

Gambling Sausage: Federal Legislation in the New Millennium

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Laws, like sausages, cease to inspire respect in proportion as we know how they are made.
—John Godfrey Saxe (27 March 1869)

I. INTRODUCTION

IT IS A POPULAR CLICHÉ to refer to law-making as sausage-making.¹ A number of popular press and academic articles have been written about the less-than-transparent and messy process of passing legislation in the U.S. Congress,² and industrialists from the meat/sausage industry even protested at the persistent use of the age-old metaphor.³ Given that gambling is arguably the most regulated industry outside of nuclear energy,⁴ few areas of legislative

efforts allow for a better view of federal law-making intricacies.

A perusal of gambling-related collective bodies and representative industry organizations yields several players in both educational and lobbying efforts, such as the Interactive Media Entertainment and Gaming Association, the International Masters of Gaming Law, the Interactive Gaming Council, the International Association of Gaming Advisors, the Remote Gambling Association, iGaming North America, the Online Gaming Association, the

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¹The first attribution erroneously has been tied by many scholars and observers to Otto Von Bismarck (Prime Minister of Prussia and First Chancellor of Germany in the late nineteenth century). More accurately, one pinpoints the first published use of the now popular metaphor to John Godfrey Saxe, an American poet, on March 27, 1869, in the University of Michigan's *The Chronicle*, p. 4, col. 2, para. 2. The precise wording is used as the preamble quote here.

²See, e.g., Kimberly D. Krawiec, *Don't 'Screw Joe the Plummer': The Sausage-Making of Financial Reform* (Duke Law Scholarship Repository working paper, Mar. 25, 2012), available at <http://scholarship.law.duke.edu/faculty_scholarship/2445/>; Ashley Hasley III, *Congress Under Pressure to Produce a Transportation Bill*, WASH. POST, Feb. 15, 2012, <http://www.washingtonpost.com/local/trafficandcommuting/congress-under-pressure-to-produce-a-transportation-bill/2012/02/14/gIQAhIVDGR_story.html> (quoting Barbara Boxer (D-CA), chair of Senate Environment and Public Works Committee: "... Everybody who says it's like making sausage, it's a lot uglier than that ..."); Mark J. Oleszek and Walter J. Oleszek, *Legislative Sausage-Making: Health Care Reform*

in the 111th Congress, in PARTY AND PROCEDURE IN THE UNITED STATES CONGRESS 253–286 (Jacob R. Straus ed., 2012); Alan Rosenthal, *The Legislature as Sausage Factory: It's About Time We Examine This Metaphor*, STATE LEGISLATURES 12–15 (Sept. 2001); David Luban, *Asking the Right Questions*, 72 TEMPLE L. REV. 839 (1999); Peter L. Strauss, *The Courts and the Congress: Should Judges Disdain Political History?*, 98 COLUM. L. REV. 242 (1998); Peter L. Strauss, *The Common Law and Statutes*, 70 COLO. L. REV. 225 (1998); Richard J. Pierce, Jr., *Reconciling Chevron and Stare Decisis*, 85 GEO. L. J. 2225, 2235 (1997); Leonard Laster, *Commentary: Making Sausage and Making National Health Policy*, 21 J. HEALTH POL., POL'Y & L. 861 (1996); Herbert F. Spierer and Louise Spierer, *The Use of Statistics: Bismarck, Sausages and Policy*, 50 AM. J. ECON. & SOC. 347 (1991); Edward L. Rubin, *The Concept of Law and the New Public Law Scholarship*, 89 MICH. L. REV. 792, 806 (1991); Bernard Schwartz, *Curiouser and Curiouser: The Supreme Court's Separation of Powers Wonderland*, 65 NOTRE DAME L. REV. 587 (1990).

³Robert Pear, *If Only Laws Were Like Sausages*, N. Y. TIMES (Dec. 4, 2010), <<http://www.nytimes.com/2010/12/05/weekinreview/05pear.html>>.

⁴Dana Amihere, *Penn National Hedging Bets on Prince George's Slots*, THE SENTINEL, Feb. 16, 2012, <<http://www.thesentinel.com/pgs/Penn-National-bets-on-slots>> (quoting Penn National's Public Affairs Director Karen Bailey).

American Gaming Association, the North American Gaming Regulators Association, the International Association of Gaming Regulators, the Gaming Standards Association, the National Center for Responsible Gaming, the Association of Gaming Equipment Manufacturers, the Association of Players, Casinos, and Webmasters, the Gambling Portal Webmasters Association, the Poker Players Alliance, and many others. Given the multitude of interests these associations represent, it is difficult to point to a particular direction that contemporary regulatory efforts for the gambling industry might assume. Instead, one observes a maelstrom of various special interest groups, which—combined with other legislatively active players, such as various Native American tribes and sports organizations—create an intriguing framework for the U.S. Congress “sausage-making machine.” What is certain, as one can easily decipher from the aforementioned organizations’ publicly available material, is that there is absolutely no dearth of political involvement and continuous legislative action, in which these various industry actors are instrumental.

A query under the Lobbying Disclosure Act Database⁵ yields more than 5,000 records and hundreds of millions of dollars spent on political action-related campaigns, contributions, and ways to influence legislators toward particular action on existing or forthcoming bills. The finance/banking industry, for example, lobbied against the Unlawful Internet Gambling Enforcement Act of 2006, given that credit card companies and U.S. finance sector interests would stand to lose tremendous revenue from transactions generated by U.S. customers of gambling sites. Gambling industry organizations employed lobbyists, such as Jack Abramoff⁶ with intimate ties to influential legislative decision-makers, or even former members of Congress-turned lobbyists, with patent ties to their former colleagues on the Hill.⁷ Powerful organizations retain services of well-respected (and connected) lobbyists, such as Martin Gold with Covington and Burling in Washington, D.C., to ensure their positions are adequately voiced. For example, the professional and amateur sport organizations’ lobby, as represented by Martin Gold, consistently and strongly defended its position against any online sports gambling regulation efforts by Congressman Barney Frank (D-MA) and others.⁸ Arguably, no better example displays the “sausage-machine” in action than the legislative commotion surrounding the passing of the

Professional and Amateur Sports Protection Act in 1992, featuring power-players in the U.S. Senate (particularly Senator Bill Bradley, with his rich sports history) facing off against New Jersey casinos lobbying for sport betting regulation in New Jersey (which would then lead to an exemption from the ensuing federal law for New Jersey), and the further entanglement of Nevada casinos siding with Sen. Bradley against the competition that might ensue from Atlantic City casinos offering Nevada-style sports books.⁹

This article summarizes federal legislation attempts during the past 14 years in the areas of online gambling and sport betting, arguably the most contentious gambling industry sectors. The article first recaps the key pieces of legislation in effect as of mid-2012 governing the U.S. gambling industry. The major section of the article follows, encompassing all legislative bills since the 106th Congress (1999–2000). Finally, this contribution attempts to forecast any possible outcomes of the pending New Jersey-led efforts for the repeal of the restrictive federal legislative framework in regard to sport betting. While it may be difficult to foresee new acts of Congress that may open avenues for gaming entrepreneurs in the U.S., congressional action remains an unpredictable (in particular, immediately preceding and following a presidential election) and messy business, as the usual meat industry-provoking figure of speech posits. Nevertheless, it still is the way any regulatory reform may be accomplished.

