

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

**NEW HAMPSHIRE LOTTERY  
COMMISSION,**  
  
**NEOPOLLARD INTERACTIVE, LLC, and**  
|  
**POLLARD BANKNOTE LIMITED,**

Plaintiffs,

and

**iDEVELOPMENT AND ECONOMIC  
ASSOCIATION,**

Proposed-Intervenor

Civil Action No. 19-cv-00163-PB

v.

**WILLIAM BARR**, in his official capacity as  
Acting Attorney General of the United States of  
America,

**UNITED STATES DEPARTMENT OF  
JUSTICE**, and

**UNITED STATES OF AMERICA**

Defendants.

**COMPLAINT IN INTERVENTION**

Intervenor iDevelopment and Economic Association (“**iDEA**” or “**Intervenor**”) respectfully submits this Complaint in Intervention for declaratory relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, against the Defendants, William Barr, in his official capacity as the Attorney General, the United States Department of Justice, and the United States of America (collectively, “**DOJ**”). In support thereof, Intervenor states as follows:

## INTRODUCTION

1. This is an emergency action brought by iDEA, a leading trade association that represents the interests of the internet gaming and entertainment (“iGaming”) industry, to prevent the DOJ from enforcing the Wire Act, 18 U.S.C. § 1084, in an unlawful manner that unjustly and disproportionately impacts iDEA and its nearly two dozen member-organizations.

2. The Wire Act is a federal criminal law that prohibits certain types of gambling activity conducted over the domestic and international wire systems. Passed by Congress in 1961, the Wire Act was long-interpreted by the DOJ as applying *only* to sports gambling activity conducted over the wires. *See Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act*, 35 Op. O.L.C. (2011) (“**2011 OLC Opinion**”).

3. In reliance on the 2011 OLC Opinion (as well as settled federal appellate law), iDEA and its member-organizations invested tens of millions of dollars to develop iGaming and lottery systems and platforms that have been specifically designed and configured in accordance with State-mandated specifications and requirements. Among other iGaming services, iDEA’s members operate and provide services related to online poker and online casino gaming. These online poker and casino gaming activities occur exclusively in States that have specifically legalized such activity, including New Jersey, Nevada, Delaware, and Pennsylvania. In no small part, these operations were launched and developed in reliance on the laws of the States in which iDEA members operate, as well as the 2011 OLC Opinion, and the case law and legislative history upon which that opinion relied. But suddenly, after being acknowledged as safely outside the prohibition of the Wire Act, these iGaming businesses now find themselves on the wrong side of the DOJ and its threat of prosecution under the Wire Act.

4. Specifically, on January 14, 2019, the DOJ announced a *new* interpretation of the Wire Act that departs from its previous, long-held view that the Act applies *only* to sports gambling. See *Reconsidering Whether the Wire Act Applies to Non-Sports Gambling*, 42 Op. O.L.C. (Nov. 2, 2018) (“**2018 OLC Opinion**”). Now, according to the DOJ, certain aspects of the Wire Act apply to *all* forms of gambling activity, including gambling operations and support activities operated by iDEA members in the United States. The DOJ reached this conclusion notwithstanding the fact that the only two federal appeals courts to have considered the scope of the Wire Act concluded that it applies only to *sports gambling* activity, a view that was recently echoed by the U.S. Supreme Court. See *Murphy v. Nat’ Collegiate Athletic Ass’n*, \_\_\_ U.S. \_\_\_, 138 S. Ct. 1461, 1483 (2018).

5. Far from assuaging the concerns of iDEA and its members, the Deputy Attorney General on January 15, 2019 instructed all United States Attorneys, the Assistant Attorneys General, and the Director of the Federal Bureau of Investigation that the DOJ’s new interpretation of the Wire Act now governs throughout the DOJ; that they should “refrain from applying Section 1084(a) in criminal or civil actions to persons who engaged in conduct violating the Wire Act in reliance on the 2011 OLC opinion” for a period of ninety (90) days following January 15, 2019; and that this “90-day window will give businesses that relied on the 2011 OLC opinion time to bring their operations into compliance with federal law,” as “an internal exercise of prosecutorial discretion.” Memorandum from Rod Rosenstein, Deputy Attorney General (January 15, 2019), <https://www.justice.gov/file/1124286/download> (“**Rosenstein Memo**”).

