



1 2.2 Venue is proper in King County under RCW 4.92.010(1) because Plaintiff resides in  
2 that county.

3 **III.FACTS**

4 3.1 Washington state has widespread legal gambling.

5 3.2 Among the forms of legal gambling offered in Washington is poker, which is dealt at  
6 dozens of tribal and non-tribal casinos and cardrooms.

7 3.3 Washington has legal internet gambling, as its citizens are allowed to bet on horse  
8 races over the internet, usually seven days a week and often around the clock.

9 3.4 Plaintiff lives in Renton, Washington. Plaintiff is also the Washington state  
10 representative of the Poker Players Alliance, a national lobbying organization devoted to  
11 full legal recognition for all forms of poker. The Poker Players Alliance has more than  
12 550,000 members nationwide, of whom more than 9,000 reside in Washington. The Poker  
13 Players Alliance estimates that 23,000,000 Americans play internet poker. If Washington  
14 residents participate proportionally, the number of internet poker players in Washington  
15 exceeds 400,000.

16 3.5 On or around July 1, 2003, Plaintiff was exposed to media accounts of Chris  
17 MoneyMaker's win in the 2003 World Series of Poker Main Event at Binion's Horseshoe  
18 Club<sup>1</sup> in Las Vegas, Nevada, the most prestigious poker tournament in the world. In  
19 winning this tournament, MoneyMaker defeated a field of 839 players and captured first  
20 prize of \$2,500,000.00. MoneyMaker's win was historic due to the fact that he was the first  
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24 <sup>1</sup> The World Series of Poker has since been sold to Harrah's, who conducts the event at the Rio All Suites Hotel in Las  
25 Vegas.

1 winner of the Main Event to have qualified for the event by playing poker on the internet.  
2 Specifically, Moneymaker qualified for the World Series of Poker through qualifying  
3 tournaments sponsored and conducted by Pokerstars, *i.e.*, pokerstars.com. Pokerstars is the  
4 world's leading internet poker site.

5  
6 3.6 Shortly after hearing of Moneymaker's rags to riches story, Plaintiff opened an  
7 account at Pokerstars and transferred money into the account by way of a debit card issued  
8 by a major United States bank.

9 3.7 From approximately July 15, 2003 to June 7, 2006, Plaintiff regularly logged on to  
10 pokerstars.com and played poker against other Pokerstars customers. Approximately 90%  
11 of the Plaintiff's internet poker activity consisted of tournament play, where the game itself  
12 is played with "play money" rather than actual money and the tournament continues until  
13 one player wins all of the other players' chips. Tournament payouts are based on finish  
14 position, with the winner receiving the largest payout. The other 10% of Plaintiff's play  
15 occurred in "ring" or "cash" games where the chips on the virtual table represent actual  
16 money. Unlike tournaments, in cash games each hand is an independent event.

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18 3.8 As operator of the internet poker site, Pokerstars acts as a neutral stakeholder; the  
19 players play against each other, not against the "house."

20 3.9 When playing internet poker, Plaintiff was engaged in commerce with citizens of  
21 other states, plus citizens of United States territories and dozens of foreign countries.

22  
23 3.10 In the months prior to June 7, 2006, Plaintiff also paid a fee to participate in a  
24 variety of contests of chance, as defined at RCW 9.46.0225. These contests of chance  
25

1 included: competing in a fantasy baseball league;<sup>2</sup> competing in a March Madness bracket  
2 contest;<sup>3</sup> and participating in an office pool based on the result of a so-called “reality” TV  
3 show. By paying a fee to participate in a contest of chance, one commits an act of  
4 professional gambling as defined at RCW 9.46.

5  
6 3.11 Plaintiff used the internet to participate in the contests of chance described in  
7 paragraph 3.10.

8 3.12 At the 2006 session of the Washington State Legislature, State Senator Margarita  
9 Prentice (D-11) introduced legislation, Senate Bill (“SB”) 6613, designed to bring internet  
10 gambling within the scope of The Gambling Act of 1973, RCW 9.46 *et seq.*, and to subject  
11 violators of RCW 9.46.240 to felony convictions for transmitting or receiving gambling  
12 information. SB 6613 (including the substituted version acted upon by the legislature),  
13 specifically the portion of SB 6613 that amended RCW 9.46.240, is hereinafter referred to  
14 as the Internet Gambling Ban (“IGB”).