⁵U.S. Senate, Lobbying Disclosure Act (LDA) reports, LDA Database, available at <<http://soprweb.senate.gov/index.cfm?event=selectfields>> [select “issue area (lobbying activity)” under “Filings” and after submitting, select issue area “gambling/gaming/casino” in the available drop-down menu]. It may be useful to remind the reader that these records are the mandatory filings under the LDA; thus, one can only engage in conjectures in regard to funding political actors that conceivably may go unreported.

⁶See *infra* note 43 and accompanying text.

⁷See, e.g., Eric Lichtblau, *Lobbyist Helps Project He Financed in Congress*, N.Y. TIMES, Jan. 21, 2012, available at <<http://www.nytimes.com/2012/01/22/us/ex-representative-may-lobby-for-project-he-helped-finance.html?pagewanted=all>>.

⁸Jessica Holzer, *Sports Leagues Mobilize Against Frank’s Gaming Bill*, THE HILL (Apr. 4, 2007), available at <<http://thehill.com/business-a-lobbying/3073-sports-leagues-mobilize-against-franks-gaming-bill>>.

⁹See *infra* note 30 *et seq.* and accompanying text.

II. EXISTING FEDERAL LAWS REGULATING GAMBLING ACTIVITY¹⁰

This section of the article serves as a reference point for all the bills proposed since the 1999–2000 congressional session. Namely, the statutes below are ones that every proposed legislative bill would need to consider in amendments and repeal efforts, as well as in attempts at tweaking the contemporary regulatory framework governing the U.S. gambling industry. The following is a non-exhaustive list of many of the primary federal statutes currently in effect:

Transportation of Gambling Devices Act of 1951 (as amended by the Gambling Devices Act of 1962).¹¹ This was an act prohibiting the manufacture, sale, possession, transportation, etc. in specific jurisdictions of “gambling devices,” which the act defined fairly broadly. It also included regulations on the registration of exempt manufacturers and dealers, labeling, and a number of exceptions, such as pari-mutuel wagering and racetrack machines.

Wire Act of 1961.¹² The Wire Act reads:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.¹³

Illegal Gambling Business Act of 1970.¹⁴ In order to establish a case under the statute, the federal government needs to prove that the gambling operation: (i) is violating a state or local law; (ii) includes five or more people who finance, manage, supervise, direct, or own all or part of the business; and (iii) has been in substantially continuous activity for more than 30 days, or has gross revenue of \$2,000 or more in any single day.¹⁵

Racketeer Influenced and Corrupt Organizations (RICO) Act of 1970.¹⁶ For a RICO case to be established, the government needs to prove that an enterprise existed and that it affected interstate or foreign commerce. Next, the accused has to be associated with the enterprise, and must participate in the en-

terprise through a pattern of racketeering activity (including collection of unlawful debts).¹⁷ The U.S. Supreme Court has held that such a “pattern” does not require multiple illegal schemes; rather “pattern” is interpreted as both a relationship between the offenses and the continuing threat of such activity.¹⁸ Lastly, the accused has to participate in the enterprise of his or her free volition.¹⁹

Interstate Horseracing Act of 1978 (as amended in December of 2000).²⁰ A current effort for a further amendment, via combined House and Senate bills H.R. 1733 and S. 886, is the Interstate Horseracing Improvement Act of 2011.²¹ This statute defines the term “interstate off-track wager” as:

a legal wager placed or accepted in one State with respect to the outcome of a horserace taking place in another State and includes pari-mutuel wagers, where lawful in each State involved, placed or transmitted by an individual in one State via telephone or other electronic media and accepted by an off-track betting system in the same or another State, as well as the combination of any pari-mutuel wagering pools ...²²

¹⁰For the purposes of this article, a brief synopsis will suffice. For more detail, see Anastasios Kaburakis and Ryan M. Rodenberg, *Legal and Corruption Issues in Sports Gambling: PASPA's 20th Anniversary*, forthcoming, J. LEGAL ASPECTS SPORT (2012).

¹¹15 U.S.C. § 1171.

¹²18 U.S.C. § 1084.

¹³*Id.* at (a). In subsection (b), the Wire Act provides a safe harbor provision: “Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.”

¹⁴18 U.S.C. § 1955.

¹⁵United States v. Sacco, 491 F.2d 995, 998 (9th Cir. 1974).

¹⁶18 U.S.C. § 1961.

¹⁷United States v. Joseph, 781 F.2d 549, 555 (6th Cir. 1986) (conspiracy to commit a violation of state gambling laws constitutes racketeering activity).

¹⁸See H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 236–239 (1989).

¹⁹United States v. Darden, 70 F.3d 1507, 1518 (8th Cir. 1995); also see 31A Am. Jur. 2d EXTORTION, BLACKMAIL, AND THREATS §128 (1989).

²⁰15 U.S.C. § 3001.

²¹H.R. 1733 and S. 886: Interstate Horseracing Improvement Act of 2011 (112th Congress), available at <<http://www.govtrack.us/congress/bill.xpd?bill=h112-1733>> and <<http://www.govtrack.us/congress/bill.xpd?bill=s112-886>>.

²²15 U.S.C. § 3002(3).

*Indian Gaming Regulatory Act of 1988.*²³ This statute was enacted to regulate the conduct of gaming on Indian land. It established the National Indian Gaming Commission, as well as a regulatory structure for Indian gaming in the U.S.

*Illegal Money Transmitting Business Act of 1992.*²⁴ This statute was enacted because of concern over money laundering and unregulated institutions carrying out such transactions. It defines “unlicensed money transmitting business” and sets penalties.

*Professional and Amateur Sports Protection Act (PASPA) of 1992.*²⁵ PASPA’s intended purpose was to “prohibit sports gambling conducted by, or authorized under the law of, any State or other governmental entity.”²⁶ Congress posited that sports wagering was “undermin[ing] public confidence in the character of professional and amateur sports,” as well as “promot[ing] gambling among our Nation’s young people.” Thus, PASPA “represents a judgment that sports gambling...is a problem of legitimate Federal concern for which a Federal solution is warranted... We must do everything we can to keep sports clean so that the fans, and especially young people, can continue to have complete confidence in the honesty of the players and the contests.”²⁷ PASPA’s text is concise:

It shall be unlawful for—(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.²⁸

PASPA contained some significant exemptions,²⁹ by which certain states’ sport gambling systems would be grandfathered into the new legislative framework. Hence, the states of Delaware, Montana, Nevada, and Oregon were essentially granted preferential treatment. One of the said exemptions granted the state of New Jersey³⁰ the opportunity to enact sport betting within one year from PASPA’s

effective date, namely by January 1, 1994. However, the one-year window for New Jersey elapsed with no legislative action, due to several factors, including: (i) Senator Bill Bradley’s efforts; (ii) a race (eventually successful) for the governor’s post by

²³25 U.S.C. § 2701.

