

GREG GEMIGNANI

FEDERAL LAW ISSUES

FEDERAL WIRE ACT – U.S. FEDERAL LAW

MATRIX OF FEDERAL LAWS – PASPA

- ▶ While current focus is on PASPA it was just one of several federal laws that apply to sports wagering activities.
- ▶ Before being deemed unconstitutional, PASPA merely precluded states and tribes from offering, regulating or conducting sports wagering and prohibits anyone from relying on such state or tribal laws to conduct sports wagering, unless the state was grandfathered in 1992.

GETTING PASPA OUT OF THE WAY

MATRIX OF FEDERAL LAWS – PASPA



U.S. GAMING LAW IN GENERAL

- ▶ In the United States, there are several forms of permitted and prohibited gaming.
- ▶ Most forms of gaming are defined as events that require participants to part with consideration for the chance of winning a prize.
- ▶ With regard to online gaming, courts have deemed a bet or wager to occur in both the jurisdiction in which the bettor is located and the jurisdiction where the bet is recorded or offered.

U.S. GAMING LAW IN GENERAL

- ▶ In the United States, federal and state laws share concurrent jurisdiction over gaming activities.
- ▶ With the exception of sports wagering, federal laws generally assist states in enforcing state gambling prohibitions regarding interstate and foreign gaming that are offered in a state.
- ▶ States and Tribes are often the primary source of legal authority with regard to most forms of gaming other than sports wagering.

CONCURRENT JURISDICTION

U.S. GAMING LAW IN GENERAL



CONCURRENT JURISDICTION

U.S. GAMING LAW IN GENERAL



CONCURRENT JURISDICTION

U.S. GAMING LAW IN GENERAL

- ▶ With regard to remote gaming, U.S. courts have deemed a bet or wager to occur in each jurisdiction in which the bettor is located and the jurisdiction where the bet is recorded or offered .





TIMING AND ISSUES

- ▶ 1945 - 1961
 - ▶ WWII ends
 - ▶ The U.S.A. is a world super power
 - ▶ However, threats remain
 - ▶ The two biggest threats to the American way of life are:
 - ▶ Communism
 - ▶ Organized Crime

TIMING AND ISSUES

- ▶ Senator Estes Kefauver of Tennessee seizes the issue by holding national televised hearings on organized crime
- ▶ The Kefauver Committee focuses in on the gambling activities of organized crime



TIMING AND ISSUES

- ▶ This is must see TV of the 1950s
- ▶ It also cements the fight against organized crime as a central theme of the Democrats in national elections



TIMING AND ISSUES

- ▶ The Kefauver Committee Hearings are followed by the McClellan Hearings.
- ▶ Robert F. Kennedy was appointed Chief Counsel for the Committee



TIMING AND ISSUES

- ▶ 1961 only 16 years after the end of WWII
- ▶ Eisenhower cuts off diplomatic ties with Cuba
- ▶ John F. Kennedy is sworn in as President
- ▶ John F. Kennedy appoints his brother Robert F. Kennedy as Attorney General
- ▶ RFK takes up the fight against organized crime in earnest

1961

- ▶ HOW MANY STATES HAD LEGAL CASINO WAGERING?
- ▶ HOW MANY STATES HAD LEGAL SPORTS WAGERING?
- ▶ HOW MANY TRIBAL CASINOS WERE OPERATING?
- ▶ HOW MANY STATES HAD STATE LOTTERIES?

TIMING AND ISSUES

- ▶ In 1961, the phone system was a monopoly run by AT&T
- ▶ The technology of the phone system was a copper wire equivalent of tin cans on a string
 - ▶ Every communication dedicated a line between the transmitter and receiver
- ▶ Today, telecommunications is a competitive industry
 - ▶ Nearly every communication today uses IP (internet) technology to share resources (lines) to allow millions of communications to occur where lines used to be dedicated to a single communication

TIMING AND ISSUES

- ▶ In 1961, only 1 state had broad based legal and regulated gambling.
- ▶ In 1961, the specter of organized crime weighed heavy on the gaming industry, which was seen by most in the U.S. as a pariah industry only legal in a sparsely populated state in the wild west
- ▶ Today, some form of regulated gaming can be found within the borders of all but two states

TIMING AND ISSUES

- ▶ In 1961, the Federal Wire Act was enacted at the behest of Attorney General Robert F. Kennedy as part of the Interstate Anti-Crime Bills
- ▶ The Federal Wire Act was a tool designed to allow federal law enforcement to deprive organized crime of its interstate fund raising activities related to gambling

THE STATUTE

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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.

THE STATUTE

- ▶ 18 USC §1084 - *(b) The Exemptions*
 - ▶ 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

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*

- ▶ (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.

Supply side only

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*

- ▶ (a) Whoever being engaged in the business of betting or wagering .

Supply side only

- ▶ Courts have held this means

- ▶ The provision of products or services
 - ▶ A function which is integral to the business
 - ▶ A function that is regular or continuous

- ▶ Courts have held this does not require:

- ▶ Exclusive engagement in the business
 - ▶ Share in profits or pay

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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.

Electronic communication

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*

- ▶ (a) Whoever being engaged in the business of betting or wagering **knowingly uses a wire communication facility**

Electronic communication

- ▶ Courts have held this to include the internet and other forms of electronic communication that is regulated by the FCC

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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.

Prohibits the transmission of "bets or wagers in interstate or foreign commerce

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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
 - ▶ Courts have interpreted this to include transmissions that cross state lines even if such transmissions begin and end in the same state

THE STATUTE – PROHIBITIONS

▶ 18 USC §1084 - (a) *The Prohibitions*

- ▶ (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
 - ▶ Courts have interpreted this to include transmissions that cross state lines even if such transmissions begin and end in the same state



THE STATUTE – PROHIBITIONS

- ▶ 1962 Court Opinion
 - ▶ Defendants had an operation where:
 - ▶ D1 was inside a race track at Waterford Park with a walkie-talkie
 - ▶ D2 was outside the track near a pay phone with a walkie-talkie
 - ▶ D3 was a bookmaker in Wierton
 - ▶ D4 was a bookmaker in Wheeling



THE STATUTE – PROHIBITIONS

- ▶ 1962 Court Opinion
 - ▶ Defendants convicted under 18 use 1084
 - ▶ Defendants argue there is no interstate commerce as all actors were in W.V.
 - ▶ Court holds that because the phone line crossed into Ohio then back to W.V., there was sufficient interstate commerce to convict



THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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.

Prohibits the transmission of information assisting in the placement of bets or wagers on sporting events or contests

Information assisting has generally been information a bookmaker used to operate a book, line information, pricing, account information, odds, point spreads...

