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## BANS ON SPORTS GAMBLING AND LOTTERIES WOULD PUMP-PRIME THE U.S. ECONOMIC SYSTEM IN THE NEW AGE OF COVID

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*A strong economy is essential for U.S. national security. The economic downturn caused by the 2020 COVID-19 pandemic has again highlighted this basic economic principle.*

*In the context of legalized gambling, Nobel-Prize Laureate Paul Samuelson emphasized that gambling creates “no new money or goods”<sup>1</sup> and “subtracts from the national income.”<sup>2</sup> The economic multiplier effect of “consumer dollars” is negated or otherwise substantially diminished when consumer dollars are diverted into gambling dollars.<sup>3</sup>*

*Therefore, the \$2.2 trillion economic stimulus of the 2020 Coronavirus Aid, Relief, and Economic Stimulus Act (CARES Act)<sup>4</sup> wasted billions of dollars of the \$260 billion allocated for unemployment benefits and the \$300 billion allocated in payments to U.S. citizens.<sup>5</sup> Intended to put food and other necessities of life in consumer pantries, billions of CARES Act dollars were instead misdirected into lotteries—creating record lottery sales, for example, in Georgia and Texas during the first 30 days of the CARES Act.<sup>6</sup>*

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1. See, e.g., PAUL A. SAMUELSON, *ECONOMICS* 425 (10th ed. 1976, et seq.). For decades, the numerous editions of *ECONOMICS* by Paul Samuelson, the 1970 Nobel Laureate in Economics, were the most widely used U.S. economics textbooks.

2. *Id.*

3. See generally John Warren Kindt, *Diminishing or Negating the Multiplier Effect: The Transfer of Consumer Dollars to Legalized Gambling: Should a Negative Socio-Economic “Crime Multiplier” Be Included in Gambling Cost/Benefit Analyses*, 2003 MICH. ST. DCL L. REV. 281 (2003) (lead article).

4. H.R. 748, 116th Cong., 2d Sess. (signed into law Mar. 27, 2020).

5. *Id.*; Audrey Conklin, *Labor Department Estimates \$36B in Improper Unemployment Payments in CARES Act*, FOX BUS. (Jan. 7, 2021), <https://www.foxbusiness.com/politics/unemployment-fraud-labor-department> [<https://perma.cc/4EDK-5UA6>].

6. See, e.g., Randy Travis, *The GA Lottery Just Had Its Best April Sales Ever, the Same Month Stimulus Checks Arrived*, FOX 5 ATLANTA (June 11, 2020), <https://www.fox5atlanta.com/news/the-ga-lottery-just-had-its>

While shutting down productive consumer businesses, governors declared lotteries to be “essential”<sup>7</sup>—although historically states were receiving only 27 cents per gambled dollar.<sup>8</sup> More importantly, U.S. lotteries take \$85 billion out of the U.S. consumer economy each year (with only \$23 billion going to state budgets).<sup>9</sup>

Accordingly, the cheapest and most effective way to pump-prime the consumer economy would be to shut down the lotteries. This \$85 billion would thereby morph into a consumer economic multiplier resulting in approximately \$255 billion in new economic spending on consumer goods (or over \$1 trillion in 4 years).<sup>10</sup>

In his 1999 Martin Luther King Day speech in Chicago, Jesse Jackson emphasized that “[t]he new chains of slavery happen to be . . . lottery tickets.”<sup>11</sup> Later in 1999, the state lotteries were savaged by the congressional U.S. National Gambling Impact Study Commission, in its Final Report (“NGISC Final Report”).<sup>12</sup> Academically, it is well-established that lotteries make “poor people poorer”<sup>13</sup> and target-market to minorities<sup>14</sup> contributing to gambling addiction rates of: African Americans (2–4%); Native Americans (2–6%), Hispanics (2–3%), and Caucasians (1.2–2%).<sup>15</sup>

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best-april-sales-ever-the-same-month-stimulus-checks-arrived [https://perma.cc/3FSV-SLDS]; Eric Dexheimer, *Texas Lottery Sales Surge as COVID Stimulus Money Arrives*, HOUS. CHRON. (Apr. 23, 2020, 5:05 PM), https://www.houstonchronicle.com/news/houston-texas/texas/article/Fulfilling-warnings-lottery-sales-surge-as-COVID-15219652.php [https://perma.cc/98UX-VPUZ].

7. See, e.g., Jon Allsop, *Chasing Sales During Coronavirus Pandemic, States Declare Lotteries “Essential,”* INTERCEPT (Apr. 16, 2020, 7:00 AM), https://theintercept.com/2020/04/16/coronavirus-state-lotteries-gambling-essential/ [https://perma.cc/CB5Q-JHDC] (investigative report).

8. See *Myths, FAQ & History*, N. AM. ASS’N STATE & PROVINCIAL LOTTERIES, https://www.naspl.org/mythsandfaq (last visited June 10, 2021) [https://perma.cc/D8RG-8G78].

9. *North American Lotteries*, N. AM. ASS’N STATE & PROVINCIAL LOTTERIES, https://www.naspl.org/nasplmembers/ (last visited June 15, 2021) [https://perma.cc/6EXB-R5H5].

10. A conservative consumer economic multiplier of 3 x \$85 billion = \$255 billion. For detailed analyses, see generally Kindt, *supra* note 3.

11. John Warren Kindt, *Would Re-Criminalizing U.S. Gambling Pump-Prime the Economy and Could U.S. Gambling Facilities Be Transformed into Educational and High-Tech Facilities*, 8 STAN. J.L. BUS. & FIN. 169, 176 (2003) (lead article). Casinos began operating in Illinois in 1992, and by 1995 the 40 Illinois NAACP chapters had “voted unanimously . . . to oppose expanded gambling” because it targeted minorities. *Id.*

12. *National Gambling Impact Study Commission Final Report*, NAT’L GAMBLING IMPACT STUDY COMM’N 3–4 (June 1999), https://govinfo.library.unt.edu/ngisc/reports/2.pdf [https://perma.cc/RTR7-MGQN].

13. John Warren Kindt, *U.S. National Security and the Strategic Economic Base: The Business/Economic Impacts of the Legalization of Gambling Activities*, 39 ST. LOUIS U. L.J. 567, 579 (1995) [hereinafter *Strategic Economic Base*]; see also WILLIAM RANDY BOBBITT, *LOTTERY WARS: CASE STUDIES IN BIBLE BELT POLITICS*, at 1986–2005 (2007); REUVEN BRENNER & GABRIELLE A. BRENNER, *GAMBLING AND SPECULATION: A THEORY, A HISTORY, AND A FUTURE OF SOME HUMAN DECISIONS* (1990). See generally Jenna Ross, *The Racial Wealth Gap in America: Asset Types Held by Race*, VISUAL CAPITALIST (June 12, 2020), https://www.visualcapitalist.com/racial-wealth-gap/ [https://perma.cc/B4U6-AG3F] (reporting U.S. Federal Reserve statistics).

14. See, e.g., Lyna Wiggins, Lia Nower, Raymond Sanchez Mayers & N. Andrew Peterson, *A Geospatial Statistical Analysis of the Density of Lottery Outlets Within Ethnically Concentrated Neighborhoods*, 38 J. CMTY. PSYCH. 486, 486–87 (2010).

15. In one study, African American males were five times more likely than white males to become problem gamblers. See John W. Welte, William F. Wieczorek, Grace M. Barnes & Marie-Cecile O. Tidwell, *Multiple Risk Factors for Frequent and Problem Gambling: Individual, Social, and Ecological*, 26 J. APPLIED SOC. PSYCH. 1548, 1549 (2006); see also Grace M. Barnes, John W. Welte & Marie-Cecile O. Tidwell, *Gambling Involvement Among Native Americans, Blacks and Whites in the United States*, 26 AM. J. ADDICTIONS 713, 713 (2017). Much

*As reported in the Wall Street Journal, these social and economic concerns prompted Mr. Les Bernal, the national director of the charity Stop Predatory Gambling (“SPG”), to write to all U.S. governors and state attorneys general detailing the need to close the state lotteries.<sup>16</sup>*

*The 2020 movie Money Machine,<sup>17</sup> however, documented the power of the gambling lobby in suppressing adverse facts. While Columbine and Sandy Hook remain in the psyche of the U.S. public, Money Machine details how the October 1, 2017 Las Vegas killings have been sanitized<sup>18</sup> via “a web of corruption and cover-ups that make the Vegas of yesteryear, when it was still run by the mob, seem positively quaint.”<sup>19</sup> The biggest mass murderer in U.S. history, Stephen Paddock, killed 59 people including himself and injured 413 by gunfire.<sup>20</sup> It would be difficult to argue that Paddock did not satisfy the American Psychiatric Association’s criteria for being an addicted or problem gambler.<sup>21</sup>*

*All of these facts and trends are well-known to the gambling industry, whose business model has morphed toward abandoning brick and mortar gambling facilities in favor of widespread internet gambling—utilizing sports gambling to build pressure on government decision-makers. Gambling lobbyists are looking to leverage the COVID pandemic and the public’s natural affinity for sports into real-time 24/7 gambling on cell phones and throughout video games.<sup>22</sup> In the age of COVID, bans on sports gambling and lotteries would inexpensively and effectively pump-prime the U.S.*

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higher percentages in all demographic categories are reported in RICK MASSATTI, SANFORD STARR, STACEY FROHNAPFEL-HASSON & NICK MARTT, OHIO MENTAL HEALTH & ADDICTION SERVS., PROBLEM GAMBLING REPORT: 2012 SURVEY OF AT-RISK AND PROBLEM GAMBLING PREVALENCE AMONG OHIOANS 17 (Feb. 2015).