²⁴18 U.S.C. § 1960.

²⁵28 U.S.C. § 3701 (1992).

²⁶S. Rep. No. 102-248 (1992), at 3.

²⁷*Id.* at 4–7.

²⁸28 U.S.C. § 3702.

²⁹28 U.S.C. § 3704:

- (a) Section 3702 shall not apply to—
- (1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990;
 - (2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both—(A) such scheme was authorized by a statute as in effect on October 2, 1991; and (B) a scheme described in section 3702 (other than one based on parimutuel animal racing or jai-alai games) actually was conducted in that State or other governmental entity at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity;
 - (3) a betting, gambling, or wagering scheme, other than a lottery described in paragraph (1), conducted exclusively in casinos located in a municipality, but only to the extent that—(A) such scheme or a similar scheme was authorized, not later than one year after the effective date of this chapter, to be operated in that municipality; and (B) any commercial casino gaming scheme was in operation in such municipality throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation authorized by that State’s constitution and applicable solely to such municipality; or
 - (4) parimutuel animal racing or jai-alai games.

³⁰*Id.* 28 U.S.C. § 3704 (a) (3). See also, Larry Josephson, *Righting a Wrong: A History in New Jersey Sports Betting*, COVERS, available at <<http://www.covers.com/articles/articles.aspx?theArt=251825>> (last visited May 4, 2012). Josephson summarizes the efforts to stall New Jersey’s sport betting legislation by Senator Bill Bradley. According to Josephson the efforts of New Jersey’s other Senator, Robert Torricelli, in conjunction with significant lobbying by the state’s casinos, sustained the one-year window for New Jersey. Senator Bradley had even greater political clout, however, and through multi-faceted action in 1993 was able to allow the one-year window to pass without New Jersey legislative action enacting sport betting rules.

Republican candidate Christine Todd Whitman³¹ against Democratic incumbent Jim Florio; and (iii) possibly some lobbying efforts in New Jersey funded by Nevada casinos, which would potentially stand to lose market share if New Jersey casinos were to aggressively compete nationally for a slice of a sport betting pie.³²

*Unlawful Internet Gambling Enforcement Act (UIGEA) of 2006.*³³ UIGEA makes it illegal for financial institutions to facilitate payment transactions between offshore gambling operations and American customers. UIGEA was “hastily tacked onto the end”³⁴ of the Security and Accountability For Every Port Act (SAFE Port Act).³⁵ UIGEA states: “No person engaged in the business of betting or wagering may knowingly accept [money drawn on U.S. financial institutions] in connection with the participation of another person in unlawful Internet gambling.”³⁶ UIGEA does not target recreational gamblers; instead, it targets the flow of funds to and from Internet gambling operators.³⁷ UIGEA is silent as to the legality of Internet gambling sites by U.S. residents. Pivotal UIGEA clarifications

were codified in November 2008, setting its effective date as June 1, 2010, and outlining the “prohibition on funding of unlawful internet gambling.”³⁸ The revised UIGEA regulations in November 2008 did not, however, clarify what constitutes unlawful Internet gambling. The regulations purposefully evaded the issue by stating that “a single, regulatory definition of ‘unlawful Internet gambling’ would not be practical.”³⁹ UIGEA includes exemptions for online fantasy sports, intrastate gambling, interstate horseracing, and gambling governed by Indian Gaming regulations.⁴⁰

III. FEDERAL LEGISLATION EFFORTS⁴¹

Politically, attempts to regulate online gambling and sport betting have been very contentious and frequently entangled, due to the interactions among conservative and liberal political factions, as well as between political actors and lobbyists serving various interests. Case in point: H.R. 3125, referred to as the Internet Gambling

³¹At the time of Whitman’s campaign in 1993, the Republican Party controlled the state legislature and, as the Republican candidate was gaining ground toward the governor’s election, Republicans may have had a lot to lose by introducing a sport betting bill that would motivate arguably more liberal voters. See Larry Josephson, *supra* note 30.

³²See Larry Josephson, *supra* note 30.

³³Title VII of SAFE Port Act, 31 U.S.C. § 5361.

³⁴*Poker Face Off*, THE ECONOMIST, Apr. 23, 2011, at 68, available at <<http://www.economist.com/node/18586698>>.

³⁵Pub. L. 109-347; 6 U.S.C. § 901.

³⁶31 U.S.C. § 5363.

³⁷See Charles P. Ciaccio, *Internet Gambling: Recent Developments and State of the Law*, 25 BERKELEY TECH. L. J. 529, 543 (2010).

³⁸12 C.F.R. § 233, 31 C.F.R. § 132 (Nov. 18, 2008).

³⁹*Id.* at 4.

⁴⁰31 U.S.C. § 5362.

⁴¹While our focus is at the federal level, that is not to infer the absence of important developments at the state level, as there are several state-level bills of note as well. For example, in addition to the current efforts by New Jersey, Iowa featured legislation (Iowa’s Senate bill was S.B. 2129) that would challenge the federal ban on sport betting; however, that state legislative effort failed in 2010. See *Gambling Developments in the States, 2010*, NATIONAL CONFERENCE OF STATE LEGISLATORS, <<http://www.ncsl.org/issues-research/econ/gambling-developments-in-the-states-2010.aspx>> (last visited May 17, 2012); see also *Iowa Racing & Gaming Commission*, GAZETTE, <<http://thegazette.com/tag/iowa-racing-and-gaming-commission/>> (last visited May 17, 2012). Further, an outlier state has been

