

THE WASHINGTON STATE SUPREME COURT

Case No. 83040-1

Court of Appeals, Division I, Case No. 61779-6-I

LEE H. ROUSSO,

Petitioner

v.

STATE OF WASHINGTON,

Respondent.

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SUPPLEMENTAL BRIEF

Lee H. Rousso
WSBA # 33340
The Law Office of Lee H Rousso
1000 2nd Ave, Suite 3000
Seattle, WA 98104
Plaintiff/Petitioner *pro se*

Table of Contents

I. Introduction	1
II. The Lower Court Rulings	5
A. King County Superior Court, Cause No. 07-2-22438-6 KNT	5
B. The Court of Appeals, Division I, Case No. 61779-6-I	6
C. Response To Section Iv Of Court Of Appeals Decision	8
1. Paragraphs 28-30	8
2. Paragraph 31	8
3. Paragraph 32	9
4. Paragraph 33	10
5. Paragraphs 34 and 35	10
6. Paragraph 36	12
7. Paragraph 37	13
8. Paragraph 38	14
9. Paragraph 39	14
10. Paragraph 40	15
11. Paragraphs 41-43	16
12. Paragraph 44	16
13. Paragraph 45	16
14. Paragraph 46	17
15. Paragraph 47	17
16. Paragraph 48	18
17. Paragraph 49	18
III. Epilogue	19
IV. Conclusion	20

Table of Authorities

Cases

<i>American Libraries Association v. Pataki</i> , 969 F.Supp. 160 (1997)	16
<i>California v. Cabazon Band of Indians</i> , 480 U.S. 202, 211 (1987).	2
<i>Commonwealth of Kentucky v. Interactive Media & Gaming Association, Inc., et al.</i> , Case No. 2009-SC-00043	19
<i>Granholt v. Heald</i> , 544 U.S. 460, 492 (2005)	13
<i>Hatch v. Superior Court</i> , 94 Cal. Rptr. 2d 453 (2000)	3
<i>Internet Community & Entertainment Corp. v. Washington State Gambling Commission</i> , 148 Wn.App. 795, 201 P.3d 1045 (2009).....	19
King County Superior Court, Cause No. 07-2-22438-6 KNT	4
<i>Pike v. Bruce Church</i> , 397 U.S. 137 (1970).....	10
<i>Rouso v. State</i> , 144 Wn.App, 204 P.3d (2009)	passim
<i>State ex rel. Evans v. Bhd. of Friends</i> , 41 Wash.2d 133, 247 P.2d 787 (1952) 8, 11, 12	
<i>State v. Coats</i> , 158 Or. 122, 74 P.2d 1102 (1938)	11
<i>State v. Heckel</i> , 143 Wn.2d 824, 24 P.3d 404 (2001)	passim
The Court of Appeals, Division I, Case No. 61779-6-I.....	6
<i>Wyoming v. Oklahoma</i> , 502 U.S. 437, 454-55, 112 S.Ct. 789 (1992)	10

Statutes

18 USC § 1084 (1961).....	5
31 USC § 5361 <i>et seq.</i> (2006).....	5

Gambling Act of 1973.....	18
RCW 9.46.0260(1)(b).....	12
RCW 9.46.0269(1)(b).....	16
RCW 9.46.240.....	passim
RCW 9.46.0237.....	12
SB 6613.....	2, 8
The Professional and Amateur Sports Protection Act, 18 U.S.C. § 3702 (1992)	1
The Wire Act, 18 U.S.C. § 1084 (1961)	2
U.S. CONST. Art, I, § 8, cl. 3	1
U.S. CONST.....	passim

Other Authorities

www.casinogamblingweb.com/gambling.../minnesota_drops_plan_to_block_on_line_gambling_sites_51354.html	19
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Petitioner *pro se* Lee H. Rousso respectfully submits the following Supplemental Brief for this Court's consideration:

INTRODUCTION

This lawsuit presents a Commerce Clause challenge to Washington's ban on internet gambling, a ban that exposes even nickel-and-dime recreational poker players to the risk of draconian punishments including long prison terms and property forfeitures.