6. To the extent the DOJ is construing the Wire Act as prohibiting established, ongoing business activities even where blessed by the States in which those activities are

occurring, iDEA and its members are injured as a result. Among other things, underpinnings of established understandings and relationships with customers, regulators, and counterparties are now compromised. Nor can iDEA promote and advance the interests of its membership, as it seeks to do, against a backdrop where the Wire Act is threatening to override state approvals and to cast a chill over online gaming.

7. In sum, the DOJ's new interpretation of the Wire Act, and threatened enforcement thereof, is unprecedented and unsustainable. As iDEA and its members are now faced with imminent sanctions, violation of their constitutional rights, and impending irreparable injury, it now falls to the federal courts to vindicate iDEA's and its member-organization's rights by holding the DOJ within bounds of governing law. iDEA, therefore, respectfully seeks a declaratory judgment in order to ensure that it and its members may continue established business practices that have been sanctioned by state law as well as by federal law to date.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. §§ 2201–2202 (the Declaratory Judgment Act).

9. This Complaint in Intervention is submitted pursuant to a requested order of this Court, should the Court grant iDEA's Emergency Motion to Intervene filed pursuant to Fed. R. Civ. P. 24.

10. Venue is proper in this District as set forth by Plaintiff New Hampshire Lottery Commission ("NHLC"). See ECF No. 1 ("Compl.") ¶ 13; see *E. Texas Baptist Univ. v. Sebelius*, 2013 WL 4678016, at \*7 (S.D. Tex. Aug. 30, 2013) ("The fact that venue is proper here for the existing plaintiffs would seem to be enough to make venue proper for [the

intervenor] as well.”); *see also Dow Chem., USA v. Consumer Prod. Safety Com.*, 459 F. Supp. 378, 384 n. 4 (W.D. La. 1978) (“This interpretation is consistent with the purpose of § 1391(e), which is “to make suits by citizens against government agencies and their officials more convenient for plaintiffs.”). In addition, relevant activities of particular iDEA members in New Hampshire would further ground venue here.

### **PARTIES**

11. iDEA is a Delaware not-for-profit corporation organized under Section 501(c)(6) of the Internal Revenue Code. iDEA’s principal place of business is 1717 Pennsylvania Ave. N.W., Suite 650, Washington, D.C. 20006.

12. Pursuant to its bylaws, iDEA is a trade association organized exclusively “to support and conduct research, education, advocacy, and informational activities to increase public awareness of the online gaming industry and the economic benefits.” iDEA is an “association seeking to grow jobs and expand online interactive entertainment business in the United States through advocacy and education.” *Who We Are*, <http://www.ideagrowth.org> (last visited Feb. 18, 2018).

13. iDEA acts on behalf of its membership, which membership extends across all sectors of the growing iGaming industry. iDEA’s members include businesses that work in gaming operations, development, technology, supply, marketing, and payment processing. The iGaming businesses that iDEA’s members operate and support include internet games such as online poker, online bingo, and online casinos. *See id.*

14. iDEA has standing to bring this action on behalf of its membership because the interpretation of the Wire Act taken in the 2018 OLC Opinion may require its members to discontinue, limit and/or overhaul their current business practices related to iGaming operations

and related services that they provide in the United States. In the State of New Hampshire, iDEA members Worldpay Gaming Solutions and Paysafe Group provide payment-related services in connection with New Hampshire's iLottery operation, referenced extensively in NHLC's Complaint. *See* Compl. ¶¶ 56–69. At least one iDEA member would have standing to bring suit on its own behalf. Individual participation of iDEA members is not necessary, however, in order to obtain the relief sought herein.

