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SUPREME COURT OF THE STATE OF WASHINGTON

LEE H. ROUSSO,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

**SUPPLEMENTAL BRIEF OF RESPONDENT
STATE OF WASHINGTON**

ROBERT M. MCKENNA
Attorney General

JERRY A. ACKERMAN
WSBA No. 6535
Senior Counsel
P.O. Box 40100
Olympia, WA 98504-0100
(360) 586-1520

ORIGINAL

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. STATEMENT OF THE ISSUES1

III. STATEMENT OF THE CASE.....2

 A. Washington’s Gambling Laws.2

 1. Article II, Section 24 of the State Constitution.2

 2. The Gambling Act.2

 B. Factual History.3

 C. Procedural History.....4

IV. ARGUMENT5

 A. Washington’s Prohibition Against Internet Gambling
 Regulates Even-Handedly In The Public Interest And
 Does Not Burden Legitimate Interstate Commerce.....5

 1. Washington’s prohibition against the knowing
 transmission or receipt of gambling information does
 not discriminate against interstate commerce, and
 does not favor in-state interests.6

 2. The State’s legitimate interest in regulating Internet
 gambling does not unduly burden interstate
 commerce.8

 B. Dormant Commerce Clause Analysis Is Inapplicable To
 This Matter Because RCW 9.46.240 Is Complemented
 By Federal Criminal Statutes That Also Prohibit Internet
 Gambling.....13

 1. The Wire and Travel Acts.15

 2. The Unlawful Internet Gambling Enforcement Act.....18

V. CONCLUSION20

TABLE OF AUTHORITIES

Cases

<i>Atherton Condo Ass'n v. Blume Dev. Co.</i> , 115 Wn.2d 506, 799 P.2d 250 (1990).....	5
<i>Berrocal v. Fernandez</i> , 155 Wn.2d 585, 121 P.3d 82 (2005).....	5
<i>Casino Ventures v. Stewart</i> , 183 F.3d 307 (4th Cir. 1999)	14
<i>Champion v. Ames (the Lottery Case)</i> , 188 U.S. 321, 23 S. Ct. 321, 47 L. Ed. 492 (1903).....	14
<i>Cybersell, Inc. v. Cybersell, Inc.</i> , 130 F.3d 414 (9 th Cir. 1997)	12
<i>Doumani v. Casino Control Comm'n of N.J.</i> , 614 F. Supp. 1465 (D.N.J. 1985).....	9
<i>International Shoe v. Washington</i> , 326 U.S. 310 S. Ct. 154, 90 L. Ed. 95 (1945).....	11
<i>Johnson v. Collins Entm't Co.</i> , 199 F.3d 710 (4th Cir. 1999)	9
<i>Maine v. Taylor</i> , 477 U.S. 131, 106 S. Ct. 2440, 91 L. Ed. 2d 110 (1986).....	6
<i>Mt. Hood Beverage Co. v. Constellation Brands, Inc.</i> , 149 Wn.2d 98, 63 P.2d 779 (2003).....	6
<i>Northeast Bancorp., Inc., v. Board of Governors of Federal Reserve System</i> , 472 U.S. 159, 105 S. Ct. 2545, 86 L. Ed. 2d 112 (1985).....	13
<i>People ex rel. Vacco v. World Interactive Gaming Corp.</i> , 185 Misc. 2d 852, 714 N.Y.S.2d 844, 851 (1999).....	16, 17

<i>Perrin v. United States</i> , 444 U.S. 37, 100 S. Ct. 311, 62 L. Ed. 2d 199 (1979).....	18
<i>Pic-A-State PA, Inc. v. Pennsylvania (Pic-A-State I)</i> , 42 F.3d 175 (3d Cir. 1994)	14
<i>Pike v. Bruce Church</i> , 397 U.S. 137, S. Ct. 844, 25 L. Ed. 2d 174 (1970).....	passim
<i>Precision Laboratory Plastics, Inc. v. Micro Test, Inc.</i> , 96 Wn. App. 721, 981 P.2d 454 (1999).....	12
<i>Rewis v. United States</i> , 401 U.S. 808, 91 S. Ct. 1056 (1971).....	17
<i>Rousso v. State</i> , 149 Wn. App. 344 P.3d 243 (2009).....	5, 7
<i>South-Central Timber Dev., Inc. v. Wunnicke</i> , 467 U.S. 82, 104 S. Ct. 2237, 81 L. Ed. 2d 71 (1984).....	13
<i>State ex rel. Schafer v. Spokane</i> , 109 Wash. 360, 186 Pac. 864 (1920).....	2, 8
<i>State v. Gedarro</i> , 19 Wn. App. 826 P.2d 949 (1978).....	9
<i>State v. Heckel</i> , 143 Wn.2d 824, 24 P.3d 404 (2001).....	6, 8, 12
<i>United States v. Cohen</i> , 260 F.3d 68 (2nd Cir. 2001).....	17
<i>United States v. Lombardo</i> , 639 F. Supp. 2d 1271 (D. Utah 2007).....	17
<i>Winshare Club of Canada v. Dep't of Legal Affairs</i> , 542 So.2d 974 (Fla. 1989)	9, 14