16. Katherine Sayre, *Coronavirus Crisis Prompts Call to Suspend Lottery Gambling*, WALL ST. J., Apr. 20, 2020, 6:12 PM), <https://www.wsj.com/articles/coronavirus-crisis-prompts-call-to-suspend-lottery-gambling-11587376800> [https://perma.cc/U7GQ-A3YL].

17. Directed by Ramsey Denison, *Money Machine* could not be theatrically released in 2020 due to the COVID pandemic. See *New Documentary MONEY MACHINE Exposes Massive Police Corruption, Cover-Ups Surrounding Las Vegas Mass Shooting*, YES! WEEKLY (June 26, 2020), [https://www.yesweekly.com/film/new-documentary-money-machine-exposes-massive-police-corruption-cover-ups-surrounding-las-vegas-mass-shooting/article\\_1dbd92d0-b7c3-11ea-99a4-871da936da06.html](https://www.yesweekly.com/film/new-documentary-money-machine-exposes-massive-police-corruption-cover-ups-surrounding-las-vegas-mass-shooting/article_1dbd92d0-b7c3-11ea-99a4-871da936da06.html) [https://perma.cc/46ZB-QDWU].

18. David Alm, *What Happened in Vegas – ‘Money Machine’ Unpacks the Sordid Aftermath of the 2017 Mass Shooting*, FORBES (Apr. 20, 2020, 12:58 PM), <https://www.forbes.com/sites/davidalm/2020/04/20/what-happened-in-vegas---a-new-documentary-unpacks-the-sordid-aftermath-of-the-2017-mass-shooting/?sh=d0be8e97de7d> [https://perma.cc/UN26-292B].

19. *Id.*

20. *Id.*

21. See *Help with Gambling Disorder*, AM. PSYCHIATRIC ASS’N, <https://www.psychiatry.org/patients-families/gambling-disorder> (last visited June 10, 2021) [https://perma.cc/U733-42K3] (“Gambling disorder involves repeated problematic gambling behavior that causes significant problems or distress.”); see also AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (2013) [hereinafter DSM-V 2013]. Compare AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-IV 1994, 615-18 (4th ed. 1994) (pathological and problem gambling, 10 criteria), with AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-IV-TR (2000), and DSM-V 2013.

22. See *Online Gambling Platforms Gained Larger User Base with Pandemic as a Driver of the Global Online Gaming Market 2020*, BUS. RSCH. CO. (Oct. 22, 2020, 8:00 AM), <https://www.globenewswire.com/news-release/2020/10/22/2112777/0/en/Online-Gambling-Platforms-Gained-Larger-User-Base-With-Pandemic-As-A-Driver-Of-The-Global-Online-Gaming-Market-2020.html> [https://perma.cc/395P-H8FH].

*economic system with billions of dollars in consumer dollars—without CARES-type loans being incurred by the U.S. Treasury.*

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#### SUMMARY OVERVIEW OF CONGRESSIONAL INTENT IN GAMBLING LEGISLATION 1988–2020: THE SOCIOECONOMIC IMPERATIVES FOR BANS ON SPORTS GAMBLING AND LOTTERIES

Since this symposium contains articles by expert witnesses who were present and/or testifying during the last three decades of congressional hearings and deliberations regarding federal gambling legislation, it would be a disservice to the historical record to ignore their expert perceptions of “congressional intent” in interpreting various provisions of federal gambling legislation and regulations.<sup>23</sup>

During the 1981–1989 Reagan Administration, U.S. Senator Paul Laxalt (R-NV) was General Chair of the Republican National Committee (RNC) from 1983–1987 with Nevada lawyer Frank Fahrenkopf as RNC National Chair until 1989.<sup>24</sup> In this political environment, the philosophies of the U.S. gambling establishment gained momentum. Accordingly, the dominant strategy of gambling

23. The legal issues created by tribal gambling per the U.S. Supreme Court case of *California v. Cabazon*, 480 U.S. 202, 205 (1987) now constitute distinctly different legal topics and are therefore beyond the scope of the present analyses. In a “bums-rush” by gambling lobbyists, the quick 1988 congressional response to *Cabazon* was to regulate tribal gambling activities via the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701–21, which established the National Indian Gaming Commission (NIGC) to administer the act.

Legislators who believe that “gambling can be controlled via regulations” should note that historically the IGRA regulations have been largely ignored de facto and the impractical enforcement mechanisms have been legally relegated by pro-gambling litigators into a practical dustbin. For a historical analysis by the definitive legal expert, see generally DONALD CRAIG MITCHELL, *WAMPUM: HOW INDIAN TRIBES, THE MAFIA, AND AN INATTENTIVE CONGRESS INVENTED INDIAN GAMING AND CREATED A \$28 BILLION GAMBLING EMPIRE* (2016). See, e.g., *Implementation of Indian Gaming Regulatory Act, Oversight Hearing Before the Subcomm. on Native Am. Affairs of the H. Comm. on Nat. Res.*, 103d Cong. 8 (1993) (noting widespread organized crime, etc.). For continuing trends involving IGRA’s inadequate regulations and concomitant widespread crime, see *Tribal Proposals to Acquire Land-in-Trust for Gaming Across State Lines and How Such Proposals are Affected by the Off-Reservation Discussion Draft Bill: Oversight Hearing Before the H. Comm. on Res.*, 109th Cong. 45 (2005) (testimony and statement of Cynthia J. Abrams, Seneca Tribe, Dir. United Methodist Board of Church and Soc’y) (testimony and statement of Prof. John W. Kindt, University of Illinois).

24. Adam Clyner, *Paul Laxalt, Senator From Nevada and Reagan Confidant, Dies at 96*, N.Y. TIMES (Aug. 6, 2018), <https://www.nytimes.com/2018/08/06/obituaries/paul-laxalt.html> [<https://perma.cc/9XEB-489G>]; *Republican National Committee*, BALLOTPEdia, [https://ballotpedia.org/Republican\\_National\\_Committee](https://ballotpedia.org/Republican_National_Committee) (last visited June 15, 2021) [<https://perma.cc/JV7N-56T5>].

businesses became one of expanding from Nevada and New Jersey into other individual states via marketing casinos and gambling facilities as the solution to governmental revenue problems.

During the early 1990s, as states began to succumb to the gambling lobby and legalize casinos, three national figures exemplified the concerns of different aspects of this trend; specifically, U.S. Senator Paul M. Simon (D-IL), business icon Howard G. Buffett, and University of Georgia law professor Dean D. Rusk, who had served as the U.S. Secretary of State from 1961–1969.<sup>25</sup> A brief summary of some of their public service provides historical perspective.

Beginning in 1948 as an Illinois newspaper editor-publisher, Paul Simon's activism against gambling and government corruption captured the attention of Illinois Governor Adlai Stevenson and led to Simon being called to testify<sup>26</sup> on illegal gambling before the U.S. Senate's 1950–1951 Kefauver Commission investigating organized crime.<sup>27</sup>

In subsequent congressional action with future U.S. Attorney General Robert F. Kennedy as chief legal counsel, the 1957–1960 McClellan Committee<sup>28</sup> investigating organized crime became best remembered for Kennedy's feud with Jimmy Hoffa, the president of the International Brotherhood of Teamsters (IBT).

In 1961 as U.S. Attorney General, Kennedy enacted the Wire Act<sup>29</sup> which prohibited the transfer of gambling information over U.S. communication systems. Thereafter, Hoffa was convicted in a 1964 Chicago trial for misdirecting IBT pension funds to criminal personages.<sup>30</sup>

Serving in the Illinois legislature during the timeframe of the Kennedy/Hoffa feud and then being elected Illinois Lieutenant Governor in 1969, Paul Simon's bipartisan work with Republican Governor Richard B. Ogilvie "paved the way for the state's 1969 constitutional convention, which created the fourth and current Illinois Constitution,"<sup>31</sup> including Article XIII protection for public pension funds—similar to those funds raided by Hoffa and others.<sup>32</sup>

25. These three icons are recognized as co-dedicatees in RESEARCH EDS. DR. DIR., GAMBLING WITH NATIONAL SECURITY, TERRORISM, AND MILITARY READINESS, U.S. INTERNATIONAL GAMBLING REPORT vii–ix (J. Kindt, ed., 2009) [hereinafter GAMBLING WITH NATIONAL SECURITY, U.S. INT'L GAMBLING REPORT].

26. *Id.*

27. See generally *Investigation of Organized Crime in Interstate Commerce: Hearings on S. Res. 202 and 129 Before the Special Comm. to Investigate Organized Crime in Interstate Commerce*, 82d Cong. (1950–1951) (commonly known as the "Kefauver Commission" in honor of the Commission's Chair, U.S. Sen. Estes Kefauver (D-TN)); ESTES KEFAUVER, THE KEFAUVER COMMITTEE REPORT ON ORGANIZED CRIME 9 (1951).

28. See generally *Investigation of Improper Activities in the Lab. or Mgmt. Field, Hearings on S. Res. 74 Before the Select Comm. on Improper Activities in the Lab. or Mgmt. Field*, 85th Cong. 4 (1957).

29. 18 U.S.C. § 1084. Robert F. Kennedy was assassinated on June 6, 1968. Thereafter, to combat organized crime, U.S. Senator John L. McClellan (D-AR) sponsored and enacted the Racketeer Influenced and Corrupt Organizations Act of 1970, 18 U.S.C. §§ 1961–68 (signed into law Oct. 15, 1970).

30. *Corruption and the Fall of Jimmy Hoffa: An Inside Story from the Man Who Claims He Killed Hoffa*, TEAMSTERS FOR A DEMOCRATIC UNION (Mar. 15, 2006), [https://www.tdu.org/news\\_corruption-and-fall-jimmy-hoffa-inside-story-man-who-claims-he-killed-hoffa](https://www.tdu.org/news_corruption-and-fall-jimmy-hoffa-inside-story-man-who-claims-he-killed-hoffa) [<https://perma.cc/4WF3-E66K>].

