

## Alert | Gaming



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# Post PASPA: An Examination of Sports Betting in America

## Background

The House Judiciary Subcommittee on Crime, Terrorism, Homeland Security, and Investigations held a hearing yesterday titled, “Post PASPA: An Examination of Sports Betting in America.” Subcommittee Chairman Jim Sensenbrenner (R-WI) heard testimony from the following witnesses: 1) Jocelyn Moore, executive vice president for communications and public affairs, National Football League; 2) Les Bernal, national director of Stop Predatory Gambling; Sara Slane, senior vice president of public affairs at the American Gaming Association; 3) Jon Bruning, counselor for the Coalition to Stop Online Gambling; and 4) Becky Harris, chair of the Nevada Gaming Control Board.

Members of Congress attending the hearing included: Subcommittee Chairman Sensenbrenner, full Committee Chairman Bob Goodlatte (R-VA); full Committee Ranking Member Jerry Nadler (D-NY); Rep. Cedric Richmond (D-LA); Rep. Val Demmings (D-FL); Rep. Hakeem Jeffries (D-NY); and Rep. Martha Roby (R-AL).

## Opening Statements and Witness Statements

**Chairman Sensenbrenner** clearly believes that Congress needs to step in and address online sports betting. He laid out three potential options that are under consideration in the “post-Murphy” environment, including: (1) reenact a federal ban on sports betting by prohibiting corporations (and not states) from engaging in sports betting activities; (2) have Congress defer to the states and allow states to

legalize and regulate the business; or (3) have Congress adopt uniform minimum standards to provide guidance to states that choose to legalize. However, Mr. Sensenbrenner made clear that his personal belief is that the temptation to “throw” games is so great that the expansion of the sports wagering market puts the integrity of the game at risk. Additionally, he wants any possible solution that Congress may consider to protect minors and to protect the game.

**Full Committee Chairman Bob Goodlatte (R-VA)** believes that online gambling can be more destructive to families than brick-and-mortar casinos, and while he remains a proponent of states’ rights, he recognizes that the internet, in his words, “doesn’t know borders.” Additionally, he does not think that federal agencies have done a proper job enforcing the Unlawful Internet Gambling Enforcement Act (UIGEA) to date, and it may be time for Congress to engage again on this issue.

**Full Committee Ranking Member Jerry Nadler (D-NY)** noted in his opening statement that there is already a huge volume of sports betting happening in the U.S., and that sports betting has long been a part of American culture. Further, according to Mr. Nadler, enacting laws to prohibit online sports betting will not prevent illegal activity. However, as more states move to allow online betting and attempt to create a regulatory system for such activity, there is a role for Congress to play in examining these issues to ensure game integrity and consumer protections.

**Jocelyn Moore from the NFL** testified that the absence of a “clear and enforceable set of legal standards for sports betting threatens the integrity of our nation’s professional and amateur sporting contests,” and called on Congress to create a new statutory and regulatory system for sports betting in the U.S. She argued that without federal oversight, sports leagues and state governments will not be able to protect the “integrity” of the game. Specifically, the NFL suggests a regulatory program that ensures a legal and regulated framework for bettors with safeguards for consumers; provides law enforcement with the necessary monitoring and enforcement tools to go after bad actors in the U.S. and abroad; and protects NFL content.

Therefore, the NFL suggests the need for federal legislation that: (1) establishes key criteria for state regulatory entities; (2) prohibits sports betting for individuals under 21 years of age; (3) requires use of official NFL and other official league data as standard for use in betting; (4) precludes betting on “risky” events that are more susceptible to match-fixing and are not contingent on the final score; (5) prohibits individuals who do jobs that allow access to insider information (players, coaches, referees, team administrators, union workers associated with organizations, family members, etc.) from betting; and (6) establishes support services for problem gamblers. Ms. Moore made additional suggestions to enhance monitoring and enforcement capabilities of the league and state and federal law enforcement agencies.

**Les Bernal from Stop Predatory Gambling** opposes government involvement – at any level – in gaming activity. He regards the entire industry as a “con” and argued that gambling ruins American lives and income. He opposes all online gaming – both legal and illegal.

**Sarah Slane from the American Gaming Association (AGA)** testified that there is no need for further federal oversight or for Congress to step into the process. AGA believes that states and tribes are capable of working with all stakeholders to ensure a safe and regulated industry. AGA believes this is necessary to maintain a successful industry since Ms. Slane categorizes sports betting as a “low-margin” business. She noted that the U.S. Supreme Court decision to overturn PASPA, as discussed in a [previous GT Alert](#), accomplishes five major public policy goals: (1) consumers can now opt out of the illegal market and move to the legal market; (2) a regulated industry creates increased transparency in the marketplace; (3) a legal marketplace ensures provisions to protect consumers; (4) a regulated and enforced market

increases game integrity; and (5) new jobs and tax revenue are generated from the creation of a legal online gaming.

However, AGA believes the industry can take proactive steps as the states continue to build a marketplace. Specifically, Ms. Slane believes the industry should continue efforts to promote responsible gaming and continue to enhance the AGA Responsible Gaming Code of Conduct, which affirms the industry's commitment to protecting consumers and promoting "responsible play." She also highlighted the industry's commitment to a robust employee training program and a commitment to treatment and research initiatives as well as public awareness campaigns and responsible marketing and advertising programs.