15  
16 3.13 Senator Prentice represents the Eleventh District, which has a large number brick-  
17 and-mortar cardrooms and casinos, many of which have made contributions to the Senator’s  
18 election campaigns. Plaintiff alleges that these brick-and-mortar cardrooms and casinos  
19 were the intended and/or actual beneficiaries of SB 6613.

20 3.14 On February 14, 2006, the Washington State Senate passed the IGB.

21 3.15 On March 2, 2006, the Washington State House of Representatives passed the IGB.

22 3.16 On March 28, 2006, Governor Christine Gregoire signed the IGB.  
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24  
25 <sup>2</sup> In fantasy baseball, contestants choose team rosters composed of major league baseball players, with contest results based on the statistical performance of the baseball players. Similar fantasy leagues exist for other sports.

1 3.17 Pursuant to its terms, the IGB took effect on June 7, 2006.

2 3.18 The IGB amended RCW 9.46.240 to include the internet among the enumerated  
3 technologies and/or devices that could not be used for the transmission of gambling  
4 information as defined at RCW 9.46.0245.

5 3.19 The IGB also amended RCW 9.46.240 by upgrading the crime of transmitting or  
6 receiving gambling information from a gross misdemeanor to a Class C felony, which under  
7 RCW 9A.20.021 carries a maximum punishment of five years in prison and a fine of  
8 \$10,000.  
9

10 3.20 In addition to upgrading the criminal classification, the IGB also made violations of  
11 RCW 9.46.240 subject to the seizure and forfeiture provisions of The Gambling Act of  
12 1973, RCW 9.46.231, in particular RCW 9.46.231(1)(g)(i)(ii). Accordingly, internet poker  
13 players and persons who participate in contests of chance as described in paragraph 3.10  
14 risk the loss of their homes as well as long prison sentences.  
15

16 3.21 Enforcement of the IGB falls mainly, but not exclusively, on the Washington State  
17 Gambling Commission. According to the Gambling Commission's website,  
18 [www.wsgc.wa.gov](http://www.wsgc.wa.gov), the Commission has initiated multiple investigations of internet  
19 gambling, thereby creating a reasonable apprehension on the part of the Plaintiff that he will  
20 be the subject of state enforcement efforts.  
21

22 3.22 Internet poker is not illegal under the federal law governing internet gambling, The  
23 Wire Act, 18 U.S.C. § 1084, nor is internet poker barred by any other federal law.  
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25 <sup>3</sup> In a March Madness bracket contest, contestants fill out brackets for the NCAA men's national championship basketball tournament, with results based on the number of correct predictions.

1 3.23 To the extent that fantasy sports and March Madness bracket contests are covered by  
2 the Wire Act, persons who participate only as players are immune from liability.

3 3.24 Plaintiff intends to, desires to, or is likely to play internet poker or participate in  
4 games of chance as described in paragraph 3.10 in the future.

5 3.25 Plaintiff has not submitted a plea as to whether he played internet poker or  
6 participated in contests of chance as described in paragraph 3.10 between the effective date  
7 of the IGB and the initiation of this lawsuit. Plaintiff will provide such a pleading if one is  
8 requested by the Court, but respectfully requests that any such a pleading be deemed  
9 inadmissible in any other legal proceeding.  
10

11 **IV. DECLARATORY JUDGMENT**

12 Pursuant to RCW 7.24.020, Plaintiff seeks a declaratory judgment that the IGB is  
13 unconstitutional and is therefore void and unenforceable.  
14

15 **A. FIRST GROUNDS FOR DECLARATORY JUDGMENT**

16 The IGB violates the U.S. CONST. art. I, §8, cl.3, The Commerce Clause, because  
17 it is a protectionist measure designed to discriminate against otherwise legal out-of-state  
18 businesses and in favor of in-state businesses. Gambling, internet gambling, and poker are  
19 all legal in Washington. Therefore, the obvious purpose of the IGB as it applies to internet  
20 poker is to force internet poker players to patronize in-state brick-and-mortar casinos rather  
21 than internet poker rooms, which are legal where domiciled and not illegal under federal  
22 law, or to switch their internet gambling from poker to horse racing. Such a discriminatory  
23 law is virtually *per se* invalid as a violation of the Commerce Clause. *Granholm v. Heald*,  
24 544 U.S. 460, 467 (2005)  
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1                                   **B. SECOND GROUNDS FOR DECLARATORY JUDGMENT**