North Dakota. In February 2005, the North Dakota House of Representatives passed a bill to legalize and regulate online poker and online poker cardroom operators in the State. Such legislation would render North Dakota the first state to do so. Testifying before the State Senate, Nigel Payne, CEO of Paradise Poker, pledged to relocate to the state if the bill became law. See Joseph M. Kelly, *A State’s Quest To Legalize Online Poker*, POKERPAGES.COM, <<http://www.pokerpages.com/articles/archives/jkelly05.htm>> (last visited May 17, 2012). However, the measure was defeated by the State Senate in March 2005. Representative Jim Kasper, who sponsored the 2005 legislation, planned to introduce similar bills in the 2007 North Dakota legislative session. However, he swiftly conceded his efforts, following UIGEA’s passing and the foreseeable Department of Justice prosecution against payment processors. See Associated Press, *Rep. Jim Kasper Gives Up on Licensing Online Poker in North Dakota*, GAMBLING 911 (Oct. 22, 2006), <<http://www.gambling911.com/Jim-Kasper-Online-Poker-North-Dakota-102306.html>>, and Christopher Costigan, *US State Online Gambling News: Jim Kasper Is Back (Sort of)*, GAMBLING 911 (Mar. 22, 2011), <<http://www.gambling911.com/gambling-news/us-state-online-gambling-news-jim-kasper-back-sort-032211.html>>. Note that the Bank of North Dakota is the only state-owned bank in the U.S. and stood to gain considerable revenue from online gambling, as it was envisioned as the “repository for players’ money.” See Dale Wetzel, *Legal Opinion May Revive ND Internet Poker*, YAHOO (Jan. 5, 2012), <<http://finance.yahoo.com/news/legal-opinion-may-revive-nd-154124739.html>>. Such efforts become more timely with the recent Department of Justice interpretation on the Wire Act’s application only to sport betting online.

Prohibition Act of 2000.⁴² This was a bill to ban Internet gambling and was defeated, as has been extensively documented, due to the lobbying efforts of (later) convicted felon Jack Abramoff.⁴³ Since the turn of the millennium, there were several bills introduced in Congress to either regulate or ban online gambling and, in particular, gambling on sports. More often than not, these bills would not reach the vote stage and would instead expire per sunset provisions at the conclusion of each session of Congress. A detailed chronology follows.⁴⁴

A. 106th Congress (1999–2000)

S. 2021: High School and College Sports Gambling Prohibition Act. This was a Senate bill to prohibit high school and college sports gambling in all states including states where such gambling was permitted prior to 1991.⁴⁵

H.R. 3575: Student Athlete Protection Act. This was the House version of the preceding bill, also to prohibit high school and college sports gambling in all states, including states where such gambling was permitted prior to 1991. It aimed to include as unlawful sports gambling—a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly, on one or more: (1) competitive games in which high school or college athletes participate; (2) performances of high school or college athletes in competitive games; or (3) competitive games at the Summer or Winter Olympics.⁴⁶

H.R. 4284: Illegal Sports Betting Enforcement Act of 2000. This was a bill to provide for the establishment of an Amateur Sports Illegal Gambling Task Force and increase penalties for illegal sports gambling, as well as to study illegal sports gambling behavior among minors.⁴⁷

*S. 2340: Amateur Sports Integrity Act.*⁴⁸ The Amateur Sports Integrity Act sponsored by Senator John McCain [R-AZ] had a strong anti-sport-gambling component. The bill's Title II ("Gambling") provided that the Act would:

- (i) Amend the Ted Stevens Olympic and Amateur Sports Act to make it unlawful for a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or for a person, including an amateur sports organization or a corporate sponsor of such an

organization, to sponsor, operate, advertise, or promote, a lottery, contest, sweepstakes, or other betting, gambling, or wagering scheme based on a competitive game at the Summer or Winter Olympics, a competitive game in which high school or college athletes participate, or a performance of high school or college athletes in a competitive game.

- (ii) Permit a civil action to enjoin a violation of this title to be commenced by the Attorney General, or a local educational agency, college, or sports organization whose competitive game is alleged to be the basis of the violation.
- (iii) Require each college to include in its report on campus crime required under the student assistance program: (1) statistics and other information on illegal gambling, including gambling over the Internet; and (2) a statement of policy regarding under-age and other illegal gambling activity, including a description of any gambling abuse education programs available to students and employees. [It would] Direct the Attorney General to periodically review the policies, procedures, and practices of colleges concerning campus crimes and

⁴²Available at <<http://thomas.loc.gov/cgi-bin/bdquery/z?d106:h.r.03125>>.

⁴³See generally Susan Schmidt and James V. Grimaldi, *How a lobbyist stacked the deck*, WASH. POST, Oct. 16, 2005, <<http://www.washingtonpost.com/wp-dyn/content/article/2005/10/15/AR2005101501539.html>>; David Postman and Hal Bernton, *Abramoff used area foundation as conduit for money*, SEATTLE TIMES, Jan. 9, 2006, <http://seattletimes.nwsources.com/html/localnews/2002728644_lapin09m.html>; JACK ABRAMOFF, *CAPITOL PUNISHMENT: THE HARD TRUTH ABOUT WASHINGTON CORRUPTION FROM AMERICA'S MOST NOTORIOUS LOBBYIST* (2011).

⁴⁴For a succinct chronological summary, see Appendix A.

⁴⁵Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=s106-2021>>.

⁴⁶Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h106-3575>>.

⁴⁷Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h106-4284>>.

⁴⁸A bill to direct the National Institute of Standards and Technology to establish a program to support research and training in methods of detecting the use of performance-enhancing substances by athletes, and for other purposes. Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=s106-2340>>.

security related to illegal gambling and the integrity of athletic contests in which students participate.

B. 107th Congress (2001–2002)

H.R. 3215: Combating Illegal Gambling Reform and Modernization Act. Its purpose was to expand and modernize the prohibition against interstate gambling.⁴⁹

*H.R. 556: Leach-LaFalce Internet Gambling Enforcement Act.*⁵⁰ This was UIGEA's predecessor, and seeds within this particular bill grew into UIGEA sections four years later. On October 1, 2002, H.R. 556 passed the House as the Leach-LaFalce Internet Gambling Enforcement Act. Its purpose was to "prevent the use of certain bank instruments for unlawful Internet gambling." Under Section 3, it read:

- (i) Prohibits any person engaged in a business of betting or wagering from knowingly accepting in connection with the participation of another person in Internet gambling: (1) credit; (2) electronic fund transfers or funds transmitted by or through a money transmitting business; (3) any instrument drawn by or on behalf of another and payable through any financial institution; or (4) the proceeds of any other form of financial transaction involving a financial institution as payer or financial intermediary for another.
- (ii) Includes in the definition of bets or wagers: (1) the purchase of a chance or opportunity, predominantly subject to chance, to win a lottery or other prize; (2) sports betting; and (3) any instructions or information pertaining to the establishment or movement of funds in an account by the bettor or customer with the business of betting or wagering.
- (iii) Excludes from the definition of bets or wagers: (1) any activity governed by the securities laws for the purchase or sale of securities; (2) any transaction subject to the Commodity Exchange Act; (3) over-the-counter derivative instruments; (4) any other transaction exempt from regulation under the Commodity Exchange Act or from State gaming or bucket shop

laws; (5) any contract of indemnity or guarantee, or for insurance; (6) deposits or transactions with a depository institution; (7) any participation in a simulation sports game or an educational game or contest that meets certain requirements; and (8) any lawful transaction with a business licensed or authorized by a State.