15. NHLC is an executive branch agency of the State of New Hampshire located at 14 Integra Drive, Concord, New Hampshire. The agency is overseen by three commissioners who are appointed and confirmed by the Governor and Executive Council of the State. N.H. Rev. Stat. § 284:21-a. The Executive Director is appointed by the Commission and is responsible for the day to day operations of the agency. N.H. Rev. Stat. 284:21-b, II.

16. NeoPollard Interactive, LLC (“**NeoPollard**”) is North America's leading provider of iLottery systems and technologies. NeoPollard's online gaming technology has been successfully deployed in Michigan, Virginia, and New Hampshire. Pollard BankNote Limited (“**Pollard**”) is the 50% joint owner of NeoPollard and is a leading supplier of gaming services to lotteries and charitable gaming organizations around the world. On February 15, 2019, NeoPollard and Pollard filed a lawsuit in this Court against DOJ raising substantially similar claims as those asserted by NHLC. *See NeoPollard Interactive LLC et al v. Barr, et al.*, 1:19-cv-00170-SM (D.N.H.). That lawsuit was consolidated with this action on February 22, 2019. NeoPollard and Pollard are, therefore, plaintiffs in this action, together with NHLC.

17. William Barr is the Attorney General of the United States. The Attorney General is the head of the Department of Justice and is responsible for administering the laws of the United States.

18. The United States Department of Justice is an executive department of the United States and, under the leadership of the Attorney General, is likewise responsible for administering the laws of the United States.

### **FACTS**

#### **A. The Wire Act**

19. The Wire Act, 18 U.S.C. § 1084, is a federal criminal law passed in 1961 that prohibits certain types of gambling activity conducted over interstate or foreign wires.

20. The Wire Act sets forth, in pertinent part:

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 U.S.C. § 1084(a).

21. By its terms, the Wire Act prohibits only transmissions concerning sports-related wagering.

22. Indeed, the Wire Act's legislative history confirms that Congress's overriding goal in the Act was to stop the use of wire communications for sports gambling in particular. Congress was focused principally on off-track betting on horse races, but also expressed concern about other sports-related events or contests, such as baseball, basketball, football, and boxing.

The House Judiciary Committee Report, for example, explains:

Testimony before your Committee on the Judiciary revealed that modern bookmaking depends in large measure on the rapid transmission of gambling information by wire communication facilities. For example, at present, the immediate receipt of information as to results of a horserace permits a bettor to place a wager on a successive race. Likewise, bookmakers are dependent upon telephone service for the placing of bets and for layoff betting on all sporting events. The availability of wire communication facilities affords opportunity for

the making of bets or wagers and the exchange of related information almost to the very minute that a particular sporting event begins.

H.R. Rep. No. 87-967 at 2, *reprinted in* 1961 U.S.C.C.A.N. at 2631-32 (reprinted report entitled “Sporting Events—Transmission of Bets, Wagers, and Related Information”).

23. Legislative history from the Senate similarly indicates that Congress’s motive in enacting the Wire Act was to combat sports-related betting. The Explanation of S. 1656, Prohibiting Transmission of Bets by Wire Communications, provided by Chairman Eastland during the Senate debate, describes the problem addressed by the legislation this way:

Information essential to gambling must be readily and quickly available. Illegal bookmaking depends upon races at about 20 major racetracks throughout the country, only a few of which are in operation at any one time. Since the bookmaker needs many bets in order to operate a successful book, he needs replays, including money on each race. Bettors will bet on successive races only if they know quickly the results of the prior race and the bookmaker cannot accept bets without the knowledge of the results of each race. Thus, information so quickly received as to be almost simultaneous, prior to, during, and immediately after each race with regard to starting horse, scratches of entries, probable winners, betting odds, results and the prices paid, is essential to both the illegal bookmaker and his customers.

107 Cong. Rec. 13,901 (1961).

24. Although Congress was most concerned about horse racing, testimony during the hearings also highlighted the increasing importance of rapid wire communications to “large-scale betting operations” involving other professional and amateur sporting events, such as baseball, basketball, football, and boxing. *See* Statement of the Hon. Robert F. Kennedy, Attorney General of the United States, Before Subcommittee No. 5 of the House Committee on the Judiciary, In Support of Legislation To Curb Organized Crime and Racketeering (May 17, 1961).

