



TESTIMONY OF ANNIE DUKE

on behalf of

THE POKER PLAYERS ALLIANCE

HOUSE COMMITTEE ON THE JUDICIARY

**“Establishing Consistent Enforcement Policies
in the Context of Internet Wagers”**

November 14, 2007

Chairman Conyers and members of the Committee, I would like to thank you for the opportunity to testify before your committee. I am doing so as an American citizen who is concerned about personal freedom and personal responsibility. I am also here to express the views of the nearly 800,000 Americans who belong to the Poker Players Alliance.

As a mother of four who supports her family as a professional poker player, I have a personal interest in the outcome of these hearings. I have excelled at my chosen profession, not only supporting my family for 13 years from poker earnings but also becoming the highest female money winner in tournament poker history over those 13 years. Having the right to continue to pursue my profession, wherever I might choose to pursue it, is very important to me from both a financial standpoint but also from the broader perspective of freedom, personal responsibility and civil liberties.

At its most basic level, the issue before this committee is personal freedom -- the right of individual Americans to do what they want in the privacy of their homes without the intrusion of the government. From the writings of John Locke and John Stuart Mill, through their application by Jefferson and Madison, this country was among the first to embrace the idea that there should be distinct limits on the ability of the government to control or direct the private affairs of its citizens. More than any other value, America is supposed to be about freedom. Except where one's actions directly and necessarily harm another person's life, liberty or property, government in America is supposed to leave the citizenry alone. Examples of Congress straying from this principle are legion, but few are as egregious as The Unlawful Internet Gambling Enforcement Act of 2006, or UIGEA.

To be sure, there are many who believe that gaming is immoral or unproductive. I don't share these beliefs, but I do respect them. What is harder to respect is the idea that just because someone disapproves of a particular activity, that they would seek to have the government prevent others from engaging in it.

Of course, opponents of gaming will cite the incidence of compulsive gambling and the possible exposure of minors as reasons to prohibit it. With respect to compulsive gambling, this

committee has received expert testimony confirming what most academic studies on compulsive gambling have found: that the incidence of problem gambling in the population of adults who engage in gambling activity is less than 1%. From a similar study in the United Kingdom, we know that the availability of betting over the Internet does not increase it over time.

Furthermore, even if one's primary concern were the very small incidence of compulsive gambling, then licensing and regulation offer more effective and less intrusive means to combat it.

Frankly, if the government is going to ban every activity that can lead to harmful compulsion, the government is going to have to ban nearly every activity. Shopping, day trading, sex, chocolate, even drinking water -- these and myriad other activities, most of which are a part of everyday life, have been linked to harmful compulsions. Are we going to move inexorably toward a world where we prohibit online shopping because some people compulsively spend themselves into bankruptcy? Worse, are we going to ask banking institutions to monitor and regulate our citizens' online shopping behavior to determine when a purchase can or cannot be approved? Gambling, like shopping, is the subject of compulsion in a very small percentage of the population -- less than one-tenth the number of people who have trouble with alcohol. In terms of the damage to society, problem gambling is orders of magnitude smaller than tobacco, alcohol, fatty foods, sugary soft drinks, and a great many other things that the government does not seek to prohibit. And, let us again remember that compulsive gambling occurs in less than 1% of the population, and that the availability of Internet gaming does not increase that percentage.

Of course, prohibitionists point to the possibility of children betting online as the other justification for prohibiting it. In fact, most people who seek to restrict individual freedom invoke protection of children as their motivation. I suspect they find that that argument has more resonance than what is often their real motivation -- to treat adults like children, and manage their choices for them.

The reality is it is very hard for a child to lose money gambling on-line -- one needs to either have a credit card or a checking account to do so -- cash cannot be used. The concern many

point to is a child using their parent's credit card to sneak online and gamble. First of all, in that scenario, the parent will nearly always decline the charge -- and successfully. For that reason, Internet gaming sites have a large incentive to ensure that their players are who they say they are, and that they are of age, in order to avoid expensive charge-backs. Furthermore, presumably the first time the parent sees an Internet gambling charge on their statements, one would hope that at minimum a very serious chat would ensue with the child. As a mother of four, however, I feel the need to make this point: if a child is stealing a parent's credit card and gambling on-line, that family probably has much more serious issues than Internet gambling. I monitor my children's online activity, and, frankly, that is my job, not my government's. Of all the things I and other parents worry about happening to our children on line, gambling is pretty far down on the list.

Still, if one's primary concern is preventing minors from betting on-line, as opposed to preventing adults from doing so, then licensing and regulation again provides a more effective and less intrusive solution than prohibition. We will hear other expert testimony demonstrating that there are highly effective identity and majority verification technologies available.