The Commerce Clause states that "Congress shall have Power...to regulate Commerce with Foreign nations, and among the several States, and with the Indian Tribes."¹ By asserting jurisdiction over otherwise legal (in the sense that it does not violate federal law) commercial activity that crosses both state and national borders, Washington has usurped the exclusive authority of Congress to regulate in this area and has thereby violated the Commerce Clause. The proper, indeed only, remedy for this violation is for this Court to strike down the statute to the extent it exceeds the scope of federal laws governing interstate gambling.

This challenge is of limited scope. It does not question the authority of the State to bar internet wagering on sports² or to bar internet

¹ U.S. CONST. Art, I, § 8, cl. 3.

² The Professional and Amateur Sports Protection Act, 18 U.S.C. § 3702 (1992), prohibits any state from legalizing sports betting. Delaware, Nevada and Oregon had forms of legal sports betting prior to the enactment of this legislation and have the benefit

sales of lottery tickets,³ as Congress has already determined that both of these activities are against the public interest.

Likewise, this challenge is somewhat state-specific. For example, this challenge would be a nonstarter in Utah or Hawaii, the two states that completely ban all forms of gambling. In those states the public policy against gambling is sufficiently pure to survive a Commerce Clause challenge. In Washington, by contrast, gambling *is* public policy, notwithstanding any legislative fiction to the contrary.⁴ Dormant Commerce Clause analysis forces the Court to consider what is banned in light of what is not, and to consider the relationship between the two.⁵ More specifically, where gambling is illegal, the state enforces the ban as a moral prerogative; where it is legal, the state regulates it as commerce. This distinction received scant recognition in the lower courts.

Additionally, this challenge does not in any way assert that all state laws regulating the internet are barred. For example, it is clear that anti-

of a “grandfather” clause. The Wire Act, 18 U.S.C. § 1084 (1961), explicitly bars interstate betting on sports.

³ SB 6613 also barred internet sales of lottery tickets. Interstate sales of lottery tickets are prohibited by federal law, but the states, as market actors, are not bound by this prohibition. Washington, along with eleven other states, markets the Mega Millions Lottery to its citizens.

⁴ Where gambling is legal, the public policy is regulation rather than prohibition, and the laws regulating gambling are civil rather than criminal in nature, notwithstanding the nature of punishments imposed for violations of the law. *California v. Cabazon Band of Indians*, 480 U.S. 202, 211 (1987).

⁵ Legal gambling in Washington is a huge industry with revenues approaching \$2 billion annually.

child luring laws, even those that reach across state lines, will survive Commerce Clause scrutiny because the regulated activity has little or no connection to commerce.⁶ Internet gambling, on the other hand, is a highly commercial activity, so Commerce Clause scrutiny applies.

While a number of issues were litigated below, the lower courts gave surprisingly scant attention to the one issue that towers above all others: does Washington's law benefit in-state business interests at the expense of out-of-state business interests or, more simply, is the statute protectionist in intent or effect? If this Court answers this question in the affirmative, as the petitioner believes it must, then all of the other issues litigated fall by the wayside and the statute must be stricken down.⁷

The court below fundamentally erred by failing to consider the similarities between Internet card rooms and brick-and-mortar card rooms. This error led the court of appeals to address the wrong question: Rather than ask whether RCW 9.46.240 equally burdens brick-and-mortar card rooms (necessarily in Washington) and functionally equivalent Internet card rooms (predominantly operating in interstate commerce), the court of appeals instead asked whether the law would apply equally to in-

⁶ See, e.g., *Hatch v. Superior Court*, 94 Cal. Rptr. 2d 453 (2000)

⁷ The issue of protectionism should be dispositive, but it is only dispositive if used to strike down the statute. If the Court finds no whiff of protectionism, it can still strike down the statute on the basis that the burden on interstate commerce (substantial) outweighs the benefit (minimal) to the State.

state Internet card rooms and out-of-state Internet card rooms. By asking the second, inapposite, question, the court of appeals reached an incorrect conclusion.

While the equivalence of Internet card rooms and brick-and-mortar card rooms was asserted before both the superior court and the court of appeals, the parties have had little opportunity to develop the facts to support or refute that assertion. The superior court decided the case at summary judgment, and while the question was briefed before the court of appeals, that court appears to have ignored the argument. However, without further development of the facts necessary to resolve the issue, this Court is deprived of information directly bearing on the constitutionality of the challenged statute.