Prior to 2011, the issue being debated was whether sporting modified event and contest or whether sporting only modified events

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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 Opinions Prior to 12/23/2011
 - ▶ Sporting events are separate from contests
 - ▶ Sporting events are athletic competitions
 - ▶ Contests are events where patrons wager something of value upon the outcome of an uncertain event.
 - ▶ (consideration, chance and prize)

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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.
- ▶ Nevada enacted “Interactive Gaming” regulation in 2001.
- ▶ DOJ sent a letter in 2002 that all interactive gaming (online gaming) was prohibited under the Wire Act

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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.
- ▶ 2001 - Louisiana Federal District Court
 - ▶ Plaintiffs sue credit card companies under civil RICO action based on online gambling losses
 - ▶ Plaintiffs cite Federal Wire Act violations as predicate offense for RICO
 - ▶ Plaintiffs argue that credit card companies take a % of credit card sales from merchants and merchants in online gaming are operating in violation of the Federal Wire Act. Therefore, the credit card companies are part of the racketeering enterprise violating the Federal Wire Act.

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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.
- ▶ 2001 - Louisiana Federal District Court
 - ▶ Credit Card companies file a motion to dismiss for lack of a claim upon which relief can be granted
 - ▶ Their argument is that the Plaintiffs allege Federal Wire Act violations with alleging any sports wagering activities, and the Federal Wire Act only applies to sports as sporting modifies both event and contest

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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.
- ▶ 2001 - Louisiana Federal District Court
 - ▶ District court agrees with credit card companies and dismisses the action

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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.
- ▶ 2002 - Fifth Circuit Court of Appeals
 - ▶ Appeals court agrees with district court

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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.
- ▶ 2002 - DOJ After Fifth Circuit Court of Appeals
 - ▶ DOJ believes 5th Circuit was wrong
 - ▶ Sporting event wagering is separate from wagering on contests

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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.
- ▶ 2006 - Congress Enacts the UIGEA exempts intrastate transactions
- ▶ 2009 - Illinois and NY write letters to DOJ indicating they plan to offer intrastate lottery subscription sales online using a third-party out-of-state payment processor.
- ▶ DOJ does not respond in 2009 or 2010 or before 12/2011

THE STATUTE – PROHIBITIONS

▶ 18 USC §1084 - (a) *The Prohibitions*

- ▶ (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.

▶ 2010

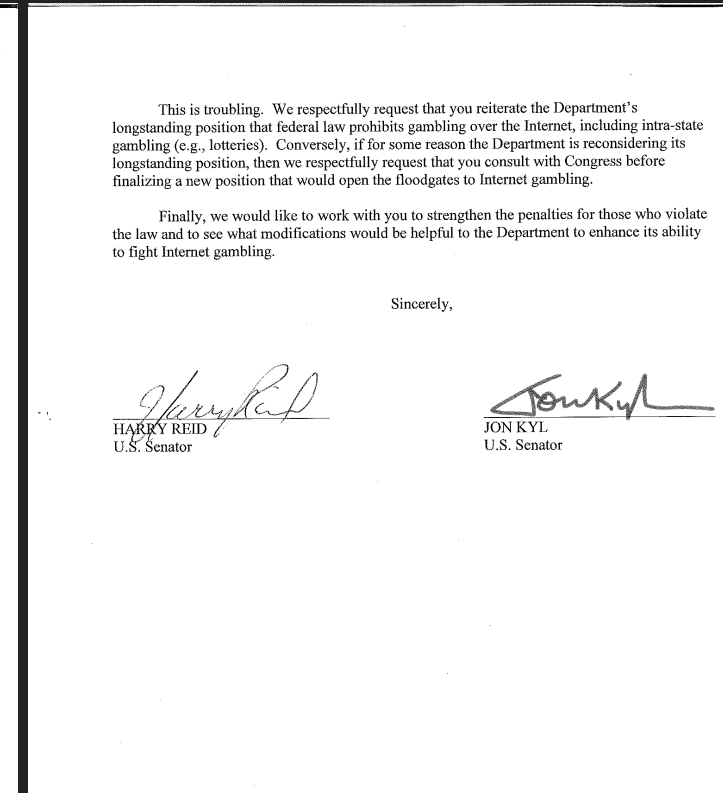
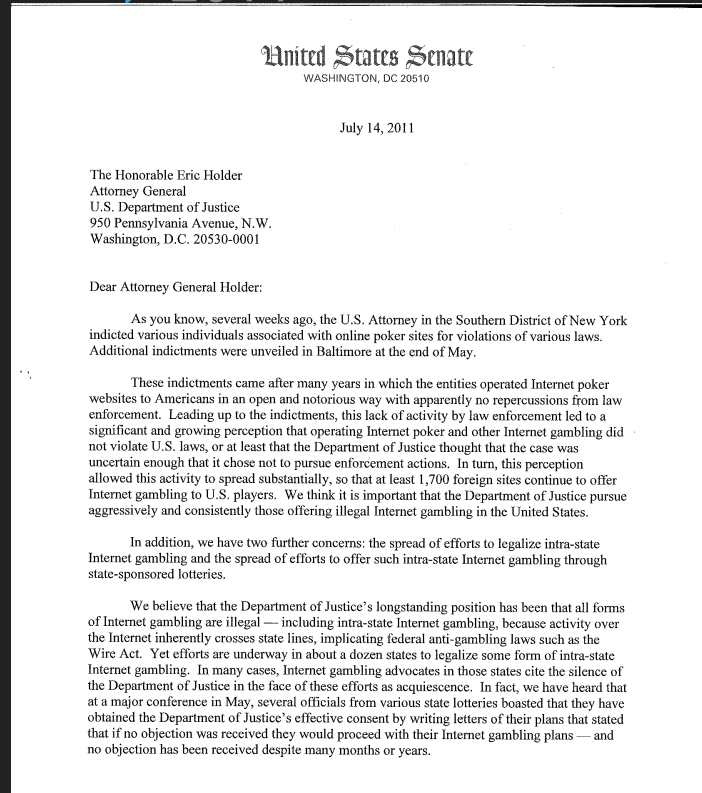


THE STATUTE – PROHIBITIONS

▶ 18 USC §1084 - (a) *The Prohibitions*

- ▶ (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.

▶ 2011



THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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.
- ▶ December 23, 2011
 - ▶ DOJ releases new Federal Wire Act opinion in response to letters from NY and IL lotteries
 - ▶ DOJ concludes UIGEA creates tension with prior interpretations of the FWA
 - ▶ Concludes FWA only addresses sports betting
 - ▶ Alludes to interstate wagering as activities where activities are occurring in different states/ jurisdictions

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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.

