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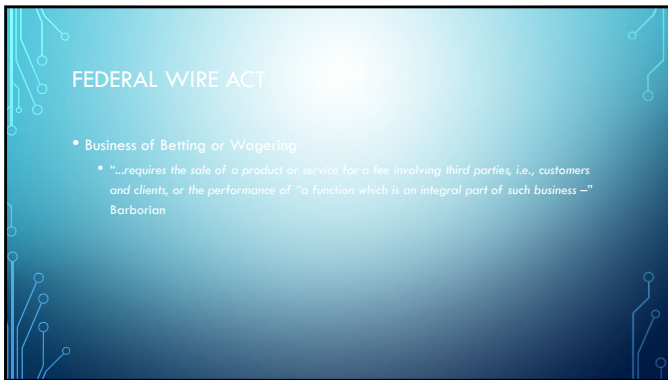
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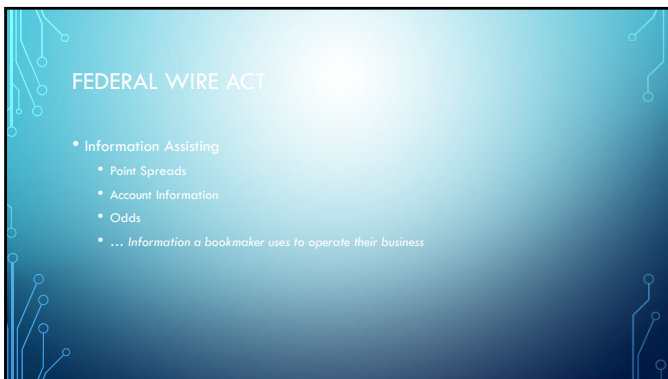
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FEDERAL WIRE ACT

- "sporting event or contest"
  - *In re: MasterCard*
    - The Federal Wire Act applies to sports wagering only

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FEDERAL WIRE ACT

- "sporting event or contest"
  - *In re: MasterCard*
    - The Federal Wire Act applies to sports wagering only

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FEDERAL WIRE ACT

- DOJ View Post *In Re: MasterCard*
  - The...Wire Act, which is codified at Section 1084 of Title 18 of the United States Code. This statute makes it a crime, punishable up to two years in prison, to knowingly transmit in interstate or foreign commerce bets on any sporting event or contest. **It is the Department of Justice's position that this prohibition applies to both sporting events and other forms of gambling**, and that it also applies to those who send or receive bets in interstate or foreign commerce even if it is legal to place or receive such a bet in both the sending jurisdiction and the receiving jurisdiction.

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**FEDERAL WIRE ACT**

18 USC §1084

- (a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on **any sporting event or contest**, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information ...assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

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**FEDERAL WIRE ACT**

DOJ View – Sporting Event | Contest

18 USC §1084

- (a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on **any sporting event or contest**, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information ...assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

DOJ View – Sporting modifies both Event or Contests.

18 USC §1084

- (a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on **any sporting event or contest**, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information ...assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

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**FEDERAL WIRE ACT**

- US v. Lombardo
- Facts

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FEDERAL WIRE ACT

- US v. Lombardo
  - Facts
    - \*Lombardo, with others, operate a payment "Gateway" (website) through various businesses to fund bettor accounts on various online sites
    - \*Bettors could add funds to betting accounts through "Gateway" and Gateway would miscode the transactions to avoid detection by banks
    - \*Lombardo and others are charged with several violations including Wire Act violations and RICO statutes
    - \*Lombardo fights the Wire Act charge claiming services were provided for online poker sites & casinos not sports betting sites

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FEDERAL WIRE ACT

- US v. Lombardo
  - Issue
    - \*Whether the Federal Wire Act applies to sports wagering activities only

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FEDERAL WIRE ACT

- US v. Lombardo
  - Analysis
    - \* Assumes the 5<sup>th</sup> Circuit is correct in its analysis of the first prohibition in 1084(a)
    - \*Notes that the 5<sup>th</sup> Circuit did not analyze the second two prohibitions under 1084(a)

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FEDERAL WIRE ACT

- US v. Lombardo
  - \* Analysis
    - "Inclusion of the 'sporting event or contest' qualifier in the second and third prohibitions is conspicuous, especially in the first prohibition, which includes the qualifier, is directly below the second and third prohibitions in the statute. This is particularly weighty in light of the legislative history of the Wire Act, which indicates the intent of Congress to facilitate enforcement of state gambling laws related to 'gambling, bookmaking, and like offenses.'"
    - Moreover, the same phrase 'information assisting in the placing of bets or wagers' is used twice in § 1084(a): first as part of the first prohibition and second as the qualifier of the third prohibited use. It is simply unpalatable to the Court to conclude, as according to Congress, one of the same phrases in two different parts of the statute where the first use is qualified by the phrase "sporting event or contest" and the second use is [pg-1282] not. Accordingly, the Court concludes that the second and third prohibited uses of a wire communication facility under § 1084(a) do not require that the bets or wagers to which those uses relate be limited to bets or wagers placed on sporting events or contests alone.

