

UNIVERSITIES & SPORTS BETTING

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New Hampshire Federal Court Sets Aside 2019 DOJ Opinion on the Wire Act

By Danielle T. Bruno and Randall P. Hsia

Earlier this year, the Department of Justice (“DOJ”) issued a memorandum opinion that effectively reversed the DOJ’s 2011 guidance and advised federal prosecutors that the Wire Act’s prohibition against interstate gambling applies beyond sports betting to all interstate gambling. This reversal surprised many in the gambling industry, since the Wire Act had long been understood to apply only to sports betting across state lines.

In a turn of events, in June 2019, the United States District Court for the District of New Hampshire set aside the DOJ’s revised guidance on the Wire Act. See [New Hampshire Lottery Commission v. Barr](#). The New Hampshire Lottery Commission had challenged the 2019 DOJ opinion, and sought a declaratory judgment that the Wire Act does not extend to state-conducted lottery activities. Several states, including New Jersey and Pennsylvania, filed amicus briefs in support of the New Hampshire Lottery Commission.

In a lengthy memorandum opinion that considered the statutory construction, legislative history, and practicality of the Wire Act, U. S. District Judge Paul J. Barbadoro granted the New Hampshire Lottery Commission’s motion for summary judgment and set aside the 2019 DOJ opinion. The Court rejected the government’s statutory construction arguments that the Wire Act must apply to all types of interstate gambling. After a careful contextual reading of the Wire Act, the Court determined that the statute applies only to sports betting, overruling the 2019 DOJ opinion, while leaving the DOJ’s 2011 guidance in place.

Judge Barbadoro stated, “I have no reason to believe that the Government will fail to respect my ruling that the Wire Act is limited to sports gambling.” The ruling is not binding outside of New Hampshire, and the DOJ recently stated that it is considering whether to seek to apply the Wire Act to other forms of gambling in other districts.

For New Hampshire businesses engaged in non-sports betting, the Court’s decision provides some clarity regarding the applicability of the Wire Act to non-sports gambling. For New Hampshire businesses engaged in sports betting, the decision confirms the long-established understanding that the Wire Act prohibits the use of interstate or foreign wire communications in connection with sports gambling.

Whether the New Hampshire decision starts a trend toward limiting the application of the Wire Act to sport betting remains to be seen. Accordingly, non-sports related gambling entities outside of New Hampshire should continue to proceed with caution.



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