Ruling a statute unconstitutional is one of the gravest tasks a court can undertake. Consequently, if this Court is unable to find, based on the facts before it, that RCW 9.46.240 violates the dormant Commerce Clause, it should nevertheless reverse the decision of the court of appeals and remand this case to the superior court for further factual development.

THE LOWER COURT RULINGS

A. King County Superior Court, Cause No. 07-2-22438-6 KNT

On May 15, 2008, the King County Superior Court, the Honorable Mary E. Roberts presiding, upheld the constitutionality of the challenged statute. While Judge Roberts rejected State arguments that the Wire Act⁸ and the Unlawful Internet Gambling Enforcement Act⁹ grant the states the authority to regulate internet gambling, Judge Roberts nonetheless found that “the regulation of gambling is reserved to the states.”¹⁰

The Superior Court ruling contains an internal contradiction: powers cannot be simultaneously granted to Congress and reserved to the states.¹¹ Given that the power to regulate interstate commerce lies exclusively with Congress, except where expressly delegated to the states, Judge Roberts’ ruling must be premised on a finding, unstated, that *internet gambling is not interstate commerce*.¹² Taking this premise one step further, it would necessarily follow that Congress has no authority to regulate internet gambling. This, of course, is not the state of the law.

⁸ 18 U.S.C. § 1084 (1961).

⁹ 31 U.S.C. § 5361 *et seq.* (2006).

¹⁰ RP at 6.

¹¹ “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. CONST. 10th Amendment (1791).

¹² Put another way, Judge Roberts incorrectly resolved a conflict between the Commerce Clause and the Tenth Amendment by giving preference to the Tenth Amendment. By its own terms, the Tenth Amendment does not allow such a resolution.

Further evidence of the Superior Court's flawed reasoning lies in the fact that the court overlooked the historical division of labor between the federal government and the states with respect to the regulation of interstate gambling. Since 1890, Congress has regulated interstate gambling and the states have regulated intrastate gambling, a division of labor that is *mandated* by the Commerce Clause.¹³

In addition to reversing constitutional priorities and misreading the history of interstate gambling regulation, the Superior Court also failed to apply the "least restrictive means" test to the State's internet gambling ban. Likewise, the Superior Court also failed to apply the heightened Commerce Clause scrutiny that must be applied when *international* commerce is at stake, an error that was also repeated by Division I. These omitted inquiries further undermine the authority to the rulings below.

B. The Court of Appeals, Division I, Case No. 61779-6-I.

On March 23, 2009, the Court of Appeals, Division I, Judges Leach, Cox and Dwyer in panel, affirmed the Superior Court ruling.¹⁴

While Division I reached the same conclusion as the Superior Court, the higher court did side with the petitioner on one key issue, *i.e.*, the hotly contested issue of whether this is a straight Commerce Clause

¹³ For a list of federal statutes regulating interstate gambling, see Appellant's Opening Brief, pp. 16-7.

¹⁴ *Rouso v. State*, 149 Wn. App. 344, 204 P.3d 243 (2009).

challenge, which would call for conflicts and preemption analysis, or a dormant Commerce Clause challenge, which would be decided on issues of protectionism and undue burdens on interstate commerce. This victory for the petitioner proved to be short lived, however, as Division I concluded that the challenged statute survived the analytical steps described by this Court in *State v. Heckel*, 143 Wn.2d 824, 24 P.3d 404 (2001), *i.e.*, Division I specifically found that there was no discrimination against out-of-state business interests and no undue burden on interstate commerce.

The question of whether dormant Commerce Clause analysis applies is discussed in Section III of the Court of Appeals decision.¹⁵ The Court of Appeals' dormant Commerce Clause analysis is contained in Section IV of the opinion.¹⁶

The analysis contained in Section III is correct and this Court is urged to adopt it in its entirety. Conversely, petitioner believes the analysis contained in Section IV is not well reasoned and provides the basis for reversing the decision.

At a minimum, Division I appears to have committed a serial *non sequitur*; asking one question but responding to its own question with a completely unrelated answer. Further, Division I failed to ask many of the

¹⁵ *Rouso v. State*, 149 Wn. App. at 350-57.