Legislative history is limited, but the transmissions discussed by Congress were Western Union

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - *(a) The Prohibitions*
 - ▶ (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.

A second information assisting, but no reference to sporting event or contest

THE STATUTE – PROHIBITIONS

- ▶ 18 USC §1084 - (a) *The Prohibitions*

- ▶ (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.

- ▶ December 13, 2007 - Utah District Court

- ▶ Defendant operated online wallets and banking for online poker sites
- ▶ Defendant charged with Wire Act violations
- ▶ Defendant challenges sufficiency of charges for Wire Act violations on the basis that the Defendant only provided services to online poker and casino sites (remember 5th Circuit)

THE STATUTE – PROHIBITIONS

▶ 18 USC §1084 - (a) *The Prohibitions*

- ▶ (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.

▶ December 13, 2007 - Utah District Court

- ▶ Court states that for the sake of argument, it will assume the 5th Circuit Court of Appeals is correct with regard to the first set of prohibitions.
- ▶ However, second two prohibitions do not mention sports
- ▶ Further, courts are compelled to give all parts of statute meaning, and if sports wagering was inferred to the last prohibition on information assisting in the placement of wagers it would deem the last prohibition duplicative and meaningless

THE STATUTE - EXEMPTIONS

▶ 18 USC §1084 - *(b) The Exemptions*

- ▶ 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

Exemption for news reporting.

THE STATUTE – EXEMPTIONS

- ▶ 18 USC §1084 - *(b) The Exemptions*
 - ▶ 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

Exemption for information assisting in the placement of bets or wagers on sporting events or contests between jurisdictions where wagering on such events is legal

Legislative history cites transmission of horse racing information between New York and Nevada as a catalyst for this exemption

No exemption for transmitting bets or wagers

THE STATUTE – PROHIBITIONS BROADER THAN EXEMPTIONS

▶ 18 USC §1084 - (a) *The Prohibitions*

- ▶ (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.

▶ 18 USC §1084 - (b) *The Exemptions*

- ▶ 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

2019 OPINION

▶ History

- ▶ After the 2011 DOJ Wire Act opinion, DE, NJ and NV began regulating online gaming on an intrastate basis
- ▶ NV and DE entered into a compact agreement to allow cross-border online poker between NV and DE. NJ later joined
- ▶ A casino operator in Las Vegas was appalled by the actions of NV and DE and sought to “restore” the Wire Act to prohibit such activities
- ▶ The resulting bill was called the “RESTORATION OF AMERICA’S WIRE ACT” (“RAWA”)

2019 OPINION

LIVE
8:26 am PT

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

SEN. LINDSEY GRAHAM
R-South Carolina

ATTORNEY GENERAL CONFIRMATION

FOR MORE INFORMATION
judiciary.senate.gov

C-SPAN
c-span.org

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

0:02 / 1:01

2019 OPINION

- ▶ History
 - ▶ RAWA would:
 - ▶ Remove all references to sports wagering and expressly cover all forms of wagering
 - ▶ Deem all internet use to be “interstate use” even if done on an intrastate basis
 - ▶ Would carve out fantasy sports from the prohibitions
 - ▶ Would not change the exemptions
 - ▶ RAWA hearings were less than helpful to the bill and it is dormant

2019 OPINION

- ▶ The opinion
 - ▶ Reinterprets the Federal Wire Act prohibitions to apply to all forms of wagering
 - ▶ Warns IL and NY that they cannot rely on the 2011 opinion to conduct intrastate online lottery sales
 - ▶ Sets a deadline for enforcement, that has been extended

2019 OPINION

- 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.**

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

FEDERAL WIRE ACT

TIMELINE



Federal Wire Act Enacted
September 13, 1961

Yaquina Opinion - Intermediate Routing Across State Lines Prohibited
May 1962

1965

1970

1975

1980

1985

1990

1995

2000

2005

2010

2015

2020

2025

2030

2035

2040

2045

2050

- 2010 - Federal Wire Act (18 USC 2533)
- 2009 - Federal Wire Act (18 USC 2533)
- 2008 - Federal Wire Act (18 USC 2533)
- 2007 - Federal Wire Act (18 USC 2533)
- 2006 - Federal Wire Act (18 USC 2533)
- 2005 - Federal Wire Act (18 USC 2533)
- 2004 - Federal Wire Act (18 USC 2533)
- 2003 - Federal Wire Act (18 USC 2533)
- 2002 - Federal Wire Act (18 USC 2533)
- 2001 - Federal Wire Act (18 USC 2533)
- 2000 - Federal Wire Act (18 USC 2533)
- 1999 - Federal Wire Act (18 USC 2533)
- 1998 - Federal Wire Act (18 USC 2533)
- 1997 - Federal Wire Act (18 USC 2533)
- 1996 - Federal Wire Act (18 USC 2533)
- 1995 - Federal Wire Act (18 USC 2533)
- 1994 - Federal Wire Act (18 USC 2533)
- 1993 - Federal Wire Act (18 USC 2533)
- 1992 - Federal Wire Act (18 USC 2533)
- 1991 - Federal Wire Act (18 USC 2533)
- 1990 - Federal Wire Act (18 USC 2533)
- 1989 - Federal Wire Act (18 USC 2533)
- 1988 - Federal Wire Act (18 USC 2533)
- 1987 - Federal Wire Act (18 USC 2533)
- 1986 - Federal Wire Act (18 USC 2533)
- 1985 - Federal Wire Act (18 USC 2533)
- 1984 - Federal Wire Act (18 USC 2533)
- 1983 - Federal Wire Act (18 USC 2533)
- 1982 - Federal Wire Act (18 USC 2533)
- 1981 - Federal Wire Act (18 USC 2533)
- 1980 - Federal Wire Act (18 USC 2533)
- 1979 - Federal Wire Act (18 USC 2533)
- 1978 - Federal Wire Act (18 USC 2533)
- 1977 - Federal Wire Act (18 USC 2533)
- 1976 - Federal Wire Act (18 USC 2533)
- 1975 - Federal Wire Act (18 USC 2533)
- 1974 - Federal Wire Act (18 USC 2533)
- 1973 - Federal Wire Act (18 USC 2533)
- 1972 - Federal Wire Act (18 USC 2533)
- 1971 - Federal Wire Act (18 USC 2533)
- 1970 - Federal Wire Act (18 USC 2533)
- 1969 - Federal Wire Act (18 USC 2533)
- 1968 - Federal Wire Act (18 USC 2533)
- 1967 - Federal Wire Act (18 USC 2533)
- 1966 - Federal Wire Act (18 USC 2533)
- 1965 - Federal Wire Act (18 USC 2533)
- 1964 - Federal Wire Act (18 USC 2533)
- 1963 - Federal Wire Act (18 USC 2533)
- 1962 - Federal Wire Act (18 USC 2533)
- 1961 - Federal Wire Act (18 USC 2533)