Statutes

RCW 7.24	4
----------------	---

RCW 9.46	2
RCW 9.46.010	2, 3, 8
RCW 9.46.240	passim

Other Authorities

15 U.S.C. § 1172(a)	15
15 U.S.C. § 3001(a)(1) (Interstate Horseracing Act).....	15
18 U.S.C. § 1084 (The Wire Act)	15, 19
18 U.S.C. § 1511	15
18 U.S.C. § 1952 (The Travel Act).....	15
18 U.S.C. § 1953(c) (Transportation of Wagering Paraphernalia Act)	15
18 U.S.C. § 1955 (Illegal Gambling Business Act).....	15
18 U.S.C. §§ 1963, 1964 (Racketeer Influenced and Corrupt Business Act (RICO)).....	15
31 U.S.C. § 5361 (Unlawful Internet Gambling Enforcement Act)	15
31 U.S.C. § 5362(10)(A).....	18
31 U.S.C. § 5363.....	18
Act of October 15, 1970, P.L. 91-452, Title VIII, Part A, § 801, 84 Stat. 936	15
Bruce P. Keller, <i>The Game's the Same: Why Gambling in Cyberspace Violates Federal Law</i> , 108 Yale L. J. 1569, 1569-70, 1574-75, 1592 (1999).....	11
Engrossed Substitute House Bill 1031, Laws of 2005, Ch. 369, § 1 (ESHB 1031).....	9, 10

H.R. Rep. No. 109-412, pt. 1	19, 20
HH.R. Rep. No. 967, 87th Cong. 1st Sess. (1961).....	16
Jon Mills, <i>Internet Casinos: A Sure Bet for Money Laundering</i> , 19 Dick. J. Int'l L. 77 (2000)	11
S. Rep. No. 644, 87th Cong., 1st Sess., 2-3 (July 27, 1961).....	17
<i>The Nat'l Gambling Impact Study Comm'n (NGISC)</i> , Executive Summary (June 18, 1999)	10, 11
U.S. Code Congressional and Administrative News 1961, p.2631	16

Constitutional Provisions

U.S. Const. art. I, § 8, cl. 3.....	4
Wash. Const. art. II, § 24	2, 8

I. INTRODUCTION

This case arises from a decision of the Court of Appeals, Division I, which held that Washington's prohibition against Internet gambling does not violate the United States Constitution's Interstate Commerce Clause and, more specifically, the "dormant" Commerce Clause. Analysis of the constitutional and statutory provisions at issue supports that determination. Moreover, those provisions also make clear that Internet gambling is universally illegal, under both federal and state laws, throughout the United States and that there is no lawful commerce that can be "burdened" by Washington's prohibition of such gambling. Accordingly, the State of Washington (the "State") respectfully requests that the decision of the Court of Appeals be affirmed.

II. STATEMENT OF THE ISSUES

1. Is dormant Commerce Clause analysis applicable when Congress has: 1) expressed a clear intent to authorize state criminal laws prohibiting gambling, like RCW 9.46.240, by adopting federal criminal statutes for the specific purpose of assisting in the enforcement of such state laws; and, 2) determined that uniform regulation of the interstate commerce related to gambling is unnecessary?

2. Assuming the dormant Commerce Clause is applicable, does the complete prohibition of all Internet gambling contained in RCW

9.46.240 impermissibly discriminate against interstate commerce?