¹⁶ *Id.* at 357-365.

questions it was required to ask, and misapplied the holdings of this Court's prior gambling¹⁷ and Commerce Clause jurisprudence.¹⁸

RESPONSE TO SECTION IV OF COURT OF APPEALS

DECISION¹⁹

Paragraphs 28-30. These paragraphs accurately describe the nature of this dispute and the controlling law. This challenge is premised on the belief that the Legislature has acted to protect in-state business interests from out-of-state competition, which is a *per se* violation of the Commerce Clause, and is further premised on the belief that, regardless of whether the statute discriminates, the benefit obtained by the State is outweighed by the burden on interstate commerce and, moreover, is certainly not the least restrictive means of obtaining the benefit.

Paragraph 31. This marks the exact point at which the Court of Appeals decision begins to lose its authority.

If the question raised in the preceding paragraphs asks whether Washington's law favors in-state business interests at the expense of out-of-state business interests, the answer contained here, that Rousso would be equally guilty of violating RCW 9.46.240 regardless of whether the server or the other players were in-state or out-of-state, is a baffling *non*

¹⁷ *State ex rel. Evans v. Bhd. of Friends*, 41 Wash.2d 133, 247 P.2d 787 (1952).

¹⁸ *State v. Heckel*, 143 Wn.2d 824, 24 P.3d 404 (2001).

¹⁹ This discussion analyzes the Court of Appeals decision on a paragraph-by-paragraph basis. Accordingly, further page cites to *Rousso* are omitted.

sequitur. This analysis completely sidesteps the question of protectionism and is premised on the assumption, unstated, that internet poker does not compete with brick-and-mortar poker, a proposition that every poker player in the world knows to be untrue. Put another way, Division I merely asked whether the statute favors in-state internet poker interests at the expense of out-of-state internet poker interests, which is on its face an irrelevant inquiry.

A more effective analysis would have asked the following four questions in sequence:

Question 1: Does Washington have an in-state poker industry?

Question 2: Do Washington residents have access out-of-state poker facilities?

Question 3: Do Washington poker players make a choice between patronizing the in-state poker facilities or their out-of-state competitors?

Question 4: Is this choice forced by the Legislature?

If all four questions are answered in the affirmative, the State is engaged in protectionism. As Division I acknowledges, protectionist statutes are *per se* invalid under the Commerce Clause.²¹

Paragraph 32. Contrary to Division I's analysis, there was no "identical argument" made in *Heckel*. In *Heckel* this Court gave passing mention of

²¹ *Rouso*, 144 Wn.App at 357, citing *Wyoming v. Oklahoma*, 502 U.S. 437, 454-55, 112 S.Ct. 789 (1992).

the discrimination issue, but only so it could move on to the *Pike v. Bruce Church*, 397 U.S. 137 (1970) balancing test that provided the basis for this Court's decision. More specifically, the lower court decision on appeal in *Heckel* had found a Commerce Clause violation based on undue burden, not protectionist discrimination.²² Put another way, Mr. Heckel did not even allege that the anti-spam statute existed to protect in-state spammers (or any other in-state business) from out-of-state competition. Division I has injected *Heckel* with an issue that was not in fact litigated there.

Paragraph 33. Given that Washington's statute is protectionist and therefore *per se* invalid, there is no need to reach the *Pike* balancing test. However, as revealed in succeeding paragraphs, Division I appears to have initiated this balancing test with many thumbs already on the State's side of the scales.

Paragraphs 34 and 35. In the benefit versus burden analysis dictated by *Pike*, the benefit consists of the harms prevented by the challenged statute.

In its briefing, the State has grossly exaggerated its historical distaste for gambling, relying primarily on Article II, Section 24 of the state constitution, which barred the legislature from authorizing lotteries. The State has argued that this constitutional ban, which is now merely a quaint anachronism, extended to all forms of gambling, including poker.

²² *Heckel*, 143 Wash.2d at 831.

Division I has erroneously adopted the State's flawed recollection of its own gambling history.

