers? Many tribes have the political power to insist on the right to offer Internet gaming to anyone in the state. But, even in a state with a population as large as California, most tribes will not be able to compete for an Internet license.

The great irony is that a conservative Republican attempting to outlaw online gaming created this explosion of legal Internet gambling in the U.S.³² When Congress was controlled by the GOP and George W. Bush was President, Bill Frist, (R.-TN), the then-majority leader of the U.S. Senate, rammed through the Unlawful Internet Gambling Enforcement Act (“UIGEA”).³³ Frist attached the UIGEA to a must-pass anti-terrorist bill, the SAFE Port Act. In addition, Frist did such a terrible job of writing the UIGEA that he accidentally opened the door to many forms of online gaming, including fantasy sports, skill games, and intrastate gambling.

The UIGEA was another reason for the announcement by the DOJ. The UIGEA expressly allows states to authorize gambling when the bettor and operator are physically in that state.³⁴ The UIGEA also expressly requires law enforcement to ignore the fact that communication wires might cross temporarily into another state.³⁵ Conversely, the DOJ had always taken the position that the Wire Act outlawed all forms of gambling and that federal law applied so long as the gambling information crossed, even for a second, into another state.³⁶

The DOJ’s Office of Legal Counsel decided the only way out of the UIGEA conflict was to reinterpret the Wire Act. If the older Wire Act applied only to sports bets, it would not matter if phone lines happened to carry lottery or poker bets into and out of other states.

The timing was also interesting. Although written months earlier, the DOJ made its announcement on one of the slowest news days of the year. This prevented it from getting any great immediate attention. Even anti-gambling activists did not notice it for days. Plus, the tie-in to Christmas may not have been accidental. This was a gift of hundreds of millions of dollars and thousands of jobs to the states from President Obama, at a time when they desperately needed help and could not get any from Congress.

The Memorandum Opinion³⁷ was issued by the DOJ’s Office of Legal Counsel, and represents the official position of President Obama’s administra-

³¹ 25 U.S.C. § 2701 (1988).

³² See Rose & Owens, Jr., *supra* note 9, at 124–26.

³³ *Id.*

³⁴ 31 U.S.C. § 5362(10)(B) (2006).

³⁵ 31 U.S.C. § 5362(10)(E) (2006).

³⁶ Wire Act Memo, *supra* note 3, at 2.

³⁷ See *id.*

tion. As discussed, it was written in response to particular inquiries,³⁸ but it also ended up responding to a letter sent by the Majority Leader of the U.S. Senate, Harry Reid (D.-NV), and Jon Kyl (R.-AZ), the number two Republican in the Senate. They wrote to the DOJ, after the District of Columbia Lottery announced it was going to open Internet gaming in Washington, demanding that the Department clarify its position on Internet gambling.³⁹ They now have their answer, though it may not have been what they had wanted. Instead of declaring the D.C. Lottery's Internet plans illegal, federal prosecutors will now only enforce the Wire Act when gambling involves sports events or races and crosses state lines. As such, the only federal prohibition remaining on state-legal gambling is on sports betting, because interstate horse racing already has its own statute,⁴⁰ and even that might be changing.

By its own terms, the Professional and Amateur Sports Protection Act grandfathers in Nevada, Delaware and a half-dozen other states,⁴¹ while prohibiting any other state from legalizing sports betting.⁴² This is currently being challenged in the courts because New Jersey voters approved sports betting in November 2011.⁴³ My guess is that the PASPA will be declared unconstitutional. It is as legally irrational as saying that only some states can have movie theaters with sound. It is possibly the only federal statute in history that tells the states they cannot change their public policies on gambling.

