



NEW JERSEY SENATE

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July 21, 2011

The Honorable Eric H. Holder Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

Dear Attorney General Holder:

As sponsor of legislation (S-490) to establish intrastate on line gaming in New Jersey, I must correct the assertions, unsupported in fact or law, made by Senators Reid and Kyl in a letter to you dated July 14, 2011, that intrastate on line gaming is illegal under federal law.

Were you to accept Sens. Reid and Kyl's letter on its merits, you would have to prosecute the Nevada Gaming Board, which this year approved sports betting via mobile Internet within the confines of the state of Nevada. Nevada has also approved other forms of Internet and remote wagering on casino games, poker and sports within Nevada by firms like Las Vegas Sands and Station Casinos.

For that matter, New Jersey and 37 other states would also have to be prosecuted for permitting online wagering on horse races, which has existed for years.

Sen. Reid & Sen. Kyl's letter claims that intra-state Internet gambling would be illegal, "because activity over the Internet inherently crosses state lines, implicating federal anti-gambling laws such as the Wire Act."

Sen. Reid and Sen. Kyl are incorrect about the permissibility of intra-state Internet gambling. Both voted for the passage of 31 U.S.C. § 5361 et seq., the Unlawful Internet Gambling Enforcement Act (UIGEA) of 2006. The text of UIGEA is contemporary and clear. In it, Congress expressly permitted "intra-state" Internet gambling:

(B) Intrastate transactions— The term "unlawful Internet gambling" does not include placing, receiving, or otherwise transmitting a bet or wager where—

- (i) the bet or wager is initiated and received or otherwise made exclusively within a single State;
- (ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and placed in accordance with the laws of such State, and the State law or regulations include—
  - (I) age and location verification requirements reasonably designed to block access to minors and persons located out of such State; and
  - (II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with such State's law or regulations; and
- (iii) the bet or wager does not violate any provision of—
  - (I) the Interstate Horseracing Act of 1978
  - (II) chapter 178 (commonly known as the "Professional and Amateur Sports Protection Act");
  - (III) the Gambling Devices Transportation Act or
  - (IV) the Indian Gaming Regulatory Act

Also, Congress was clear that the intermediate routing of Internet traffic across state lines as part of the normal network management required by Internet service providers (ISPs) does not affect the permissibility of intra-state Internet gambling:

"(E) INTERMEDIATE ROUTING- The intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made."

Further, the US 3rd Circuit Court of Appeals, in upholding UIGEA in a 2009 unanimous decision by a three judge panel, made clear that it fell to the states to determine the legal status of Internet gambling within their borders:

"Whether the transaction...constitutes unlawful Internet gambling turns on how the law of the state from which the bettor initiates the bet would treat that bet, i.e. if it is illegal under that state's law, it constitutes "unlawful Internet gambling" under the Act."; Judge Dolores Sloviter, (iMEGA v Holder, et al; US 3rd Circuit no.08-198)

As such, despite the claims made by Sen. Reid and Sen. Kyl, the intra-state Internet gambling permitted under UIGEA does not violate 18 USC § 1081-1084 - the "Wire Act of 1961", nor is it included in Congress' recitation of applicable federal laws above.

Indeed, the federal Wire Act was intended to punish criminal enterprises utilizing "telecommunications" to facilitate interstate sports wagering. The Act was not intended to prohibit state-licensed and regulated operations like those permitted under UIGEA.

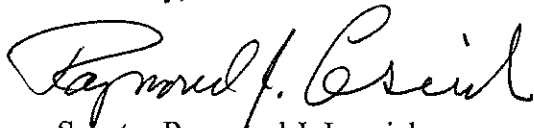
Nor is there any Federal prohibition against Internet gambling contained within UIGEA, as Judge Sloviter acknowledged in *iMEGA v Holder, et al* ("It bears repeating that the Act itself does not make any gambling activity illegal").

Although Governor Christie vetoed S-490, his veto message focused on concerns having nothing to do with federal law. I will address the governor's concerns in legislation which will be introduced when the legislature reconvenes for a full session later this year.

Intrastate internet gaming will produce more than \$100 million in net revenues for our casinos in Atlantic City, reversing its declining profitability and creating hundreds of high-paying, high-tech jobs in an area suffering from high unemployment. It will also boost state revenues by tens of millions.

The State of New Jersey should not be impeded in any manner from exercising our rights under our state constitution and under federal law, Senator Reid and Kyl's letter notwithstanding.

Sincerely,

A handwritten signature in cursive script, reading "Raymond J. Lesniak". The signature is written in black ink and is positioned above the printed name and title.

Senator Raymond J. Lesniak  
New Jersey State Legislature  
20<sup>th</sup> Legislative District