

SNEAKY ELECTION PLOY PUTS VULNERABLE AT RISK

BY RICK SMITH AND KEITH FURLONG

After a decade of false starts, anti-gambling forces in the U.S. Congress have finally succeeded in passing a specific ban on Internet gambling. Literally at the dead of night, without debate and far from public scrutiny, Republican leaders in Congress added an Internet gambling prohibition bill to completely unrelated, but important, legislation on port security. President George Bush made it official on 13th October 2006 when he signed the Port Security Bill.



The Senate majority leader at the time the bill was signed was Bill Frist (Republican-Tennessee). He had attached anti-Internet gambling language to the port security measure several hours before Congress adjourned on 30th September for its election recess. The language generally followed the language of the Unlawful Internet Gambling Enforcement Act (UIGEA) that had been passed by the House in July 2006. However, the Senate had not even held hearings on the measure.

As it turned out, the opponents of Internet gambling would not have succeeded without sneaky political plays by Frist. In the 7th November mid-term election, Republicans lost control of not only the House, but the Senate as well. Although some Democrats are also opponents of this form of gambling, many feel that the UIGEA would not have come close to passing in this current session of Congress, which began on 4th January.

The leading prohibitionists are opposed to all forms of gambling, a position rooted in their moral and religious beliefs. In specifically targeting Internet gambling, they contend that minors and compulsive gamblers become addicted, leading to a variety of social ills. What prohibitionists fail to note is that regulations supported by the online gaming industry would better address and in many cases alleviate these concerns.

In fairness, it is important to realise that not all supporters of prohibition are religious-right zealots or fundamentalist Christian extremists. In the U.S. Senate, for example, Dianne Feinstein, a moderate California Democrat, and Mark Pryor, a moderate Arkansas Democrat, have been very supportive of attempts to ban Internet gambling.

Online gambling opponents gained momentum by revelations that disgraced lobbyist Jack Abramoff had arranged payment to Rev. Louis Sheldon of the Traditional Values

Coalition to help defeat an anti-Internet gambling bill in 2000. Sheldon had urged Christian-right members of Congress to vote against the anti-Internet gambling bill because it had exemptions (known as carve-outs) for horseracing, lotteries and other activities, and therefore could be perceived as actually expanding legal online gambling. When informed later that he had received funding from Abramoff, Sheldon claimed that he was unaware and shocked. Abramoff, who is now in federal prison, had been lobbying on behalf of an online lottery company.

Interestingly, leading up to the passage of UIGEA, public reaction to prohibition bills had not been particularly warm. Various polls found between 70 and 85 percent of respondents opposing prohibition efforts. On 9th June 2006, the *Los Angeles Times* took Congressional representatives to task in an editorial staunchly opposing an all-out prohibition of online gambling. The *LATimes* found prohibition legislation to be an unnecessary burden on financial firms, which would be banned from having their services used for electronic betting. The editorial also criticised Congress for an inherent hypocrisy, considering the continued exemption for online wagering on horseracing, which, thanks to a powerful lobby, has seen a half-decade of legal safeguard in the U.S.

The West Coast's largest newspaper further questioned the priorities of Congress in focusing on the banning of online gambling at a time when the nation faced so many political and social problems. The *LATimes* agreed with many leading gaming industry advocates that regulation instead of a ban on online gambling was a proper answer to the issue, citing Britain's recent legalisation of Internet gambling as a role model for Americans.

Neil Cavuto, lead business commentator for the right-wing Fox News, interviewed Rep. Robert Goodlatte (Republican-Virginia) about his legislation (Fox News, 12th June, 2006). Goodlatte had sponsored an anti-Internet gambling bill whose main points became part of UIGEA. Cavuto, generally considered an ally of the conservative cause, did not let Goodlatte off the hook for the flaws in his bill. Cavuto questioned the necessity of the legislation, as well as the severe penalties that could be incurred for not following the proposed new law. He even compared some of the proposed punishments for participating in Internet gambling to those given to people involved in child pornography sites.