31. See *Paul Simon*, *supra* note 26 (as referenced in Wikipedia).

32. See ILL. CONST. art. XIII, § 5. For a rare historical analysis of the "legislative intent" regarding the 1970 Illinois Constitution (and Article XIII, § 5) by an actual participant/framer and current University of Illinois law professor, see Ann M. Lousin, "Will the State Keep its Promises?", Univ. Ill.-Chi. & St. Univ. Annuitants

Then as a 1985–1997 U.S. Senator for Illinois, Paul Simon supported the 1992 Professional and Amateur Sports Protection Act (“PASPA”),<sup>33</sup> which was enacted after an eighty-eight to five Senate vote, as a legislative response to several sports gambling scandals involving organized crime.<sup>34</sup>

Within this historical perspective of gambling concerns and after conversing with newly elected President William J. Clinton, U.S. Senator Paul Simon (D-IL) introduced the Gambling Impact Study Commission Act in 1993.<sup>35</sup> Senator Simon, however, had no cosponsors for this legislation.

While Senator Simon’s legislation stalled, former Secretary of State Dean Rusk took serious note of the long-term threat of widespread government-sanctioned gambling to the U.S. strategic economic base, and despite failing health, Secretary Rusk initiated authoring an article for *Foreign Affairs*.<sup>36</sup> Secretary Rusk’s initiative prodded actions by business leaders, academics, and government officials and was eventually reflected in the National Gambling Impact & Policy Commission Act: Hearing on H.R. 497 before the House Committee on the Judiciary,<sup>37</sup> chaired by Illinois Congressman Henry J. Hyde (R-IL).

Arguing against enactment of the Simon/Wolf legislation at the 1995 hearing, Frank Fahrenkopf, the initial CEO of the newly formed American Gaming Association (AGA) lobbying group, claimed that the Nevada Congressional Delegation who spoke “against the bill this morning clearly pointed out the 10th amendment arguments”<sup>38</sup> restricting federal interference in policy matters reserved to the states. It is significant and somewhat bizarre that the Nevada Congressional Delegation and other opponents of the legislation had obviously been briefed by lobbyists to argue the 10th Amendment—when the legislation was merely to establish a congressional commission to collect social and economic information.<sup>39</sup>

The only academic to testify at the hearing was University of Illinois Economics Professor Earl L. Grinols who presented extensive studies highlighting the significant economic problems created by government-sanctioned gambling

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Ass’n, Webinar, Feb. 24, 2021 (transcript) (2,000 webinar registrants). Throughout the 1960s, the national Kennedy-Hoffa feud and the Hoffa criminal trials in Chicago obviously framed portions of the 1970 Constitutional Convention’s environment for the Article XIII protections.

33. 28 U.S.C. § 3701.

34. See, e.g., John Warren Kindt & Thomas Asmar, *College and Amateur Sports Gambling: Gambling Away Our Youth?*, 8 VILL. SPORTS & ENT. L.J. 221, 231 (2002) (lead article).

35. S. 1720, 103d Cong. (1993). During their conversation, when President Clinton learned that Senator Simon was not planning to run for re-election, President Clinton urged Senator Simon to leave a legislative legacy that was close to Simon’s heart.

36. Dean Rusk died on December 20, 1994 before completing his article (which he was co-authoring due to his failing health and eyesight). See generally Dorsey R. Carson, Jr. & Amelia M. Bever, *Special Tribute: Remembering Dean Rusk*, 25 GA. J. INT’L & COMP. L. 707, 727 (1998).

37. *National Gambling Impact and Policy Commission Act: Hearing on H.R. 497 Before the H. Comm. on the Judiciary*, 104th Cong. (1995) [hereinafter *Cong. Hearing 1995 on Gambling*]. Emulating Senator Simon’s 1995 bill which was co-sponsored by U.S. Senator Richard G. Lugar (R-IN), H.R. 497 was the House companion bill sponsored by U.S. Rep. Frank R. Wolf (R-VA).

38. *Id.* at 126 (statement of Frank Fahrenkopf, President and CEO, American Gaming Association).

39. See, e.g., *id.* at 35 (statement of U.S. Rep. John E. Ensign (R-NV) arguing the 10th Amendment). While serving as a U.S. Senator from Nevada, scandal forced Senator Ensign to resign in 2011.

activities.<sup>40</sup> The hearing also reflected strategic issues highlighted by Secretary Rusk involving U.S. national security and the strategic economic base.<sup>41</sup>

In addition, an organized crime member from Chicago, William Jahoda, who was in the Witness Protection Program, was escorted into the hearing by congressional security and seated behind protective screens to testify.<sup>42</sup> Jahoda testified to the connections between expanded legalized gambling and concomitant increases in monies enriching organized crime members and financing new recruits.<sup>43</sup>

After the hearing, the Simon/Wolf legislation passed the House of Representatives with overwhelming bipartisan support and was enacted as the U.S. National Gambling Impact Study Commission<sup>44</sup> (“NGISC” or “1999 U.S. Gambling Commission”). After three years, this Commission completed its NGISC Final Report<sup>45</sup> in 1999, and this report called for a moratorium on the expansion of any type of gambling anywhere in the United States.<sup>46</sup>

After completing the NGISC Final Report, the NGISC Chair Kay C. James complained that as an African American academic:

[S]he was not prepared for the venom, bigotry, prejudice, and stereotyping she experienced [from pro-gambling interests] in leading the congressional study commission on the social and economic impact of gambling in America . . . . She said that she had endured more bigotry and intolerance . . . leading the Congressional study on gambling than she had as a black woman in corporate America.<sup>47</sup>

The NGISC Final Report also concluded that: (1) all gambling on collegiate and amateur sports should be legislatively banned, while gambling on professional sports should be permitted only in the two states where already authorized;<sup>48</sup>

40. *Id.* at 367–405 (testimony, statement, and studies summary of Earl L. Grinols, Professor of Economics, University of Illinois).

41. *See Strategic Economic Base*, *supra* note 13 (written under the auspices of Secretary Dean D. Rusk), reprinted in *Cong. Hearing 1995 on Gambling*, *supra* note 37, at 528–45; *see also Cong. Hearing 1995 on Gambling*, *supra* note 37, at 519–27 (statement of Professor John W. Kindt, University of Illinois).

42. *See Cong. Hearing 1995 on Gambling*, *supra* note 37, at 59 (introduction of security considerations for organized crime member William Jahoda by Chair Henry J. Hyde (R-IL)).

43. *Id.* at 60–89 (testimony and prepared statement of William Jahoda).

44. National Gambling Impact Study Commission Act, Pub. L. No. 104-169, 110 Stat. 1482 (signed into law Aug. 3, 1996).

45. NAT’L GAMBLING IMPACT STUDY COMM’N, FINAL REPORT (1999) [hereinafter NGISC FINAL REPORT], <http://govinfo.library.unt.edu/ngisc> [<https://perma.cc/SV6S-XCG4>]. The University of Illinois is highlighted on the first page of the NGISC FINAL REPORT’s “Sources of Information and Resources on Gambling.” *Id.* at VI-1.

46. *Id.* (introduction by Chair Kay C. James).

47. Orville Scott, *Gambling in U.S. More Destructive Than Previously Thought*, *Speakers Say*, BAPTIST PRESS (Sept. 29, 1999), <https://www.baptistpress.com/resource-library/news/gambling-in-u-s-more-destructive-than-previously-thought-speakers-say/> [<https://perma.cc/BAE9-V47Q>].

48. *See* NGISC FINAL REPORT, *supra* note 45, rec. 3-7; *see id.* at 2-14.

(2) internet gambling was technologically impossible to regulate and should remain criminalized;<sup>49</sup> and (3) there were virtually no positive aspects to state lotteries and therefore existing lotteries should be minimized and heavily restricted.<sup>50</sup>

Paralleling the NGISC hearings, the growing public and business opposition to expanded legalized gambling activities was exemplified by a series of public speeches and presentations by international business gurus Howard Buffett<sup>51</sup> and Warren Buffett.<sup>52</sup>

As the 1999 NGISC Final Report was published, the Supreme Court of the United States (SCOTUS) decided the case of *Greater New Orleans Broadcasting Ass'n v. United States*<sup>53</sup> and overturned various federal restrictions on advertising by legalized casinos and other gambling ventures.<sup>54</sup> To the public, this decision seemed inconsistent with the public demands and legislative trends toward restricting tobacco advertising.<sup>55</sup>

In *Greater New Orleans Broadcasting*, it should be noted that the American Gaming Association submitted an amicus curiae brief to the U.S. Supreme Court arguing in favor of casino advertising.<sup>56</sup> The brief was submitted by counsel of record John Roberts (who was soon to become Chief Justice Roberts) and by Frank Fahrenkopf, CEO of the AGA.<sup>57</sup>

The recommendations of the NGISC Final Report also prompted the eventual enactment of the 2006 Unlawful Internet Gambling Enforcement Act (UIGEA),<sup>58</sup> which added enforcement mechanisms to prohibit gambling activities via the internet.<sup>59</sup> The “congressional legislative intent” during the hearing before the House Subcommittee on Crime, Terrorism, and Homeland Security<sup>60</sup> and as the legislation was subsequently forwarded into the mark-up process, was

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49. *Id.* recs. 5-1 to 5-4.

50. *See, e.g., id.* recs. 3-8 to 3-15.

51. *See* GAMBLING WITH NATIONAL SECURITY, U.S. INT'L GAMBLING REPORT, *supra* note 25, at doc. numbers 1.24–1.26 (speeches/presentations of Howard Buffett, reprinted with permission).

52. *Id.* at doc. numbers 1.27–1.29 (speeches/presentations of Warren Buffett, reprinted with permission).