With respect to gambling law, the extremely narrow issue decided by *State ex rel. Evans v. Bhd. of Friends*, 41 Wash.2d 133, 247 P.2d 787 (1952), was whether mechanical slot machines constituted lotteries. There is not a single word in *Evans* to support Division I's conclusion that the constitutional prohibition extended to slot machines "and, by implication, other games of chance." To the contrary, if all forms of gambling fell under the "lottery" umbrella, there would have been no need for the *Evans* court to even discuss whether slot machines are lotteries, *i.e.*, there would have been no need for the court to discuss lottery and non-lottery forms of gambling, and describe the distinction between the two.

Division I criticizes petitioner's reliance on an Oregon decision, *State v. Coats*, 158 Or. 122, 74 P.2d 1102 (1938), apparently failing to realize that this Court adopted the skill/chance distinction described in *Coats*, and finding that slot machines are lotteries precisely because no skill is involved.²³ Instead, Division I states that "the exercise of some knowledge or skill" does not negate the government's interest in regulating the activity in question. This, however, refutes an argument that the petitioner has not made. There is no question that the State can

²³ *Evans*, 41 Wn.2d at 150.

regulate poker as “gambling,” although Washington does not.²⁴ But the fact that poker can be defined as “gambling” does not mean that it can be defined as a “lottery.” Washington has never had a constitutional prohibition against poker, and the fact that Division I concluded otherwise suggests that the “balancing test” was not particularly well balanced.

Paragraph 36. This challenge does not dispute the proposition that Washington can regulate intrastate gambling through its exercise of police powers. However, *there is no “police powers” exception to the Commerce Clause.*” Accordingly, rather than relying on the convenient crutch of “police powers,” any state attempting to burden otherwise legal interstate commerce must show that it is preventing actual harm, as opposed to harms that are generalized, hypothetical, and possibly fictional.

Contrary to Division I’s analysis, this challenge was not precipitated by the addition of the word “internet” to RCW 9.46.240, but is instead a response to the State’s sudden assertion of jurisdiction over *interstate* and *international* commerce.

²⁴ Poker does not fit within the definition of “gambling” contained in RCW 9.46.0237, which defines gambling in relevant part as “risking or staking something of value upon a future contingent event or contest of chance upon an agreement or understanding that the person will receive something of value in the event of a particular result.” Instead, Washington pulls poker into the reach of the Gambling Act by defining “professional gambling” to include “paying a fee to participate in a card game” RCW 9.46.0260(1)(b). If poker is “gambling” under section 0237, there would be no need to separately mention “card game” under section 0260.

Paragraph 37. Contrary to Division I’s analysis, the question is not merely whether the State’s interests can be accommodated by “less restrictive” regulations, but whether the State has adopted the *least restrictive* regulation that would accomplish the goal.

With respect to the “problems associated with Internet-based gambling,” the State has not shown that any of these problems actually exist.²⁵ The State has not, for example, shown that internet gambling exacerbates the rate of problem gambling, nor has the State shown that internet gambling preys on children.²⁶ However, even if these problems did exist, a complete ban on internet gambling is not the least restrictive means of addressing the problems. To state the obvious, a scheme of regulation and taxation would protect the State’s interest as effectively (indeed, far more effectively) as prohibition does. Likewise, if the State’s interest is keeping minors from gambling on the internet, barring adults

²⁵ In the dozens of countries that have legalized internet poker, the social impact has been immeasurably small. The argument that states can rely on generalized claims of harm to avoid Commerce Clause restrictions was rejected in *Granholm v. Heald*, 544 U.S. 460, 492 (2005), “In summary, the States provide little concrete evidence for the sweeping assertion that they cannot police direct shipments by out-of-state wineries. Our Commerce Clause cases demand more than mere speculation to support discrimination against out-of-state goods.”

²⁶ The State, and perhaps the Court, might be surprised to learn that virtually all internet poker sites bar players under 18 years of age and require that account holders provide government issued identification (driver’s license and social security number) for age verification purposes. It is reasonable to believe that the number of minors in this state playing poker on the internet is approximately zero.

from gambling on the internet can hardly be considered the least restrictive means of obtaining the objective.