The leader of the anti-Internet gambling movement in the House of Representatives last year was Rep. Jim Leach (Republican-Iowa), often regarded as a moderate and someone who was disliked by religious conservatives within the Republican Party. Leach had enlisted the help of Frist to assist in the passage of his legislation in the Senate. Leach's bill stood little chance of passage as a stand-alone bill in the Senate. But Frist, with the help of then-House Speaker Dennis Hastert (Republican-Illinois), pressured the conference committee chairman to insert it in the SAFE Ports Bill. Because of the importance of the SAFE Ports Bill, members of Congress would have been hard pressed to vote "no".

Although Leach was a 30-year veteran of Congress, he was defeated in his re-election bid in November (by 51 percent to 49 percent of votes cast). Leach publicly said he was defeated because his district was "the most Democratic district represented by a Republican, and I knew if there was a tidal wave, it was inescapable". His defeat was "the most surprising defeat of the night" and the successful Democrat had not even prepared a victory speech. (*American Banker*,

9th November 2006). Predictably, supporters of online gambling claimed that they played a major role in Leach's defeat ("Online Gamblers Worked to Defeat Sponsor of Anti-Gambling Legislation," COMWEB, 9th November 2006).

Another prominent anti-Internet gambling representative who was defeated in the 2006 election was Rep. Sue Kelly (Republican-New York), who unlike Leach, was seen as a Bush loyalist. As chair of the House of Representatives Subcommittee on Oversight and Investigations, she expressed her opposition to Internet gambling in July 2001: "While Internet gambling represents a jackpot for such foreign jurisdictions, it is a wheel of misfortune for far too many Americans who struggle with gambling addictions and the loss of jobs, wrecked marriages and destroyed finances that often follow." Goodlatte, a long-time crusader against Internet gambling, had no Democratic opponent and obtained 75 percent of the vote. Despite predictions of a close contest, Senator Jon Kyl (Republican-Arizona), the veteran Senate opponent of online gambling, won reelection easily.

NEW LEADERSHIP: A DEMOCRATIC-CONTROLLED CONGRESS

In the session of Congress that just began, powerful House committees will be chaired by members who are more likely to support regulation of Internet gambling rather than prohibition, members such as Barney Frank (Democrat-Massachusetts) and John Conyers (Democrat-Michigan). While Goodlatte has announced his intention to introduce a new bill to prohibit all Internet gambling by amending the 1961 Wire Act, his bill will probably never make it out of a Democratic-controlled committee in the House.

The fact remains that most members of Congress do not count Internet gambling as a top priority. And some strongly anti-gambling Senators, such as Richard Lugar (Republican-Indiana) may be wary of further complications with the World Trade Organisation over its conclusion that the U.S. was in violation of GATS (General Agreement on Trade in Services) because of the U.S. legalisation of interactive, interstate wagering on horseracing only for domestic organisations. Foreign betting services are excluded from this activity.

Most members of Congress will want to see whether the proscribed 270-day period following the enactment of the UIGEA as part of the Port Security Bill will actually result in regulations to end financing of Internet gambling. There is consensus among many legal experts that the Act has not prohibited anything that was not already illegal.

That could change, however. It is probable that a bill will be reintroduced to establish a commission to determine or recommend whether Internet gambling regulation is feasible. Rep. Jon Porter (Republican-Nevada) is likely to reintroduce his bill to create an Internet gambling study commission. Porter had originally introduced his legislation in the last session of Congress ("Commission to Study the Proper Response of the U.S. to the Growth of Internet Gambling" [HR 5474]). The bill had 50 co-sponsors, but was never considered by the Judiciary Committee. It was, however, supported by the American Gaming Association (AGA).

The Porter study commission bill from the last congressional session would have created nine commissioners — two each would be appointed by the majority and minority leaders of the House and Senate and the eight appointees would then select the ninth member. Should such a bill be enacted into law, it would be helpful if the commissioners

were unbiased experts. The most recent federal gambling study commission, the National Gambling Impact Study Commission, established in the summer of 1996, had nine members, of which four were perceived to be pro-gaming, four were perceived to be anti-gambling and one was objective.

Further, once Great Britain issues Internet gambling licenses in late 2007, it will be difficult to continue to assert that a regulatory body cannot ensure the suitability and solvency of licensees. Furthermore, powerful casino interests such as Harrah's, MGM Mirage and Sun International will continue to push for U.S. licensing and regulation.

