

New Hampshire Judge Overturns DOJ Wire Act Opinion

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The future of internet gambling and online lotteries in the United States became more secure on Monday after a federal judge in Concord, New Hampshire, ruled the U.S. Wire Act of 1961 applies only to sports betting.

U.S. District Judge Paul J. Barbadoro rejected a [new opinion by the Office of Legal Counsel](#) (OLC) of the U.S. Department of Justice (DOJ) that concluded the Wire Act applies to all interstate gambling communications.

Barbadoro's [63-page ruling](#) restores a previous OLC opinion from 2011 that fostered the creation of legal and regulated internet gambling in the United States.

The judge said he was guided by the principle that federal statutes should be interpreted as "a symmetrical and coherent regulatory scheme."

"Limiting the Wire Act to sports gambling conforms to this rule," he said.

"It avoids significant coherence problems that result from the OLC's current interpretation and it construes the Wire Act in harmony with another gambling statute that Congress enacted the same day as the Wire Act."

The other gambling statute was the Interstate Transportation of Wagering Paraphernalia Act, which Congress approved along with the Wire Act on August 31, 1961.

Although Barbadoro said his ruling applies specifically to New Hampshire, he added: "It is clear, however, that the judgment binds the parties beyond the geographic boundaries of my district."

For example, the judge noted the internet lottery system of NeoPollard Interactive in New Hampshire is also used in Michigan and is set for deployment in Virginia.

The DOJ did not immediately respond to a request for comment on Barbadoro's ruling.

Drafted on November 2, 2018 and posted on the DOJ's website on January 14, 2019, the new OLC opinion reversed its [earlier opinion of December 2011](#) that concluded the Wire Act applies only to sports betting.

The OLC's reversal of the Wire Act provoked a lawsuit on February 15 by the [New Hampshire Lottery Commission](#) and NeoPollard, its technology provider.

[Fourteen other states and the District of Columbia](#) submitted briefs supporting the New Hampshire Lottery Commission's lawsuit.

Barbadoro's ruling appears to be a complete victory for the New Hampshire Lottery and NeoPollard and a devastating setback for opponents of internet gambling.

[Matthew McGill](#), a prominent Washington, D.C. attorney with the firm of Gibson Dunn who represented NeoPollard in the lawsuit, praised Barbadoro's decision.

"By confirming that the Wire Act applies only to sports-betting activities, the court's ruling safeguards the New Hampshire Lottery and its service providers from the threat of unlawful prosecution," McGill said.

McGill claims the ruling will have an impact nationwide.

"Throughout the country, state lotteries and others in the gaming industry once again can rely on the Justice Department's 2011 opinion that the Wire Act is limited to sports betting," he said.

The Coalition to Stop Internet Gambling (CSIG), which supported the new OLC opinion restricting internet gambling, has a different view.

"While we disagree with many of the views expressed in Judge Barbadoro's ruling, we are happy that the scope of the opinion was confined to the parties involved," said CSIG spokesman Parker Mantell.

"We are confident that other jurisdictions will see this issue very differently and our resolve to protect at-risk regulations has only been strengthened by today's decision," Mantell said.

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During oral arguments on April 11, [Barbadoro predicted his opinion](#) would be appealed no matter what it was and would eventually reach the U.S. Supreme Court.

So far, he has been proven right — at least about an appeal.

"We are disappointed, of course, by the court's ruling, and are preparing for proceedings in the court of appeals," said Charles "Chuck" J. Cooper, a former director of the OLC office whose Washington, D.C. law firm supported CSIG in the New Hampshire lawsuit.

The appeal is likely to be considered by the 1st U.S. Circuit Court of Appeals in Boston.

Mantell, the CSIG spokesman, echoed Cooper.

"This ruling will almost certainly be appealed and we look forward to participating in that process," Mantell said.

On the other hand, the iDEA trade association that represents companies involved in regulated internet gambling said it was thrilled with Barbadoro's decision.

"The order today means that states can continue to legalize online entertainment, including casino, lottery and poker," said Jeff Ifrah, a Washington, D.C. attorney and iDEA co-founder.

James Trusty, an attorney at Ifrah's firm who was chief of the DOJ's organized crime and gangs section from 2011 to 2018, called Barbadoro's ruling "a clear-eyed judicial decision that helps an entire industry regain the stability that will fuel continued growth."

"When DOJ revised its take on the Wire Act, they invited clarifying litigation," Trusty said. "Now they have it."

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