25. The only two federal appeals courts to have considered the scope of the Wire Act have held that the limiting phrase “on any sporting event or contest” applies to all prohibitions set forth in Section 1084(a). *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.”) (quoting 18 U.S.C. § 1084(a)) (emphasis added); *In re MasterCard Int’l Inc.*, 313 F.3d 257, 263 (5th Cir. 2002) (“Because *the Wire Act does not prohibit non-sports internet gambling*, any debts incurred in connection with such gambling are not illegal.”) (emphasis added).

**B. The UIGEA Muddied the State of the Law Surrounding iGaming**

26. iGaming first became possible in the mid-1990s when graphical user interfaces, Internet connectivity, and reliable payment systems developed to the point where they could be integrated into a relatively seamless application. The rapid growth and success of the iGaming industry set up an important change to the legal framework when Congress in 2006 passed the Unlawful Internet Gambling Enforcement Act (“**UIGEA**”). *See* 31 U.S.C. §§ 5361–5367.

27. Given that UIGEA prohibits participation in “unlawful Internet gambling,” the statutory definition of that term is critical:

The term ‘unlawful Internet gambling’ means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law . . . in which the bet or wager is initiated, received, or otherwise made.

*Id.* § 5362(10)(A).

28. Importantly, UIGEA’s definition of “unlawful Internet gambling” is subject to several notable exemptions. For example, UIGEA endorsed the use of geolocation technology to verify that individuals using iGaming services were present in a state in which such services were legal. *Id.* § 5362(10)(B).

**C. The Department of Justice Office of Legal Counsel’s 2011 Memorandum**

29. To resolve questions about the scope of the Wire Act, officials from the New York State Division of the Lottery and the Office of the Governor of the State of Illinois sought

the DOJ's views regarding their respective State's plans to use the Internet and out-of-state transaction processors to sell lottery tickets to adults within their states.

30. Both States submitted to the DOJ that the Wire Act was inapplicable to such interstate transmissions of electronic data, whether incidental or intentional.

31. On December 23, 2011, the DOJ responded favorably to the 2009 inquiries from the States of Illinois and New York and affirmed the legality of their proposals. *See* 2011 OLC Opinion.

32. While agreeing with the States as to the bottom line, the 2011 OLC Opinion did not answer the precise question posed by the States regarding the lawfulness of selling lottery tickets over the Internet to in-state adults using out-of-state transaction processors. The 2011 OLC Opinion concluded that it need not resolve this question because "interstate transmissions of wire communications that do not relate to a 'sporting event or contest' . . . fall outside of the reach of the Wire Act." *Id.* at 1–2. Because the proposed New York and Illinois lottery proposals did not involve wagering on sporting events or contests, the 2011 OLC Opinion concluded that "the Wire Act does not . . . prohibit them." *Id.*

33. In reaching its conclusion that the Wire Act applied only to sports gambling activity, the OLC thoroughly examined the terms of the Wire Act, as well as legislative history surrounding it and settled federal appellate law. *See id.* at 3–11.

#### **D. iGaming Experiences a Resurgence as States Begin to Explicitly Regulate Online Poker**

34. Thanks to the added clarity provided by the 2011 OLC Opinion, Internet gambling providers, financial institutions, payment processors, and States no longer needed to worry about federal prosecution of Internet gambling and related transactions under the Wire Act.

35. Since the 2011 OLC Opinion, four States, including Delaware, Pennsylvania, New Jersey, and Nevada, have enacted various iGaming legislation legalizing some form of online poker and/or online casino gaming. See Eric Ramsey, *WSOP.com Multistate Poker Goes Live Across New Jersey And Nevada*, Online Poker Report, (April 30, 2018), <https://www.onlinepokerreport.com/30176/wsop-com-multistate-poker-goes-live-nj-nevada/>.