Again, though, I have to express my skepticism that that concerns about children are really what is driving this debate. By that, I mean that I doubt that there is anyone who is opposed to Internet gaming because of children who wouldn't still be opposed to Internet gaming for adults, even if it could be proven to them that children can be protected. However, if there are such people on this Committee, or in Congress, I would urge them to look at the regulatory systems being set up in the U.K. and other European nations, as they are highly effective. To reiterate: if your concern in this matter is about children, there are solutions available. If, instead your interest is in treating adults like children, then there are not.

What is remarkable to me about the UIGEA is that while it allows games of pure luck, like the lottery, it prohibits a game of skill like poker. For nearly 200 years U.S. presidents, generals, members of Congress, Supreme Court Justices and average citizens have enjoyed the challenge and the fun that is poker. I have no doubt that tonight, somewhere not too far from the U.S. Capitol, groups of friends and family will open a deck of cards and play some poker. This scenario will be replicated in almost every city across the U.S. That is because poker is an

American pastime, it is woven into the very fabric of American history. Poker typifies Americana just like baseball or Jazz and has become a positive ambassador of American culture throughout the world.

Surveys have shown that more than 70 million Americans play poker at least once in a while. And, within the past several years, an estimated 23 million Americans have begun playing with people from all over the world via the Internet. Remarkably, though, some in Congress have insisted that when you put the word "Internet" in front of poker, this American tradition and the people who play it become suspect. I don't believe that the government should be preventing consenting adults from enjoying poker just because it has moved from the kitchen table to the computer table.

Poker is a great egalitarian game. Anyone who is willing to learn, regardless of race, creed, color or gender, can succeed at poker. And playing on the Internet gives millions of Americans the freedom to enjoy the game in the comfort of their homes, when it would be otherwise impossible to get to a casino, or gather others to play in person. As a mother of four young children, I don't have the liberty of being away from home every day or at night when my children return home from school. The ability to play on the Internet allows me more time with my family.

But my situation only represents a small section of the online poker playing community. Each day the Poker Players Alliance receives emails from its members detailing why Internet poker is important to them. Many of these emails detail a person's physical disability and why they are unable to get to a casino, and in some cases suffer from muscular diseases which do not allow them to hold cards or poker chips and the virtual game is the only way for them to play. Other emails describe how they are caring for sick loved ones who are home-bound or bed ridden and the few hours they get to play poker in the comfort of their home is their escape from the monotony of their day. There are countless stories, of every day law-abiding Americans who play Internet poker, and for whom the proposed ban on poker would have tragic unintended consequences.

The vast majority of Internet poker players are doing so for recreation and entertainment. On average, a person spends \$10 a week playing online poker. 10 dollars! You can't even get a movie ticket for that price where I live! But with poker not only do you get the satisfaction of engaging in a skillful endeavor, you actually walk away with something more than a ticket stub! You walk away with keener mathematical and negotiation skills.

I don't believe that poker and the people who play it should be lumped into the category of gambling or be called gamblers. For me, and for other professionals, this is a job, and some of us are better than others. Whether a professional is playing with someone for whom poker is an avocation does not change the question of whether the game itself is one of skill. Yes, for the majority of Americans playing poker is hobby. This is how these people choose to spend their hard-earned dollars and they should have the right to choose how to spend their discretionary income, whether it be on poker or anything else.

There is critical distinction between poker and other forms of "gambling" which is the skill level involved to succeed at the game. I cannot stress this point enough: in poker it is better to be skillful than lucky. I ask anyone in this hearing room to name for me the top five professional roulette players in the world or the number one lottery picker in America. It is just not possible (my apologies to one obvious candidate, Congressman Sensenbrenner). We can however have a real discussion about the top five professional poker players, just like we can have a discussion about the top five professional golfers.

Few can debate the skill elements involved to be successful at poker. From mathematics and probability to psychology and money management, numerous authors and academics have drawn analogies between poker and other endeavors that involve strategic thinking. John Von Neumann regarded as the greatest mind of the first part of the 20th century used analysis of the game of poker in his seminal book on game theory, "Theory of Games and Economic Behavior" as a method of modeling decision-making under incomplete information. When asked why he did not use chess he deferred to the skill elements of poker which encompass all aspects of human intellect, calling chess not a game but merely an exercise in calculation.

Everyone agrees that the betting elements and hand selection involved in poker are skill elements. But I hear people say all the time that poker is only a game of skill for good players and the vast majority of recreational players are playing a game of luck. This is as absurd as asserting that bad golfers are playing a game of luck while only the pro golfers are playing a game of skill. If we all agree that putting and driving and other elements of golf are skill components then whether someone is a good putter or a bad putter doesn't change whether putting is a skill or not. It is the same in poker. If someone is poor at betting or good at betting has no bearing on whether the betting component of the game itself is a skill component.

Go into any bookstore in America and you will likely find a display table covered in books about how to play poker and poker theory. The fact that one can learn poker and get better over time is clear evidence that skill is a dominant factor in the game.