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FEDERAL WIRE ACT

WHAT DO YOU THINK?

18 USC §1084

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce

- of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest,
- or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers,
- or for information assisting in the placing of bets or wagers,

shall be fined under this title or imprisoned not more than two years, or both.

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FEDERAL WIRE ACT

- 1084 (b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

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**FEDERAL WIRE ACT**

- 1084 (b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

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**FEDERAL WIRE ACT**

- 1084 (b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

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**18 U.S.C. § 1084**

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of

*no (b) exemption for the transmission of bets* → bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest,

or

*no (b) exemption for the transmission communications re: credit or money from a wager* → for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers,

or

*questionable whether there is a (b) exemption for info assisting w/o reference to sporting event or contest* → for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests,

or

for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

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FEDERAL WIRE ACT

- Timing...
- 2001 Nevada enacts "Interactive Gaming" statute to regulate and license online gaming
- 2002 DOJ warns Nevada that all such wagering violates the Federal Wire Act
- 2005 Online poker is popular in the USA with some providers going public on foreign exchanges and having multi-billion dollar valuations
- 2006 Congress enacts the UIGEA
- 2009 Online poker lobbying in full force
- 2009 Illinois and New York send letter to DOJ
- 2009 Illinois and New York offer online lottery subscriptions
- 2009 New Jersey enacts online gaming legislation
- 2010 Federal compromise reached
- 2011 Nevada enacts interactive gaming revision to compel the Commission to draft regulations to license online poker
- 2011 Reid and Kyl issue letter to DOJ

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FEDERAL WIRE ACT

- 2011 DOJ Opinion

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FEDERAL WIRE ACT

- 2011 DOJ Opinion
  - What does it address?

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FEDERAL WIRE ACT

- 2011 DOJ Opinion
  - You have asked for our opinion regarding the lawfulness of proposals by Illinois and New York to use the Internet and out-of-state transaction processors to sell lottery tickets to in-state adults.

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FEDERAL WIRE ACT

- 2011 DOJ Opinion
  - Does it find tension between the UIGEA and the Federal Wire Act

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FEDERAL WIRE ACT

- 2011 DOJ Opinion
  - Does it find tension between the UIGEA and the Federal Wire Act
    - Taken together, these interpretations of the Wire Act "lead[] to the conclusion that the [Act] prohibits" states from "utiliz[ing] the Internet to transact bets or wagers," even if those bets or wagers originate and terminate within the state.
    - The Criminal Division further notes, however, that reading the Wire Act in this manner creates tension with UIGEA, which appears to permit out-of-state routing of data associated with in-state lottery transactions.
    - The Criminal Division is thus concerned that the Wire Act may criminalize conduct that UIGEA suggests is lawful.

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FEDERAL WIRE ACT

- 2011 DOJ Opinion
  - How does it address the sporting events or contest phrase and its impact?

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FEDERAL WIRE ACT

- 2011 DOJ Opinion
  - How does it address the sporting events or contest phrase and its impact?
  - The more reasonable inference is that Congress intended the Wire Act's prohibitions to be parallel in scope, prohibiting the use of wire communication facilities to transmit both bets or wagers and betting or wagering information on sporting events or contests.
  - We likewise conclude that the phrase "on any sporting event or contest" modifies subsection 1084(a)'s second clause, which prohibits "the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers." 18 U.S.C. § 1084(a). The qualifying phrase "on any sporting event or contest" does not appear in this clause. But in our view, the references to "bets or wagers" in the second clause are best read as shorthand references to the "bets or wagers on any sporting event or contest" described in the first clause.
  - In sum, the text of the Wire Act and the relevant legislative materials support our conclusion that the Act's prohibitions relate solely to sports-related gambling activities in interstate and foreign commerce.