Paragraph 38. The State has not established that its regulation of internet gambling furthers a significant state interest. First, the State does not merely regulate internet gambling, it prohibits it. The question must then be asked: in a state with a \$2,000,000,000.00 gambling industry, what is the state's interest in preventing the 2,000,000,001st dollar in gambling revenue from changing hands. In other words, the State's *marginal* interest in barring internet gambling is exceedingly small. It bears repeating: neither of the lower courts even acknowledged the scope of the legal gambling that already occurs in this state.

Paragraph 39. Division I says there is "no question" that the challenged statute would be constitutional if it only regulated the petitioner's conduct. If there were in fact "no question," this challenge would not have been raised.

Individual citizens have Commerce Clause rights guaranteed by the United States Constitution. Specifically, the Commerce Clause grants individual citizens the right to engage in commercial intercourse with individuals and businesses located in other states and countries without interference from the individual's own state government, except when Congress has declared the specific type of commercial activity off limits.

The benefit the State obtains by preventing one person, the petitioner, from playing poker on the internet is so small it cannot be measured by even the most powerful legal microscope. Conversely, the burden, *from the standpoint of the individual*, is severe. Admittedly, this severity is subjective, but no more subjective than the State's claims of harms prevented by the ban. Given these competing subjective claims, this Court should err on the side of the citizen. If Congress disapproves of the result, it can respond either by extending the scope of federal anti-gambling legislation to include poker, or by adopting a federal scheme of taxation and regulation.

Paragraph 40. This appeal can be decided without reaching the first issue raised in this paragraph. Petitioner has not alleged or argued that Washington's law is invalid because it is not consistent with the laws of other states, only that it is inconsistent with the United States Constitution.

With respect to the second issue, Washington's assertion of jurisdiction does have the effect of exporting Washington law to other jurisdictions and imposing it where it is likely not welcome. In fact, a broad reading of the statute (and the State always reads it broadly) would lead to the conclusion that it is not merely the poker sites that transmit gambling information into Washington state, but the individual players as

well.²⁷ Thus, read broadly, Washington's law has created tens of thousands; perhaps millions, of potential felons in other states and countries, which leads to the conclusion that Washington has appointed itself as the world's gambling policeman.

Paragraphs 41 to 43. These paragraphs are devoted to erecting a straw man, *American Libraries Association v. Pataki*, 969 F.Supp. 160 (1997), so that it may be knocked down. Petitioner has never argued that *Pataki* acts as a complete and total bar to any state regulation that touches the internet. To the contrary, petitioner believes that Washington could *regulate* internet poker through a regime of taxation and licenses without violating the Commerce Clause. Further, petitioner believes Washington can regulate non-commercial internet activity, *e.g.*, child luring, without violating the Commerce Clause.

Paragraph 44. It is puzzling that Division I would characterize poker sites as passive. However, the active/passive distinction had little bearing on the outcome in *Heckel* and should have even less bearing here.

Paragraph 45. *Heckel* does not point in the right direction. First, there were no in-state spammers who stood to benefit at the expense of out-of-

²⁷ Given that the crime of professional gambling is complete upon the payment of a fee to participate in a card game, RCW 9.46.0269(1)(b), it is an open question RCW 9.46.240 covers the actual playing of the game or merely reaches transmissions related to the payment of a fee. If the former, there is no question that citizens of other states are committing felonies here and could be subject to arrest if found in this state.

state spammers, so the issue of protectionism was not in play. Moreover, the *ratio decidendi* of *Heckel* was that the ban on untruthful subject lines actually improved the flow of interstate commerce.²⁸

Paragraph 46. Here, again, Division I is refuting an argument not made by this petitioner. Petitioner has never suggested that Washington’s law violates the Commerce Clause because it creates inconsistent state regulation and, further, there is no question that a major poker site could comply with fifty different state laws. Division I has lost sight of the fact that the unconstitutional burden at issue here is not the burden on the poker sites, but the burden on the citizen.

Paragraph 47. When the Gambling Act of 1973 was enacted, the purpose of RCW 9.46.240 was not to regulate gambling, but rather to regulate ancillary activities. It may be hard to believe now, but once upon a time governments believed they could stop sports betting by preventing the dissemination of point spreads and game odds. Section 240 also prohibited the transmission of information that would allow bookmakers to “balance their books.” Accordingly, until the Legislature and the Gambling Commission announced that this Section applied to internet poker, there would have been no reason to believe that it did.