3. Assuming the dormant Commerce Clause is applicable, do the legitimate local interests advanced by RCW 9.46.240 outweigh any incidental burdens it may impose on interstate commerce?

III. STATEMENT OF THE CASE

A. Washington's Gambling Laws.

1. Article II, Section 24 of the State Constitution.

Washington's people, legislature and courts have long recognized that gambling is a social and economic evil that the Legislature has plenary authority to prohibit or strictly limit. Washington State Const. art. II, § 24;¹ RCW 9.46.010; *State ex rel. Schafer v. Spokane*, 109 Wash. 360, 362-63, 186 Pac. 864 (1920). In fact, as initially adopted in 1889, article II, section 24 of the State Constitution banned all gambling. It was not until 1973 that the Legislature, acting pursuant to a 1972 amendment to the Constitution, enacted The Gambling Act (the "Act"), Chapter 9.46 RCW, which for the first time permitted some specifically limited forms of gambling activities under highly regulated circumstances.

2. The Gambling Act.

The Gambling Act advances a two-fold policy: (1) to keep the

¹ Petitioner Rousso ("Rousso") fails to recognize that the regulation of gambling in Washington is a matter of constitutional dimension, and reference to article II, section 24 of the State Constitution is notably absent from his briefing below.

criminal element out of gambling; and, (2) to promote the social welfare by “limiting the nature and scope of gambling activities and by strict regulation and control.” RCW 9.46.010. In furtherance of this policy, the Legislature directed that “[a]ll factors incident to the activities authorized in [the Act] shall be closely controlled, and the provisions of [the Act] shall be liberally construed to achieve such end.” *Id.* One important provision of the Act, RCW 9.46.240, specifically prohibits the knowing transmission or receipt of “gambling information” through any electronic communication medium, including the Internet.

B. Factual History.

This case was decided below on summary judgment and, for purposes of appeal, the following facts are assumed to be true. Rousso asserts that, prior to June 7, 2006, he used a personal computer to play poker on an Internet website known as Pokerstars. CP 373-74.² Rousso accessed Pokerstars by downloading software and funding a gambling account through a bank-issued debit card. CP 385. Rousso contends that he played poker with individuals located in other states and other countries, but cannot provide their identities. CP 375-76, 386.

² All references to the Clerk’s Papers in this matter are referred to as “CP”. All references to the Report of Proceedings are referred to as “RP.”

C. Procedural History.

In July 2007, Rousso commenced this action by filing a complaint under the Uniform Declaratory Judgments Act, RCW 7.24 *et seq.* CP 3-11. The complaint alleged, among other things, that RCW 9.46.240 violates article I, section 8, clause 3 of the United States Constitution (the “Commerce Clause”). CP 8-10. Rousso later filed a Motion for Declaratory Judgment, arguing specifically that RCW 9.46.240 violates the “dormant” Commerce Clause. CP 17-39. In May 2008, the King County Superior Court considered the parties’ cross-motions for summary judgment and ruled in favor of the State. RP 1-7; CP 207-09.

In ruling, the trial court did not adopt the State’s position that dormant Commerce Clause analysis is inapplicable to this matter. RP 5-6. It did, however, find that RCW 9.46.240 is not facially protectionist or discriminatory and, thus, does not violate the Commerce Clause. RP 4. After applying the balancing test set forth in *Pike v. Bruce Church*, 397 U.S. 137, 90 S. Ct. 844, 25 L. Ed. 2d 174 (1970), the trial court further held that the statute advances a legitimate interest of local concern and that any burden imposed on interstate commerce is merely incidental. RP 4-5.

On June 2, 2008, Rousso filed a Notice of Appeal with the Court of Appeals, Division I. CP 210-11. On March 23, 2009, that court issued an Opinion unanimously affirming the trial court’s decision.

Rousso v. State, 149 Wn. App. 344, 204 P.3d 243 (2009). Rousso filed a Petition For Review that was granted on September 10, 2009.³

IV. ARGUMENT

Washington specifically prohibits individuals and entities within this state from knowingly using electronic means of communication, including the Internet, to conduct gambling activities. RCW 9.46.240. It does so through an even-handed, non-discriminatory prohibition that applies to all electronic gambling communications, regardless of whether the communications are intrastate, interstate, or international in nature. Accordingly, as the courts below correctly held, Washington's prohibition on Internet gambling does not violate the dormant Commerce Clause.