I will concede that chance does play a role in poker. But it is true that chance plays a role in every human activity. Chance plays a role in getting through a traffic light safely. We know that is true because people who exactly follow the rules of the road get in accidents every day across America because of chance. And yet no one is claiming that driving is a game of chance and not a skill! Poker is a game of skill with an element of chance. But to call poker pure chance is just pure ignorance.

To further explain this point, let me try to illustrate it in two ways. If I could program a robot with the rules of poker, when to decide to check, raise, fold, etc. -- but gave it no "skill" so that it made these decisions randomly, that robot would lose nearly 100% of the hands in which it participated.

For those not content with the example of the robot, let me try another approach. One defining characteristic of games of skill is this: a player or team can intentionally lose. If I suggested that you should play slots, roulette, baccarat, or lottery and seek to lose, you could no more make yourself lose than you could make yourself win, as long as you continued playing. However, at golf, tennis, baseball or other games of skill it is entirely possible to lose on purpose. Losing on purpose is playing in defiance of the concept of skill, and thus proves the existence of the skill

element in the game.

Several analogies can be made between playing poker and crafting public policy. But millions of poker-playing Americans were stunned last year when politicians decided that playing Texas Hold 'em over the Internet was so pernicious that the government must deputize financial institutions to prohibit personal financial transactions to certain forms of online gaming.

As we all know, in the closing hours of the last Congress, behind closed doors, Senator Bill Frist managed to slip the UIGEA into the Port Security bill. That law seeks to deputize financial institutions, and have them function as the Internet morality police. Ironically, however, that law did nothing to clarify what actually constitutes an unlawful Internet wager. It exempted certain favored forms of gambling from that bill's enforcement mechanism, but it clarified nothing as legal or illegal.

Instead, Internet gaming is the subject of a hodgepodge of antiquated laws that were intended to govern brick-and-mortar operations. The governing federal statute, The Wire Act of 1961, has been found to only apply to sports betting; beyond that we have a morass of state laws which, for the most part, did not contemplate the Internet. Nevada, North Dakota and Virgin Islands have all taken steps to license non-sports betting, only to be told by the DOJ that even intra-state Internet wagers are illegal.

In the proposed rule issued by the Department of the Treasury and the Board of Governors of the Federal Reserve, the regulators come right out and say that they cannot and will not tell the regulated community what constitutes an unlawful Internet wager. Let me emphasize -- **the posture of the Federal government is, "We are going to create a new federal crime, but we will not tell you what it is."** In the proposed rule, the regulators explain their refusal to resolve this by saying that to do so would require them to examine the laws of the federal government and all 50 states with respect to every gaming modality, and that this would be unduly burdensome. **Yet that is exactly what they are requiring the general counsel of every bank in the country to do.** The committee has received testimony from the association representing providers of pure skill games, such as chess and Tetris, complaining that unless the UIGEA

regulations clarify what they are supposed to cover, they will be unable to hold chess tournaments where people can win money, because, in the absence of clarity, banks will simply block any transaction where people pay a fee to compete and win money.

Poker players believe that the UIGEA regulations should not apply to games where players compete against each other and not against "the house" and where success is predominantly a function of skill. Such games include poker, bridge, mahjong and backgammon, among others. However, because neither UIGEA itself nor the regulations seek to address the issue, we cannot make that case.

Instead, PPA supports certain other legislative initiatives which we believe are more rational. We support H.R. 2046, Rep. Frank's bill to license, regulate and tax Internet gambling, but which allows states to opt out of the federal licensing system with respect to any and all forms of gaming. We support H.R. 2610, Rep. Wexler's bill to clarify that poker and other games predominantly determined by skill are outside the ambit of the federal gambling statutes, provided that they incorporate adequate protection against compulsive play, minor play, and money laundering. We also support H.R. 2140, Rep. Berkeley's bill to commission a National Academy of Sciences study on how to deal with Internet gaming, because we believe any rational examination will verify that licensing and regulation makes more sense than prohibition. However, we believe that the experience of the U.K and other countries can provide the same evidence.

Mr. Chairman, I would like to close with the point I started with: this issue is about personal liberty and personal responsibility -- the freedom to do what you want in the privacy of your own home. I suspect that some on this committee support freedom, except where individuals would use that freedom to make what they believe to be bad choices. "Freedom to make good choices" is an Orwellian term for tyranny-- the governments of China, Cuba and Iran all support the freedom of their citizens to make choices that their governments perceive as good. For those whose religious or moral beliefs hold gaming as abhorrent, I fully support their right to live by those beliefs. I support their right to choose to not gamble. What I do not support, and what this Committee and this Congress should not tolerate, is an effort by those people or anyone else to

prevent me and the millions of people like me from playing a game we find stimulating, challenging and entertaining. However you might feel about gambling on the Internet, I would suggest that gambling with freedom is far more risky.

Again, Mr. Chairman and members of the Committee, I thank you for the opportunity to address you today. I look forward to the testimony of my fellow panelists and the opportunity to engage with you during the question and answer period.