

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

<p>New Hampshire Lottery Commission,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>William Barr, in his official capacity As Attorney General; United States Department of Justice</p> <p style="text-align: center;">Defendants</p>	<p> </p> <p> </p> <p> </p> <p> </p> <p> </p> <p> </p> <p> </p> <p> </p> <p> </p> <p> </p>	<p>Civil Case No. 19-cv-163</p> <p><i>Expedited Treatment Requested</i></p>
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MOTION FOR A SPEEDY HEARING

Pursuant to Federal Rule of Civil Procedure 57, and Local Rule 7.1(f), the plaintiff, the New Hampshire Lottery Commission (“NHLC”), by and through counsel, the New Hampshire Attorney General’s Office, hereby moves for a speedy hearing and expedited resolution of its Motion for Summary Judgment. In support thereof, the NHLC states as follows:

1. Federal Rule of Civil Procedure 57 permits a court to “order a speedy hearing of a declaratory-judgment action.”
2. Local Rule 7.1(f) also permits a court to entertain the plaintiff’s Motion for Summary Judgment on an expedited basis for good cause shown.
3. By this action, and through its Motion for Summary Judgment, the NHLC seeks immediate declaratory relief under the federal Declaratory Judgment Act and immediate relief under the federal Administrative Procedure Act to prevent the defendants from extending their new, erroneous interpretation of a criminal statute, 18 U.S.C. § 1084, to state-conducted lotteries.
4. Extending 18 U.S.C. § 1084 to state-conducted lotteries exposes the plaintiff and its agents to criminal and civil liability, including liability under the Racketeer Influenced and

Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961-1968, and raises substantial questions as to whether the plaintiff needs to cease all of its modern day lottery operations. *See, e.g.*, Declaration of Charles R. McIntyre in Support of Plaintiff’s Motion for Summ. J. (“McIntyre Decl.”) at ¶¶ 42-48.

5. If the plaintiff does need to cease all of its modern day lottery operations, or even only certain portions of them, the defendants’ new interpretation of 18 U.S.C. § 1084 will result in the loss of millions of dollars in revenue that New Hampshire uses to fund its public education system. *See* N.H. Const. Pt. II, Art. 6(b); N.H. Rev. Stat. § 284:21-j; *see, e.g.*, McIntyre Decl. at ¶¶ 8, 29, 45, 48 (describing the millions of dollars of public education funding at risk as a result of the defendants’ new interpretation of 18 U.S.C. § 1084).

6. Relief is needed on an expedited basis. The defendants have made clear that their new, erroneous interpretation took effect at least on January 15, 2019, when the Deputy Attorney General issued a directive to all USDOJ commanding them to implement that interpretation of law. *See* Declaration of Anthony J. Galdieri in Support of Plaintiff’s Motion for Summary Judgment (“Galdieri Decl.”) at ¶ 4, Exhibit 3. While the Deputy Attorney General has asked USDOJ attorneys not to apply this new interpretation for a period of 90 days, this request “is an internal exercise of prosecutorial discretion; it is not a safe harbor for violations of the Wire Act.” *Id.*

7. In other words, the 90 day period appears to be provided so that operations made illegal by the USDOJ’s new interpretation of 18 U.S.C. § 1084 can be wound down and discontinued.

8. The defendants have indicated in the opinion advancing this new interpretation, which has been adopted by the Deputy Attorney General’s January 15, 2019 memorandum,

applies to state-conducted lottery activity. Galdieri Decl. at ¶ 3, Exhibit 2 (*Reconsidering Whether the Wire Act Applies to Non-Sports Gambling*, 42 Op. O.L.C. 1-23 (Nov. 28, 2018) (the “2018 Opinion”)).

9. Specifically, in reversing its earlier stance and advancing its new interpretation of 18 U.S.C. § 1084, the opinion states as follows:

We acknowledge that some may have relied on the views expressed in our 2011 Opinion about what federal law permits. Some States, for example, began selling lottery tickets via the Internet after the issuance of our 2011 Opinion. But in light of our conclusion about the plain language of the statute, we do not believe that such reliance interests are sufficient to justify continued adherence to the 2011 opinion.

2018 Opinion, 42 Op. O.L.C. at 22-23.

10. The 2018 Opinion suggests that “[a]n individual who reasonably relied upon our 2011 Opinion may have a defense for acts taken in violation of the Wire Act after publication of that opinion and prior to the publication of this one. . . . The reliance interest implicit in any such defense, however, does not bear upon our reconsideration of the 2011 Opinion.” *Id.* at 23 n. 19.

11. Consequently, given the immediacy of the harm, and the breadth and expanse of the adverse impact this new, erroneous interpretation will have on the plaintiff, its agents, and the State of New Hampshire, immediate resolution of the pure legal questions of statutory interpretation involved in this case is appropriate and will effectively end the controversy. *See, e.g., Allergan, Inc. v. Valeant Pharm. Int’l, Inc.*, No. 14-CV-1214, 2014 WL 4181457, at *3 (C.D. Cal. Aug. 21, 2014); *GEC US I LLC v. Frontier Renewables, LLC*, No. 16-CV-1276, 2016 WL 3345456, at *6 (N.D. Cal. June 16, 2016); *Tri-State Generation & Transmission Ass’n, Inc. v. BNSF Ry. Co.*, No. 08-CV-272, 2008 WL 2465407, at *7 (D. Ariz. June 17, 2008)

12. Accordingly, a speed hearing under Federal Rule of Civil Procedure 57 is appropriate in these circumstances and good cause exists to expedite the resolution of the plaintiff's Motion for Summary Judgment pursuant to Local Rule 7.1(f).

13. No memorandum of law is filed in support of this motion as the relief requested lies within the discretion of the court and the authorities relied upon have been cited herein. L.R. 7.1(a)(2).

14. Given the expedient nature of this motion, and the timing of its filing, the plaintiff does not yet know the identity of opposing counsel and has not been able to reach out for assent to this motion. If the plaintiff learns of defense counsel's assent or non-assent after the filing and service of this motion, it will promptly notify the court of the defendants' position on this motion. *See* L.R. 7.1(c).

WHEREFORE, the plaintiff respectfully requests that this Court issue an order:

- A. Granting its Motion For A Speedy Hearing;
- B. Ordering the Defendants to file their response to the plaintiff's Motion for Summary Judgment within 30 days after service;
- C. Scheduling a speedy hearing on this matter as soon as the court's calendar permits so that a final judgment may be rendered before the defendants' 90-day discretionary, non-prosecution time period expires;
- D. In the alternative, scheduling an expedited scheduling conference in this matter; and
- E. Granting such further relief as the court deems just and equitable.

Respectfully submitted,

NEW HAMPSHIRE LOTTERY
COMMISSION

By its attorney,

GORDON J. MACDONALD
ATTORNEY GENERAL

Date: February 15, 2019

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Certificate of Service

I hereby certify that a copy of the foregoing was served this 15th day of February, 2019, on all counsel of record, via the ECF System.

/s/ Anthony J. Galdieri
Anthony J. Galdieri