2                   The IGB violates the U.S. CONST. art. I, §8, cl.3, The Commerce Clause, because  
3 under the *Pike* balancing test the IGB places a burden on interstate commerce that is not  
4 offset by a compelling state interest. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142  
5 (1970).  
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10                                   **C. THIRD GROUNDS FOR DECLARATORY JUDGMENT**

11                   The IGB violates the U.S. CONST. art. I, §8, cl.3, The Commerce Clause, because  
12 it places a burden on international commerce that is not offset by a compelling state interest.  
13 This is especially true with respect to internet poker, which is uniquely international in  
14 nature. Where international commerce is involved, an even higher degree of Commerce  
15 Clause scrutiny is imposed. *Reeves, Inc. v. Stake*, 447 U.S. 429, 437 (1980).  
16

17                                   **D. FOURTH GROUNDS FOR DECLARATORY JUDGMENT**

18                   The IGB violates the U.S. CONST. art. I, §8, cl.3, The Commerce Clause, because  
19 it the federal government has occupied the field with respect to internet gambling and the  
20 IGB conflicts with the federal statutory scheme and/or conflicts with federal obligations  
21 under international treaties. Congress has repeatedly refused efforts to amend the Wire Act  
22 to include internet poker. Congress has repeatedly refused to extend criminal liability for  
23 internet gambling to mere players. Conversely, Congress has carved out an exemption to  
24 The Wire Act for fantasy sports, which remain a felony under Washington law when  
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1 conducted using the internet. Likewise, a scheme that allows some internet gambling but  
2 bars others for protectionist reasons violates federal obligations under the General  
3 Agreement on Trade & Tariffs (“GATT Treaty”) as administered by the World Trade  
4 Organization.

#### 5 **E. FIFTH GROUNDS FOR DECLARATORY JUDGMENT**

6  
7 The IGB violates the U.S. CONST. amend. VIII, which prohibits cruel and unusual  
8 punishments, because it has the effect of treating use of the internet as either an aggravating  
9 factor or as a separate offense. For example, the land-based analog of the “crime” of  
10 playing internet poker would be the offense of playing poker at an unlicensed cardroom,  
11 which constitutes, on the part of the player, Professional Gambling in the 3<sup>rd</sup> Degree, RCW  
12 9.46. , a misdemeanor. There is no rational basis for treating the internet version of the  
13 purported crime more harshly than the land-based version, and to do so is both cruel and  
14 unusual.  
15

#### 16 **F. SIXTH GROUNDS FOR DECLARATORY JUDGMENT**

17 The IGB violates the U.S. CONST. amend. XIV, which guarantees citizens of the  
18 States the due process of the law, because the IGB is so vague that the typical citizen cannot  
19 determine which acts are permitted and which are prohibited. Specifically, the scope and  
20 application of the word “knowingly” in RCW 9.46.240 determines whether the section  
21 applies to perhaps millions of Washington residents or, in the alternative, a mere handful.  
22 Does the statute merely required that the individual know that he or she is sending or  
23 receiving the prohibited information, or does it require that the individual know that the  
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25



1 information is “gambling information” as defined at RCW 9.46. ? Or, put another way, is  
2 ignorance of the law a defense under the statute?

3 **V. PRAYER FOR RELIEF**

4 Plaintiff prays for the following relief:

5 1. That this Court declare the IGB unconstitutional based on any or all of the  
6 constitutional objections raised herein;

7 2. That this Court issue a preliminary injunction to prohibit any and all  
8 enforcement of the IGB while this matter is pending. Such injunction should apply to all  
9 criminal proceedings and also should terminate or suspend all Washington State Gambling  
10 Commission investigations based solely on alleged violations of the IGB;

11 3. That this Court grant any and all further relief deemed appropriate.  
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13  
14 DATED this the \_\_\_ day of \_\_\_\_\_, 2007  
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20 \_\_\_\_\_  
21 Lee H. Rousso  
22 WSBA #33340  
23 Hadley Green PLLC  
24 901 So. Third Street  
25 Renton, Washington 98057