53. 527 U.S. 173 (1999).

54. *Id.* at 176.

55. FISHMAN ET AL., CDC, STATE LAWS ON TOBACCO CONTROL—UNITED STATES, 1998 (1999), <https://www.cdc.gov/mmwr/preview/mmwrhtml/ss4803a2.htm> [<https://perma.cc/M6VF-94FF>].

56. Brief for Am. Gaming Ass'n as Amicus Curiae Supporting Petitioners, *Greater New Orleans Broad. Ass'n v. United States* 527 U.S. 173 (1999) (No. 98-387), 1999 WL 95444. (Counsel of Record John G. Roberts, Jr. and Frank J. Fahrenkopf, Jr.) On the brief's contact information, both Roberts and the AGA's Fahrenkopf oddly listed the same address for their offices in Washington, D.C. The source materials cited in this amicus brief, particularly the primary citations, were poorly documented and lacking in credibility (*e.g.*, as being financed by the AGA without acknowledgement of all of these facts to SCOTUS).

57. *Id.*

58. 31 U.S.C. § 5361.

59. *Id.* *See Final Vote Results for Roll Call 363*, CLERK (July 11, 2006, 3:18 PM), <https://clerk.house.gov/evs/2006/roll363.xml> [<https://perma.cc/34JE-6HDZ>] (voting results for the Unlawful Internet Gambling Enforcement Act) (80% bipartisan favorable vote).

60. *Internet Gambling Prohibition Act of 2006: Hearing on H.R. 4777 Before the Subcomm. on Crime, Terrorism, and Homeland Sec. of the H. Comm. on the Judiciary*, 109th Cong. (2006).



definitely to prohibit the type of gambling activities exemplified by “daily fantasy sports” (DFS) activities.<sup>61</sup> Caveats to prohibit or severely restrict any “fantasy sports exception” during the mark-up process were discounted via assertions that the exception could never be abused<sup>62</sup>—but thereafter DFS groups began abusing the “fantasy sports exception” to leverage into a hardcore business model for sports gambling.<sup>63</sup>

Within days after UIGEA was signed into law by President George W. Bush on October 13, 2006, the White House requested briefings on gambling’s socioeconomic effects on national security and the strategic economic base.<sup>64</sup> These briefings included the following summary:

During the 1930s Great Depression, President Franklin Roosevelt and other governments worldwide did not decriminalize gambling because economies cannot gamble their way to prosperity. Gambling economies transfer consumer wealth [into destructive economic multipliers], destroy productivity, undermine economic national security, and destabilize banks, financial institutions, and stock markets. For example, the UIGEA caused the overnight loss of billions of dollars in “speculative bubble” gambling stocks, particularly on the London Stock Exchange—impacting allies.<sup>65</sup>

Iconic 1936 photos of New York City Mayor Fiorello LaGuardia dumping 1,200 slot machines into Long Island Sound<sup>66</sup> also highlighted the New Deal’s quintessential commitments not only to combat organized crime, but also to keep gambling from depressing the consumer economy.

Yet, in 2011 the Obama Administration responded to unusual simultaneous requests from the Illinois and New York lotteries to reassess the scope de facto of Robert Kennedy’s Wire Act<sup>67</sup> and the existing DOJ’s interpretation that the

61. See generally *id.* Professor John Kindt of the University of Illinois cautioned that gambling lobbyists would drive a truck through the “fantasy” exception. See *id.* at 20–63 (testimony and prepared statement of Professor John W. Kindt, University of Illinois).

62. *Id.* DFS was a virtual nonentity in 2012, but by 2015 DFS was the largest advertiser in the United States. By the end of 2015, DFS investigations were underway by the U.S. Attorney offices in New York, Boston, and Tampa, and in addition, the attorney generals of twelve states had also determined that DFS activities were illegal.

63. *Id.*

64. With permission, relevant briefing information was released to the public in 2007 as John Warren Kindt, *Gambling with Terrorism: Gambling’s Strategic Socio-Economic Threat to National Security* (Feb. 10–11, 2007) [hereinafter Prof. Kindt 2-10-07 Harvard Analysis], [https://www.ideals.illinois.edu/bitstream/handle/2142/14447/HarvardU\\_Gamb\\_Terrorism\\_2-%2010-2007.pdf?sequence=2&isAllowed=y](https://www.ideals.illinois.edu/bitstream/handle/2142/14447/HarvardU_Gamb_Terrorism_2-%2010-2007.pdf?sequence=2&isAllowed=y) [<https://perma.cc/4TXW-A6VQ>] (sponsored by Harvard Business School, Harvard Law School, and Kennedy School of Gov’t). These documents are reprinted in *GAMBLING WITH NATIONAL SECURITY*, U.S. INT’L GAMBLING REPORT, *supra* note 25, at cxii–cxiii (2009) (including dozens of supporting legal, economic, and government reports in Table of Documents at cxi–cxx.)

65. Prof. Kindt 2-10-07 Harvard Analysis, *supra* note 64, at 3.

66. The internet has multiple film clips and photos of Mayor LaGuardia smashing slot machines, while calling them “pick pockets.” See, e.g., David Blankenhorn, *Why I’m Smashing a Slot Machine*, NY DAILY NEWS (Oct. 11, 2013, 4:05 AM), <https://www.nydailynews.com/opinion/smashing-slot-machine-article-1.1482217> [<https://perma.cc/4VL9-DCJL>]; CriticalPast, *New York City Mayor, Fiorello LaGuardia, Campaigns Against Slot Machines. HD Stock Footage*, YOUTUBE (June 13, 2014), <https://youtu.be/iGJ2Uvlu1Kk> [<https://perma.cc/2PDD-GER4>].

67. 18 U.S.C. § 1084.

Wire Act restricted gambling via the internet.<sup>68</sup> Fast-tracking the DOJ's response memorandum<sup>69</sup> from the Office of Legal Counsel (OLC), the memo was completed on September 20, 2011, but it was reportedly held for public release until December 23 to bury the news story in the dead news cycle before Christmas.<sup>70</sup> The *Christian Science Monitor* and other national news media, however, still exposed numerous concerns involving improprieties, procedural ethics, and conflicts of interest<sup>71</sup> involving the OLC 2011 Wire Act Memo.<sup>72</sup>

The author of the OLC 2011 Wire Act Memo focused on the author's own interpretations of: (1) "congressional legislative intent," including U.S. Attorney General Kennedy's "intent" which resulted in interpretations contrary to the objective manifestations of the legislators themselves; (2) the placement of a comma; and (3) other semantic legerdemain.<sup>73</sup> Thereby, the OLC 2011 Wire Act Memo reversed fifty years of DOJ interpretations of the Wire Act and other statutes restricting "non-sports" gambling activities<sup>74</sup>—but sports gambling interests quickly alleged that they could expand as well per their "legal interpretations" of gray areas in the OLC memo. Although it was neither a congressional statute nor a judicial determination, the OLC 2011 Wire Act Memo provided the aura of legality to gambling interests arguing that they could place real-time 24/7 gambling on every computer and cell phone (*i.e.*, the business model of "click your mouse, lose your house" and "click your phone, lose your home").

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68. See Letter from William J. Murray, Deputy Dir. & Gen. Counsel, N.Y. Lottery to Portia Roberson, Dir., Off. Intergovernmental Aff. (Dec. 4, 2009); Letter from Ill. Gov. Pat Quinn to Eric. H. Holder, Jr., U.S. Att'y Gen. (Dec. 11, 2009); Letter from John W. McCaffrey, Gen. Counsel, Ill. Dept. Revenue to Bruce Ohr, Chief, Organized Crime & Racketeering Sec., Crim. Div. (Mar. 10, 2010); see also 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, 35 Op. Att'y Gen. (2011).

69. Whether the Wire Act Applies to Non-Sports Gambling, 35 Op. O.L.C. 134 (2011) [hereinafter OLC 2011 Wire Act Memo].

70. See *Obama's New Tax on the Poor: Internet Gambling by States*, CHRISTIAN SCI. MONITOR (Dec. 27, 2011) [hereinafter *Obama's New Tax on the Poor*], <https://www.csmonitor.com/Commentary/the-monitors-view/2011/1227/Obama-s-new-tax-on-the-poor-Internet-gambling-by-states> [https://perma.cc/DQ7R-BT5E]; see also Dave Bohon, *Obama DOJ Helping to Facilitate Expansion of Online Gambling*, NEW AM. (Jan. 3, 2012), <https://thenewamerican.com/obama-doj-helping-to-facilitate-expansion-of-online-gambling/> [https://perma.cc/WHT7-JLY2].

71. See *Obama's New Tax on the Poor*, *supra* note 70. Obvious questions were raised by the media concerning the timing of these New York and Illinois lotteries' requests and the ninety-day fast-tracking of the OLC response written by a new DOJ appointee who should have been subject to recusal (as coming from an Illinois law group allegedly representing pro-gambling interests which could benefit from an OLC interpretation rolling back the scope of the Wire Act). *Id.*

72. See, e.g., sources cited *supra* note 70.

73. See OLC 2011 Wire Act Memo, *supra* note 69, at 141–43.

74. *Id.* at 150.

Responding to overwhelming congressional and public outrage,<sup>75</sup> in 2018 the DOJ basically reversed the OLC 2011 Wire Act Memo via a new memorandum, “Reconsidering Whether the Wire Act Applies to Non-Sports Gambling.”<sup>76</sup> On January 15, 2019, the DOJ issued a notice that new enforcement of the Wire Act would begin in ninety days.<sup>77</sup> Pro-gambling litigators immediately went forum shopping to the U.S. District Court in New Hampshire and received a ruling on June 3, 2019 that § 1084(a) of the Wire Act applied only to sports gambling.<sup>78</sup> The DOJ appealed, but the First Circuit Court of Appeals held on January 20, 2021 that the Wire Act was limited to sports wagering,<sup>79</sup> and it appeared that the new Biden Administration was unlikely to appeal to the U.S. Supreme Court.

