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New Hampshire Lottery Issues Statement as US Department of Justice Will Not Appeal Wire Act Ruling

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CONCORD, N.H. – The United States Department of Justice (DOJ) this week declined to appeal a January 2021 decision by the United States Court of Appeals for the First Circuit finding that the 1961 Wire Act does not apply to non-sports betting or wagering activity, like state lottery activity, effectively ending the case in the New Hampshire Lottery’s favor. The outcome of the case confirms the Wire Act applies only to sports betting and not state lottery activity and other forms of interstate gambling.

New Hampshire Lottery Executive Director Charlie McIntyre released the following statement in response to this DOJ decision:

“While we have been confident in this outcome throughout this process, we are extremely pleased to have closure. This case represents a historic victory for the New Hampshire Lottery and lotteries across the country. That said, the biggest winners are our country’s schools and a variety of other important causes that depend on lottery funding each year—literally billions of dollars in critical funding have hung in the balance. In New Hampshire, this outcome ensures the New Hampshire Lottery will be able to continue delivering more

than \$100 million to New Hampshire schools each year.

“As the nation’s first lottery, we had a responsibility to challenge this opinion. We would like to once again thank the New Hampshire Attorney General’s Office for its leadership, expertise and skill in guiding us through this process and ultimately to this monumental victory, preserving the New Hampshire Lottery as a critical resource for education in the Granite State for years to come.”

The First Circuit ruling this past January affirmed the ruling of the United States District Court for the District of New Hampshire, which ruled in June 2019 the Wire Act applies only to transmissions related to bets or wagers on a sporting event or contest.

The New Hampshire Attorney General’s Office, on behalf of the New Hampshire Lottery, challenged the U.S. DOJ’s November 2018 opinion that the Wire Act applied broadly to all forms of gaming, including sales of lottery tickets over the Internet. The U.S. DOJ appealed the United States District Court ruling in August 2019.

Background

The 1961 Wire Act is a federal law that prohibits the use of wire transmission facilities to place bets or wagers, transmit information assisting in the placement of bets and wagers, or transmit a communication, which entitles the recipient to receive money or credit as a result of a bet or wager.

In 2011, the U.S. DOJ Office of Legal Counsel issued an opinion stating the Wire Act applies to sports betting and therefore is not applicable to lottery sales over the Internet. In November 2018, however, the U.S. DOJ reversed its 2011 interpretation of the Wire Act and found the law applied to all betting activities, not just sports betting. With billions of dollars in lottery funding for education at stake, including more than \$100 million annually in New Hampshire alone, the New Hampshire Attorney General’s Office, on behalf of the New Hampshire Lottery, challenged the U.S. DOJ opinion in February 2019.

The New Hampshire Lottery noted in its initial filing the U.S. DOJ opinion had

far-reaching consequences potentially impacting all aspects of modern lottery operations, not just direct sales over the Internet—all of which threatened the millions of dollars in critical annual revenue the New Hampshire Lottery generates for education in New Hampshire.

The New Hampshire Lottery argued the U.S. DOJ's opinion was wrong, defeats the purpose of the Wire Act and creates "absurd and impractical results." Specifically, the New Hampshire Lottery argued the U.S. DOJ opinion was not supported by the language of the law, was inconsistent with binding precedent, and conflicted with other laws, including the U.S. Constitution.

Judge Paul Barbadoro of the United States District Court for the District of New Hampshire ruled in June 2019 the Wire Act applies only to transmissions related to bets or wagers on a sporting event or contest. The First Circuit affirmed that decision in January 2021.

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