H.R. 1110: Student Athlete Protection Act. Its purpose was to prohibit high school and college sports gambling in all states, including states where such gambling was permitted prior to 1991.⁵¹

*S. 718: Amateur Sports Integrity Act.*⁵² This was very similar to Sen. McCain's S. 2340 from the previous session of Congress.

*H.R. 5760: Internet Gambling Licensing and Regulation Commission Act.*⁵³ H.R. 5760 was the first modest effort to entertain the prospect of federally regulating and licensing Internet gambling in the U.S. It was introduced on November 19, 2002, by Congressman John Conyers (D-MI). Its purpose was to create a commission on Internet gambling licensing and regulation. The bill's Section 2 contained insightful findings and policy considerations by U.S. Congress:

- (1) Gambling is regulated primarily by State governments, whose statutes and regulations govern the placement and acceptance of wagers within state boundaries.
- (2) The advent of advanced telecommunications technologies, and the Internet in particular, has rendered state regulation less effective and confusing with respect to online wagering.
- (3) Federal statutes governing interstate placement of wagers are contradictory and confusing, and they do not adequately address

⁴⁹Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h107-3215>>.

⁵⁰Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h107-556&tab=summary>>.

⁵¹Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h107-1110>>.

⁵²Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=s107-718>>.

⁵³Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h107-5760>>.

the issues involved with gambling over the Internet.

- (4) Commercial casino operations, Native American tribal gaming operations, State lotteries, horse and dog racing tracks, jai alai, and card rooms have made legal land-based gambling available to the vast majority of Americans.
- (5) Online gaming is an activity occurring in interstate commerce.
- (6) Various forms of gambling, including *inter alia*, casino-style, sports wagering, pari-mutuel wagering (including horse and dog racing as well as jai alai), State lotteries, noncasino slot machines, and others, are subject to disparate Federal and State laws and regulations.
- (7) Because of the nature of the Internet, legislative attempts to prohibit Internet gambling are unlikely to be effective, and may adversely impact American's rights to due process and individual privacy.
- (8) It is the policy of the Congress in this Act to establish a commission to study and resolve issues posed by the regulation of interstate commerce with respect to Internet gambling.

A useful summary of the bill's provisions sheds light into ensuing Internet gambling regulatory efforts:

- (i) Establishes the Internet Gambling Licensing and Regulation Study Commission to conduct a comprehensive study of the existing legal framework governing Internet gambling and the issues involved with the licensing and regulation of Internet gambling.
- (ii) Includes within the matters to be studied by the Commission: (1) a review of existing laws governing various forms of wagering over the Internet; (2) assessments of the impact of Internet gambling with respect to problem gambling, the availability of gambling to minors, and its susceptibility to money laundering by terrorists or criminal enterprises; (3) the potential of regulatory measures to minimize adverse impacts of Internet gambling; (4) federalism issues; and (5) the

problems of unregulated international Internet wagering and federal options in seeking international cooperation.

- (iii) Requires the Commission to issue proposed changes to federal laws and regulations providing for the licensing and regulation of Internet gambling in the United States which: (1) preserve the prerogatives of states and tribal sovereignty; (2) include measures to minimize adverse impacts of Internet gambling and to eliminate the disparate treatment of various forms of Internet gambling; (3) provide for the appropriate taxation of Internet gambling enterprises; (4) provide for the licensing of enterprises both within and outside of the U.S.; (5) remain consistent with U.S. goals, principles, and obligations in other international negotiations governing electronic commerce; and (6) include measures to discourage, prohibit, or prevent U.S. citizens from wagering with unlicensed Internet gambling operations outside the U.S.

*H.R. 641: National Collegiate and Amateur Athletic Protection Act of 2001.*⁵⁴ The bill's purpose was to protect amateur athletics and combat illegal sports gambling. It directed the attorney general to establish a prosecutorial task force on illegal wagering on amateur and collegiate sporting events and increased penalties for illegal sports gambling.

*S. 338: National Collegiate and Amateur Athletic Protection Act of 2001.*⁵⁵ The purpose was the same as the preceding House bill. However, the Senate version had a provision which would oblige the NCAA and other amateur sport governing organizations to ensure that they not only have rules against sport gambling and that no student athlete would be eligible for financial aid if s/he was found violating such rules, but also that such organizations would need to file an annual report to the attorney general. A summary of that provision is insightful:

- (i) Makes a recipient of athletically related student aid ineligible for such aid upon a

⁵⁴Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h107-641>>.

⁵⁵Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=s107-338>>.

determination by either the institution of higher education or the applicable amateur sports organization that the recipient has engaged in illegal gambling activity. Requires such an institution, and such an organization that sanctions a competitive game or performance in which one or more competitors receive such aid, to report annually to the attorney general and the secretary.

- (ii) Expresses the sense of Congress that illegal sports gambling poses a significant threat to youth.

C. 108th Congress (2003–2004)

*H.R. 1223: Internet Gambling Licensing and Regulation Commission Act.*⁵⁶ Its purpose was the same as H.R. 5760 in the previous Congress, and featured two additional charges for such an Internet gambling licensing and regulation committee: (i) an evaluation of the personal use of credit, credit cards, electronic fund transfers, and bank instruments to fund Internet gambling; and (ii) an assessment of European Union member state activities to regulate and license Internet gambling. The latter charge was particularly insightful, as it displayed a more-careful observation by Congressional actors of developments in the sector internationally, legislative and judicial trends, and findings from the European Union that point to a highly competitive, regulated, and growing industry. International comparative law and related academic and practitioners' scholarship yield data and policy considerations that may be utilized in ensuing U.S. gambling regulation discourse.⁵⁷

*H.R. 1451: Student Athlete Protection Act.*⁵⁸ Much like previous legislation attempts, its purpose was to prohibit high school and college sports gambling in all states, including states where such gambling was permitted prior to 1991.

*S. 1002: Amateur Sports Integrity Act.*⁵⁹ This bill had the same purpose, sponsor (Sen. McCain) and outcome (did not reach the voting stage in either House of Congress) as the previous two similar attempts, S. 718 and S. 2340.

D. 109th Congress (2005–2006)

*H.R. 1422: Student Athlete Protection Act.*⁶⁰ This bill had the same purpose and outcome as above in the previous three attempts, H.R. 1451, H.R. 1110,

and H.R. 3575; however, this time it was introduced in the House by Rep. Thomas Osborne (R-NE).

*H.R. 4411: Internet Gambling Prohibition and Enforcement Act.*⁶¹ This was the prequel to UIGEA, and it was introduced on November 18, 2005. Sponsored by Rep. James Leach (R-IA), it did pass the House. Its purpose was to prevent the use of certain payment instruments, credit cards, and fund transfers for unlawful Internet gambling. It defined "bets and wagers" to include bets for contests, sporting events, games predominantly subject to chance, and lotteries. It prohibited the use of a communication facility to transmit: (1) bets or wagers; (2) information assisting in the placing of bets or wagers; or (3) a communication which entitled the recipient to receive money or credit as a result of bets or wages or for information assisting in the placing of bets or wagers.