Historically, the congressional outrage over the OLC 2011 Wire Act Memo had generated a 2015 congressional hearing, “Restoration of America’s Wire Act.”<sup>80</sup> The former head of the DOJ Task Force prosecuting internet gambling cases, Professor Michael K. Fagan, testified to the extensive problematic impacts of the OLC 2011 Wire Act Memo and alluded to unusual aspects of the memo’s preparation.<sup>81</sup> Sharing Professor Fagan’s concerns, Mr. Les Bernal, the National Director of SPG, also focused on the state lotteries and governments “blatantly cheating and exploiting their own citizens”<sup>82</sup>—further impoverishing millions of poor people.<sup>83</sup> Furthermore, the internet gambling enabled by the OLC 2011 Wire Act Memo was poised to increase exponentially the socioeconomic costs of gambling already encumbering the public and destroying lives via increasing the numbers of addicted gamblers, bankruptcies, and crime.<sup>84</sup>

75. For examples of bipartisan congressional concerns, including those of U.S. Senator Dianne Feinstein (D-CA), as summarized by the 2019 Chair of the Senate Committee on the Judiciary, Lindsey Graham (R-SC), see *Graham Statement on Justice Department’s Restoration of Wire Act*, LINDSEY GRAHAM (Jan. 16, 2019), <https://www.lgraham.senate.gov/public/index.cfm/press-releases?ID=63CEAE6D-2834-415A-AA4D-C424BE248729> [<https://perma.cc/9Y2Q-6F92>]. Senator Graham stated: “I welcome the decision by the Department of Justice to reverse a misguided decision by the Obama Administration . . . Restoring the original interpretation of the Wire Act takes great strides to protect children and society’s most vulnerable. It will also be a blow to criminal elements that tried to take advantage of the failed Obama policy.” *Id.*

76. *Reconsidering Whether the Wire Act Applies to Non-Sports Gambling*, 42 Op. O.L.C. 1 (Nov. 2, 2018), <https://www.justice.gov/olc/file/1121531/download> [<https://perma.cc/NW6W-Y248>].

77. U.S. Dep’t of Just., Opinion Letter on Applicability of the Wire Act, 18 U.S.C. § 1084, to Non-Sports Gambling (Jan. 15, 2019).

78. See U.S. Dep’t of Just., Opinion Letter on Updated Directive Regarding Applicability of the Wire Act, 18 U.S.C. § 1084, to Non-Sports Gambling (June 12, 2019).

79. *New Hampshire Lottery Comm’n v. Rosen*, No. 19-1835, 2021 WL 191771 (1st Cir. Jan. 20, 2021); see U.S. Dep’t of Just., Opinion Letter on Updated Directive Regarding Applicability of the Wire Act, 18 U.S.C. § 1084, to Non-Sports Gambling (June 11, 2020).

80. See *Restoration of America’s Wire Act: Hearing on H.R. 707 Before the Subcomm. on Crime, Terrorism, Homeland Sec., and Investigations of the H. Comm. on the Judiciary*, 114th Cong. 8 (2015) [hereinafter *Cong. Hearing 2015 to Restore Kennedy Wire Act*].

81. *Id.* at 39, 41 (oral testimony and prepared statement of Law Professor Michael K. Fagan, Washington University School of Law).

82. *Id.* at 25, 27 (oral testimony and prepared statement of Les Bernal, National Director, Stop Predatory Gambling).

83. See *id.*

84. *Id.* at 10–13 (oral testimony and prepared statement of Prof. John Warren Kindt, University of Illinois).

From a strategic economic perspective, this 2015 congressional hearing reaffirmed the economic principle that internet gambling undermines U.S. national security,<sup>85</sup> as “[i]nternet gambling destabilizes and threatens the financial systems of the United States and the International Economic System.”<sup>86</sup>

Several of the follow-up questions issued by the committee members to the panelists focused on the impacts of internet gambling sites already operating illegally to entrap kids and target-market poor people.<sup>87</sup> Sports gambling and video gambling were highlighted as the gateway markets for seducing the youth demographic onto destructive gambling platforms.<sup>88</sup>

Also, during the 2012–2018 timeframe, New Jersey began state-sponsored legal challenges to PASPA, which ironically had been sponsored by a former U.S. Senator from New Jersey, William W. Bradley (D-NJ), a professional basketball legend.<sup>89</sup>

Trying to legalize sports gambling, New Jersey lost twice in the U.S. District Court and twice in the Third Circuit U.S. Court of Appeals between 2012 and 2014.<sup>90</sup> In a perplexing move, however, the Supreme Court accepted New Jersey’s appeal and heard the case on Dec. 4, 2017, despite the recommendation of the Office of the Solicitor General advising the Court to reject New Jersey’s appeal.<sup>91</sup>

Surprisingly, the U.S. Supreme Court did not follow the advice of the U.S. Solicitor General and agreed to review the case.

The *Legal Sports Report* thereafter reported that Justice John Roberts, along with Frank Fahrenkopf, the CEO of the American Gaming Association, had together filed a brief with the Supreme Court on behalf of the AGA “casino

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85. *Id.* at 13–24 (citing multiple economics journals, law review articles, books, and government reports).

86. *Id.* at 17. For numerous reprinted academic sources detailing the serious impacts of internet gambling activities on macro-economic systems, see RESEARCH EDS. DR. DIR., THE GAMBLING THREAT TO ECONOMIES AND FINANCIAL SYSTEMS: INTERNET GAMBLING, U.S. INTERNATIONAL GAMBLING REPORT, at cxi (John Kindt ed., 2010) [hereinafter GAMBLING THREAT TO FINANCIAL SYSTEMS, U.S. INT’L GAMBLING REPORT].

87. *See Cong. Hearing 2015 to Restore Kennedy Wire Act*, *supra* note 80, at 128 (Appendix: Material Submitted for the Hearing Record).

88. *See id.* at 133.

89. John W. Kindt, *SCOTUS Decision Creates a ‘Wild West’ for Sports Gambling*, THE HILL (May 14, 2018, 4:45 PM) [hereinafter *SCOTUS Creates Sports Gambling*], <https://thehill.com/opinion/finance/387632-scotus-decision-creates-a-wild-west-for-sports-gambling> [<https://perma.cc/8EU5-VETY>].

90. *NCAA v. Christie*, 926 F. Supp. 2d 551, 579 (D.N.J. 2013), *appealed denied sub nom.* *NCAA v. Governor of N.J.*, 730 F.3d 208, 217 (3d Cir. 2013), *cert denied*, 573 U.S. 931 (2014). A second New Jersey legislative attempt to circumvent the U.S. Third Circuit Court of Appeals ruling in *Christie* resulted in more judicial notice. *NCAA v. Christie*, 61 F. Supp. 3d 488, 508 (D.N.J. 2014), *appeal denied sub nom.* *NCAA v. Governor of N.J.*, 832 F.3d 389 (3d Cir. 2016).

91. *See SCOTUS Creates Sports Gambling*, *supra* note 89. Requested by SCOTUS, the brief by the U.S. Solicitor General’s Office advised SCOTUS not to grant certiorari to hear the case. Brief for the United States as Amicus Curiae Supporting Petitioners, *Christie v. Nat’l Collegiate Athletic Assn.*, 138 S. Ct. 1461 (2018) (Nos. 16-476, 16-477), 2017 WL 4805228.

lobby” in the 1999 case of *Greater New Orleans Broadcasting*.<sup>92</sup> Perhaps implying that Justice Roberts should recuse himself, the *Legal Sports Report* then cited to the blog of Law Professor I. Nelson Rose who reportedly blogged as follows:

I think this is all due to my former classmate, Chief Justice John Roberts (Harvard Law School 1979). Roberts is strongly for state’s rights, particularly for states making their own decisions, free from control by Congress.

He is also, probably, pro-gambling.<sup>93</sup>

As one of the interested parties filing an amicus brief to overturn PASPA,<sup>94</sup> the AGA was also reportedly “pushing for a repeal of the sports betting prohibition via Congress.”<sup>95</sup>

By comparison, an amicus brief in opposition to overturning PASPA was filed by Les Bernal and Stop Predatory Gambling along with dozens of social action and religious groups ranging from the Center for Popular Democracy to the Public Health Advocacy Institute and including the National Association of Evangelicals, the Islamic Society of North America, and the Faith and Freedom Coalition, et alia.<sup>96</sup> In accord with the NGISC Final Report, hundreds of other social justice and religious denominations were also on record as opposing expanded gambling anywhere in the United States.<sup>97</sup>

More importantly, the observations of Professor Rose and the *Legal Sports Report* pointed to the question of whether Justice Roberts should have recused himself in this case.<sup>98</sup> During his nomination process, the press in Washington D.C. reported<sup>99</sup> that:

Part of the White House strategy is to have Republicans such as former Republican National Committee leader Frank Fahrenkopf, a former law partner of Judge Roberts, hit the airwaves to say how much “intellect” and “integrity” the nominee possesses.<sup>100</sup>

A few days after this news report, Frank Fahrenkopf was extolling his former law partner John Roberts whom he had known since 1986<sup>101</sup> as Fahrenkopf gave a long television interview in Las Vegas. Fahrenkopf noted that at his law firm “there were about ten of us [including Roberts] who ate lunch together every

92. Dustin Gouker, *Chief Justice Roberts Once Filed a Brief for the Casino Lobby, In Interesting Twist for NJ Sports Betting Case*, LEGAL SPORTS REP. (July 7, 2017) [hereinafter *Justice Roberts and Casino Lobby*], <https://www.legalsportsreport.com/14581/scotus-aga-nj-sports-betting/> [<https://perma.cc/GDK8-TWTX>].