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FEDERAL WIRE ACT

- 2011 DOJ Opinion
  - In sum, the text of the Wire Act and the relevant legislative materials support our conclusion that the Act's prohibitions relate solely to sports-related gambling activities in interstate and foreign commerce.
  - SPORTS WAGERING ONLY
  - INTERSTATE AND FOREIGN COMMERCE ONLY - not where bets are transmitted from and received by persons in the same state

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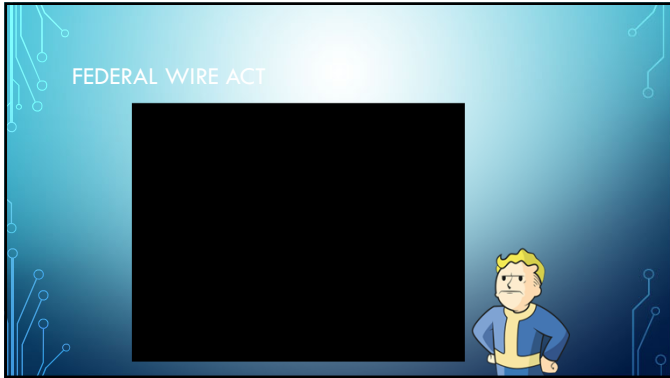
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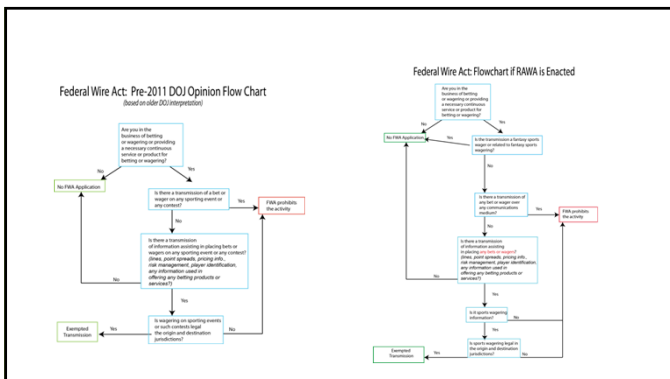
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FEDERAL WIRE ACT

- Restoration of America's Wire Act
  - Hearings are a disaster and the bill dies

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FEDERAL WIRE ACT



SEN. JEFF SESSIONS (R-AL)  
Attorney General Nominee

SEN. LINDSEY GRAHAM  
R-South Carolina

ATTORNEY GENERAL CONFIRMATION

FOR MORE INFORMATION  
[judiciary.senate.gov](http://judiciary.senate.gov)

C-SPAN

AHEAD: SEN. DURBIN (D-IL), CORNYN (R-TX)

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FEDERAL WIRE ACT

- January 2019 DOJ Opinion
  - Reinterprets the Federal Wire Act prohibitions again

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### FEDERAL WIRE ACT

- Evolutionary Interpretation - 2019 Opinion
- States there is no tension between the UIGEA and Federal Wire Act
  - Removes basis for interpreting the Federal Wire Act to not be applicable to intrastate wagering
- Implies NY and IL lotteries must not rely on the 2011 opinion to continue intrastate online lottery product sales

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### FEDERAL WIRE ACT

- 18 USC §1084
- (a) **Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers at any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.**

interstate and foreign commerce only impact the first clause

no sporting event after bets or wagers

sporting event or contest only modifies information assisting

a second transmission without reference to interstate or foreign commerce is present in the second clause and no references to sporting event or contest

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### FEDERAL WIRE ACT

- More fallout...

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FEDERAL WIRE ACT

- New Hampshire District Court Opinion
  - What are the issues?

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FEDERAL WIRE ACT

- New Hampshire District Court Opinion
  - What are the issues?
    - Whether the Federal Wire Act applies to state actors?
    - Whether the Federal Wire Act prohibitions are limited to sports wagering?

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FEDERAL WIRE ACT

- New Hampshire District Court Opinion
  - Will the court rely on the Lyon's opinion that issued a jury instruction stating the Federal Wire Act applies to sports wagering only?

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FEDERAL WIRE ACT

- New Hampshire District Court Opinion
  - Will the court rely on the Lyon's opinion that issued a jury instruction stating the Federal Wire Act applies to sports wagering only?
    - "I cannot defer to the circuit court's unconsidered dictum in Lyons"

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FEDERAL WIRE ACT

- New Hampshire District Court Opinion
  - In the 2019 Opinion, the DOJ argues the sporting events and contests language only limits the first "information assisting" prohibition to sports wagering and thus the Wire Act's other prohibitions apply to all sports wagering, does the court agree?

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FEDERAL WIRE ACT

- New Hampshire District Court Opinion
  - In the 2019 Opinion, the DOJ argues the sporting events and contests language only limits the first "information assisting" prohibition to sports wagering and thus the Wire Act's other prohibitions apply to all sports wagering, does the court agree?
    - As the OLC concluded in 2011, the omission of the interstate-commerce modifier from the second clause "suggests that Congress used shortened phrases in the second clause to refer back to terms spelled out more completely in the first clause." 2011 OLC Opinion at 7. I agree with the 2011 OLC Opinion that this instance of borrowing by the drafters of § 1084(a) gives textual support for similarly importing the sports-gambling modifier into the second clause.