Ms. Slane testified that AGA is also committed to ensuring game integrity and has had productive discussion to date with the leagues about the creation of an integrity monitoring association to provide a system of enhanced reporting to the leagues. States and tribes will also need to work with law enforcement officials to ensure game integrity and work to combat the illegal market.

Finally, AGA objects to any government interference into contractual agreements among private business entities. Specifically, AGA opposes any attempt to use federal or state legislation to establish the commercial terms of a contract. For example, legislative efforts to mandate that every sportsbook contract be with only one official data company could allow for individual companies to set inflated prices for their services. Further facts and statistics, such as the score of a game, do not qualify as intellectual property and should not be treated as such.

Ms. Slane highlighted the work that Nevada has done in this space, commending the state for getting it "right." She noted that the gaming industry is already one of the most regulated industries in the country, and states and tribes beyond Nevada are capable of taking the necessary steps to ensure a safe and regulated industry where the rules are enforced.

**Jon Bruning, managing partner of the Bruning Law Group and the former attorney general of the state of Nebraska, speaking on behalf of the Coalition to Stop Online Gambling,** provided a more cynical view of what the states and tribes are capable of. He argued that a system that relies on states and tribes for regulation is untenable because the internet has no borders, and it is impossible as a legal entity or an illegal entity to ensure that only individuals of legal age are participating, that the system isn't being used by criminals to raise and launder funds; and that winnings from illegal online activity isn't being used for nefarious purposes such as terrorism. Therefore, he believes that Congress must step in to ensure existing provisions under UIGEA are better enforced and to pass legislation to restore the Wire Act, affirming that the Wire Act does apply to all forms of online gaming (contrary to the Department of Justice opinion limiting the Wire Act to sports wagering).

**Chair Becky Harris of the Nevada Gaming Control Board** was the last witness to testify before the Subcommittee. **Her statement** largely focused on all the steps the state of Nevada has taken to ensure a safe and regulated environment for gamblers over the past six decades. She highlighted various issues the state considers to be critical in ensuring a viable legal online betting industry in Nevada and in other states and tribal lands, including: (1) ensuring the integrity of the game; (2) ensuring a reasonable tax structure; (3) understanding that the efforts to combat illegal online operators must be ongoing and will be needed regardless of whether or not there is federal legislation; (4) utilizing technology that adheres to the utmost standards of integrity, accountability and regulatory compliance; and (5) making sure that new jurisdictions entering the online market enact the necessary steps to address the challenges of individuals not able to game responsibly.

## Questions and Answers

**Chairman Sensenbrenner** asked the panel why an online bettor would bet through a legal operation when it is so easy to use an illegal outfit. Ms. Slane argued that surveys of Americans prove that 70 percent of online bettors have indicated a desire to move to a legal market. However, former Attorney General Bruning noted that there is nothing in place that can prevent a 14-year-old from using his smart phone, lying about his age, and using his father's credit card to rack up hundreds of thousands of dollars in debt in a matter of days. And if the online company is offshore, there is no ability by state law enforcement to take any steps to prosecute the illegal activity.

**Ranking Member Nadler** acknowledged that illegal gaming cannot be stopped but asked the committee if that fact should be balanced against creating a regulated industry. Mr. Bernal argued that the government should not be in the business of profiting from gaming and that gaming entities should not be allowed to use marketing and advertising to attract new customers. Ms. Slane and Chair Harris disagreed, arguing that a regulated industry ensures a level of enforcement to target bad actors.

**Chairman Goodlatte** asked the panel to provide assurances that state regulators can tell if a player is of age and not a child; he then answered his own question by noting that he believes this type of enforcement is impossible. And as previously mentioned, he believes the only way to address his concerns is to ensure that UIGEA is better enforced and the Wire Act is modernized. Chair Harris argued that she has jurisdictional concerns with respect to any attempt to modernize the Wire Act. Chairman Goodlatte also went on to claim that lawyers within the Obama-era Department of Justice flipped the DOJ's interpretation of the Wire Act and then proceeded to seek jobs within the gaming industry.

**Rep. Richmond** focused on the controls that can be placed on a debit card over a credit card as a safeguard against problem gamblers running up credit card balances that cannot be repaid. Chair Harris explained that Nevada works with financial institutions to ensure certain limits.

**Rep. Demmings, Rep. Jeffries, and Rep. Roby** all focused on how to ensure integrity within the game and raised concerns for the personal safety of players and referees, etc. and their family members. Ms. Moore agreed that protections are needed to safeguard these individuals beyond the game, which is why a federal framework is necessary. Rep. Jeffries was also interested in the role exotic betting has on game fixing, but Chair Harris noted that in Nevada, what is often deemed to be "exotic wagering" is not allowed.

## Conclusion

Subcommittee Chairman Sensenbrenner concluded the hearing by noting that he believes that Congress needs to engage on this issue and to look at both a short and long solution, but he didn't elaborate on what that may be. No further action was taken by the Committee.

As a reminder, the House will recess today and is not expected to return until after the midterm elections.

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