93. *Id.*

94. *Id.*

95. *Id.*

96. Brief for Stop Predatory Gambling, et al. as Amici Curiae Supporting Respondents, *Christie v. Nat’l Collegiate Athletic Assn.*, 138 S. Ct. 1461 (2018) (nos. 16-476, 16-477) 2017 WL 4857114.

97. See, e.g., 148 CONG. REC. H2208-11 (daily ed. May 8, 2002) [hereinafter *220 Religious Organizations Oppose the Spread of Gambling*] (including a list of the organizations/leaders).

98. See Gouker, *supra* note 92.

99. Ann McFeatters, *U.S. Supreme Court: President Pleased by Response to Nominee*, TOLEDO BLADE (July 22, 2005).

100. *Id.*

101. Transcript of “Who is John Roberts?,” see Interview with Frank Fahrenkopf, Pres. & CEO American Gaming Association Lobbying Group, on “Face-to-Face” with Jon Ralston, in Las Vegas Nev. (Aug. 1, 2005).

day.”<sup>102</sup> With regard to the *Greater New Orleans Broadcasting*<sup>103</sup> case, Fahrenkopf stated:

[T]he Justice Department, in its brief, was attacking gambling, casino gambling, with all the old . . . organized crime, bankruptcy . . . you go on and on through the litany of what I call myths and stereotypes. I wanted to make sure that we presented before the Supreme Court what we know the facts to be and the fact that John [Roberts] had to prepare that brief so he worked through all of these myths and superstitions, knows the independent research that is out there, knows the true set of facts, you know you just hope that if there is a case that ever hits the Court some way down the road and they are all sitting around in that private inner sanctum, and someone says something, gee whiz isn't organized crime involved? At least there is someone in the room who can say wait, wait a minute, that's 30 years ago, that's not the way it is.<sup>104</sup>

Thus, the recusal implications in the *Legal Sports Report* appear to raise some future issues regarding gambling cases coming before the U.S. Supreme Court.<sup>105</sup>

In any event, the New Jersey sports gambling case *Murphy v. National Collegiate Athletic Association*<sup>106</sup> was decided May 14, 2018, and in a 7-2 decision PASPA was declared invalid. The Court's decision did not consider any socio-economic issues per se but rather focused on the “anti-commandeering” doctrine the Court had enumerated in the 1992 case of *New York v. United States*.<sup>107</sup> Interestingly, the Court's Tenth Amendment arguments were reminiscent of those by Frank Fahrenkopf and the Nevada delegation, which were rejected by the House Judiciary Committee during the 1995 congressional hearing that resulted in the enactment of the U.S. National Gambling Impact Study Commission.<sup>108</sup>

Seizing upon *Murphy* as a public relations coup and claiming unwarranted legality for all gambling activities, gambling lobbyists overwhelmed state capitals in the wake of *Murphy* and flooded state legislators with bills authorizing numerous types of gambling.<sup>109</sup> Once again, congressional outrage over gambling lobbyists' manipulations occurring under the umbra of *Murphy* quickly led to congressional hearings, specifically “Post-PASPA: An Examination of Sports Betting in America.”<sup>110</sup> During this hearing both House Judiciary Committee Chair Robert W. Goodlatte (R-VA) and Subcommittee Chair James Sensenbrenner (R-WI) expressed their serious concerns regarding the “Wild West” impacts

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102. *Id.*

103. *Id.*

104. *Id.* This transcript/interview consists of several pages.

105. See Gouker, *supra* note 92.

106. *Murphy v. NCAA*, 138 S. Ct. 1461, 1485 (2018). When Philip D. Murphy succeeded Christopher J. Christie as N.J. Governor, the case name was changed from *Christie to Murphy*.

107. 505 U.S. 144, 175, 202 (1992); see also *Printz v. United States*, 521 U.S. 898, 925 (1997).

108. See *supra* notes 38–40 and accompanying text.

109. See *SCOTUS Creates Sports Gambling*, *supra* note 89.

110. See *Post-PASPA: An examination of Sports Betting in America: Hearing Before the Subcomm. on Crime, Terrorism, Homeland Sec., & Investigations of the H. Comm. on the Judiciary*, 115th Cong. 1 (2018) [hereinafter *Cong. Hearing 2018 on PASPA*].

caused by *Murphy*,<sup>111</sup> and the sense of the committee was that PASPA could be passed again by Congress with technical modifications per the Commerce Clause—satisfying SCOTUS.<sup>112</sup> During the hearing it became apparent that the national press would have flooded this hearing except for unexpected extensions in the U.S. Senate confirmation hearings for Supreme Court Justice Brett Kavanaugh.<sup>113</sup>

Similarly, a 2020 congressional hearing in the U.S. Senate highlighted the practical problems created by *Murphy* and utilizing the Commerce Clause to pass legislation emulating PASPA was suggested.<sup>114</sup>

#### HAS CONGRESS LOST CONTROL TO THE GAMBLING LOBBY?

Soon after the 1995–1999 U.S. National Gambling Impact Study Commission was enacted, the U.S. House of Representatives sponsor, Frank R. Wolf (R-VA) complained in April 1996 on the floor of Congress regarding the “Money and Power Influence on Gambling Legislation,”<sup>115</sup> which was echoed again in 2002 in the Congress by over 220 social-justice and religious organizations.<sup>116</sup> In this context, the 2020 movie *Money Machine* details the enormous power of the gambling establishment to obfuscate the largest mass murder in U.S. history; specifically, problem gambler Stephen Paddock’s shooting spree in Las Vegas, which killed fifty-eight and allegedly caused 869 other injuries, including 413 wounded by gunshots.<sup>117</sup>

Regardless of the repressive legislative environment financed by Big Gambling’s lobbyists, the U.S. Congress and the U.S. executive branch need to protect the U.S. strategic economic base,<sup>118</sup> as well as the public health, safety, and

111. *Id.* (statements of House Judiciary Chair Robert W. Goodlatte (R-VA) and Subcommittee Chair F. James Sensenbrenner, Jr. (R-WI)).

112. *Id.*

113. *Id.* (introductory statements of Subcommittee Chair F. James Sensenbrenner, Jr. (R-WI)).

114. This hearing dealt primarily with the cheating that was inherent in the history of sports gambling, as well as inequality issues involving minority athletes as exemplified in developing issues involving an athlete’s “name, information, and likeness” (“NIL”). See, e.g., *Protecting the Integrity of College Athletics*, S. Comm. on the Judiciary, 116th Cong. (2020) (statement of Matt Mitten, Professor at Marquette University). For a summary of issues tempting athletes to cheat and including real-time “prop” bets, see *id.* (statement of Heather Lyke, Director of Athletics, University of Pittsburgh). Director Lyke also testified that “Justice Alito explained that ‘Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own.’” *Id.* (citing *Murphy v. NCAA*, 138 S. Ct. 1461, 1484–85 (2018)).

115. 142 CONG. REC. H3622–23 (daily ed. Apr. 18, 1996) (statement of U.S. Rep. Frank R. Wolf (R-VA)).

116. See, e.g., *220 Religious Organizations Oppose the Spread of Gambling*, *supra* note 97 (statement of U.S. Rep. Frank R. Wolf (R-VA)).

117. *Stephen Paddock*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Stephen\\_Paddock](https://en.wikipedia.org/wiki/Stephen_Paddock) (last visited June 10, 2021) [<https://perma.cc/SHA6-ZRYT>]. Due to the COVID pandemic, the movie *Money Machine* had to cancel its 2020 distribution to movie theatres, but it may be accessed and viewed via the internet. See *Money Machine*, AMAZON: PRIME VIDEO (2020), <https://www.amazon.com/Money-Machine-Joe-Lombardo/dp/B08J4FD2CT> (last visited June 10, 2021) [<https://perma.cc/GUW2-JS5K>].

118. RESEARCH EDS. DR. DIR., THE GAMBLING THREAT TO NATIONAL AND HOMELAND SECURITY: INTERNET GAMBLING, U.S. INTERNATIONAL GAMBLING REPORT, at xci (2012) (reprinting dozens of academic, economic, and government reports); see, e.g., *supra* notes 44–45 and accompanying text.

welfare. Accordingly, academic analyses conclude that actions need to be taken to:

1. enact federal legislation to protect the integrity of professional, collegiate, and amateur sports by re-establishing PASPA via the congressional power in the Commerce Clause;<sup>119</sup>
2. supplement new PASPA legislation with safeguards for athletes, particularly economically disadvantaged athletes, including protections for an athlete's "name, information, and likeness" (NIL);<sup>120</sup>
3. reinstate Robert F. Kennedy's Wire Act, eliminating the ambiguities caused by the OLC 2011 Wire Act Memo;<sup>121</sup>
4. reinstate a total ban on internet gambling pursuant to the recommendations of the NGISC Final Report, including closing any perceived exceptions in UIGEA which Daily Fantasy Sports advocates can manipulate;<sup>122</sup>
5. shut down all state and national lotteries, which would inexpensively pump-prime the U.S. economic system without incurring long-term debts for the U.S. Treasury;<sup>123</sup> and
6. ban any and all financial instruments linked to the gambling industry as destabilizing influences on Wall Street, creating classic "speculative bubbles" large enough to undermine the U.S. strategic economic base.<sup>124</sup>

Indeed, this last recommendation, which had strong expert support during the 1990s, has been eroded by three decades of Big Gambling's public relations campaigns.