WHERE DO FINANCIAL INSTITUTIONS AND OTHER BUSINESSES STAND?

Some representatives of the business community may step up efforts to minimize the impact of the regulations being drafted as a result of UIGEA. Bankers, especially at smaller community-based institutions, have previously expressed concerns about the regulatory burden that would be imposed on them. A group representing 5,000 small banks opposed the Leach legislation last summer for that reason.

The use of U.S. credit cards for online gambling transactions had already been largely shut down during the last few years by major card-issuing banks, either on their own initiative or in reaction to pressure from state and federal officials. But UIGEA, in also outlawing cheques and electronic fund transfers, creates a burdensome technical problem for banks. Credit card transactions get codes that describe their general nature, and a bank can use software to block transactions with specific transaction codes. But the billions of cheques and electronic transfers that occur each year are not coded in the same manner. The system for clearing these transactions was not designed to identify the nature of the transaction. UIGEA gives federal officials 270 days, from 13th October, to figure out how to implement the new prohibitions without adding undue burdens to the regulatory requirements of banks. It is not just the small-bank lobbying group that doubts whether this can be done.

The AGA, while officially neutral on prohibition legislation, published a white paper on the issue in May 2006 that recommends a review committee. Further, two of the world's largest casino companies — Harrah's and MGM Mirage — have publicly stated support for licensing and regulating online gambling, believing that online gambling offers attractive synergies with their existing brick-and-mortar casino businesses. MGM Mirage even experimented with an online casino that was based in the Isle of Man, but closed the site in June 2003 because excluding American players, a measure required by American regulators, made the operation unprofitable. In December 2006 Las Vegas Sands Corp. announced that an agreement has been reached between one of its affiliates and Cantor Gaming, an affiliate of the global financial services company Cantor Fitzgerald, to launch an online casino and poker site initially aimed at serving the UK market, to be licensed in Alderney.

Major American financial institutions, including Goldman Sachs, Morgan Stanley, Fidelity and Merrill Lynch, also have an interest having made significant investments in online gaming firms based outside the United States. Some of these companies also lost an opportunity for significant investment banking revenue when they couldn't participate in initial public offerings of some of these firms.

Individual American players are still free to gamble online under the UIGEA; the prohibition bill does not make it a crime for the individual participant. The focus of the bill is on the "financial transaction provider" — which covers the companies involved in getting money from the player to the operator of the gambling site, and vice versa.

American players, who are believed to account for half of all online gambling activity, can continue to play without fear of federal prosecution. Some of their favourite sites may no longer accept their wagers, however, as most of the publicly traded online gambling companies stopped taking American bets after passage of the UIGEA.

The fact is that this new law doesn't do anything to protect American consumers who choose to enjoy Internet poker and other games, and the immediate effect is to drive the industry further underground. Gambling sites will devise new methods for getting money from players, who have shown a resilient demand for this type of entertainment. The sad thing is that many of the largest and most responsible companies have already walked away from the U.S. market.

The IGC contends that the U.S. action is a classic case of unintended consequences. In the guise of protecting vulnerable Americans — minors who want to gamble and adults who can't control their gambling — Congress has actually heightened the risk to these groups. It has driven away the operators who followed the most socially responsible practices. It has also increased the possibility of online gambling being used for money laundering, because it has outlawed the most easily tracked methods of payment.

While we recognise that the Internet provides unique challenges to the regulation of any activity, including simple retail transactions, Congress demonstrated no interest in even studying such issues. Political motives clearly drove its rush to pass a prohibition bill, as its members left Washington to hit the campaign trail. This was a sneaky election ploy, and it's no coincidence that a ban on Internet gambling was part of the "family values" platform of the extreme right, which hoped to distract voters from real issues, such as the war in Iraq. If there was any good news, it was that the election year ploy did not play out in terms of election victories. [CGI](#)

■ Professor Joseph Kelly assisted with this article.

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IGC is the leading trade association — formed in 1996 — for the international interactive gaming industry, with its members operating, or supplying services to, most of the reputable gaming and wagering sites on the World Wide Web. Additional information about the IGC, including membership details, can be found at the association's web site, www.igcouncil.org.