A. Washington's Prohibition Against Internet Gambling Regulates Even-Handedly In The Public Interest And Does Not Burden Legitimate Interstate Commerce.

"Where [a state] statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld [against a dormant commerce clause challenge], unless the burden imposed on such commerce is clearly

³ This Court reviews motions for summary judgment *de novo*, and engages in the same inquiry as the trial court by reviewing the facts, as well as the reasonable inferences from those facts, in the light most favorable to the nonmoving parties. *Berrocal v. Fernandez*, 155 Wn.2d 585, 590, 121 P.3d 82 (2005). Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Atherton Condo Ass'n v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990).

excessive in relation to the putative local benefits.” *Pike*, 397 U.S. at 142. The purpose of dormant Commerce Clause analysis is to guard against state regulation that improperly burdens interstate commerce. *Maine v. Taylor*, 477 U.S. 131, 137, 106 S. Ct. 2440, 91 L. Ed. 2d 110 (1986). The doctrine is implicit in the Constitution’s grant of affirmative authority to Congress to regulate interstate commerce, but States intrude on that federal power only “when they enact laws that unduly burden interstate commerce.” *State v. Heckel*, 143 Wn.2d 824, 832, 24 P.3d 404 (2001).

Under the *Pike* analysis, a reviewing court’s first inquiry is whether the challenged law “facially regulates or discriminates against interstate commerce, or has the direct effect of favoring in-state economic interests over out-of-state interests.” *Mt. Hood Beverage Co. v. Constellation Brands, Inc.*, 149 Wn.2d 98, 110, 63 P.2d 779 (2003). If the statute survives this first step, the court then performs a balancing test in which the local interests advanced by the statute are weighed against the burden, if any, the statute may impose upon interstate commerce. *Heckel*, 143 Wn.2d at 832-33. RCW 9.46.240 easily satisfies both tests.

- 1. Washington’s prohibition against the knowing transmission or receipt of gambling information does not discriminate against interstate commerce and does not favor in-state interests.**

RCW 9.46.240 satisfies the first inquiry under *Pike* because it regulates Internet gambling in an even-handed way. That statutory

provision prohibits all knowing transmission or receipt of gambling information over the Internet in the State of Washington, regardless of whether the conduct occurs during intrastate or interstate communications. As the Court of Appeals observed, the 2006 amendments to RCW 9.46.240 “are facially neutral — they apply equally to gambling information transmitted over the Internet whether such transmission occurs solely between Washington residents or businesses, or instead occurs between Washington residents or businesses and residents or businesses located in other states or countries.” *Rouso*, 149 Wn. App. at 358. Stated even more clearly, “Rouso would be equally guilty of violating RCW 9.46.240 were he caught playing Internet poker with Spokane residents on a website owned by a Seattle business and hosted on a Tacoma server as he would be were he caught playing poker on Pokerstars (a non-U.S. corporation) with residents of Minnesota, Montana, and Moldova.” *Id.* at 358-59.

The Court of Appeals also correctly rejected Rouso’s argument that RCW 9.46.240 favors local businesses by protecting Washington’s licensed card rooms from competition on the Internet. *Rouso*, 149 Wn. App. at 358. Rouso’s argument fails because, as the court observed below, the legislative history of the statute contradicts it. *Id.* at 358 n. 8. In addition, it also fails because *licensed, heavily-regulated* brick-and-

mortar card rooms are not similarly situated to *unregulated, illegal* Internet casinos.

Because RCW 9.46.240 regulates Internet gambling in a non-discriminatory and even-handed manner, it does not trigger heightened scrutiny under the dormant Commerce Clause. Like the “anti-spam” statute at issue in *Heckel*, RCW 9.46.240 prohibits **all** knowing transmission or receipt of gambling information, regardless of whether the communication involves intrastate or interstate commerce. Accordingly, it is non-discriminatory and, therefore, not subject to strict scrutiny.

