



State of West Virginia  
Office of the Attorney General

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March 21, 2019

**Via E-mail and Regular Mail**

Attorney General William Barr  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530

Dear Attorney General Barr:

We, the Attorneys General of West Virginia, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, the District of Columbia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, and Virginia, write to express our serious concerns regarding the Office of Legal Counsel's recent opinion, "Reconsidering Whether the Wire Act Applies to Non-Sports Gambling" ("Opinion"). We ask for an opportunity to meet with you in the near future to discuss the potentially sweeping implications of this decision to our state lotteries, as well as potential solutions that are fully consistent with both federal law and the significant needs and reliance interests of our States. We also respectfully request that the Department extend the current window for compliance reflected in Deputy Attorney General Rosenstein's Memoranda to U.S. Attorneys, Assistant Attorneys General, and the Director of the Federal Bureau of Investigation, until or beyond August 13, 2019.

The Opinion reversed the Department's prior, 2011 interpretation of the Wire Act's scope, which had assured the States and other actors that 18 U.S.C. § 1084(a) prohibits only interstate transmission of information regarding sporting events or contests. The new Opinion, however, calls into question interstate transmissions related to *all* bets or wagers, even where fully authorized under relevant state law. We are concerned that the consequences of this

interpretation reach into areas of traditional state sovereignty. Under the Opinion, conduct that was long understood to be legal now invites exposure to severe criminal penalties. The rationale in the Opinion is not limited to online gaming; it also casts significant doubt on the continued vitality of multi-state lottery games such as Powerball and Mega Millions, even though these programs existed without legal challenge well before the earlier 2011 OLC opinion was issued, and even though the vast majority of States participate in these offerings. The increasingly interstate nature of internet and cellular transmissions means that even traditionally in-state lotteries—those operated by a single State and open only to players within the State’s borders—might be interpreted as running afoul of the new Opinion as well. The loss of these programs would have devastating consequences for our States. State-run and multi-state lotteries are a consistent source of state revenue, representing many billions of dollars in annual funding used to fund vital state services such as schools and other educational initiatives, services for senior citizens, and infrastructure projects.

We also have concerns about the Opinion’s legal foundations. As the chief legal officers of our States, we are firmly committed to upholding both state and federal law. But the two federal appellate courts to have addressed the issue have come to the opposite conclusion than the Opinion does.<sup>1</sup> And the Opinion’s conclusion also runs afoul of the decisions of the overwhelming majority of States that multi-state lottery games are consistent with federal law, and the Department’s own prior legal interpretation.

In light of these concerns, we ask for time to meet with you in the coming weeks to confirm that the Department does not intend to enforce this law against state lotteries and their associated vendors. We welcome the opportunity to talk with you about the weighty consequences the Opinion will have for our States, and to discuss the legal foundations of the Department’s position in further detail. These issues are critical for the people in our States, and we need to know the Department’s position as we assess the path forward for our States. Nevertheless, we are optimistic that through discussions with you we can reach a potential solution that minimizes the repercussions for our States and upholds the rule of law.

We also respectfully request that the Department extend the compliance window in Deputy Attorney General Rosenstein’s January 15 and February 28 memoranda for at least an additional 60 days, until or beyond August 13, 2019. We appreciate the recognition the Department has already shown that evaluating and potentially modifying existing programs in light of the Opinion is no simple task. Yet even beyond the logistical hurdles, the fact that many States operate under a fiscal year that ends in June presents substantial financial challenges. Our

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<sup>1</sup> See *United States v. Lyons*, 740 F.3d 702, 718 (1st Cir. 2014) (“The Wire Act applies only to ‘wagers on any sporting event or contest,’ that is, sports betting.”); *In re MasterCard Int’l*, 313 F.3d 257, 262-63 (5th Cir. 2002) (affirming district court’s conclusion that “the Wire Act concerns gambling on sporting events or contests” based on a “plain reading of the statutory language”).

States rely heavily on financial projections from the previous fiscal year when making funding determinations throughout the current year, and many funding streams for this year are based in part on projected revenue from programs that may ultimately be affected by the Opinion. An additional extension through August 13, 2019 will not only allow time for us to discuss these and other important issues with the Department, but will give our States and the vendors we work with an enhanced ability to safeguard our citizens and state services.

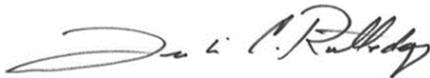
Sincerely,



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Leslie Rutledge  
Arkansas Attorney General



William Tong  
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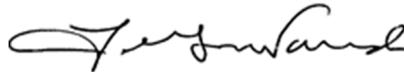
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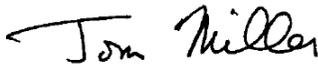
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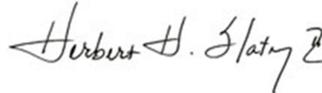
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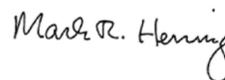
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