Federal Wire Act Enacted
September 13, 1961

Yaquina Opinion - Intermediate Routing Across State Lines Prohibited
May 1962

1965

1970

1975

1980

1985

1990

1995

2000

2005

2010

2015

2020

2025

2030

2035

2040

2045

2050

2055

2060

2070

2080

2090

2100

In re: MasterCard - District Court - Limits Wire Act to Sports
February 2001

Nevada Interactive Gaming Bill Signed (AB466)
June 2001

5th Cir. - Affirms In re: Mastercard (Sports Only)
November 2002

DOJ Statement Reaffirms FWA Application to Internet and No Limits to Sports
April 2003

DOJ Letter to NV Regulators
2009

Reid/Kyl Letter to DOJ re: Wire Act
July 2011

2015

NV & DE Enter into Online Poker Agreement
February 2014

RAWA introduced in Congress
February 2015

NJ Joins NV and DE for Online Poker
April 2018

PASPA Deemed Unconstitutional
May 2018

August 2018

DOJ Releases New Opinion - FWA Not Limited to Sports - IL & NY Lotteries Must Comply
(Internet Illegal)
Jan 14, 2019

NH and NH Vendor File Dec Relief Action
February 2019

NH Fed Court Requests Briefing re: Application to States
April 12, 2019

2020

2025

2030

2035

In re: MasterCard - District Court - Limits Wire Act to Sports
February 2001

Nevada Interactive Gaming Bill Signed (AB466)
June 2001

5th Cir. - Affirms In re: Mastercard (Sports Only)
November 2002

DOJ Statement Reaffirms FWA Application to Internet and No Limits to Sports
April 2003

DOJ Letter to NV Regulators
August 2002

Reid/Kyl Letter to DOJ re: Wire Act
July 2011

RAWA introduced in Congress
February 2015

NJ Joins NV and DE for Online Poker
April 2018

PASPA Deemed Unconstitutional
May 2018

NJ Issues First Sports Betting License - Online Permitted
June 2018

WV Sports Betting Goes Live with Online
August 2018

DOJ Releases New Opinion - FWA Not Limited to Sports - IL & NY Lotteries Must Comply (Internet Illegal)
Jan 14, 2019

NH and NH Vendor File Dec Relief Action
February 2019

NH Fed Court Requests Briefing re: Application to States
April 12, 2019

2005

2010

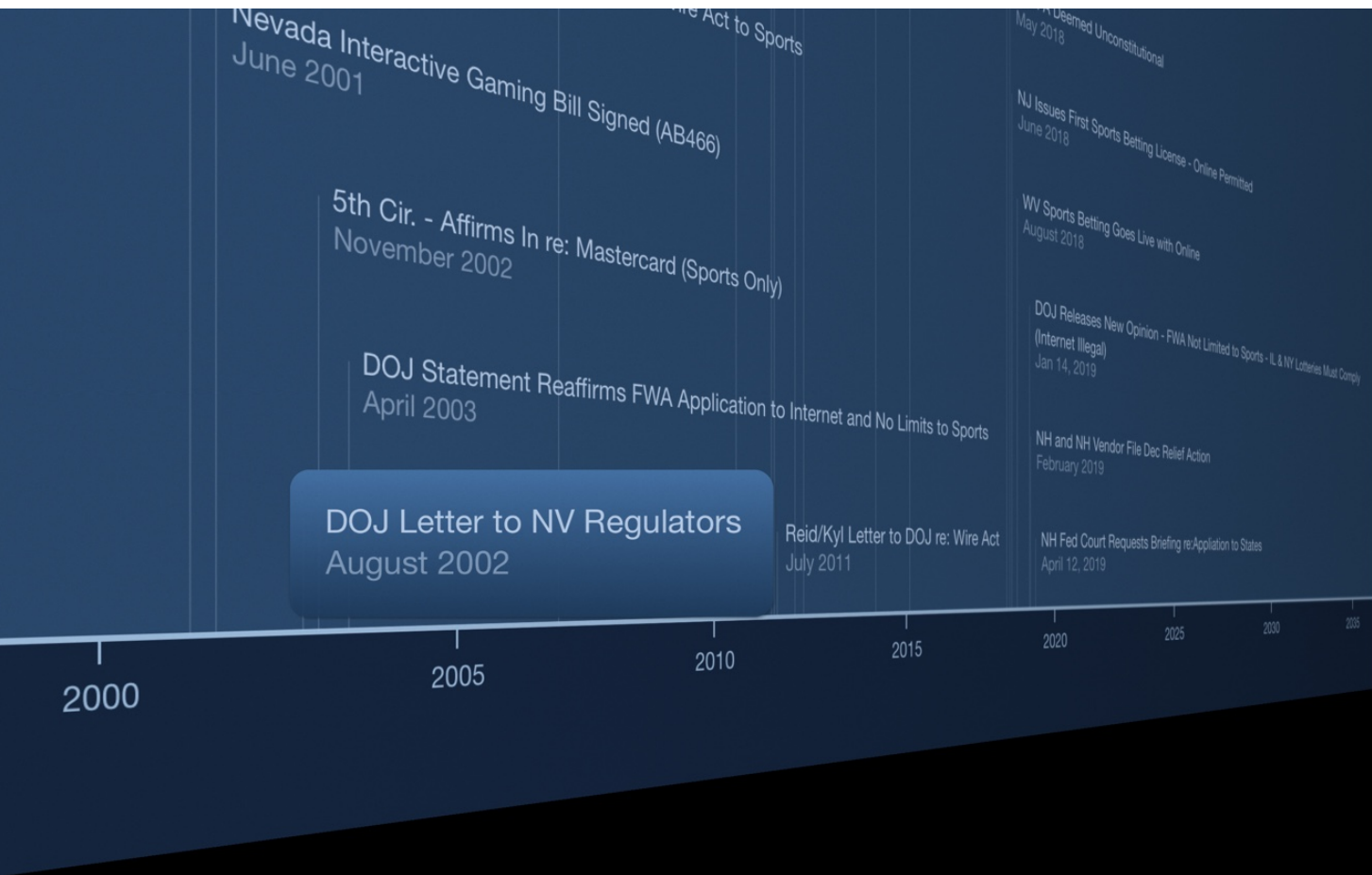
2015

2020

2025

2030

2035



2000

2005

2010

2015

2020

2025

2030

2035

In re: MasterCard - District Court - Limits Wire Act to Sports
February 2001

Nevada Interactive Gaming Bill Signed (AB466)
June 2001

5th Cir. - Affirms In re: Mastercard (Sports Only)
November 2002

DOJ Letter to NV Regulators
August 2002

DOJ Statement Reaffirms FWA Application to Internet and No Limits to Sports
April 2003