2. The State’s legitimate interest in regulating Internet gambling does not unduly burden interstate commerce.

Even if it were necessary for the Court to proceed to the second inquiry under *Pike*, RCW 9.46.240 would satisfy that standard as well. Washington’s constitution, the Legislature, and its courts have long recognized the social and economic problems that accompany gambling. *See* Const. art. II, § 24 (prohibiting all gambling, except when approved by a supermajority of the legislature or the electorate); RCW 9.46.010 (recognizing that gambling has a close relationship to organized crime and that close regulation and control of gambling promotes the social welfare); *State ex rel. Schafer*, 109 Wash. at 363 (gambling is a social and economic evil over which the Legislature has broad powers to prohibit or suppress);

State v. Gedarro, 19 Wn. App. 826, 579 P.2d 949, review denied, 90 Wn.2d 1023 (1978) (“Underlying the gambling act, and consonant with the legislative recognition that professional gambling is interrelated with organized crime, are policies which attempt to restrain personal profits realized through professional gambling activities and to discourage participation in such activities”).⁴ Given that Washington has either completely outlawed or strictly controlled gambling since its inception as a state, there can be no doubt that the regulation of gambling in Washington is an issue of legitimate local public interest.

This local public interest in gambling is not merely one of historical significance. As recently as 2005, the Legislature passed Engrossed Substitute House Bill 1031, Laws of 2005, Ch. 369, § 1 (ESHB 1031), to address the negative impacts associated with problem and pathological gambling in Washington. In doing so, the Legislature made the following findings:

⁴ Washington is not unique in this regard. Courts throughout the United States have repeatedly recognized that state regulation and control of gambling is consistent with a state’s “paramount interest in the health, welfare, safety, and morals of its citizens.” *Johnson v. Collins Entm’t Co.*, 199 F.3d 710, 720 (4th Cir. 1999). “The regulation of lotteries, betting, poker and other games of chance touch upon all of the above aspects of the quality of life of state citizens” and the regulation of gambling “lies at the heart of the state’s police power.” *Id.*; see also *Doumani v. Casino Control Comm’n of N.J.*, 614 F. Supp. 1465, 1473-74 (D.N.J. 1985) (state has “strong interest” in strict regulation of the gambling industry); *Winshare Club of Canada v. Dep’t of Legal Affairs*, 542 So.2d 974, 975 (Fla. 1989) (gambling is “a matter of peculiarly local concern that traditionally has been left to the regulation of the states”).

(a) The costs to society of problem and pathological gambling include family disintegration, criminal activity, and financial insolvency;

(b) Problem and pathological gamblers suffer a higher incidence of addictive disorders such as alcohol and substance abuse;

(c) Residents of Washington have the opportunity to participate in a variety of legal gambling activities operated by the state, by federally recognized tribes, and by private businesses and nonprofit organizations; and

(d) A 1999 study found that five percent of adult Washington residents and eight percent of adolescents could be classified as problem gamblers during their lifetimes, and that more than one percent of adults have been afflicted with pathological gambling.

ESHB 1031, § 1 (2005). CP 97.

And the cost of preventing and treating pathological and problem gambling is only the tip of the iceberg:

Problem and pathological gambling affects not only the problem and pathological gambler and his or her family but also broader society. Such costs include unemployment benefits, welfare benefits, physical and mental health problems, theft, embezzlement, bankruptcy, suicide, domestic violence, and child abuse and neglect.

The Nat'l Gambling Impact Study Comm'n (NGISC), Executive Summary June 18, 1999, CP 615. Given the far-reaching social impacts and costs associated with gambling, Washington has a legitimate local public interest in restricting and regulating gambling through The Gambling Act and its related criminal prohibitions, including RCW 9.46.240.

Moreover, Internet gambling poses many regulatory challenges

and risks that are not present in the strictly regulated and controlled “brick and mortar” gambling operations that are legal in Washington State. Washington’s gambling laws are based on a licensing model that requires all entities operating gambling businesses and, in many instances, their individual employees, to subject themselves to close state scrutiny and ongoing regulation. None of the normal regulatory safeguards can be effectively enforced against off-shore Internet gambling operations. See Bruce P. Keller, *The Game’s the Same: Why Gambling in Cyberspace Violates Federal Law*, 108 Yale L. J. 1569, 1569-70, 1574-75, 1592 (1999); CP 106-47. In addition, Internet gambling, like other forms of unregulated gambling, also provides fertile grounds for criminal activity, including organized crime. *NGISC*, Exec. Summary, June 18, 1999; CP 619-20. See Jon Mills, *Internet Casinos: A Sure Bet for Money Laundering*, 19 Dick. J. Int’l L. 77 (2000); CP 149-78.