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FEDERAL WIRE ACT

- New Hampshire District Court Opinion
- New Hampshire District Court Opinion
  - Many states filed Amicus briefs. Did the court extend its holding beyond New Hampshire and its vendors?

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FEDERAL WIRE ACT

- New Hampshire District Court Opinion
- New Hampshire District Court Opinion
  - Many states filed Amicus briefs. Did the court extend its holding beyond New Hampshire and its vendors?
    - The parties nevertheless disagree as to whether a declaratory judgment should be limited to the parties or have universal effect.<sup>15</sup> The plaintiffs maintain that declaratory relief "necessarily extends beyond the [Commission] itself." Doc. No. 58 at 21. The Government contends that any declaratory relief must apply only to the parties to the case. I agree with the Government.

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FEDERAL WIRE ACT

- New Hampshire District Court Opinion
- New Hampshire District Court Opinion
 

The judgment provides the Lottery Commission and NeoPollard complete relief. No more is needed.

III. CONCLUSION

In summary, I deny the Government's motion to dismiss for lack of jurisdiction (Doc. No. 45) because the plaintiffs have established standing, and the Government has not met its burden to show that the case is moot. I grant the plaintiffs' motions for summary judgment (Doc. Nos. 2 & 10) and deny the Government's cross-motion for summary judgment (Doc. No. 45). I hereby declare that § 1084(a) of the Wire Act, 18 U.S.C. § 1084(a), applies only to transmissions related to bets or wagers on a sporting event or contest. The 2018 OLC Opinion is set aside. SO ORDERED

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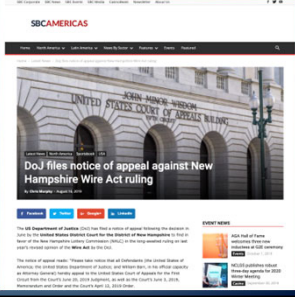
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### FEDERAL WIRE ACT

- New Hampshire District Court Opinion
- In August 2019 the DOJ Appeals



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### FEDERAL WIRE ACT

- New Hampshire District Court Opinion
- In August 2019 the DOJ Appeals



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### FEDERAL WIRE ACT

- Appeal, oral arguments heard in June, 2020.



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### FEDERAL WIRE ACT

- First circuit agrees.




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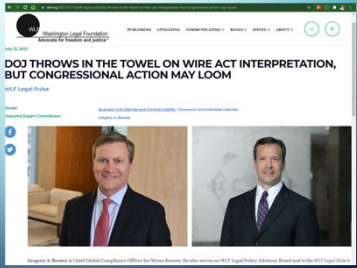
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### FEDERAL WIRE ACT

- DOJ declines to appeal.




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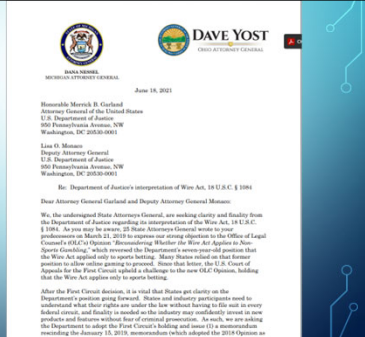
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### FEDERAL WIRE ACT

- Attorneys General of 28 states appeal to the Attorney General of the US to officially rescind the 2018 opinion.




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FEDERAL WIRE ACT

- Where do we stand?

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FEDERAL WIRE ACT

- NV, NJ, DE, and PA have an agreement to let their citizens play online poker with sites licensed in either of these states. Will a NJ operator violate the Federal Wire Act by taking a wager from a NV player?

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FEDERAL WIRE ACT

- NV, NJ, DE, and PA have an agreement to let their citizens play online poker with sites licensed in either of these states. Will a NJ operator violate the Federal Wire Act by taking a wager from a NV player?
  - Under pre-2011 DOJ view – YES
  - Under 2011 Opinion – No
  - Under 2018 Opinion – Yes
  - In First Circuit – No ... but neither NJ or NV are in the First Circuit

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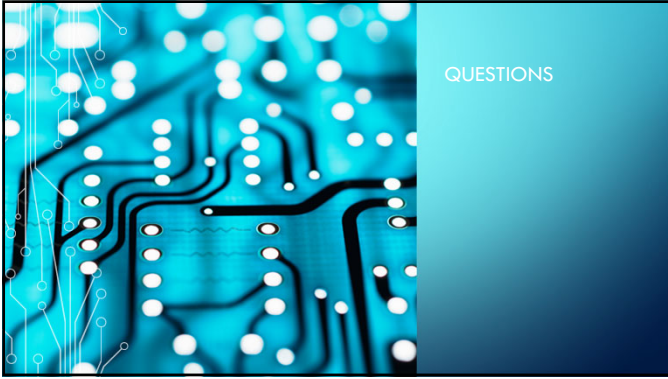
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