²⁸ *Heckel*, 143 Wash.2d at 836, “...the only burden the act places on spammers is the requirement of truthfulness, *a requirement that does not burden commerce at all* but actually ‘facilitates it by eliminating fraud and deception.’”

Division I's argument here is a bit of a red herring as this challenge does no rest on the technology of the internet. If it were practical to play poker by mail, and the State asserted jurisdiction over *interstate* poker-by-mail, petitioner would raise the very same issues that have been raised here. The key word is "interstate," not "internet."

Paragraph 48. Again, Division I refutes an argument not made in this case. Petitioner has never argued for "special rules" with respect to the internet. To the contrary, petitioner argues for a uniform rule, *i.e.*, the Commerce Clause, that has been applied to each new technology (railroads, highways, telegraphs, telephones, internet, etc.) as that technology has emerged. Nor, obviously, has petitioner ever argued that the internet is "entirely off-limits" to state regulation.

Paragraph 49. Washington has long since crossed the Rubicon with respect to gambling. When it moved from prohibition to regulation, and became an aggressive purveyor of gambling products, it abandoned any claim that it is "protecting its citizens from the ills associated with gambling." And, again, the burden objected to here is not the cost of compliance by out-of-state businesses, it is the burden placed on petitioner, who is barred from engaging in an activity that he would otherwise choose to engage in. The State gains no benefit, tangible or otherwise, from forcing that choice.

EPILOGUE

While this lawsuit has been pending, various states have attempted, unsuccessfully, to move against internet gambling. These failed efforts strongly suggest that this is in fact an issue that should be left to Congress.

In Kentucky, where the issue is still being litigated, the state attempted to seize gambling related domain names on the theory that the domain names were “gambling devices.” *Commonwealth of Kentucky v. Interactive Media & Gaming Association, Inc., et al.*, Case No. 2009-SC-00043. In Kentucky, the state unwisely admitted that it was moving to protect the state’s racing industry from out-of-state competition, so Kentucky may have an even bigger Commerce Clause problem than Washington.

In Minnesota, the state attempted for force internet service providers to block access to internet gambling sites, but backed down in the face of public opposition.²⁹

Closer to home, Washington’s first serious foray into internet gambling enforcement led to the Betcha.com fiasco,³⁰ wherein the State shuttered a legitimate business and threw its law abiding employees into the unemployment line..

²⁹www.casinogamblingweb.com/gambling.../minnesota_drops_plan_to_block_online_gambling_sites_51354.html

³⁰ *Internet Community & Entertainment Corp. v. Washington State Gambling Commission*, 148 Wn.App. 795, 201 P.3d 1045 (2009).

CONCLUSION

On the issue of protectionism, where the focus should have been on in-state and out-of-state business interests, the focus was instead on the petitioner. Conversely, on the issue of benefit versus burden, where the focus should have been on the petitioner, the court focused only on the burden placed on out-of-state businesses. Add to that the fact that Division I devoted a substantial portion of its energy to refuting arguments not made in this case and it becomes clear that the decision does not stand up to the rigorous scrutiny that this Court will apply.

To read the State's over-animated briefing in the lower courts, one would think that the very fate of civilization was hanging in the balance. Not so. If this Court reverses the lower courts, there will be no sudden surge in bankruptcy, divorce, suicides, foreclosures or juvenile delinquency. Life will continue much as it always has, except a few citizens will enjoy their daily activities somewhat more than they do now.

More to the point, a reversal will give Congress added incentive to clarify its position with respect to internet poker. This is the result our Founding Fathers intended, as internet poker is interstate and international commerce, and should be regulated first and foremost by Congress.



Lee H. Rousso, WSBA #33340, Petitioner *pro se*

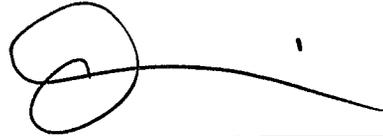
CERTIFICATE OF SERVICE

I certify that on the 25th day of November 2009, I caused a true and correct copy of Appellant's Supplemental Brief to be served on the following in the manner indicated below:

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DATED this 25th day of November 2009.



Alecia J. Rivas, Legal Assistant