In contrast, Washington’s Internet gambling law poses little burden on interstate commerce. Like any state law, RCW 9.46.240 can only be enforced against individuals acting with a sufficient nexus to Washington. Enforcement of the statute is necessarily limited by the constitutional requirements for personal jurisdiction articulated in *International Shoe v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945). Both state and federal courts have acknowledged the application of these

jurisdictional principles to the Internet. *See, e.g., Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 417-19 (9th Cir. 1997); *Precision Laboratory Plastics, Inc. v. Micro Test, Inc.*, 96 Wn. App. 721, 728 n. 6, 981 P.2d 454 (1999). Washington's law, accordingly, does not affect any interstate commerce which does not have a nexus to this state.

In sum, Internet gambling, like other types of unregulated gambling activities, poses a significant risk to the health, welfare and morals of residents of the State of Washington. The solitary nature of Internet gambling exacerbates many of the problems traditionally associated with face-to-face gambling activities. The "virtual" nature of Internet casinos allows casino operators to escape financial accountability to their patrons and allows problem gamblers and other vulnerable individuals unlimited access to gambling activities without any restraint or limit, or possibility of intervention. Internet gambling, like other illegal gambling, is a magnet for organized crime, including traditional crime families and international terrorists. For all of these reasons, Washington State has a substantial local public interest in prohibiting gambling on the Internet. Given the foregoing, Rousso's assertion that RCW 9.46.240 impermissibly impairs the ability of individuals to engage in interstate commerce is without merit. *See Heckel*, 143 Wn.2d at 839 (finding that

anti-spam law does not have “sweeping extraterritorial effect” that would overshadow local benefits).

B. Dormant Commerce Clause Analysis Is Inapplicable To This Matter Because RCW 9.46.240 Is Complemented By Federal Criminal Statutes That Also Prohibit Internet Gambling.

A state law is removed from the reach of the dormant Commerce Clause upon a showing of clear congressional intent to allow such state regulation. *South-Central Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 91, 104 S. Ct. 2237, 81 L. Ed. 2d 71 (1984). The requirement of clear congressional intent to authorize states to adopt laws burdening interstate commerce is necessary in order to increase the likelihood that decisions affecting such commerce are in fact “collective decisions” by Congress, rather than unilateral choices imposed by individual states. *Id.* at 92.

Moreover, when Congress chooses to regulate in a particular area, state laws authorized by Congressional legislation “are invulnerable to constitutional attack under the Commerce Clause.” *Northeast Bancorp., Inc., v. Board of Governors of Federal Reserve System*, 472 U.S. 159, 174, 105 S. Ct. 2545, 86 L. Ed. 2d 112 (1985). More particularly, when Congress criminally proscribes certain types of interstate commerce, it “has determined that that commerce is not in the public interest” and, therefore, “it does not offend the purpose of the Commerce Clause for states to discriminate or burden that commerce.”

Pic-A-State PA, Inc. v. Pennsylvania (Pic-A-State I), 42 F.3d 175, 179-80 (3d Cir. 1994), *cert. denied*, 517 U.S. 1246 (1996).

Through its adoption of laws that enhance, rather than preclude, state regulation of gambling, Congress has consistently found that the regulation of gambling is a matter of local concern. Congress has long acknowledged that individual states have the exclusive power to determine what types of gambling activities may be allowed within their borders, and has adopted laws that supplement and complement state gambling laws to ensure that wrongdoers cannot use state and international borders to evade criminal liability. *See, e.g., Champion v. Ames (the Lottery Case)*, 188 U.S. 321, 357-58, 23 S. Ct. 321, 47 L. Ed. 492 (1903); *Casino Ventures v. Stewart*, 183 F.3d 307, 311 (4th Cir. 1999). In making this decision, Congress has made a policy judgment that uniformity in the laws governing interstate gambling activities is not necessary or required. Under such circumstances, performing the *Pike* balancing test is futile, as there is literally no legitimate interstate commerce capable of being burdened and any incidental impact RCW 9.46.240 may have is permissible. *See Winshare Club of Canada v. Dep't of Legal Affairs*, 542 So.2d 974, 975 (Fla. 1989).