Many other States, including New Hampshire, Kentucky, Illinois, Georgia, Michigan, and Pennsylvania, have legalized the in-state online sale of lottery tickets. See Steve Ruddock, *New Hampshire Becomes The Sixth State Offering Online Lottery*, Online Poker Report (Sept. 19, 2018), <https://www.onlinepokerreport.com/32248/new-hampshire-online-lottery-2/>.

36. Today, iGaming is a multi-billion dollar industry offering customers dozens of safe, well-developed, and highly-regulated gaming options.

37. In enacting iGaming legislation, each State has developed a tight statutory and regulatory framework for iGaming companies. For example, the laws of each State require Internet gambling providers to be licensed by the State and, unless expressly authorized, to limit gambling activity to the geographic confines of the State.

38. Collectively, Delaware, Pennsylvania, New Jersey, and Nevada have issued a significant number of licenses to various iGaming companies and businesses. As a result, the iGaming industry has experienced exponential growth in recent years.

39. As iGaming in the United States grew, industry businesses and stakeholders looked to form an association to support the development of the nascent online gaming industry. Towards that end, iDEA was formed in 2016.

40. iDEA is a trade association that represents the interests of nearly two dozen member-organizations from virtually every sector of the iGaming community, including

operations, development, technology, supply, marketing, and payment processing. Among the iGaming businesses that iDEA members operate and support are games such as online poker, online bingo, online casinos, and lotteries in States whose laws permit these activities.

41. iDEA's mission is to create jobs and expand the iGaming industry in the United States through advocacy and education. iDEA itself does not engage in electronic gaming by and through the Internet, but collects and disseminates information, research, and advice regarding such services to its members and to the general public through various media, including speech, print, and the Internet.

42. Like the various States that have enacted iGaming legislation or otherwise provide direct iGaming products to its residents, iDEA's member-organizations have relied in good faith on the 2011 OLC Opinion and state regulations and specifications enacted subsequent to and in direct reliance on it. iDEA members have, collectively, invested millions of dollars to develop markets and create online gaming products and services compliant with state and federal laws.

43. Specifically, several iDEA members operate online poker and online casino businesses in States that have legalized such activity following the 2011 OLC Opinion, pursuant to those States' legal frameworks authorizing and regulating such activity. Individuals can participate in these gaming activities both via personal computer and personal mobile device.

44. Players seeking to play online poker or online casino games via services operated by iDEA members do so while physically located in the State where the iGaming activity has been legalized. iDEA members utilize geolocation technology in order to ensure that players utilizing their iGaming services comply with this geographic requirement.

45. The operative technological structures have been created pursuant to state regulations that were developed in reliance on the 2011 OLC Opinion, in addition to the same case law and legislative history upon which the 2011 OLC Opinion relied.

46. Additionally, iDEA members provide online poker services subject to a shared liquidity agreement involving the States of Delaware, Nevada, and New Jersey. *See Geocomply, Interstate Compact Takes Effect May 1st Tying DE-NV-NJ Poker Platforms* (May 1, 2018), <https://www.geocomply.com/press/interstate-compact-de-nv-nj-poker/> (last visited Feb. 18, 2018). As part of the shared liquidity agreement, online poker players from Delaware, Nevada, and New Jersey can all play in games together. Importantly, this service utilizes geolocation technology to ensure that players utilizing the service are physically within the borders of those three States when playing. For this type of poker play, the gaming activity still begins and ends in the State where the underlying activity is legal. But certain data necessarily travels between the three States that are parties to the agreement. The software necessary for the interstate agreement was tested and approved by state regulators. *See Richard N. Velotta, Nevada Pokers Players Can Now Play Online Against New Jersey Players*, *Las Vegas Review Journal* (May 1, 2018), <https://www.reviewjournal.com/business/casinos-gaming/nevada-pokers-players-can-now-play-online-against-new-jersey-players/> (last visited Feb. 18, 2018).