Reid/Kyl Letter to DOJ re: Wire Act
July 2011

NJ Joins NV and DE for Online Poker
April 2018

PASPA Deemed Unconstitutional
May 2018

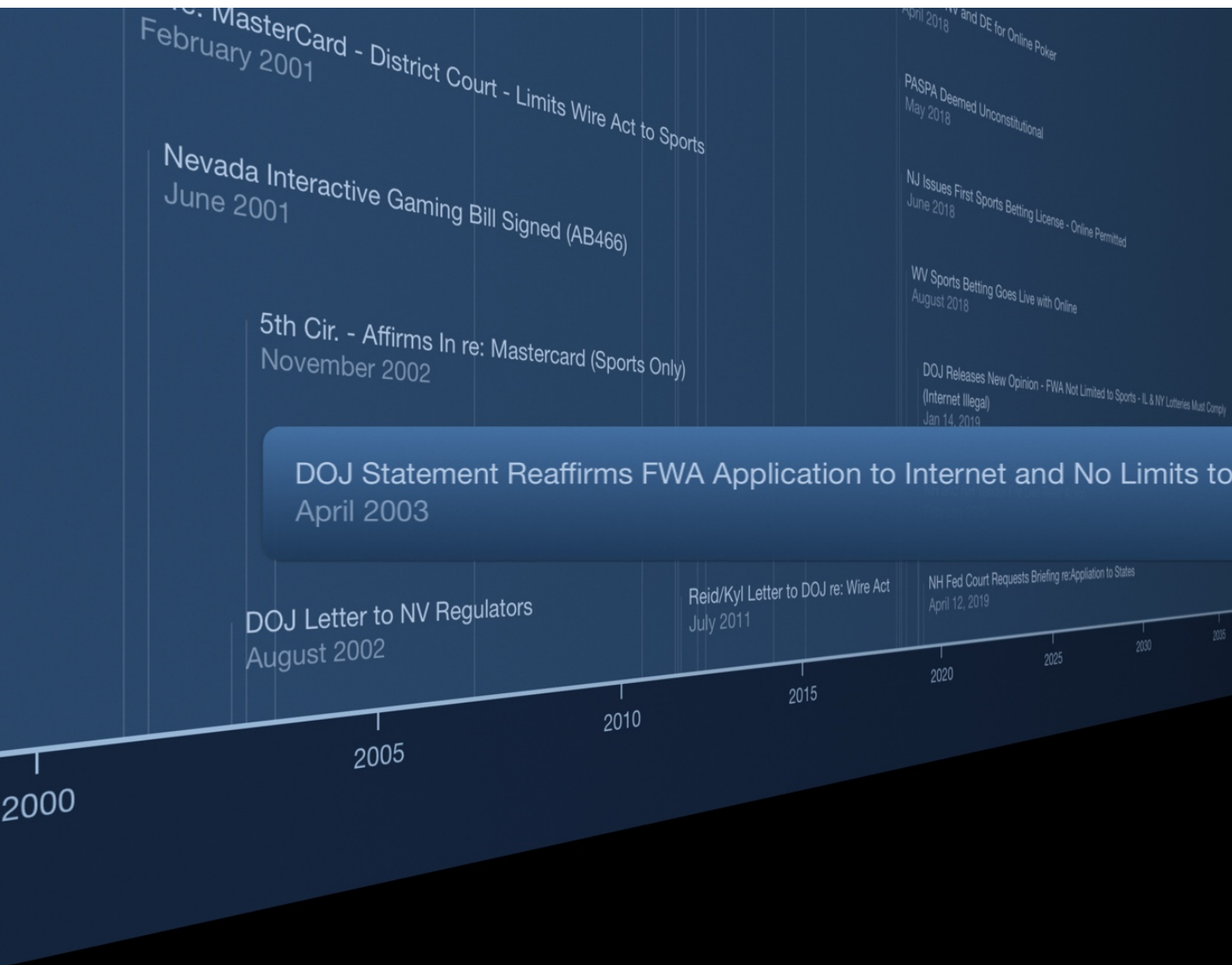
NJ Issues First Sports Betting License - Online Permitted
June 2018

WV Sports Betting Goes Live with Online
August 2018

Releases New Opinion - FWA Not Limited to Sports - IL & NY Lotteries Must Comply
14, 2019

NH and NH Vendor File Dec Relief Action
February 2019

NH Fed Court Requests Briefing re: Application to States
April 12, 2019



UIGEA Enacted - Specific Fed. Statute Regarding Funds Transfer for Online Wagering
October 2006

IL and NY Lotteries Notify DOJ re: Intrastate Online Lottery Sales
July 2010

Ried/Kyle Online Poker Bill Near Final
May 2011

NV Enacts AB258 re: Online Poker Regs
June 2011

DOJ Opinion - Wire Act - Sports Only - Intrastate Ok
December 2011

Remote Sports Account Wagering Apps Approved in NV

UIGEA Enacted - Specific Fed. Statute Regarding Funds Transfer for Online Wagering
October 2006

IL and NY Lotteries Notify DOJ re: Intrastate Online Lottery Sales
July 2010

Ried/Kyle Online Poker Bill Near Final
May 2011

NV Enacts AB258 re: Online Poker Regs
June 2011

DOJ Opinion - Wire Act - Sports Only - Intrastate Ok
December 2011

Leroy's Android & iOS Remote Sports Account Wagering Apps Approved in NV
Agreement

EA Enacted - Specific Fed. Statute Regarding Funds Transfer for Online Wagering
October 2006

IL and NY Lotteries Notify DOJ re: Intrastate Online Lottery Sales
July 2010

Ried/Kyle Online Poker Bill Near Final
May 2011

NV Enacts AB258 re: Online Poker Regs
June 2011

DOJ Opinion - Wire Act - Sports Only - Intrastate Ok
December 2011

Leroy's Android & iOS Remote Sports Account Wagering Apps Approved in NV
March 2012