Recognizing that the regulation of gambling is an area of local concern, Congress has passed numerous criminal laws for the stated

purpose of enhancing state gambling regulations and assisting with their enforcement. The Wire Act, 18 U.S.C. § 1084(a), the Travel Act, 18 U.S.C. § 1952, and The Unlawful Internet Gambling Enforcement Act, 31 U.S.C. § 5361 *et seq.*, are only a few examples of federal laws that Congress has carefully crafted to supplement state gambling laws without impinging upon state autonomy, but they are particularly relevant, as they effectively outlaw Internet gambling across state borders.⁵

1. The Wire and Travel Acts.

Congress passed the Wire Act and the Travel Act in the early 1960s as part of a bill designed to combat organized crime. The Wire Act

⁵ The Unlawful Internet Gambling Enforcement Act of 2006 is only the latest federal law in which Congress has taken steps to ensure that federal laws governing gambling do not pre-empt state law. For example, when adopting 18 U.S.C. § 1511, which criminally prohibits conspiracies to obstruct the enforcement of state gambling laws, Congress found:

No provision of this title indicates an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of a State or possession, or a political subdivision of a State or possession, on the same subject matter, or to relieve any person of any obligation imposed by any law of any State or possession, or political subdivision of a State or possession.

Act of October 15, 1970, P.L. 91-452, Title VIII, Part A, § 801, 84 Stat. 936.

Congress has consistently expressed similar deference to state police powers in other gambling related statutes. *See* 15 U.S.C. § 1172(a) (criminalizing interstate transport of slot machines into states that prohibit slot machine gambling); the Interstate Horseracing Act, 15 U.S.C. § 3001(a)(1) (finding that “the States should have primary responsibility for determining what forms of gambling may legally take place within their borders”); the Transportation of Wagering Paraphernalia Act, 18 U.S.C. § 1953(c) (“Nothing contained in this Act shall create immunity from criminal prosecution under any laws of any State . . .”); the Illegal Gambling Business Act, 18 U.S.C. § 1955 (violation of state or local gambling law necessary element establishing violation of Act); the Racketeer Influenced and Corrupt Business Act (RICO), 18 U.S.C. §§ 1963, 1964 (prohibiting racketeering activities that include felony violations of state gambling laws or violations of federal gambling laws).

prohibits the transmission of wagering information in interstate or foreign commerce. It expressly provides that it is not intended to prevent the transmission of interstate or foreign transmissions of betting information if that form of wagering is legal in the recipient state or country.

The purpose of the bill is to assist various States and the District of Columbia in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses and to aid in the suppression of organized gambling activities by prohibiting the use of wire communication facilities which are or will be used for the transmission of bets or wagers and gambling information in interstate and foreign commerce.

H.R. Rep. No. 967, 87th Cong. 1st Sess. (1961), U.S. Code Congressional and Administrative News 1961, p.2631 (quoted by *People ex rel. Vacco v. World Interactive Gaming Corp.*, 185 Misc. 2d 852, 861, 714 N.Y.S.2d 844, 851 (1999)).

The Travel Act prohibits persons from using an interstate or foreign commerce “facility” to distribute the proceeds from an “unlawful activity,” to further any unlawful activity, or otherwise promote or facilitate the promotion of any unlawful activity. For purposes of the Act, certain gambling activities constitute “unlawful activity.”

The bill, S. 1653, was introduced ... to combat organized crime and racketeering. The Attorney General testified ... and commented: “We are seeking to take effective action against the racketeer who conducts an unlawful business but lives far from the scene in comfort and safety, as well as against other hoodlums.” The travel that would be

banned is travel 'in furtherance of a business enterprise' which involves gambling, liquor, narcotics, and prostitution offenses or extortion or bribery." ". . . only the Federal Government can shut off the funds which permit the top men of organized crime to live far from the scene and, therefore, remain immune from the local officials."

S. Rep. No. 644, 87th Cong., 1st Sess., 2-3, dated July 27, 1961, *quoted by Rewis v. United States*, 401 U.S. 808, 812 n.6, 91 S. Ct. 1056 (1971).