47. iGaming has generated significant revenues, jobs, and tax revenue in States where such activity has been legalized. For example, in New Jersey between 2013 and 2016, iGaming directly and indirectly generated \$998.3 million in revenue, 3,374 full-time jobs, \$218.9 million in employee wages, and \$124.4 million in tax revenue (including \$83.5 million in iGaming taxes). *See Economic Benefits*, <https://ideagrowth.org/economic-benefits/> (last visited Feb. 18, 2018).

48. In Pennsylvania, where online casinos and online poker were only recently allowed by the state legislature, the State generated over \$100 million just in licensing fees alone, prior to the commencement of gaming. *See* Bill Grinstead, Penn Bets, *Expanded Gambling Netted Pa \$322 Million In Fees Alone In 2018* (Dec. 28, 2018), <https://www.pennbets.com/expanded-gambling-fees-pennsylvania-2018/> (last visited Feb. 19, 2019).

**E. The Department of Justice Office of Legal Counsel’s 2018 Memorandum**

49. In the time since the 2011 OLC Opinion, no court has found in any published opinion that the Wire Act applies to any gambling other than to sporting events.

50. Indeed, in 2014, the First Circuit agreed that the 2011 OLC Opinion was confined to gambling on “any sporting event or contest.” *Lyons*, 740 F.3d at 718.

51. The 2018 OLC Opinion was also issued after the U.S. Supreme Court decided *Murphy v. Nat’ Collegiate Athletic Ass’n*, \_\_\_ U.S. \_\_\_, 138 S. Ct. 1461 (2018).

52. Although *Murphy* was decided on other grounds, it explained that the Wire Act “outlaws the interstate transmission of information that assists in the placing of a bet on a *sporting event*” and applies “only if the underlying gambling is illegal under state law.” *Id.* at 1483 (emphasis added).

53. The Supreme Court in *Murphy* found there to exist a “coherent federal policy” that “respect[s] the policy choices of the people of each State on the controversial issue of gambling.” *Id.*

54. Notwithstanding that judicial precedent, the OLC reversed the 2011 OLC Opinion, concluding that its prior 2011 opinion was wrong and that certain aspects of the Wire Act applied beyond sports betting to other forms of betting or wagering. *See* 2018 OLC Opinion at 1.

55. As it did in 2011, the OLC looked to the text of the statute and its legislative history. *See id.* at 6–17. This time, however, the OLC adopted the exact opposite position it had in the 2011 OLC Opinion—arriving a position that has been squarely rejected by the only two federal courts of appeals to have addressed this question. *See Lyons*, 740 F.3d at 718; *see also In re MasterCard*, 313 F.3d at 262–63.

56. The 2018 OLC Opinion states that it constitutes “binding legal advice within the Executive Branch.” *Id.* at 19.

57. The 2018 OLC Opinion further specifies that, although both States and private actors such as iDEA members took action in reliance on the 2011 OLC Opinion, “we do not believe that such reliance interests are sufficient to justify continued adherence to the 2011 opinion.” *Id.* at 22-23.

58. On January 15, 2019, the DOJ issued a memorandum to all United States Attorneys, Assistant Attorneys General, and the Director of the Federal Bureau of Investigation informing them of 2018 OLC Opinion that certain activities under the Wire Act apply to non-sports gambling activity. *See Rosenstein Memo.*

59. The Rosenstein Memo instructed federal prosecutors to refrain from applying the new interpretation of the Wire Act for a period of 90 days, but it characterized the 90-day period as “not a safe harbor for violations of the Wire Act,” but instead reflecting “an internal exercise of prosecutorial discretion.” *Id.* As a result, any present conduct that does not conform to the 2018 OLC Opinion is, according to the DOJ’s interpretation, in violation of the Wire Act and subject to prosecution.

60. Thus, according to the Rosenstein Memo, upon the expiration of the 90-day period in April, criminal prosecutions flowing from the 2018 OLC Opinion can commence.

**F. Harm To iDEA's Membership**

61. With the 90-day “clock” established by the Rosenstein Memo now ticking, iDEA’s members must currently choose between either facing criminal prosecution and penalties for continuing their business practices, or else trying to comply with the DOJ’s new, incorrect, interpretation of the Wire Act.