NV & DE Enter into Online Poker Agreement
January 2014

2006

Specific Fed. Statute Regarding Funds Transfer for Online Wagering

IL and NY Lotteries Notify DOJ re: Intrastate Online Lottery Sales
July 2010

Ried/Kyle Online Poker Bill Near Final
May 2011

NV Enacts AB258 re: Online Poker Regs
June 2011

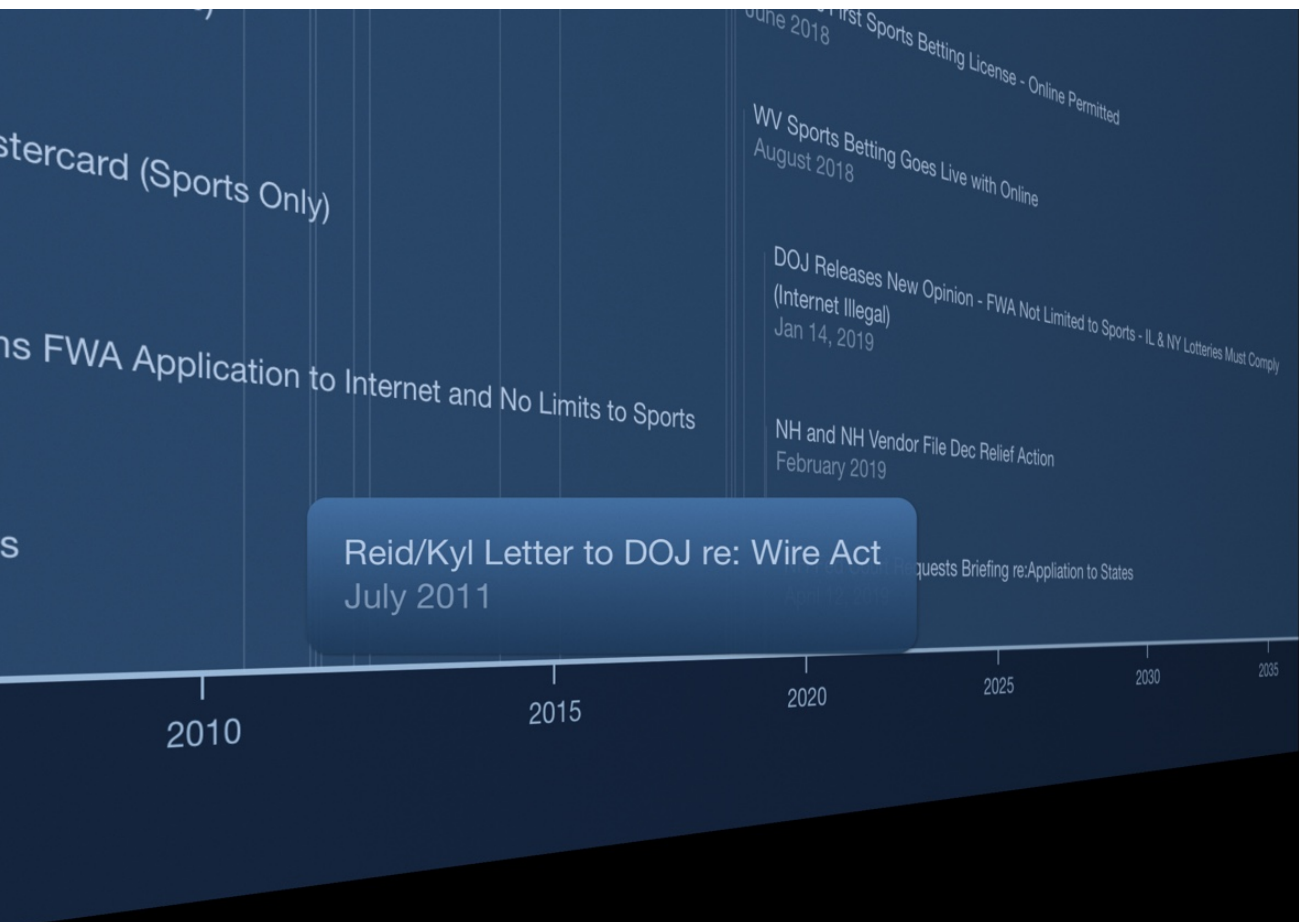
DOJ Opinion - Wire Act - Sports Only - Intrastate Ok
December 2011

Leroy's Android & iOS Remote Sports Account Wagering Apps Approved in NV
March 2012

NV & DE Enter into Online Poker Agreement
February 2014

RAWA introduced in Congress
February 2015

DE for Online Poker



Reid/Kyl Letter to DOJ re: Wire Act
July 2011

Requests Briefing re: Application to States

IL and NY Lotteries Notify DOJ re: Intrastate Online Lottery Sales
July 2010

Ried/Kyle Online Poker Bill Near Final
May 2011

NV Enacts AB258 re: Online Poker Regs
June 2011

DOJ Opinion - Wire Act - Sports Only - Intrastate Ok
December 2011

Leroy's Android & iOS Remote Sports Account Wagering Apps Approved in NV
March 2012

NV & DE Enter into Online Poker Agreement
February 2014

RAWA introduced in Congress
February 2015

NJ Joins NV and DE for Online Poker
April 2018

Unconstitutional

Online Lottery Sales
Ried/Kyle Online Poker Bill Near Final
May 2011

NV Enacts AB258 re: Online Poker Regs
June 2011

DOJ Opinion - Wire Act - Sports Only - Intrastate Ok
December 2011

Leroy's Android & iOS Remote Sports Account Wagering Apps Approved in NV
March 2012

NV & DE Enter into Online Poker Agreement
February 2014

RAWA introduced in Congress
February 2015

NJ Joins NV and DE for Online Poker
April 2018

PASPA Deemed Unconstitutional
May 2018

Sports Betting License - Online Permitted

Acts AB258 re: Online Poker Regs
June 2011

DOJ Opinion - Wire Act - Sports Only - Intrastate Ok
December 2011

Leroy's Android & iOS Remote Sports Account Wagering Apps Approved in NV
March 2012

NV & DE Enter into Online Poker Agreement
February 2014

RAWA introduced in Congress
February 2015

NJ Joins NV and DE for Online Poker
April 2018

PASPA Deemed Unconstitutional
May 2018

NJ Issues First Sports Betting License - Online Permitted
June 2018

with Online

States Must Comply

Wire Act - Sports Only - Intrastate Ok
December 2011

Leroy's Android & iOS Remote Sports Account Wagering Apps Approved in NV
March 2012

NV & DE Enter into Online Poker Agreement
February 2014

RAWA introduced in Congress
February 2015

NJ Joins NV and DE for Online Poker
April 2018

PASPA Deemed Unconstitutional
May 2018

NJ Issues First Sports Betting License - Online Permitted
June 2018

WV Sports Betting Goes Live with Online
August 2018

RAWA Not Limited to Sports - IL & NY Lotteries Must Comply

Remote Sports Account Wagering Apps Approved in NV

NV & DE Enter into Online Poker Agreement
February 2014

RAWA introduced in Congress
February 2015

NJ Joins NV and DE for Online Poker
April 2018

PASPA Deemed Unconstitutional
May 2018

NJ Issues First Sports Betting License - Online Permitted
June 2018

WV Sports Betting Goes Live with Online
August 2018

Releases New Opinion - FWA Not Limited to Sports - IL & NY Lotteries Must Comply

January 2014 ... into Online Poker Agreement ... ed in NV

RAWA introduced in Congress
February 2015

NJ Joins NV and DE for Online Poker
April 2018

PASPA Deemed Unconstitutional
May 2018

NJ Issues First Sports Betting License - Online Permitted
June 2018

WV Sports Betting Goes Live with Online
August 2018

DOJ Releases New Opinion - FWA Not Limited to Sports - IL & NY Lotteries Must Comply
(Internet Illegal)
Jan 14, 2019