*H.R. 4777: Internet Gambling Prohibition Act.*⁶² Sponsored by Rep. Robert Goodlatte [R-VA], its main purpose was identical to past attempts to expand and modernize the prohibition against interstate gambling.

E. 110th Congress (2007–2008)

*H.R. 2046: Internet Gambling Regulation and Enforcement Act of 2007.*⁶³ This was the first effort by Rep. Barney Frank (D-MA) to regulate Internet gambling. The bill set forth requirements for the licensing of Internet betting or wagering. It authorized states, Indian tribes, and sporting leagues to prohibit Internet gambling licenses.

*H.R. 2607: Internet Gambling Regulation and Tax Enforcement Act of 2007.*⁶⁴ It was introduced

⁵⁶Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h108-1223>>.

⁵⁷See, e.g., Anastasios Kaburakis and Ryan M. Rodenberg, *Odds: Gambling, Law, and Strategy in the European Union*, 13 BUS. L. INT'L 63 (2012).

⁵⁸Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h108-1451>>.

⁵⁹Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=s108-1002>>.

⁶⁰Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h109-1422>>.

⁶¹Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h109-4411>>.

⁶²Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h109-4777>>.

⁶³Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h110-2046>>.

⁶⁴Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h110-2607>>.

on June 7, 2007 by Rep. James McDermott (D-WA) and included several interesting provisions:

- (i) Amend the Internal Revenue Code to establish licensing requirements and fees for Internet gambling operators.
- (ii) Require Internet gambling operators to pay to the Director of the Financial Crimes Enforcement Network during each 30-day period of operation a license fee of 2% of all bets and wagers placed during the preceding 30-day period.
- (iii) Require the Director to grant Internet gambling licenses to applicants who meet criteria set by the Director and who are generally fit to engage in the business of Internet gambling. It required such operators to adopt appropriate mechanisms to ensure the collection of all taxes and license fees relating to Internet gambling that become due to federal and state governments.

*H.R. 5523: Internet Gambling Regulation and Tax Enforcement Act of 2008.*⁶⁵ Its purpose was to regulate and tax Internet gambling. It was introduced on March 4, 2008, once again by Rep. McDermott, and it featured several distinctions from the previous year's bill. It would: (i) impose an Internet gambling license fee on Internet gambling operators; (ii) require such operators to file informational returns identifying themselves and the individuals placing wagers with them; (iii) require withholding of tax on annual Internet gambling winnings of more than \$5,000; (iv) impose a 30% tax on the Internet gambling winnings of nonresident aliens; and (v) impose the excise tax on wagers on any individual who places a wager with an unlicensed Internet gambling operator.

H.R. 6663: Unlawful Internet Gambling Enforcement Clarification and Implementation Act of 2008. This was a fairly significant bipartisan effort to amend UIGEA.⁶⁶ Sponsored by Rep. Peter Sessions (R-TX), it was introduced on July 30, 2008, but never became law. In a nutshell, it expressed the sense of Congress that the attorney general should focus prosecutorial efforts on persons who: (1) offer Internet sports betting in the United States; or (2) process payments for illegal Internet sports betting in the United States. It would have amended federal law governing prohibited funding of unlaw-

ful Internet gambling to declare that no person shall be subject to criminal liability arising out of certain bets or wagers by means of the Internet. It defined criminal liability to include actions against real or personal property that arise from or depend upon the allegedly criminal nature of the bet or wager, or of the transmission or receipt of funds in connection with that bet or wager.

*H.R. 2610: Skill Game Protection Act.*⁶⁷ Its purpose was to clarify the applicability of such provisions to games of skill, and establish certain requirements with respect to such games. It was introduced by Rep. Robert Wexler (D-FL) on June 7, 2007. A summary yields useful information in regard to so-called "skill versus chance" gaming, operational language, and the substantive legislative treatment problem. The proposed Act would have:

- (i) Amended federal law to exempt from the prohibition against transmission of wagering information, the operation or participation in poker, chess, bridge, mahjong or any other game where success is predominantly determined by a player's skill, to the extent that: (1) the game provides for competition only between and among participants, and not against the person operating the game; and (2) the operator is in compliance with federal regulations governing games of skill.
- (ii) Amended federal law governing monetary transactions to instruct the secretary of the treasury to prescribe regulations requiring each person who operates a game of skill on the Internet to maintain specified safeguards, including: (1) that the individual participant depositing funds is 18 years of age or older; (2) that the individual participant is physically located in a jurisdiction that does not bar participation in the particular Internet games of skill in which the individual participates; and (3)

⁶⁵Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h110-5523>>.

⁶⁶Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h110-6663>>.

⁶⁷Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h110-2610>>.

that all taxes relating to Internet games of skill due to federal and state governments and to Indian tribes from individual participants are collected at the time of any payment of any proceeds of Internet games of skill.

It is important to note that the period between the 110th and 111th Congress—so, the pivotal time in U.S. politics that preceded and immediately followed the financial meltdown, global recession, and the 2008 presidential election won by Barack Obama (which also led to a landslide victory for Democratic members of Congress)—was characterized by a focused and continuous action by (mainly) Democrats in the House and Senate, as well as by the gambling industry, toward regulation and growth of the online and sports gambling industry sectors. As one notices from the Appendix A below, the “score” for pro- v. anti- gambling regulation bills was 8–2 during this time, or 12–4 if one adds the currently pending pieces of legislation in the 112th Congress.

F. 111th Congress (2009–2010)

*S. 1597: Internet Poker and Game of Skill Regulation, Consumer Protection, and Enforcement Act of 2009.*⁶⁸ This bill was aiming to amend title 31, United States Code, to provide for the licensing by the secretary of the treasury of Internet poker and other games that are predominantly games of skill; to provide for consumer protection on the Internet; to enforce the tax code; and for other purposes as well. It was sponsored by Senator Robert Menendez (D-NJ) and did not advance to the voting stage.