62. Just as is the case with New Hampshire’s and with other States’ lottery businesses, Compl. ¶¶ 87-98, iDEA’s members developed their iGaming technologies using modern communications technology, consistent with the legal framework set forth by state law following the 2011 OLC Opinion, as well as settled law.

63. iDEA’s members, in implementing iGaming operational and related service technology, took steps to ensure that their operations complied with state law, as well as the 2011 OLC Opinion.

64. The DOJ’s reversal via the 2018 OLC Opinion now threatens iDEA members and their employees with both criminal prosecution under the Wire Act, as well as civil and criminal liability under RICO.

65. Indeed, within five days of the issuance of the 2018 OLC Opinion, the Pennsylvania Gaming Control Board (“**PGCB**”) wrote to all state-licensed casino operators describing the 2018 OLC Opinion as placing “significant restrictions on the future conduct of internet-based gambling.” The letter further declared that—in light of the new opinion—the PGCB would be forced to rescind relevant parts of Pennsylvania Title 58, Regulation 809.3, which had allowed certain interactive gaming devices and associated equipment to be located across state lines, provided that the jurisdiction in which the equipment was located met certain specified condition. The PGCB said that it understood that this change would likely “alter the



plans of licenses in implementing expanded gaming offerings,” but that the change was “commanded by the changing interpretation by federal law enforcement authorities.” Letter from Kevin O’Toole, Executive Director of the Pennsylvania Gaming Control Board, to All Casino Managers and Counsel (Jan. 18, 2019), *available at* <https://www.onlinepokerreport.com/wp-content/uploads/2019/01/KFO-Ltr-to-Casino-GMs-re-DOJ-Wire-Act-Opinion-REDACTED-1-18-19.pdf> (last visited Feb. 22, 2019). In short, this letter demonstrates the concrete impact and resulting harm that the 2018 OLC Opinion immediately inflicted on state licensed casino operators.

66. The 2018 OLC Opinion threatens iDEA members’ activity related to online poker and online casino gaming in States where the activity is perfectly legal. That stance contravenes one of the primary purposes of the Wire Act, which is to assist States in the enforcement of their gaming laws. The 2018 OLC Opinion directly undercuts States in their adoption and implementation of gaming policies.

67. The iDEA members conducting activity pursuant to the shared liquidity agreement—approved by multiple state regulators—are further at risk because the player pools in New Jersey, Nevada, and Delaware, by their very nature, enable pools to participate in online poker activity with one another. In that case, online poker activity again begins and ends in States that have legalized such activity, but data is necessarily shared among the three States.

68. The 2018 OLC Opinion threatens the United States operations of many iDEA members, which could result in losses of revenues and profits, lines of business, and potentially the termination of operations altogether.

69. The 2018 OLC Opinion flies in the face of the language and legislative history of the Wire Act, prior federal court decisional law, the 2011 OLC Opinion, and the enactments of

state legislatures following the 2011 OLC Opinion. Members of iDEA relied on all of those legal authorities in investing in and developing their businesses that provide operations and related services in and for the iGaming industry; their businesses have been repeatedly blessed by the relevant States, alongside the DOJ, while subject to extensive regulatory and licensing oversight.

70. Absent declaratory relief outlining their rights and clarifying that the Wire Act is limited to sports betting, iDEA's members face the threat of criminal prosecution and civil lawsuits, just for continuing their established businesses.

### **CAUSE OF ACTION**

#### **COUNT I (Declaratory Judgment, 28 U.S.C. § 2201(a))**

71. Intervenor incorporates paragraphs 1–70 as if fully set forth herein.

72. Intervenor respectfully seeks a declaratory judgment that the Wire Act does not extend beyond gambling on sporting events or contests.

73. Because the 2018 OLC Opinion's interpretation of the Wire Act presents an immediate and substantial threat to the continued operations of iDEA's members, and could subject them to criminal penalties, this case presents "a case of actual controversy within [the Court's] jurisdiction." 28 U.S.C. § 2201(a).