... File Dec Relief Action

roduced in Congress
February 2015

NJ Joins NV and DE for Online Poker
April 2018

PASPA Deemed Unconstitutional
May 2018

NJ Issues First Sports Betting License - Online Permitted
June 2018

WV Sports Betting Goes Live with Online
August 2018

DOJ Releases New Opinion - FWA Not Limited to Sports - IL & NY Lotteries Must Comply
(Internet Illegal)
Jan 14, 2019

NH and NH Vendor File Dec Relief Action
February 2019

Requests Briefing re: Application to States

NJ Joins NV and DE for Online Poker
April 2018

PASPA Deemed Unconstitutional
May 2018

NJ Issues First Sports Betting License - Online Permitted
June 2018

WV Sports Betting Goes Live with Online
August 2018

DOJ Releases New Opinion - FWA Not Limited to Sports - IL & NY Lotteries Must Comply
(Internet Illegal)
Jan 14, 2019

NH and NH Vendor File Dec Relief Action
February 2019

NH Fed Court Requests Briefing re: Application to States
April 12, 2019

Limits to Sports

DOJ re: Wire Act

2025

2030

2035

NSA Deemed Unconstitutional
May 2018

NJ Issues First Sports Betting License - Online Permitted
June 2018

WV Sports Betting Goes Live with Online
August 2018

DOJ Releases New Opinion - FWA Not Limited to Sports - IL & NY Lotteries Must Comply (Internet Illegal)
Jan 14, 2019

NH and NH Vendor File Dec Relief Action
February 2019

NH Fed Court Requests Briefing re: Application to States
April 12, 2019

2020

2025

2030

2035

imits to Sports

DOJ re: Wire Act

First Sports Betting License - Online Permitted
June 2018

WV Sports Betting Goes Live with Online
August 2018

DOJ Releases New Opinion - FWA Not Limited to Sports - IL & NY Lotteries Must Comply
(Internet Illegal)
Jan 14, 2019

NH and NH Vendor File Dec Relief Action
February 2019

NH Fed Court Requests Briefing re: Application to States
April 12, 2019

2020 2025 2030 2035

its to Sports

DOJ re: Wire Act

5

Sports Betting Goes Live with Online
August 2018

DOJ Releases New Opinion - FWA Not Limited to Sports - IL & NY Lotteries Must Comply
(Internet Illegal)
Jan 14, 2019

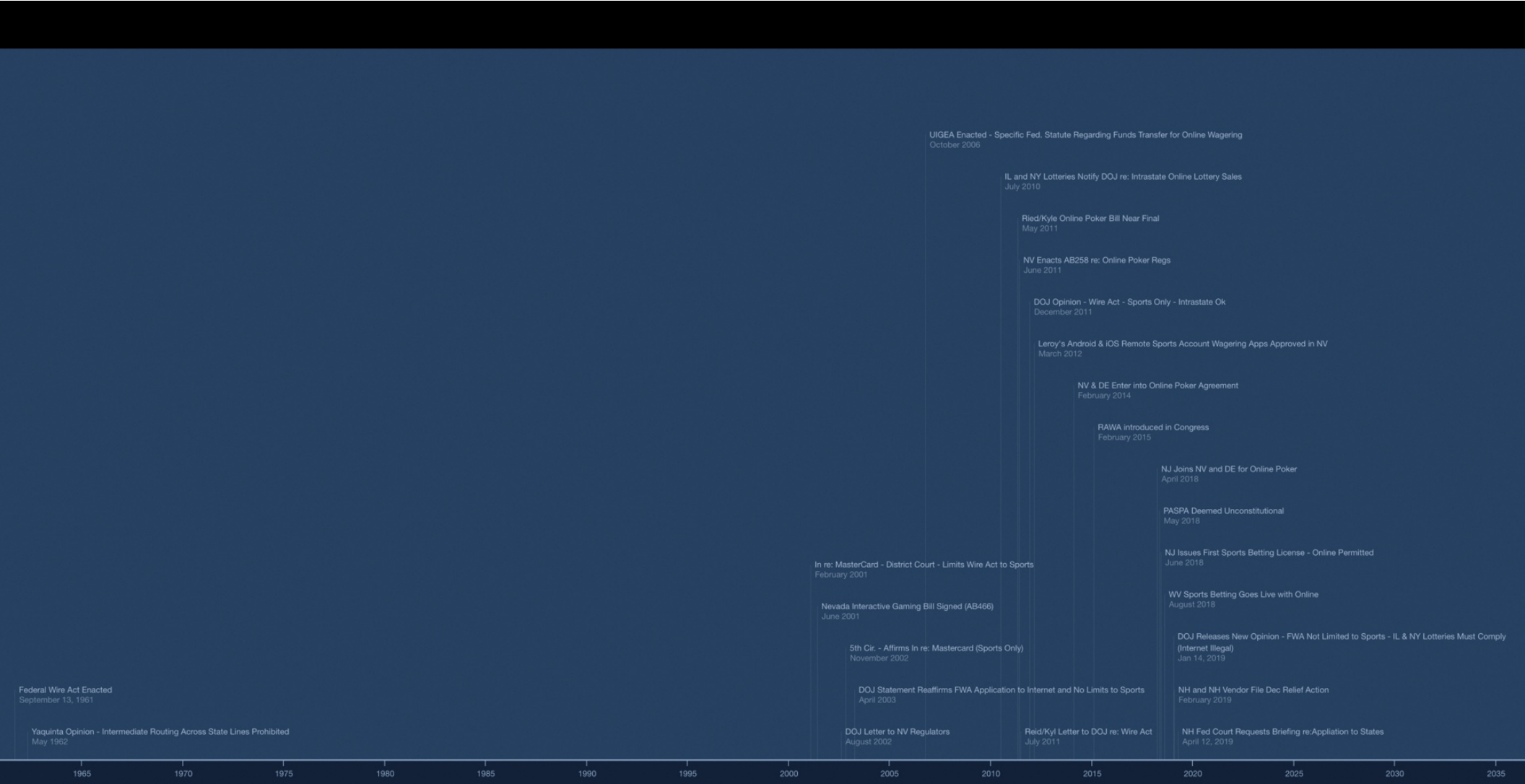
NH and NH Vendor File Dec Relief Action
February 2019