In this context, congressional inattentiveness can once again ravage the U.S. strategic economic base as happened during the U.S. 2007–2009 Great Recession. Obscured, for example, among the last legislation passed during the 2000 congressional session by an inattentive U.S. Congress was the Commodity Futures Modernization Act (CFMA).<sup>125</sup> Remarkably, the CFMA's "last provision" prohibited any state from enforcing any anti-gambling legislation, such as laws prohibiting illegal "bucket shops."<sup>126</sup> This strategic economic mistake was

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119. See *supra* notes 110–114 and accompanying text.

120. See *supra* note 114 and accompanying text.

121. See *supra* notes 67–88 and accompanying text.

122. See *supra* notes 58–63 and accompanying text.

123. See, e.g., Katherine Sayre, *Coronavirus Crisis Prompts Call to Suspend Lottery Gambling*, WALL ST. J. (Apr. 20, 2020, 6:12 PM), <https://www.wsj.com/articles/coronavirus-crisis-prompts-call-to-suspend-lottery-gambling-11587376800> [<https://perma.cc/89D5-LYXZ>].

124. See GAMBLING THREAT TO FINANCIAL SYSTEMS, U.S. INT'L GAMBLING REPORT, *supra* note 86.

125. The Commodity Futures Modernization Act of 2000 was incorporated into the Consolidated Appropriations Act of 2001. See Consolidation Appropriations Act, Pub. L. No. 106-554, 114 Stat. 2763, 2763A–365.

126. The statute stated: "PREEMPTION.—This title shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than the antifraud provisions of general applicability) in the case of—(1) a hybrid instrument that is predominantly a banking product, or (2) a covered swap agreement." *Id.* at 2763A–461.



highlighted by a *60 Minutes*<sup>127</sup> investigative report, “Financial Weapons of Mass Destruction,”<sup>128</sup> as igniting the explosion in unregulated “credit default swaps” and precipitating the U.S. 2007–2009 Great Recession.<sup>129</sup>

Emboldened by the COVID economic recession of 2020, Big Gambling’s legislative proposals are poised to spiral the U.S. economy into further misery and threaten the U.S. strategic economic base. As a first and inexpensive step, the U.S. executive branch should shut down all state lotteries to pump-prime the consumer economy. The unenlightened decisions of state governors to shut down consumer businesses while promoting state lotteries are breathtaking economic mistakes—which will have far-reaching detrimental socioeconomic impacts.

#### EDITORS’ HISTORICAL NOTE

These trends were apparent to observers of a 2015 congressional hearing before the House Subcommittee on Crime, Terrorism, Homeland Security, and Investigations,<sup>130</sup> which featured as expert witnesses Professor Mike Fagan (the former head of the Department of Justice (DOJ) Task Force on Internet Gambling), Director Les Bernal, and Professor John Kindt.

On September 28, 2018, this House Subcommittee held another hearing on “Post-PASPA: An Examination of Sports Betting in America” and called four gambling lobbyists and one academic, Professor Kindt, to testify.<sup>131</sup> After Professor Kindt arrived in Washington, D.C. to testify, his office received dozens of phone calls from organizations complaining about the four gambling lobbyists.<sup>132</sup> Accordingly, thirty-six hours before the hearing Professor Kindt asked House Judiciary Chair Robert Goodlatte (R-Va.) and Subcommittee Chair James Sensenbrenner (R-Wis.) for permission to surrender his expert witness chair to a representative of multiple social justice organizations. The substitute selected was Mr. Les Bernal, the National Director of the charity SPG, which represented hundreds of charities, religious organizations, and social justice groups opposed to expanded gambling.<sup>133</sup>

The background information which Professor Mike Fagan submitted to the subcommittee includes important historical context for this symposium,<sup>134</sup> as

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127. *Financial WMDs*, CBS: 60 MINUTES (Aug. 30, 2009), [https://www.cbs.com/shows/60\\_minutes/video/1592885247/financial-wmds/](https://www.cbs.com/shows/60_minutes/video/1592885247/financial-wmds/) [<https://perma.cc/2NHF-PSWC>] (reporting financial WMDs by Steve Kroft). The title “WMDs” came from a Warren Buffett quote. *Id.*

128. *Id.*

129. *Id.*

130. *See Cong. Hearing 2015 to Restore Kennedy Wire Act*, *supra* note 80.

131. *See Cong. Hearing 2018 on PASPA*, *supra* note 110.

132. *See 220 Religious Organizations Oppose the Spread of Gambling*, *supra* note 97.

133. *See Cong. Hearing 2018 on PASPA*, *supra* note 110, at 1.

134. *See Cong. Hearing 2015 to Restore Kennedy Wire Act*, *supra* note 80, at 9; *see also* “Realistically-Unsolvable Foreseeable Problems Which Will Arise From Expanded Legalized Commercialized Sports Betting.” Friend of Congress Memorandum of Michael K. Fagan, Adj. Professor, Washington Univ. School of Law, Submitted to the Subcomm. on Crime, Terrorism, Homeland Security, & Investigations, U.S. House of Representatives Comm. on the Judiciary, Legislative Hearing on Sports Gambling, Sept. 27, 2018.

does Professor Kindt's prepared congressional testimony.<sup>135</sup> For purposes of historical continuity, the contributions of Professors Fagan and Kindt (see Appendix) provide insights into the congressional intent for interpreting the 1961 Wire Act,<sup>136</sup> as well as the 2006 UIGEA.<sup>137</sup>

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135. Professor Kindt's testimony provides an historical platform for economists' recommendations to ban sports gambling and lotteries, and therefore, the testimony should be viewed as it was submitted to the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations.

136. 18 U.S.C. § 1084.

137. 31 U.S.C. § 5361–67. Professor Kindt was the only academic testifying before the House Judiciary Committee reviewing UIGEA before UIGEA went to mark-up and was enacted. His references to flaws in UIGEA are part of his 2018 congressional testimony.

APPENDIX

Prof. John Warren Kindt  
University of Illinois  
Prepared Statement  
Before the Subcommittee on Crime, Terrorism, Homeland Security, and  
Investigations  
U.S. House of Representatives Committee on the Judiciary  
Legislative Hearing  
“Post-PASPA: An Examination of Sports Betting in America”  
September 27, 2018

Prepared Statement of Prof. John Warren Kindt<sup>138</sup>

Banning Sports Gambling Activities by Businesses is Easy Fix to Re-Establishing the Goals of PASPA

Mr. Chairman, Ranking Minority Member, Members of the Committee, participants and guests from the U.S. House of Representatives and the U.S. Senate, thank you for your kind invitation to testify before the Subcommittee.

As a University of Illinois professor since 1978 teaching law, economics, and business courses, I believe that a large majority of U.S. academic experts unattached to the gambling industry would concur that via the Commerce Clause, the Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. § 3701

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138. Professor Em., Univ. Ill. at Urbana-Champaign. B.A. 1972, William & Mary; J.D. 1976, MBA 1977, U.Ga.; LL.M. 1978, SJD 1981, U.Va.; former Associate, Program in Arms Control, Disarmament, and International Security, University of Illinois; former Sr. Fellow, London School of Economics.

Professor Kindt has taught at the University of Illinois from 1978-2014, and he has published over 80 academic articles in law reviews, public policy journals, and economics journals. Over 20 of these articles have dealt with gambling issues, and many of these articles are available in PDF format at the online archives of the University of Illinois Library at [www.ideals.illinois.edu](http://www.ideals.illinois.edu). The Committee has permission to reprint and distribute any and all Kindt publications relating to gambling. In this Congressional statement, cites to publications of Professor Kindt serve only as introductions to the hundreds of source materials cited in the footnotes. Professor Kindt is research active, and he is still teaching and publishing.

To avoid conflicts of interest, Professor Kindt and several academic colleagues do not accept consultant fees or honoraria for work in gambling research areas. This statement should be interpreted as representing only the individual views of the author. For historical continuity, portions of this statement mirror *Internet Gambling Prohibition Act of 2006: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the House Comm. on the Judiciary*, 109th Cong., 2d Sess. 20-27 (2006) (prepared statement of Prof. John W. Kindt, Univ. Ill.); *Restoration of America's Wire Act: Hearing on H.R. 707 Before the Subcomm. on Crime, Terrorism, Homeland Security, and Investigations of the House Comm. on the Judiciary*, 114th Cong., 1st Sess. 13-24 (2015) (prepared statement of Prof. John W. Kindt, Univ. Ill.). The author appreciates the insights of 2012 Nobel Laureate in Economics, Prof. Alvin Roth; Univ. Ill. Econ. Chair, Prof. Martin Perry; and Law Prof. Thomas Ulen. Beth Kindt, James Kindt and John Kindt Jr. provided editorial assistance.

*et seq.* has the simple fix of prohibiting corporations and individuals from engaging in sports gambling activities—instead of prohibiting States—which was the gravamen of *Murphy v. NCAA*, 584 U.S. \_\_\_\_ (2018). (Libertarians may eliminate individuals from these restrictions if the bans on businesses are strict.)

Otherwise, sports gambling enterprises will destabilize Wall Street by creating a “Wild West” Wall Street environment. The Great Recession of 2008 was caused in large part by the elimination of the anti-gambling restrictions via the Commodity Futures Modernization Act of 2000, 7 U.S.C. § 27f (bill § 408). An excellent 12-minute **60 Minutes** summary substantiating these observations is **Financial WMDs**, a.k.a. **Financial Weapons of Mass Destruction**, CBS Network (reporter Steve Kroft, airdate Aug. 30, 2009). Interfacing the issues highlighted by **60 Minutes** with the push for sports gambling reveals the dangers of real-time sports gambling on cell phones which can be manipulated to interface with the trading of stocks and financials—also via cell phones. Internet sports gambling is “impossible to regulate” and can only be banned, pursuant to findings of the Congressional U.S. National Gambling Impact Study Commission, Final Report (June 1999) [hereinafter U.S. Gambling Commission ], at <http://govinfo.library.unt.edu/ngisc>; see, e.g., *id.*, chap. 5 & recs. 5.1 to 5.4. See also, The Wire Act, 18 U.S.C. § 1084 (sponsored by U.S. Att’y Gen. Robert F. Kennedy, 1961); John W. Kindt, op-ed., *SCOTUS Decision Creates a ‘Wild West’ for Sports Gambling*, The Hill, May 14, 2018 (online edition), at <https://thehill.com/opinion>.