It is theoretically possible that the DOJ could someday reverse its conclusion that the Wire Act's "prohibitions relate solely to sports-related gambling activities in interstate and foreign commerce."⁴⁴ But that is highly unlikely. Not only are such reversals rare, but they tend to be limited to issues a new presidential administration considers important, such as President Obama's reversal of the DOJ's approval of torture under President Bush. Perhaps more importantly, the DOJ's position is the one that is legally correct, and is supported by almost all federal court decisions, including consolidated class actions from throughout the U.S. decided by the Fifth Circuit Court of Appeals.⁴⁵

The impact of the announcement was felt across the nation. The American Virgin Islands and Nevada had already passed legislation allowing their regulators to issue licenses for Internet casinos. However, no licenses were issued because both jurisdictions received letters from the DOJ threatening to arrest any of their operators who dared take bets online. The threat is now gone. Even before the DOJ's reversal, the Nevada State Legislature had passed a bill ordering the state's regulators to prepare for licensing Internet poker. In June 2012,

³⁸ *Id.*

³⁹ I. Nelson Rose, *Reid-Kyl Internet Gambling Letter*, GAMBLING & THE L. BLOG (July 18, 2011), <http://www.gamblingandthelaw.com/blog/307-reid-kyl-internet-gambling-letter-july-18-2011.html>.

⁴⁰ Interstate Horseracing Act, 15 U.S.C. § 3001 (1978).

⁴¹ 28 U.S.C. § 3704; plus additional states that offer pari-mutuel betting on jai alai.

⁴² *Id.*

⁴³ Suzette Parmley, *After Election Victory, Sports-Betting Backers Push Ahead*, PHILA. INQUIRER, Nov. 14, 2011, at A01.

⁴⁴ Wire Act Memo, *supra* note 3.

⁴⁵ See *In re MasterCard Int'l Inc.*, 313 F.3d 257 (5th Cir. 2002), *aff'g* 132 F. Supp. 2d 468 (E.D. La. 2001); see also *Jubelirer v. MasterCard Int'l, Inc.*, 68 F. Supp. 2d 1049 (W.D. Wis. 1999).

Spring 2013]

THE DOJ GIVES STATES A GIFT

7

the Nevada Gaming Commission issued the first two licenses in the nation for Internet gaming to two of the largest slot machine manufacturers: International Game Technology and Bally Technologies, Inc.

A week later, on June 28, 2012, Gov. Jack Markell (D.-DE) signed a bill allowing the Delaware State Lottery to operate full-scale casinos online.⁴⁶ Part of the money that will be raised will go to the state's racinos, to help them market and expand. The bill was rushed through because the racinos in Delaware were hurting from the increased competition from expanded casino gambling in Atlantic City, Maryland, New York, and Pennsylvania. In fact, more money is now bet on the slot machines in Pennsylvania than in New Jersey.⁴⁷ In addition, the state of New York takes in more gaming tax revenue than Nevada, helped mightily by the Aqueduct racino, the first legal casino in New York City.

However, it will take some time for other state legislatures to react. The opening of Internet gambling in Delaware and Nevada, and, to a lesser extent, the American Virgin Islands, will push states near the tipping point.

New Jersey will likely be first. The Democratic-controlled legislature approved intrastate online gaming in 2011, but the bill was vetoed by Gov. Chris Christie (R.-NJ).⁴⁸ Christie was afraid the Internet gambling storefronts would open throughout the state, which the Atlantic City casinos were not about to let happen. He did point out a true legal problem: the state's constitution limits all casino gambling to Atlantic City. Christie is working with the legislature's leading advocate, state senator Ray Lesniak (D.-Union), to correct these problems.

Iowa may well be next. The Iowa legislature mandated a study concluding that intra-state Internet poker can be operated safely and will raise money, although not as much as many predicted.⁴⁹ A bill passed in the democratically controlled State Senate, but was not even brought up for a vote in the Republican-controlled House.⁵⁰ This was the third year the legislature had considered the issue.

California and many other states are so desperate for any source of revenue that they will jump on the bandwagon once the political compromises are reached. Gambling is seen as a painless tax, and even economic conservatives like it because it can raise revenue without raising taxes.

⁴⁶ Doug Denison, *Delaware Goes All-In with Legalized Online Gambling Plan; State Hopes Move Will Help Its Casino Industry, Keep Jobs*, USA TODAY, June 29, 2012, at 3B; H.B. 333 (NS), 146th Gen. Assemb., 2nd Regular Session (Del. 2011).

