

Congress of the United States
Washington, DC 20515

February 7, 2019

The Honorable Lee J. Lofthus
Assistant Attorney General for Administration
and Designated Agency Ethics Officer
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Assistant Attorney General Lofthus:

We are writing to request documents regarding whether Acting Attorney General Matthew Whitaker recused himself or played a role in the decision by the Department of Justice (DOJ) to reverse its previous position on online gambling after Mr. Whitaker received highly unusual campaign donations from casino executives.

According to press reports, lobbyists working for casino magnate Sheldon Adelson sent a memo to DOJ leaders in 2017 criticizing a 2011 opinion from the Office of Legal Counsel (OLC). That 2011 opinion concluded that the Wire Act, 18 U.S.C. § 1084, prohibited only online sports gambling. Officials in DOJ's Criminal Division reportedly forwarded this memo to OLC with a request that they "re-examine their stance that a law on the books for decades didn't prohibit online gambling."¹

On January 29, 2018, and February 2, 2018, the Chairman/Founder and the Vice Chairman of Wild Rose Casino & Resorts, a casino in Iowa, each donated \$2,600 to Mr. Whitaker's 2014 Senate campaign. These donations were strange because they came more than three years after Mr. Whitaker's campaign had concluded. Mr. Whitaker's campaign received these donations while he was serving as Chief of Staff to then Attorney General Jeff Sessions.²

¹ *Justice Department's Reversal on Online Gambling Tracked Memo from Adelson Lobbyists*, Wall Street Journal (Jan. 18, 2019) (online at www.wsj.com/articles/justice-departments-reversal-on-online-gambling-tracked-memo-from-adelson-lobbyists-11547854137).

² Federal Election Commission, *Individual Contributions to Whitaker for U.S. Senate Inc.* (Jan. 1, 2017- Dec. 31, 2018) (online at www.fec.gov/data/individual-contributions/?+two_year_transaction_period=2014&two_year_transaction_period=2018&committee_id=C00544924&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018) (accessed Feb. 6, 2019).

On January 14, 2019, OLC issued a new opinion reversing its 2011 memo and benefiting land-based casinos. OLC concluded that the Wire Act prohibits all forms of gambling transmitted interstate by wire—effectively concluding that online gambling is illegal.³

DOJ's ethics rules on political activity require compliance with the Hatch Act, 5 U.S.C. §§ 7323(a) and 7324(a). These rules provide that non-career appointees may not "solicit, accept, or receive a political contribution."⁴ In addition, DOJ's ethics rules on personal conflicts of interest state: "Generally, an employee should seek advice from an ethics official before participating in any matter in which her impartiality could be questioned."⁵

The Office of Special Counsel has reportedly opened an investigation into whether Mr. Whitaker's acceptance of political contributions violated the Hatch Act.⁶

In light of the fact that Mr. Whitaker's campaign received contributions from casino executives while he was serving as Chief of Staff—for his campaign that concluded three years earlier—we are requesting information about whether Mr. Whitaker recused himself from DOJ actions relating to the Wire Act.

To assist with our Committees' investigation, we request that you provide the following documents by February 21, 2019:

1. All documents referring or relating to Mr. Whitaker's involvement in DOJ policies or positions on gambling, gaming, or casinos, including DOJ's decision to reverse its position on the Wire Act; and
2. All documents referring or relating to ethics advice sought by or provided to Mr. Whitaker regarding the 2018 campaign donations, including any advice regarding recusal.

An attachment to this letter provides additional instructions for responding to the Committees' request. If you have any questions regarding this request, please contact the Committee on Oversight and Reform staff at (202) 225-5051.

³ Department of Justice, Memorandum Opinion from the Office of Legal Counsel to the Acting Assistant Attorney General, Criminal Division, *Reconsidering Whether the Wire Act Applies to Non-Sports Gambling* (Nov. 2, 2018) (released Jan. 14, 2019) (online at www.justice.gov/olc/file/1121531/download).

⁴ Memorandum from Sally Q. Yates, Deputy Attorney General, Department of Justice, to Non-Career Employees, Restrictions on Political Activities/Election Year Reminders (Mar. 10, 2016) (online at www.justice.gov/jmd/file/834496/download); Department of Justice, Departmental Ethics Office, *Political Activities* (online at www.justice.gov/jmd/political-activities) (accessed Feb. 6, 2019).

⁵ Department of Justice, Departmental Ethics Office, *Conflicts* (online at www.justice.gov/jmd/conflicts) (accessed Feb. 6, 2019).

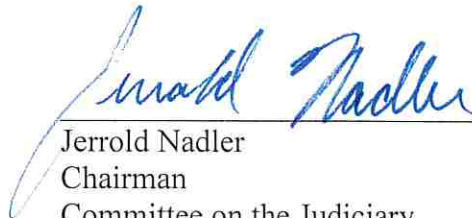
⁶ *US Agency Opens Case File on Potential Whitaker Hatch Act Violations*, CNN (Nov. 21, 2018) (online at www.cnn.com/2018/11/21/politics/matt-whitaker-2014-senate-campaign-donations/index.html).

Thank you for your prompt attention to this matter.


Sincerely,



Elijah E. Cummings
Chairman
Committee on Oversight and Reform



Jerrold Nadler
Chairman
Committee on the Judiciary



Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce



Adam Schiff
Chairman
Permanent Select Committee
on Intelligence

cc: The Honorable Jim Jordan, Ranking Member
Committee on Oversight and Reform

The Honorable Doug Collins, Ranking Member
Committee on the Judiciary

The Honorable Greg Walden, Ranking Member
Committee on Energy and Commerce

The Honorable Devin Nunes, Ranking Member
Permanent Select Committee on Intelligence