*H.R. 2267: Internet Gambling Regulation, Consumer Protection, and Enforcement Act.*⁶⁹ Its purpose was identical to the above regulatory treatment of online gambling efforts—namely to provide for the licensing of Internet gambling activities by the secretary of the treasury, to provide for consumer protection on the Internet, and to enforce the tax code. This bill was moved by Rep. Frank, but did not progress to a voting stage. According to Congressman Frank, this policy shift would make lots of practical sense. Being interviewed on National Public Radio, he remarked: “I spend a lot of energy trying to protect people from other people. I have none left for protecting people from themselves.”⁷⁰

*H.R. 2268: Internet Gambling Regulation and Tax Enforcement Act of 2009.*⁷¹ This was closely similar bill to Congressman Frank’s bill, and had the purpose of amending the Internal Revenue Code to regulate and tax Internet gambling. Its provisions were to: (i) impose an Internet gambling license fee on Internet gambling operators and an additional tax on unauthorized bets or wagers; (ii) require such operators to file informational returns identifying themselves and the individuals placing bets or wagers with them; (iii) require withholding of tax on net Internet gambling winnings and on the winnings of nonresident aliens; and (iv) extend the excise tax on wagers to include wagers placed within the United States or any commonwealth, territory, or possession by a U.S. citizen or resident.

*H.R. 4976: Internet Gambling Regulation and Tax Enforcement Act of 2010.*⁷² The purpose (and outcome) was the same as above: to amend the Internal Revenue Code to regulate and tax Internet gambling. This follow-up bill from Rep. McDermott had more precise language; it would: (i) impose an Internet gambling license fee on Internet gambling operators and an additional tax on unauthorized bets or wagers; (ii) require such operators to keep daily records of gambling deposits and file informational returns identifying themselves and the individuals placing bets or wagers with them; (iii) require operators to pay state and Indian tribal governments a 6% fee on gambling deposits; (iv) require withholding of tax on net Internet gambling winnings and on the gross amount of winnings of nonresident aliens; and (5) extend the excise tax on wagers to include wagers placed within the U.S. or any commonwealth, territory, or possession by a U.S. citizen or resident.

H.R. 5599: Wire Clarification Act of 2010. This bill, introduced by Rep. Scott Murphy (D-NY), attempted to clarify the Wire Act. It would amend

⁶⁸Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=s111-1597>>.

⁶⁹Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h111-2267>>.

⁷⁰Available at <<http://www.npr.org/templates/story/story.php?storyId=9884085>>.

⁷¹Never became law. Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h111-2268>>.

⁷²Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h111-4976>>.

“the federal criminal code to provide that criminal penalties under such code and other provisions of federal law for transmitting bets and wagers on sporting events or contests shall not apply to any bet or wager that is permissible under the Interstate Horseracing Act of 1978.”⁷³

*G. 112th Congress (2011–2012)*⁷⁴

After the 2010 midterm elections, which resulted in a clear shift in power in the House and key Republican wins in Senate seats’ races, there was a modified focus for legislation and a well-documented standstill in most industry sectors for the period preceding the 2012 presidential elections. Still, due to continuous pressure from states and U.S. Congress members’ constituents, there was also an intriguing trend that saw Republicans siding with positions heretofore espoused by their colleagues across the aisle, in support of online and sport gambling regulation. The context for this was the dire financial straits in which many states found themselves, as well as the arguably more-mature timing for arguments in favor of regulating these industry sectors. Advocates were also emboldened by state legislative attempts to regulate gambling, as well as by challenges to the federal ban on sports gambling. Thus, there were even Republican-led or bipartisan efforts to regulate online and sports gambling, something which previously would have been unexpected in a general climate of division and heated pre-election rhetoric.

H.R. 1174: Internet Gambling Regulation, Consumer Protection, and Enforcement Act. It was introduced on March 17, 2011 by Rep. John Campbell (R-CA), and contained several policy considerations and structural steps toward online gaming regulation. Its purpose was to provide for the licensing of Internet gambling activities by the secretary of the treasury, to provide for consumer protections on the Internet, and to enforce the tax code. This bill has a clear mention of prohibited activities: (1) sports betting on the Internet, except pari-mutuel racing, and the use of credit cards for Internet gambling; and (2) electronic cheating devices.⁷⁵

H.R. 2366: Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2011. This bill was introduced by Rep. Joe Barton (R-TX), on June 24, 2011, to “establish a

program for State licensing of Internet poker, and for other purposes.”⁷⁶

H.R. 2230: Internet Gambling Regulation and Tax Enforcement Act of 2011. Similarly to prior attempts, Rep. James McDermott (D-WA) introduced this bill “to regulate and tax Internet gambling.”⁷⁷

H.R. 2702: Wire Clarification Act of 2011. Similarly to H.R. 5599 in the previous session, H.R. 2702 aims to “amend title 18, United States Code, to clarify the scope of the provision commonly referred to as the ‘Wire Act’, and for other purposes.”⁷⁸

H.R. 3797: Sports Gaming Opportunity Act of 2012. In conjunction with the state legislative efforts (and possible federal litigation challenging PASPA), Congressman Frank LoBiondo (R-NJ) sponsored H.R. 3797 and introduced it on January 23, 2012, “[t]o amend Chapter 178 of Title 28 of the United States Code to permit during a 4-year period States to enact statutes that exempt from the operation of such chapter, lotteries, sweepstakes, and other betting, gambling, or wagering schemes involving professional and amateur sports.”⁷⁹

H.R. 3809: New Jersey Betting and Equal Treatment Act of 2012. Not to be outdone by his fellow NJ colleague across the aisle in the House of Representatives, Rep. Frank Pallone (D-NJ) sponsored H.R. 3809 and introduced it on the same day, January 23, 2012, “to amend Title 28 of the United States Code to exclude the State of New Jersey from the prohibition on professional and amateur sports gambling to the extent approved by the legislature of the State.”⁸⁰ In an April 26, 2012 open letter to their congressional colleagues, the sponsors of the two aforementioned bills explained the underlying motivation:

⁷³Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h111-5599>>.

⁷⁴Updated through May 1, 2012.

⁷⁵Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h112-1174>>.

⁷⁶Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h112-2366>>.

⁷⁷Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h112-2230>>.

⁷⁸Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h112-2702>>.

⁷⁹Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h112-3797>>.

⁸⁰Available at <<http://www.govtrack.us/congress/bill.xpd?bill=h112-3809>>.

We have developed two separate, but equally effective, pathways toward the same goal of bringing sports gaming and the economic benefits it yields to the State of New Jersey. The New Jersey Betting and Equal Treatment Act of 2012 (NJ BET Act), H.R. 3081 (sic),⁸¹ provides New Jersey with an exemption to the federal prohibition [in PASPA]. It allows state law in New Jersey to determine how sports betting will be regulated within the state. The Sports Gaming Opportunity Act of 2012, H.R. 3797, opens a window in which states can enact a law providing for sports gambling within their state until January 1, 2016, after which the federal prohibition [in PASPA] against states allowing sports gambling would go back into place.”⁸²