NH Fed Court Requests Briefing re:Application to States
April 12, 2019

2020 2025 2030 2035

ts to Sports

J re: Wire Act



FEDERAL WIRE ACT

QUESTIONS

ILLEGAL GAMBLING BUSINESS ACT

- ▶ Part of follow-up laws to the 1961 statutes
- ▶ Elevates state gambling law violations to federal criminal violations when the activity is being done as part of a business

ILLEGAL GAMBLING BUSINESS ACT – 18 USC §1955

- ▶ (a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.
- ▶ (b) As used in this section--
 - ▶ (1) “illegal gambling business” means a gambling business which--
 - ▶ (i) is a violation of the law of a State or political subdivision in which it is conducted;
 - ▶ (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and
 - ▶ (iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.
 - ▶ (4) “gambling” includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.
 - ▶ (6) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

ILLEGAL GAMBLING BUSINESS ACT – 18 USC §1955

- ▶ (a) **Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.**
- ▶ (b) As used in this section--
 - ▶ (1) “illegal gambling business” means a gambling business which--
 - ▶ (i) is a violation of the law of a State or political subdivision in which it is conducted;
 - ▶ (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and
 - ▶ (iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.
 - ▶ (4) “gambling” includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.
 - ▶ (6) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

ILLEGAL GAMBLING BUSINESS ACT – 18 USC §1955

- ▶ (a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.
- ▶ (b) As used in this section--
 - ▶ (1) “illegal gambling business” means a gambling business which--
 - ▶ (i) is a violation of the law of a State or political subdivision in which it is conducted;
 - ▶ (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and
 - ▶ (iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.
 - ▶ (4) “gambling” includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.
 - ▶ (6) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

ILLEGAL GAMBLING BUSINESS ACT – 18 USC §1955

- ▶ (a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.
- ▶ (b) As used in this section--
 - ▶ (1) “illegal gambling business” means a gambling business which--
 - ▶ (i) is a violation of the law of a State or political subdivision in which it is conducted;
 - ▶ (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and
 - ▶ (iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.
 - ▶ (4) “**gambling**” includes but is not limited to **pool-selling, bookmaking**, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.
 - ▶ (6) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

ILLEGAL GAMBLING BUSINESS ACT - 18 USC §1955

- ▶ The term "conducts" means providing anything necessary or helpful, even a being a janitor:
 - ▶ "...this circuit has held that runners, telephone clerks, salesmen, dealers, doormen and watchmen "conduct" gambling businesses within the meaning of the statute. ... By cleaning up and preparing the gambling area for future sessions, appellant helped to provide an attractive place for bettors to congregate in order to wager. ... In light of the authorities from the fifth, seventh and eighth circuits, we hold that persons who regularly aid gambling enterprises should be subject to prosecution under section 1955 even though their conduct may not be strictly necessary to the success of such businesses. ... Since appellant knowingly and regularly aided the gambling business in question, the district court acted properly in convicting him. - U.S. v. Merell

ILLEGAL GAMBLING BUSINESS ACT – 18 USC §1955

- ▶ The IGBA is a POWERFUL statute
- ▶ It was the primary statute used to prosecute those involved with Absolute Poker, Full Tilt Poker and PokerStars in 2011.



*United States Attorney
Southern District of New York*

FOR IMMEDIATE RELEASE
APRIL 15, 2011

CONTACT: U.S. ATTORNEY'S OFFICE
ELLEN DAVIS, CARLY SULLIVAN,
JERIKA RICHARDSON, EDELI RIVERA
PUBLIC INFORMATION OFFICE
(212) 637-2600

FBI
TIM FLANNELLY, JIM MARGOLIN
PUBLIC INFORMATION OFFICE
(212) 384-2100

**MANHATTAN U.S. ATTORNEY CHARGES PRINCIPALS
OF THREE LARGEST INTERNET POKER COMPANIES WITH BANK
FRAUD, ILLEGAL GAMBLING OFFENSES AND LAUNDERING
BILLIONS IN ILLEGAL GAMBLING PROCEEDS**

*Multi-Billion Dollar Civil Money Laundering And
Forfeiture Action Also Filed*

Internet Domain Names Used By The Poker Companies Seized

PREET BHARARA, the United States Attorney for the Southern District of New York, and JANICE FEDARCYK, the Assistant-Director-in-Charge of the New York Field Office of the Federal Bureau of Investigation ("FBI"), announced the unsealing of an Indictment today charging eleven defendants, including the founders of the three largest Internet poker companies doing business in the United States - PokerStars, Full Tilt Poker, and Absolute Poker (the "Poker Companies")- with bank fraud, money laundering, and illegal gambling offenses. The United States also filed a civil money laundering and in rem forfeiture complaint (the "Civil Complaint") against the Poker Companies, their assets, and the assets of several payment processors for the Poker Companies. In addition, restraining orders were issued against more than 75 bank accounts utilized by the Poker Companies and their payment processors, and five Internet domain

FEDERAL LAWS

ILLEGAL GAMBLING BUSINESS ACT – 18 USC §1955

▶ QUESTIONS

UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT – 31 USC §5361 ET. SEQ.

- ▶ Not a criminal gambling statute
- ▶ This is a title 31 funds transfer statute
- ▶ It essentially makes it a separate offense to accept funds in the furtherance of an illegal gambling activity online, unless such activity is exempted from making the funds transfer a separate offense
- ▶ It uses other statutes to determine if an activity is an illegal gambling activity

UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT – 31 USC §5361 ET. SEQ.

- ▶ 31 USC §5361 (b)Rule of Construction.—
- ▶ No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States
- ▶ *If an activity is illegal under other laws, the UIGEA does not make the activity legal, although it may exempt the activity from UIGEA prohibitions on acceptance of funds.*

UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT – 31 USC §5361 ET. SEQ.

- ▶ 31 USC §5363 Prohibitions
- ▶ No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling–
 - ▶ (1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);
 - ▶ (2) an electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person;
 - ▶ (3) any check, draft, or similar instrument which is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution; or
 - ▶ (4) the proceeds of any other form of financial transaction, as the Secretary and the Board of Governors of the Federal Reserve System may jointly prescribe by regulation, which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of such other person.

FEDERAL LAWS

UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT - 31 USC §5361 ET. SEQ.

▶ QUESTIONS

QUESTIONS

Greg Gemignani

702-809-3554

DICKINSON  WRIGHT^{PLLC}