74. Intervenor contends that the Wire Act does not extend beyond gambling on sporting events and contests and that the reasoning of the 2018 OLC Opinion is flawed. Indeed, the 2018 OLC Opinion contradicts the holdings of two federal courts of appeals, and the obvious legislative intent of the Wire Act.

75. The 2018 OLC Opinion also ignores structural components of the Wire Act that specifically prohibit transmission of "information" related solely to sporting events, and it also

ignores the Wire Act’s legislative history, which confirms the Act was to be confined to sports gambling and was intended to assist States in the enforcement of their laws (not to thwart States in the adoption of gaming policies suitable to their citizenry). *See, e.g.*, H.R. Rep. 87-967, *reprinted in* 1961 U.S.C.C.A.N., at 2633 (stating that purpose of legislation is to “assist the various States, territories, and possessions of the United States and the District of Columbia in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses . . .”); *see also Murphy*, 138 S. Ct. at 1483 (noting the “coherent federal policy” which “respect[s] the policy choices of the people of each State on the controversial issue of gambling”).

76. Thus, the 2018 OLC Opinion’s interpretation of the Wire Act is wrong as a matter of law.

77. As discussed above, the 2018 OLC Opinion presents an actual controversy between Intervenor and the DOJ as to the proper scope of the Wire Act. Given that the 90-day “internal exercise of prosecutorial discretion” contemplated by Deputy Attorney General Rosenstein is set to expire in April, the controversy is immediate and real, and presents substantial threats to iDEA and its members. Thus, this case is ripe for a declaratory judgment.

78. Based on the 2018 OLC Opinion, together with the Rosenstein Memo, Intervenor’s members are facing a real specter of being prosecuted, amidst pointed warnings that their iGaming operations and related support activities—currently conducted pursuant to state laws that make them legal—will be deemed unlawful.

79. In order to comply with the 2018 OLC Opinion, iDEA members may have to discontinue, overhaul or limit their current business practices related to iGaming in the United States.

80. In the case of some iDEA members, the DOJ's position threatens the entirety of their United States businesses and could cause them to cease operating.

81. Were iDEA members to discontinue their current business practices related to their iGaming operations and related support activities,; they would suffer significant economic harm.

82. The 2018 OLC Opinion itself invites initiation of prosecutions to enforce the DOJ's new interpretation of the law. Indeed, it states that its interpretation makes it "more likely that the Executive Branch's view of the law will be tested in the courts." 2018 OLC Opinion at 22.

83. Thus, this signals a threat of criminal prosecution, which extends to Intervenor's membership. Such a threat presents a significant hardship to Intervenor and its members.

84. Only a declaratory judgment finding that the Wire Act does not extend beyond gambling on sporting events or contests will secure the rights and practical abilities of Intervenor and its members operating in the United States to continue their operations without a fear of criminal prosecution.

85. In addition to the threat of criminal prosecutions under the Wire Act, RICO defines racketeering activities to include Wire Act violations and allows for private individuals to file civil complaints for RICO violations. *See* 18 U.S.C. § 1961(1); 18 U.S.C. § 1964.

86. Thus, just as the threat of criminal enforcement is immediate and real, there is an equally immediate and real threat that private individuals may initiate civil lawsuits against Intervenor's members for purported RICO violations.

87. Intervenor therefore requests that the Court enter a declaratory judgment stating that the Wire Act does not extend beyond gambling on sporting events or contests.

WHEREFORE, Intervenor respectfully requests that the Court:

- A. Enter an order declaring that the Wire Act does not extend beyond gambling on sporting events or contests;
- B. Permanently enjoin the defendants and their agents from acting under or pursuant to the interpretation of 18 U.S.C. § 1084 advanced by the 2018 OLC Opinion and endorsed by the Rosenstein Memo;
- C. Award to Intervenor their litigation costs and reasonable attorneys' fees as appropriate; and
- D. Provide such additional relief as the Court deems reasonable and proper.

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Respectfully Submitted,

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