

# U.S. Justice Department Appeals To Save Internet Gambling Ban

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In an effort to resurrect a ban on internet gambling, the U.S. Department of Justice (DOJ) on Friday appealed a June 3 decision by a federal judge in New Hampshire who ruled the U.S. Wire Act of 1961 prohibits interstate sports betting but no other forms of online gaming.

The three-page “[notice of appeal](#)” includes just one sentence saying U.S. Attorney General William Barr, the Justice Department and the United States “hereby appeal to the United States Court of Appeals for the First Circuit.”

The First U.S. Circuit Court of Appeals is located in Boston, Massachusetts, where the appeal would be heard if accepted as expected.

The notice of appeal was submitted on Friday to the U.S. District Court in Concord, New Hampshire, which ruled against the Justice Department on June 3.

Barr’s inclusion in the notice of appeal is significant because [his views on internet gambling](#) have been largely unknown, and he could have blocked the appeal.

In the June 3 decision, U.S. District Judge Paul J. Barbadoro of New Hampshire rejected a [November 2, 2018 opinion](#) by the Justice Department’s Office of Legal Counsel (OLC), which concluded the Wire Act prohibits all gambling transactions across state lines.

After being officially posted on the DOJ website on [January 14](#), the OLC opinion provoked a calamity in the gaming industry among those whose future would be uncertain without access to the internet.

The OLC opinion also was unusual because it reversed a previous [OLC decision in 2011](#) that led to the creation of legalized internet gambling in the United States.

Federal statutes should be interpreted as “a symmetrical and coherent regulatory scheme,” Barbadoro wrote in his [63-page opinion](#). “Limiting the Wire Act to sports gambling conforms to this rule.”

During [oral arguments](#) in the case on April 11, Barbadoro predicted the case would eventually be decided by the U.S. Supreme Court.

“I have a strong feeling that however I resolve the case or however the First Circuit resolves the case that it is likely [to be] resolved by the United States Supreme Court either way,” Barbadoro said.

[John Holden](#), an assistant business professor at Oklahoma State University who writes about the gambling industry, agrees the Wire Act case could end up in the Supreme Court.

“This case raises key questions regarding the separation of powers and the interplay between the executive branch, Department of Justice, and the legislative branch,” Holden said.

“Perhaps most eye catching is that the DOJ appears to have accomplished an objective that Congress failed for years to accomplish with [RAWA-type legislation](#).”

RAWA is the Restoration of America’s Wire Act, defunct legislation which was backed by anti-internet gambling crusader Sheldon Adelson who is chairman of Las Vegas Sands.

RAWA bills were introduced in both the House and Senate before being abandoned in 2017 after the election of President Trump in 2016.

“If the DOJ is able to interpret legislation so as to effectively cut [Congress] out of the lawmaking process, this would be an expansion of executive-branch authority,” Holden said.

The impact of the case on the gambling industry is likely to spread across multiple sectors, according to Ryan Rodenberg, an associate professor of sports law analytics at Florida State University.

“Beyond the direct implications for cross-state lotteries, the First Circuit’s eventual decision could also have important ramifications for fantasy sports companies that operate in jurisdictions such as Texas and Illinois,” Rodenberg said.

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DOJ spokeswoman Kelly Laco declined to comment on Friday's appeal.

The [Coalition to Stop Internet Gambling](#) (CSIG), a group financed by Adelson, applauded the appeal and called Barbadoro's opinion "misguided."

"The coalition remains confident that our position is correct legally — and from a policy standpoint," said CSIG spokesman Parker Mantell.

"American families do not want casinos available on their kids' mobile devices 24-7, especially now that online casinos are offering cartoon and fairy-tail-themed games, and advertisements for online gaming are appearing on websites targeted at children," Mantell said.

Mantell also said the CSIG is "eager to participate" in the DOJ appeal [despite having criticized DOJ attorneys](#) shortly before Barbadoro's ruling for not adequately representing the CSIG's point of view.

Matthew McGill, the attorney who represents NeoPollard Interactive, the technology vendor for the New Hampshire Lottery which won the lawsuit against the DOJ, said he looks forward to defending Barbadoro's decision in the First U.S. Circuit Court of Appeals.

"The district court's thoughtful opinion carefully analyzed the Wire Act's text, structure, and history and concluded that each showed that the Wire Act was intended to supplement state laws prohibiting sports betting and does not reach other forms of gaming such as state lotteries," McGill said.

[Jeff Ifrah](#), a Washington, D.C. attorney for the online gaming industry, described the DOJ appeal as "hardly unexpected" but "certainly unwarranted."

"We hope that, rather than engaging in a protracted, expensive and ultimately unsuccessful legal fight, the Department will take this opportunity to negotiate a settlement," said Ifrah, who is the founder of iDEA, a trade group representing the mobile gaming industry.

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