Pursuant to the *Murphy* decision, sports gambling promoters project that eventually a gambler theoretically will be able to take a laptop, personal computer, or cell phone and—just like automatic bill pay—tie into a person’s day trader accounts, stock accounts, IRAs, Roth IRAs, 401(k)s, college savings accounts, checking accounts, and other monetary accounts.

Internet sports gambling places the most addictive form of gambling as real-time gambling at every school desk, at every work desk, and in every living room—making it easy to “click your phone, lose your home” or “click your mouse, lose your house.”

Under *Murphy*, my 11 grandchildren will soon be able to drain their accounts and go into debt. My college students and colleagues claim they can circumvent any industry safeguards and that they are only deterred by legal penalties.

However, won’t sports gambling companies be tempted, if not compelled eventually, to bundle the 11 debtor accounts of my grandchildren and others—like subprime mortgages were bundled to support credit default swaps? Then are we not back at Warren Buffett’s warning of “New Financial Weapons of Mass Destruction”?

These caveats may sound speculative, but the technology is there and if you give our law colleagues several million dollars, they will find a way to legalize “New Financial Weapons of Mass Destruction.” Even more dangerous is the anonymity of Internet sports gambling which will stimulate computer fraud, corruption, and money laundering—per dangerous organizations. To reiterate the

Congressional U.S. Gambling Commission, Internet sports gambling cannot be regulated. The simple solution is for Congress to prohibit businesses from engaging in sports gambling. Decision makers should also beware the numerous so-called “studies” financed directly or indirectly by gambling interests—who will not finance any relevant research that could harm their talking points. *See, e.g.*, David Ferrell & Matea Gold, *Casino Industry Fights an Emerging Backlash*, L.A. Times, Dec. 14, 1998, at A1 (part of investigative series detailing ongoing harassment of academic community by gambling industry).

As warned by the U.S. Gambling Commission, millions of new gamblers will become problem gamblers and go into debt. The medical, psychiatric, and psychological communities widely refer to electronic gambling, particularly Internet gambling, as the “crack cocaine” for addicting new gamblers—including kids and youth who are already showing gambling addiction rates of 4% to 8%—double those of the adult population. *See, e.g.*, Durand F. Jacobs, *Illegal and Undocumented: A Review of Teenage Gambling and the Plight of Children of Problem Gamblers in America*, in *Compulsive Gambling: Theory, Research, and Practice* 249 (1989) [hereinafter Jacobs]. *See also*, U.S. Gambling Commission, *infra*, at 5-5; V. Novak, *They Call It Video Crack*, Time, June 1, 1998, at 58; Charles Walston, *Teens Laying Their Futures on the Line*, Atlanta J.-Const., Feb. 25, 1996, at C4 (reporting 4.5% to 7.5% Ga. teens as addicted gamblers). The U.S. Gambling Commission also reported 100% increases in problem and addicted gamblers were caused by proximity to legalized gambling. U.S. Gambling Commission, *infra*, at 4-4.

Killing personal, business, and institutional finances, Internet gambling is widely known as the “killer application” (a.k.a. “killer app”) of the Internet. *See, e.g.*, William H. Bulkeley, *Feeling Lucky? Electronics is Bringing Gambling into Homes, Restaurants and Planes*, Wall St. J., Aug. 16, 1995, at A1.

As often stated by former Ohio State and NFL quarterback Art Schlichter, who has repeatedly gone to prison for periodically conning millions of dollars from sports friends: “You just don’t understand gambling addiction!” *See, Art Schlichter: All American Fraud*, American Greed, CNBC Network, season 11, episode 14 (recent airdate Sept.3, 2018).

Jesse Jackson predicted many of these serious socio-economic costs when in his Chicago speech on Martin Luther King Day he labeled legalized gambling activities as “the new chains of slavery.” Jackson stated that “The key to achieving King’s dream is to teach ... people to go from ... [legalized gambling] to the markets ... [and] to boardrooms.” Bryan Smith, *‘New chains’ shackle King’s dream*, Chi. Sun-Times, Jan. 19, 1999, Metro Sec., at 1.

As I testified before this Subcommittee on 3-25-15, the perceived loophole in the Unlawful Internet Gambling Enforcement Act (UIGEA), 31 U.S.C. §§ 5301, 5361 *et seq.* (2006) for Daily Fantasy Sports (DFS) needs to be closed. Along with colleagues, I also made this point with Congressional staff before and after my 4-5-06 testimony in favor of UIGEA before this Subcommittee. I specifically remember myself and colleagues stating that gambling interests would leverage any apparently harmless exceptions (as desired by the NFL for

season-long fantasy sports) and drive a truckload of unforeseeable negative consequences through any exception. Concurrently, 49 State Attorneys General supported the passage of UIGEA (*see* attached Nat'l Ass'n Att'ys Gen. Letter to Congress, Mar. 21, 2006) which became law after passing the House with a favorable bipartisan vote of over 80 percent.

These consequences occurred, as DFS interests initiated online DFS designed to leverage into the current push for ubiquitous online sports gambling. By 2015 DFS was the largest advertiser in the United States. However, by the end of 2015, DFS was the subject of investigations by the U.S. Attorney Offices in New York, Boston, and Tampa. Other criminal justice authorities including two dozen state attorneys general were reviewing various DFS operations. *See*, Prof. John Kindt, op-ed., *Gov. McAullife's Dilemma: The Daily Fantasy Sports Emperor is Wearing No Clothes*, Richmond Times-Dispatch, Mar. 5, 2016, editorial page.

In October 2015, N.Y. Attorney General Eric Schneiderman declared DFS illegal. He was soon joined by the attorney generals of 11 other states including Illinois, Texas, Alabama, Georgia, Hawaii, Mississippi, Nevada, South Dakota, Tennessee, Idaho, and Vermont. Historically, DFS had also been banned in Arizona, Louisiana, Montana, Washington, and Iowa. *See, e.g., id.*

With billions of dollars at stake, DFS lobbyists needed to manufacture the color of legality by misdirecting naïve legislators in enacting sham legislation “regulating” DFS—such as in Virginia where DFS was first “legalized” without any significant opposition being allowed to testify before the legislature. Ironically, former U.S. Representative Frank Wolf (R-Va.) was a sponsor of the Congressional U.S. Gambling Commission which called for severe restrictions on sports gambling and a total ban on Internet gambling, concluding it was impossible to regulate. *See, id.*

The point is that Congress ignored the many and obvious caveats of the academic community.

Congress is now in the same position with sports gambling. Since 2015 major networks both on air and behind the scenes have been arguing for bizarre sports gambling financial instruments. *See, Real Sports with Bryant Gumbel*, Home Box Office Network, Sept. 24, 2014 (original airdate). For example, in 2014 HBO's sports commentator Bryant Gumbel suggested that sports gamblers were “doing the same as a day trader, but in a different kind of stock market.” Gumbel's co-reporter Carl Quintanilla concurred that fantasy sports is a “stock market,” and according to Quintanilla fantasy sports gamblers

talk about athletes like commodities. They're able to track past performance, see how ... [the athletes] operate or perform in various patterns, and ... [the sports gamblers] know if I want to sell ... or buy .... That's how you trade a stock. *Id.*

The trend is to “[i]nvest in a sort of hedge fund that trades fantasy sports.” *Id.*

As the U.S. Gambling Commission and the academic community have warned for years, the international markets are now evidencing the emergence of

bizarre financials predicated most recently on the “loot boxes” and “skin games” of video games which have attained real-world value, can be moved off the games to third-party sites and can be gambled via platforms, such as YouTube (to children of all ages).

However, in 2017 the gaming industry’s sham watchdog, the Entertainment Software Rating Board (ESRB), “declined to classify loot boxes as a form of gambling.” Jean Carter, *EU Regulators Form Coalition to End Gambling on Video Games*, Sept. 19, 2018, at <https://www.usaonlinecasino.com>. For example, “skins became their own sort of currency, with money deposited converted to points to trade in skins [including gambling], but with no way to [*sic*] withdrawel credits and convert them back into real money.” *Id.* Consequently, 15 countries and government entities in the European Union (EU), as well as the State of Washington, have formed an international coalition to take regulatory action. *Id.* The EU countries and government entities include the United Kingdom, Ireland, France, Spain, Portugal, the Netherlands, Norway, Poland, Austria, the Czech Republic, Latvia, Gibraltar, Jersey, Malta, and the Isle of Man. *See also*, Philip Conneller, *Washington State Joins Alliance of European Regulators to Challenge Video Game Industry on Loot Boxes*, Sept. 17, 2018, at <https://www.casino.org/news>.

Similar to the loot boxes and DFS fiascos, an even worse Wild West economic destabilization will begin to develop if Federal legislation modeled on PASPA’s goals does not slam the door shut on sports gambling by prohibiting companies from participating in sports gambling activities. Without a ban on sports gambling, numerous experts and Congressional hearings note that there will be widespread corruption of state decision makers, massive money laundering to deleterious organizations, and gaming companies addicting numerous kids via Internet gambling—the “crack cocaine of gambling addiction” (beginning with loot boxes).

Internet gambling is an issue of strategic financial stability and Wall Street regulation. It is not an issue of electronic poker, daily fantasy sports gambling, and other gambling methodologies—which are actually proposals to leverage gateways for legalizing various gambling activities throughout international cyberspace.

