

The Wire Act Was Already Restored

The Trump administration doesn't need to restore the act, a 2011 legal opinion already did

In his April 24 op-ed (<http://www.washingtonexaminer.com/restore-the-wire-act/article/2621030>), lobbyist Jon Bruning presented several alternative facts about our nation's gambling laws and history. The most egregious error was his assertion that a 2011 opinion issued by the Office of Legal Counsel in the Department of Justice amounted to a reinterpretation of the 1961 Wire Act and that the Trump Administration — presumably newly minted Attorney General Jeff Sessions — must act to “restore” the Act to its original intent. The reality, however, is that the 2011 legal opinion already did that.

When Congress enacted the Wire Act, there was no doubt about its intent, as I detailed in an exhaustive 2014 University of Nevada, Las Vegas study (http://gaming.unlv.edu/papers/cgr_op29_minton.pdf). As then-Attorney General Robert F. Kennedy—who wrote the bill—testified multiple times, it was meant as a tool for the federal government to assist the states in the enforcement of their laws. The point was to target the mafia's sports gambling operations that, via the use of the telephone, operated across state lines and thus out of the reach of state law enforcement. It was not, as Bruning and others now want to believe, meant to create a new and broad prohibition on all Internet gambling.

Congress clearly understood the limited nature of the Wire Act when it enacted the bill. In Senate hearings, for example, Chairman Estes Kefauver asked Deputy Attorney General Herbert J. Miller if the Wire Act applied to lotteries conducted over the phone, to which Miller responded that it would not since the Wire Act was “limited to sporting events or contests.”

But years later, the Department of Justice under President Bill Clinton decided that the Wire Act applied to Internet sports gambling, even though the Internet hadn't been invented when Congress enacted the law. Later still, under President George W.

Bush, the DOJ also decided — without providing any rationale — the law also suddenly prohibited all forms of gambling, not just sports betting.

This confusion came to a head when two states asked the DOJ if it believed intrastate online lotteries would be a violation of the Wire Act. After two years of reviewing historical documents, case law, and the language of the law itself, the Office of Legal Counsel—the highest division within the DOJ — notified the states that so long as their gambling did not relate to sporting events, the Wire Act did not apply.

This clarification freed states to legalize and regulate Internet gambling, which three, Nevada, New Jersey, and Delaware, did. It also created a new form of competition for certain land-based casinos that did not wish to enter into the Internet gambling fray. And for the last four years, Bruning's client — casino owner Sheldon Adelson — has tried to convince Congress of the need to enact his bill, the Restoration of America's Wire Act, which would rewrite the 56-year-old law, creating a federal prohibition on Internet gambling that never existed.

Surprisingly, the greatest push-back on the bill came from Republicans who saw it as a violation of states' right to make decisions about whether or not to legalize certain forms of gambling within their borders, whether online or off. Many of them rightly viewed RAWA as a dangerous, precedent-setting measure that would make any form of online commerce vulnerable to federal interference and rejected it.

Failing to pass a bill, Bruning and his ilk now turn to the executive branch, demanding that Trump's DOJ do exactly what they've been criticizing the previous administration for: bypassing the uncooperative Congress and unilaterally reinterpreting the Wire Act to create the igambling prohibition they desire. Even for Washington, that's pretty low. ■



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Minton has coauthored numerous studies, including topics like the effectiveness and unintended consequences of sin taxes and history of gambling regulation. Her analyses have been published and cited by nationally respected news outlets such as the New York Times, the Wall Street Journal and USA Today as well as industry blogs and publications. She regularly appears on news media to discuss the effects regulation has on individual's health and economic well-being and to propose more effective means of achieving public health goals while protecting the rights of individuals. In addition to her work at CEI, Minton is also a visiting fellow at the Maryland Public Policy Institute.