IV. CONCLUSION

According to David O. Stewart of Ropes & Gray, LLP, “getting a bill through Congress to amend PASPA will likely prove difficult, due in no small part to the power of the lobby of the professional sports leagues, led by the National Football League.”⁸³ Furthermore, the passage of either bill will likely have to go through Senate Majority Leader Harry Reid (D-NV), who has historically been protective of Nevada’s gaming interests.⁸⁴ The professional sports leagues, including the National Football League, the National Basketball Association, Major League Baseball, and the National Hockey League, as well as the National Collegiate Athletic Association, have historically resisted all forms of sports wagering expansion, arguing that it would affect the integrity of their respective sports.⁸⁵ These groups have flexed their collective muscle on a number of occasions in prior attempts to expand sports wagering, including past efforts in Delaware (one of the PASPA “grandfathered” states).⁸⁶

David S. Schugar of RMC Gaming Management opined: “Further regulation in more jurisdictions would add transparency to something that is already occurring, on a large scale, throughout the country.”⁸⁷ He continued: “Ultimately, expansion of sports wagering options could very well allow additional gaming operators and regulators to offer even more of a safe and fair wagering environment to the

public, reduce underage gaming concerns, and also actually provide more protection to the integrity of sporting contests.”⁸⁸

According to the American Gaming Association “Fact Sheet” on sports wagering, illegal wagers on sporting events totaled as much as \$380 billion in 2010, compared to the \$2.76 billion legally wagered in Las Vegas sports books that same year—an amount which is less than 1% of the total estimated sports wagers placed.⁸⁹ Research conducted by Price Waterhouse Coopers (PwC), commissioned during Congressional hearings (consideration of H.R. 2267—111th Congress) and pursuant to lobbying efforts by gaming industry groups, yields a projection of estimated tax revenues from regulated online gambling, including sport betting, in the region of \$62.7 billion over the next decade.⁹⁰ In the PwC report, the sport betting portion of this tax revenue generation is estimated at just over \$14 billion.⁹¹ Furthermore, according to a December 2011 survey by Fairleigh Dickinson University’s PublicMind,⁹² the U.S. is moving toward an overall acceptance of sports wagering. According to the Fairleigh Dickinson survey of 855 registered voters nationwide in November and December 2011, respondents were split (at 42 percent–42 percent) on whether federal law should be changed to

⁸¹There was an error in the “Dear Colleague” letter by the two Congressmen, and the reader is alerted to monitor the correct bill, H.R. 3809. Later in the letter, the authors utilize the correct bill numbers.

⁸²Frank Pallone and Frank A. Lobiondo, Dear Colleague Letter (Apr. 26, 2012), available at <<http://www.imega.org/wp-content/uploads/2012/04/dear-colleague-nj-sports-betting-legislation.pdf>>.

⁸³Douglas Minke, *Betting Games*, GLOBAL GAMING BUSINESS, Apr. 26, 2012.

⁸⁴*Id.*

⁸⁵Ryan M. Rodenberg, *US Sport’s Opposition to Betting: Potential for Change*, 10 WORLD SPORTS LAW REPORT 12–13 (2012).

⁸⁶*Id.*

⁸⁷Douglas Minke, *supra* note 83.

⁸⁸*Id.*

⁸⁹*Id.*

⁹⁰PRICEWATERHOUSECOOPERS, ESTIMATE OF FEDERAL REVENUE EFFECT OF PROPOSAL TO REGULATE AND TAX ONLINE GAMBLING (2009), <<http://www.safeandsecureig.org/sites/default/files/pwc09.pdf>>.

⁹¹*Id.* at E-3.

⁹²Fairleigh Dickinson, *A Nation of Bettors? They May Follow New Jersey’s Lead into Sports Betting*, PUBLIC MIND, <<http://publicmind.fdu.edu/2011/bettornation/>>.

allow sports wagering in their home states. This even split is a change from a March 2010 poll, in which 53 percent of nationwide voters opposed legalizing sports wagering in all states, compared to 39 percent who favored such expansion.⁹³ If this trend continues, and poll analytics yield similar data, political actors will likely re-consider their stance on the prospect of federal sport betting and online gambling legislation going into the 2012 election season.

APPENDIX A. INTERNET/SPORT GAMBLING BILLS INTRODUCED IN CONGRESS SINCE 2000

<i>Congressional Session</i>	<i>Bills for Internet/Sport Gambling Ban or Regulation</i>
106th Congress (1999–2000)	S. 2021: High School and College Sports Gambling Prohibition Act H.R. 3125: Internet Gambling Prohibition Act of 2000 H.R. 3575: Student Athlete Protection Act H.R. 4284: Illegal Sports Betting Enforcement Act of 2000 S. 2340: Amateur Sports Integrity Act
107th Congress (2001–2002)	H.R. 3215: Combating Illegal Gambling Reform and Modernization Act H.R. 556: Leach-LaFalce Internet Gambling Enforcement Act H.R. 1110: Student Athlete Protection Act S. 718: Amateur Sports Integrity Act <i>H.R. 5760: Internet Gambling Licensing and Regulation Commission Act</i> H.R. 641: National Collegiate and Amateur Athletic Protection Act of 2001 S. 338: National Collegiate and Amateur Athletic Protection Act of 2001
108th Congress (2003–2004)	<i>H.R. 1223: Internet Gambling Licensing and Regulation Commission Act</i> H.R. 1451: Student Athlete Protection Act S. 1002: Amateur Sports Integrity Act
109th Congress (2005–2006)	H.R. 1422: Student Athlete Protection Act H.R. 4411: Internet Gambling Prohibition and Enforcement Act H.R. 4777: Internet Gambling Prohibition Act
110th Congress (2007–2008)	<i>H.R. 2046: Internet Gambling Regulation and Enforcement Act of 2007</i> <i>H.R. 2607: Internet Gambling Regulation and Tax Enforcement Act of 2007</i> <i>H.R. 5523: Internet Gambling Regulation and Tax Enforcement Act of 2008</i> H.R. 6663: Unlawful Internet Gambling Enforcement Clarification and Implementation Act of 2008 <i>H.R. 2610: Skill Game Protection Act</i>
111th Congress (2009–2010)	<i>S. 1597: Internet Poker and Game of Skill Regulation, Consumer Protection, and Enforcement Act of 2009</i> <i>H.R. 2267: Internet Gambling Regulation, Consumer Protection, and Enforcement Act</i> <i>H.R. 2268: Internet Gambling Regulation and Tax Enforcement Act of 2009</i> <i>H.R. 4976: Internet Gambling Regulation and Tax Enforcement Act of 2010</i> H.R. 5599: Wire Clarification Act of 2010
112th Congress (2011–2012)	<i>H.R. 1174: Internet Gambling Regulation, Consumer Protection, and Enforcement Act</i> H.R. 2366: Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2011 <i>H.R. 2230: Internet Gambling Regulation and Tax Enforcement Act of 2011</i> H.R. 2702: Wire Clarification Act of 2011 <i>H.R. 3797: Sports Gaming Opportunity Act of 2012</i> <i>H.R. 3809: New Jersey Betting and Equal Treatment Act of 2012</i>

⁹³*Id.*