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TESTIMONY OF HON. ALFONSE D'AMATO

on behalf of

THE POKER PLAYERS ALLIANCE

**SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND
TRADE
of the
HOUSE COMMITTEE ON ENERGY AND COMMERCE**

“Internet Gaming: Is There A Safe Bet?”

October 25, 2011

Madam Chairman and Members of the Subcommittee, I'd like to thank you for this opportunity to testify today on an issue about which I care very much. My name is Alfonse D'Amato, and for eighteen years, I was privileged to serve the people of New York on the other side of the Capitol. Today, in my capacity as Chairman of the Poker Players Alliance, I am privileged to represent 1.2 million Americans who enjoy playing this great American pastime in their homes, in casinos and card rooms, in charitable games, and on the Internet. They play for recreation, for camaraderie, for entertainment, for intellectual challenge, and in some cases, they play for a living. The game has been a favorite of Presidents, including our current President, Supreme Court Justices, and more than a few Members of Congress.

I congratulate the committee on holding this hearing in an effort to better understand the status quo with respect to Internet gambling and Internet poker. I think what the committee will discover in the course of this hearing is that the status quo is badly broken and benefits no one -- not my members, not the federal or state governments, not minors or problem gamblers, not the financial services sector and certainly not the U.S. economy. It is my fervent hope that the committee will respond by taking up legislation similar to the bills introduced by Congressman Barton and Congressman Campbell, and at this point, let me take a moment to congratulate the Chairman Emeritus for his leadership on this issue.

I would like to emphasize the question that is *not* before this committee: the question of whether Americans will continue to play poker on the Internet. Americans have been playing poker on the Internet for almost 10 years, and even the Department of Justice (DOJ) agrees that playing Internet poker is not illegal for the player. Events like the passage of the Unlawful Internet

Gambling Enforcement Act (UIGEA) and the indictments on April 15, 2010, otherwise known as Black Friday, can change where players play, and for a short time, the number of people playing, but Internet poker has not gone away, and it is hard to envision a scenario where it would. Today, virtually any American with a broadband connection and a checking account can engage in nearly any form of Internet gambling.

What players cannot do, however, is play on a site that is located in the U.S.; that employs U.S. citizens; that pays U.S. taxes or is regulated by any level of government in the U.S. We believe it is time -- indeed, it is well past time -- to replace an offshore industry subject to uneven levels of foreign regulation with an on-shore industry that is subject to strict and consistent federal, state and tribal regulation. In developing this U.S. industry, we can learn from the experience of the many European jurisdictions that have licensed and regulated Internet gambling and Internet poker -- from both their successes and their mistakes.

I am aware that a substantial part of this Subcommittee's mission is consumer protection. As a representative of the consumers you would seek to protect, let me detail briefly the types of consumer protections Congress should enact.

Since the Black Friday indictments, many thousands of U.S. poker players have not been able to recover money that they deposited into Full Tilt Poker and Ultimate Bet/Absolute Poker accounts, or money they won playing on these sites. In the case of Full Tilt Poker, according to the DOJ, that site used those deposits to pay dividends to their shareholders. PokerStars, the largest Internet poker site, as a condition of its license, was required to keep all player deposits in

a regularly-audited trust account. All of PokerStars' players who have requested their funds were paid soon after Black Friday. Congress should pass legislation requiring all player deposits to be kept in trust accounts, with regular audits to ensure solvency.

One of the foremost concerns about Internet gambling -- and gambling in general -- is the question of minors improperly being allowed to place bets. My fellow panelist, Ms. Aftab, is the leading advocate for protecting children on-line, and she can best address this, but let me say this: U.S. legislation should ensure that, in order to access Internet poker sites, players should not only be required to prove that they are adults, but to prove that they are a specific adult whose identity can be separately verified. Identity verification for Internet poker should be as robust as identity verification for Internet banking, and regulators should require "best of breed" technologies to ensure that minors aren't allowed access to sites. I would emphasize again that today, we are outsourcing the protection of our children to foreign jurisdictions and I believe our kids deserve better.