⁴⁷ Michael Cooper, *Casino Boom Has States Looking to the Internet for Gambling Dollars*, N.Y. TIMES, Aug. 3, 2012, at A13.

⁴⁸ Associated Press, *Christie Vetoes Legislation to Legalize Internet Gambling*, N.Y. TIMES, Mar. 4, 2011, at A22. He vetoed a revised bill, but said that if changes were made, he would sign it. Associated Press, *Chris Christie Again Vetoes N.J.'s Internet Gambling Law*, USA TODAY, Feb. 7, 2013, <http://abcnews.go.com/US/wireStory/christie-vetoes-njs-internet-gambling-law-18431868>.

⁴⁹ Michael Cooper, *Mired in Debt, States Pursue Web Gambling*, N.Y. TIMES, Jan. 18, 2012, at A1.

⁵⁰ 2011 Bill Tracking IA S.B. 2275; see also Jason Noble & Jason Clayworth, *Iowa Lawmakers Tally Hits, Misses: A Look at the Session and What Happened to Various Measures*, DES MOINES REG., May 13, 2012, available at 2012 WLNR 10058041.

States with smaller populations, like Nevada and Delaware, want their operators to be able to take bets from other states and nations. The only possible federal barrier is the Compact Clause of the U.S. Constitution, which provides, “[n]o State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State, or with a foreign Power . . .”⁵¹ The Compact Clause has been limited to cases where there was an infringement on federal sovereignty.⁵² It was no barrier to states pooling players for state lotteries, even before Congress expressly approved that right.⁵³ If necessary, states could ask Congress to ratify their agreements. Therefore, small states should be able to compact together to create player pools in the millions.

Even without a compact, a state could authorize its licensees to accept bets from foreign nations where the betting is legal, such as England. So long as they stay away from sports betting and lotteries, there is no federal barrier to having truly international games. A state like Nevada can ask to be put on the U.K.’s “White List,”⁵⁴ allowing its licensees the additional right to advertise in England.

The DOJ’s new position on the Wire Act has not made the UIGEA or other federal anti-gambling laws irrelevant. The Black Friday indictments, in which the U.S. Attorney for the Southern District of New York closed down the largest online poker sites then taking money bets from America, never mentioned the Wire Act.⁵⁵ In that case, the federal government bootstrapped New York state anti-gambling misdemeanors into federal organized crime felony charges.

Questions remain. The Wire Act still applies to bets on horse races. In December 2000, Congress amended the Interstate Horseracing Act to expressly allow states to decide for themselves whether their residents can make bets on horse races by phone and computer.⁵⁶ More than half of the states passed laws allowing this remote betting, called Advanced Deposit Wagering (“ADW”), including across state lines. But the DOJ’s official position is still that the

⁵¹ U.S. CONST. art. 1, § 10, cl 3.

⁵² *New Hampshire v. Maine*, 426 U.S. 363, 369 (1976), held that the “application of the Compact Clause is limited to agreements that are “Directed to the formation of any combination tending to the increase of the political power in the states, which may encroach upon or interfere with the just supremacy of the United States.” This rule was reaffirmed in *U.S. Steel Corp. v. Multistate Tax Comm’n*, 434 U.S. 452, 471 (1978), where the Court ruled that the quoted test “states the proper balance between federal and state power with respect to compacts and agreements among States.”

⁵³ 18 U.S.C. § 1301 (1994).

⁵⁴ Regulators in England evaluate whether the regulatory regime in other jurisdictions meet their standards. If they do, the jurisdiction is put on the “White List” and its online operators are allowed to advertise directly to British residents. Department for Culture, Media and Sport, *Gambling Act, 2005 “White-Listing”*, 16 Advertising: Foreign Gambling § 1.1 (2007), available at <http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/NR/rdonlyres/74063D4D-C9F2-4167-B7A6-246385FB0276/0/WhiteListingCriteria.pdf>.

⁵⁵ Nathan Vardi, *Department of Justice Flip-Flops on Internet Gambling*, FORBES (Dec. 23, 2011), available at <http://www.forbes.com/sites/nathanvardi/2011/12/23/departement-of-justice-flip-flops-on-internet-gambling>.