Notwithstanding the Court of Appeals' inexplicably erroneous statement to the contrary, the federal and state courts **have**, without reported exception, upheld Internet gambling prosecutions under both the Travel Act and the Wire Act. *Vacco v. World Interactive Gaming Corp.*, 185 Misc.2d 852, 714 N.Y.S.2d 844 (N.Y. Sup. 1999) (finding violations of both the Wire Act and the Travel Act by operators of an on-line casino that exchanged betting information over the Internet in violation of New York state gambling laws); *United States v. Cohen*, 260 F.3d 68 (2nd Cir. 2001) (upholding the prosecution of an off-shore Internet sports betting operation and concluding that the Wire Act extends to transmissions of gambling information over the Internet); *United States v. Lombardo*, 639 F. Supp. 2d 1271 (D. Utah 2007) (similarly upholding Wire Act indictments filed against an "enterprise" that provided "transaction processing services to illegal gambling websites" and further concluding

that the Wire Act prohibits all illegal gambling communications, regardless of whether they involve sports betting or casino style games).

2. The Unlawful Internet Gambling Enforcement Act.

The Unlawful Internet Gambling Enforcement Act (UIGEA) is the latest anti-gambling law enacted by Congress. The adoption of the UIGEA in October 2006 clearly expresses Congress' intent that Internet gambling is not a type of commerce that requires nationwide uniformity in regulation. The UIGEA regulates Internet gambling by prohibiting financial institutions from processing financial transactions, like credit card payments, related to "unlawful Internet gambling." 31 U.S.C. § 5363. More importantly, it defines "unlawful Internet gambling" to mean "to place, receive or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under **any applicable Federal or State law** in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made." 31 U.S.C. § 5362(10)(A) (emphasis added). Thus, a violation of the UIGEA is necessarily predicated on violation of a state gambling law, like RCW 9.46.240. *See Perrin v. United States*, 444 U.S. 37, 42, 100 S. Ct. 311, 62 L. Ed. 2d 199 (1979) (holding that Congress' adoption of the Travel Act, which incorporates the violation of other state and federal laws as predicate offenses, makes "it clear beyond a

reasonable doubt that Congress intended to add a second layer of enforcement supplementing what it found to be inadequate state authority and state enforcement”).

The House Bill Report on the UIGEA describes the general state of the law governing Internet gambling at the time of the Act’s passage:

Many legal experts, including officials from the Department of Justice, State attorneys general, and others involved in law enforcement hold the view that Internet gambling is generally prohibited under various Federal statutes. Among them, the Federal Wire Act (18 U.S.C. 1084 *et seq.*) criminalizes the knowing use of a wire facility by a gambling establishment for the transmission of bets and wagers in interstate or foreign commerce.

Conventional forms of gambling activities, such as casino wagering, State lotteries, slot machines and horse racing, legal in many jurisdictions, are regulated by the individual States. **Internet gambling currently constitutes illegal gambling activity** in all 50 States.

Because **Internet gambling is generally held to be illegal under Federal and State law**, most of the estimated 2,000 Internet gambling sites today operate from offshore locations in the Caribbean and elsewhere.

H.R. Rep. No. 109-412, pt. 1 at 8-9 (emphasis added).

The House Bill Report also provides particular insight regarding Congress’ understanding of the federal laws governing gambling:

H.R. 4411 does not change the legality of any gambling-related activity in the United States.

H.R. 4411 does not interfere with intrastate laws. The safe harbor would leave intact the current interstate gambling prohibitions such as the Wire Act, federal prohibitions on lotteries, and the Gambling Ship Act so that

casino and lottery games could not be placed on websites and individuals could not access these games from their homes or businesses.

H.R. Rep. No. 109-412, pt. 1 at 10-11.

Whether viewed singularly or as a whole, the existing federal gambling statutes universally recognize and preserve the ability of the states to exercise their police power authority over gambling. Moreover, they clearly confirm that Congress regards Internet gambling as an illegal activity that does not require uniform regulation and control throughout the nation. Accordingly, Washington's constitutional and statutory prohibitions of Internet gambling, including RCW 9.46.240, are not subject to challenge under the dormant Commerce Clause.

V. CONCLUSION

For the reasons set forth above, the Respondent respectfully requests that the Court issue an opinion upholding the validity of RCW 9.46.240 and affirming the decision of the Court of Appeals.

RESPECTFULLY SUBMITTED this 25th day of November, 2009.

ROBERT M. MCKENNA
Attorney General


JERRY A. ACKERMAN

WSBA No. 6535
Senior Counsel
Attorney for Respondent
State of Washington