The second most common concern relates to individuals who develop gambling problems. I believe legislation should allow players to set limits on the amount of money they deposit on any licensed site over a particular interval. If a player decides that they do not want to be allowed to lose more than \$100 per month on a site, regulations should ensure that they cannot deposit additional dollars on ANY licensed site. In addition, there should be a list of excluded people who are not allowed to play on any site, so that if a player feels that he is developing a gambling problem, he could place himself on that list to avoid the temptation of playing. Further, the sites themselves have the obligation to promote responsible play. Technologies exist today in which a

site can identify a player exhibiting signs of a problem gambler and proactively alert the player and provide necessary resources and information so the player can evaluate their playing habits. Regulation should insist that licensed operators employ these technologies.

As part of licensing legislation, the U.S. should also ensure that games are fair, that random number generators really are random, and that players are protected from fraud and collusion. To this end, I believe that U.S. regulators should look at both the source code for the game, as well as the outcomes it generates for any sign of anomaly within the software that would render the game unfair. In addition, regulators should require “best of breed” technologies to detect when players might be illegally colluding. In Europe, they have developed algorithms to watch millions of hands and flag suspicious behavior so that once a player is flagged, humans watch the hands in real time to detect possible cheating. Again, U.S. regulators should require “best-of-breed” technologies in this area, but today, the players can only count on the vagaries of foreign regulations.

In addition, the prerogatives of states must be respected. While we support an interstate program for the licensing of poker, states that do not wish to participate in such a system should be given the prerogative to opt out , such that no licensee would be allowed to take play from individuals in that state. To be clear, PPA will vociferously encourage states not to opt-out, but if they choose to do so, their choice should be respected. U.S. regulations should ensure that regulators have and use the best technology to ensure that players from “opt-out” states cannot play on licensed sites.

I should emphasize at this point that regulations and technology to accomplish these goals -- protecting minors and problem gamblers, ensure that games are fair, blocking players in prohibited jurisdictions -- are not theoretical. They are being used successfully in many European jurisdictions that license and regulate Internet gambling and Internet poker.

Along with legislation to license Internet poker, Congress should finally clarify the laws governing Internet gambling and create effective enforcement against whatever is illegal. DOJ has long maintained that the federal Wire Act prohibits any wager over the Internet phone lines, and the highest court that has ruled on it said the Wire Act only applies to sports betting. State laws mostly pre-date the Internet and only govern behavior within the state. Although the House-passed version of UIGEA sought to finally clarify the Wire Act, the Senate could not reach a consensus. In the end, UIGEA simply told banks to block payments for “unlawful Internet gambling” without defining that term. When the Federal Reserve official responsible for drafting the UIGEA regulations testified before the Financial Services Committee, she listed the lack of a clear definition of “unlawful Internet gambling” as one of her biggest challenges.

In the course of developing those regulations, many stakeholders, including sports leagues and family groups, urged the regulators to create and maintain a list of prohibited businesses to which U.S. banks should not transfer money, modeled after the OFAC list which prevents the transfer of money to supporters of terrorism. Many in the banking industry supported the creation of such a list as well, since it would remove them from the precarious position of having to determine what constitutes “unlawful Internet gambling” and who is engaged in it. Both the

Barton and Campbell bills create such a list, as well as an additional “tattle-tale” provision that would allow any affected party to build a prima facie case that a site or its financial agent belongs on the list. Treasury would then have 60 days to place the individual on the list, or explain why they hadn’t.

In addition to better protecting players, bringing Internet poker on-shore and regulating it will yield real economic benefits to the U.S. Billions of dollars that today flow across our borders and onto offshore websites could be kept here, creating tens of thousands of good-paying jobs, and yielding billions of dollars in revenue for the federal government, all without having to raise taxes.

In sum, Congress has a choice. They can preserve the status quo, where Americans play on foreign sites with consumer protections outsourced to foreign regulators, while creating jobs and tax revenue for foreign countries. Or they can replace it with a licensed regime for Internet poker with strict consumer protections, clear laws and effective enforcement against illegal Internet gambling. Such a regime would allow states to regain control over the gambling activities of their residents, and in so doing, create tens of thousands of U.S. jobs and billions in federal and state revenue.

For over a century, poker has been a reflection of America’s entrepreneurial and competitive spirit and has been a positive ambassador of our culture throughout the globe. Over the years, the way people play the game has changed and, like other recreational activities, more and more are turning to the Internet to enjoy this pastime. I urge this committee and this Congress to

swiftly enact federal policy that ensures American consumers have a safe and secure marketplace in which to play this game of skill over the Internet.

Again, Madam Chairman and members of the committee, I appreciate the opportunity to testify, and I look forward to answering your questions.