

The Mystery Of Attorney General Barr's Position On Wire Act Appeal

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What once seemed inevitable is becoming less certain with each passing day as the U.S. Department of Justice (DOJ) mulls whether to appeal the ruling of a federal judge in New Hampshire on internet gambling and the Wire Act of 1961.

On Wednesday, it will be one month since [U.S. District Judge Paul J. Barbadoro](#) of Concord, New Hampshire, struck down a new opinion by the DOJ's Office of Legal Counsel (OLC) which concluded the Wire Act prohibits all interstate gambling transmissions.

Barbadoro's ruling restored an [OLC opinion of December 2011](#), which said the Wire Act applies only to sports betting.

[Two months before](#) his decision, Barbadoro even went so far as to predict his ruling not only would be appealed but eventually would reach the U.S. Supreme Court for a final resolution.

If the DOJ plans to appeal its defeat in the lawsuit brought by the New Hampshire Lottery Commission and its technology contractor, NeoPollard Interactive, it certainly is not tipping its hand.

"DOJ declines to comment," Kelly Laco, a spokeswoman for the agency, said Friday in response to an inquiry by GamblingCompliance.

The deadline for the DOJ and other federal agencies to appeal a ruling by a U.S. district court is 60 days "after entry of the judgment," according to Rule 4 of the Federal Rules of Appellate Procedure.

Barbadoro announced his decision on June 3, but court documents show his judgment was not officially entered until June 20.

So it would appear the DOJ has until Monday August 19 to appeal Barbadoro's ruling to the 1st U.S. Circuit Court of Appeals in Boston.

If the DOJ still has not reached a decision within 60 days, it could file a notice of appeal to keep its options open.

"DOJ tends to have a lot of voices and bureaucratic input, so they could note the appeal but ultimately accept the ruling and withdraw," said [James Trusty](#), who served as chief of the DOJ's organized crime and gangs section during the administration of President Obama.

Since 2018, Trusty has worked for Ifrah Law, a firm in Washington, D.C., which is representing online gambling companies that are members of the iDevelopment and Economic Association (IDEA).

"A lot of us are hoping and thinking that the attorney general will not want to double down on a bad bet," Trusty said.

The attorney general, [William Barr](#), has so far remained silent on the new OLC opinion and the lawsuit it spawned.

It is important to remember the OLC opinion that Judge Barbadoro struck down was released before Barr took office.

[Republican Senator Lindsey Graham](#) of South Carolina, the chairman of the U.S. Senate Judiciary Committee, may have pressured the DOJ to release the new opinion on the Wire Act before his committee's confirmation hearings on Barr in January, according to sources.

The OLC wrote its new opinion on November 2, 2018, more than ten weeks before it was [officially posted on the DOJ website](#) on January 14.

On January 15, Barr appeared before the Senate Judiciary Committee for the first of two days of confirmation hearings.

Barr also served as the assistant attorney general in charge of the OLC in 1989 before he went on to serve his first stint as U.S. attorney general from 1991 to 1993.

"I don't think Graham wanted Barr to face questions from the committee about the new Wire Act opinion because Barr might have said he believes in preserving precedent at the OLC, and that would have raised more questions about why the OLC overturned the 2011 opinion," said a Capitol Hill gaming lobbyist who requested anonymity.

Las Vegas Sands' CEO and chairman [Sheldon Adelson](#), who wants to abolish internet gambling, has made contributions to Graham's previous Senate campaigns, with the South Carolina senator having led congressional efforts to restrict online gaming for the past five years.

Graham is up for re-election in 2020.

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