⁵⁶ 15 U.S.C. § 3002 (effective Dec. 21, 2000).

ADW operator and the bettor have to be in the same state.⁵⁷ No one else, including the World Trade Organization,⁵⁸ agrees with the DOJ, and payment processors must figure out who is right.

What impact will all this have on proposed federal laws? Proponents are trying to spin the DOJ opinion. The Poker Players Alliance stated, “this ruling makes it even more important that Congress act now to clarify federal law, and to create a licensing and regulation regime for Internet poker, coupled with clear laws and strong enforcement against other forms of gambling deemed to be illegal.”⁵⁹

But the reality is that Congressional advocates, like Barney Frank (D.-Mass.) and Joe Barton (R.-Tx.), have had some of the wind knocked out of their sails. Since states are now free to legalize intrastate online poker, and even interstate and international, there is not much reason to bother with a federal law. It might be a good idea to have one unified law. On the other hand, the success of the gambling currently licensed or operated solely by states and tribes demonstrates that consistency is not essential. Only the major operators, like Caesars Entertainment, need an overriding federal law, because they do not want to be competing with politically connected local gaming companies for limited numbers of licenses in 50 states.

The control of gambling has always been left up to the states. A federal law would not significantly change things. Every proposed federal restriction on Internet gambling allows states to opt in or out. Even the UIGEA is only an enforcement act, requiring that the gambling be illegal under some other federal or state statute.

The reaction to the DOJ’s announcement shows that there never was much chance that Congress would carve out poker from the UIGEA. News media and online gaming opponents, both anti-gambling activists and potential competitors, attacked the decision as creating great danger to compulsive gamblers.⁶⁰ The North American Association of State and Provincial Lotteries announced that there was now no need for federal legislation.⁶¹ And, as I have pointed out – to the ire of some who have contributed money to politicians and lobbyists, hoping for a federal Internet gambling law – Congress has passed no new sub-

⁵⁷ Nelson I. Rose, *What the Department of Justice Announcement Means*, 16 GAMING L. REV. & ECON., 264 (2012).

⁵⁸ United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services, WT/DS285/ARB (Dec. 21, 2007).

⁵⁹ Press Release, Poker Players Alliance, PPA Applauds DoJ Ruling: Online Poker Does Not Violate the Wire Act: Calls on Congress to Act Quickly to Pass Federal Legislation (Dec. 23, 2011), available at <http://theppa.org/press-releases/2011/12/23/press-release-ppa-applauds-doj-ruling-online-poker-does-not-violate-the-wire-act-calls-on-congress-to-act-quickly-to-pass-federal-legislation-12232011>.

⁶⁰ Dan Cypra, *UIGEA Regulations Do not Address Problem Gambling*, POKER NEWS DAILY (Nov. 23, 2008), <http://www.pokernewsdaily.com/uigea-regulations-do-not-address-problem-gambling-720>; Michael D. Schmitt, *Prohibition Reincarnated? The Uncertain Future of Online Gambling Following the Unlawful Internet Gambling Enforcement Act of 2006*, 17 S. CAL. INTERDISC. L.J. 381, 382 (2008).

⁶¹ Kevin Bogardus, *States Bristle at Reid’s Push to Legalize Online Poker in Lam Duck Session*, THE HILL (Oct. 2, 2012), <http://thehill.com/business-a-lobbying/259617-states-bristle-at-reids-push-for-online-poker>.

stantive laws, other than a change in patent laws, since the Republicans took over the House of Representatives in January 2011.

Opponents, like Jon Kyl and Frank Wolf (R.-VA), might get some leverage for their attempts to expand the Wire Act to cover all forms of gambling. However, there is as little chance of this, or any, Congress passing a new prohibition as there is of it passing a repeal of the UIGEA.

Internet years are like “dog years.” In 1962, there were no legal state lotteries in the U.S. It took more than 45 years before almost all states made lotteries legal. Now, developments happen so fast, that it won’t take four decades before Internet gambling is legal in almost every state. While Congress continues to do nothing, Internet gambling is about to explode across the nation, made legal under state laws.