



**Testimony of David Cookson,  
Counsel to the Coalition to Stop Internet Gambling**

Mr. Chairman, members of the committee, thank you for allowing me the opportunity to present testimony on behalf of the Coalition to Stop Internet Gambling (CSIG). CSIG strongly opposes legislation before the Regulatory Reform Committee authorizing a new form of gambling in Michigan – Internet gambling.

CSIG is a national effort to oppose Internet gambling at the state and Federal levels. Before I discuss CSIG's substantive and principled opposition to Internet gambling, it is important to review the shaky Federal and state legal framework upon which Internet gambling efforts are based – a framework being reviewed by the Justice Department at this time.

Since the day Federal Wire Act was signed in 1961, the Department of Justice had consistently interpreted the law as covering all forms of gambling – whether it be on sports, horses, or casino games. The US Attorney General at the time of its passage knew full well what the bill meant. In fact, it was his Department that proposed the original version and then worked with Congress as they revised the text of the bill.

In 2006, Congress, to give law enforcement the tools to shut down online poker and other forms of Internet gambling, reinforced this interpretation when it enacted the Unlawful Internet Gambling Enforcement Act or "UIGEA." This law prohibits any gambling business from knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the Internet. It did not legalize state-based Internet gambling.

In 2011, an attorney in the Obama Administration quietly issued a legal opinion that went around Congress and reinterpreted the Federal Wire Act of 1961. The legal opinion was issued by the Office of Legal Counsel – or "OLC." It concluded the law covers only bets on sporting events and contests. Congress changed no laws. No Federal court issued a decision. No new rules were promulgated. And, as the author of the Opinion, then-Assistant Attorney General Virginia Seitz later conceded, "it is just that -- an opinion."

As former Attorney General Loretta Lynch confirmed during her confirmation process, OLC legal opinions do not carry the force of law. They do not change the law. They can be withdrawn at any time. To that point, President Obama's Justice Department did just that with several Bush Administration legal opinions. And, OLC opinions issued by the Justice Department are not "grandfathered."

In January of this year, Senior Justice Department Officials made clear their intention to “revisit” this Obama Administration OLC opinion. And a bipartisan group of Senators including Senator Graham, Senator Feinstein and Senator Warner have urged the OLC to reverse the opinion.

If the OLC opinion is withdrawn, no online casino sites would be grandfathered or protected from prosecution – or civil liability – regardless of when they were authorized. Withdrawal would return the DOJ to the original, longstanding interpretation of the Wire Act, under which the Act could be enforced against sports and non-sports online gambling sites alike. Should any gambling sites remain in operation following such a decision, they risk being shut down by the federal enforcement, regardless of when those sites were authorized.

The administrative overreach of the OLC’s opinion, the shaky Federal legal basis for Internet gambling, the announced intention to “re-visit” the OLC opinion and the inability to “grandfather” OLC opinions should give this legislature pause for any action on Internet gambling at this time.

Beyond the federal issues, the language being discussed today raises serious state constitutional issues. Former Solicitor General John Bursch has authored a legal opinion for CSIG which accompanies my testimony. In that opinion, he states that any Internet gambling legislation triggers proposition 1 of 2004, requiring the authorization of any new form of gambling to be approved by “a majority of electors voting in a statewide general election”. Furthermore, Proposition 1 requires an election of the “majority of electors voting in the township or city where gambling will take place”. Since Internet gambling under this Bill would be allowed essentially in every township and city in our state, each local municipality would be constitutionally required to hold an election on this issue. This raises a host of questions about enforcement and preventing illegal gambling in communities that do not approve online gambling, questions that would make any Internet gambling system unmanageable.

Some testifying today or lobbying you in this will tell you that Internet gambling is a great help for Michigan’s budget or a revenue source for a much needed tax cut. Let me be clear, no state that has authorized Internet gambling has experienced a windfall in tax revenue and no state has been able to generate enough money from Internet gambling to cut taxes. In fact, in every state the estimates of tax revenue from Internet gambling has been measured, weighed and found to have come up wanting!

The Senate’s own Fiscal Agency has stated, “It is difficult to accurately estimate the impact of Internet gaming on State revenue”. The Senate Fiscal Agency went so far in their analysis to point out the numerous pitfalls and potential negative impacts to the state budget - the potential loss of tribal casino compact payments, and the loss of revenue to the school aid fund resulting from reduced lottery sales just to name two.

We concur with Senate Fiscal Agency. Last year, CSIG commissioned an independent fiscal analysis, which confirmed the Senate Fiscal Agency's analysis. The potential downside of Internet gambling far outweighs the upside. For example, if the lottery were to lose just 1% of its revenue to Internet gambling, the School Aid Fund would suffer a \$ 7.5 million loss. We have provided the Committee with a copy of that analysis.

Beyond the problematic Federal and state legal justification and budget shortcomings, CSIG has principled and deep opposition to allowing casino companies to put a virtual slot machines in every home in the state and video poker on everyone's mobile devices.

Internet gambling is a threat to families and children. Supporters of expanded gambling in Michigan will say that there is technology that can protect children and families from getting access to internet gambling sites. There is no way to prevent a legal player from letting a child use their device to gamble.

There is no way to guard against a child using their parent's password to access online gaming sites. The largest and most successful Internet companies can't restrict child access. In 2014, Apple agreed to provide full refunds to customers, paying \$32.5 Million to settle an FTC complaint that the company billed consumers for millions of dollars of charges incurred by their children, without their parent's consent. If Apple can't fully prevent purchases by minors on their APP Store, what makes us believe that we can protect Michigan's children from accessing internet gambling sites.

Lost in this discussion are recent advances in technology that poise a fundamental issue over the fairness of Internet gambling. Scientists in Pennsylvania, at the Pittsburgh Supercomputer Center, this January, built an artificial intelligence "bot" which just recently beat four of the world's best poker players over a 20-day tournament. The bot won \$1.8 Million.

One of the poker pro's stated "It's the toughest opponent I've ever played, and I'm not being generous. It's stomping us out."

Despite claims to the contrary, common sense and a reading of the headlines tells us all we need to know about Internet safety. The Internet gambling industry has little ability to guarantee that our children are safe and that their customers are not playing against "bots" that they cannot possibly beat. If they have figured out how to make the Internet safe, then maybe they should let the Pentagon, and companies like Apple and Equifax in on their secret.

In summary, the federal basis for the authorization of Internet gambling as a form of legal gaming in Michigan is shaky at best. The authorization of Internet gambling as a form of gaming in Michigan would require a statewide ballot approval and elections in every township and city in the state. Authorizing Internet gambling is not a windfall to the state budget that will lead to greater revenues which could be used for a tax cut. Rather, Internet gambling poses a real threat to the School Aid Fund. Internet gambling is a threat to the integrity of legal gambling in Michigan. And most importantly the Internet gambling is no less secure and some would argue even less so today than it has ever been and most definitely, is a threat to Michigan families and our children.