

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

NEOPOLLARD INTERACTIVE LLC,

POLLARD BANKNOTE LIMITED,

Plaintiffs,

v.

WILLIAM P. BARR,
in his official capacity as Attorney General of
the United States of America,

THE UNITED STATES DEPARTMENT OF
JUSTICE,

THE UNITED STATES OF AMERICA,

Defendants.

Civil Action No. 1:19-cv-00170

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs NeoPollard Interactive LLC (“NeoPollard”) and Pollard Banknote Limited (“Pollard”) submit this complaint for declaratory relief.

INTRODUCTION

1. In 1961, Congress passed the Wire Act, 18 U.S.C. § 1084. The Wire Act provides, in relevant part:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

18 U.S.C. § 1084(a).

2. In 2011, the United States Office of Legal Counsel (the “OLC”), under the authority delegated to it by the Attorney General, *see* 28 U.S.C. § 511; 28 C.F.R. § 0.25(a), issued an opinion concluding that the Wire Act applies only to gambling on sporting events, and does not prohibit interstate transmissions related to other types of gaming (such as lotteries). *See Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act*, 35 Op. O.L.C. (2011) (the “2011 Opinion”).

3. The 2011 Opinion specifically addressed the question of whether states could lawfully sell lottery tickets using the Internet. Because the OLC determined that the Wire Act applied only to gambling on sporting events, the OLC concluded that interstate transmissions of wire communications that do not relate to a “sporting event or contest”—including the use of a wire communication facility to sell non-sports-related lottery tickets to in-state players—fall outside the scope of the Wire Act.

4. Following the issuance of the 2011 Opinion, several states, including New Hampshire, Illinois, Michigan, Georgia, Pennsylvania, Kentucky, Virginia, and North Carolina began making lottery and/or other gaming products available to consumers for purchase via personal computers and/or mobile applications, and several states licensed mobile interactive gaming, including Delaware and New Jersey.

5. Last year, the New Hampshire Lottery launched its new “iLottery” gaming platform that gives “players located in New Hampshire the ability to purchase and play select lottery games on their personal computers, mobile and electronic devices.” *iLottery Terms & Conditions*, NHLottery (Aug. 27, 2018), <https://www.nhlottery.com/iLottery-Terms-Conditions>.

6. The New Hampshire Lottery requires that any players purchasing lottery tickets through its iLottery platform be located in New Hampshire. In New Hampshire, age verification software and geolocation technology are used for all iLottery gaming activity.

7. NeoPollard currently serves as the technology and service provider of the New Hampshire Lottery's iLottery system.

8. On January 14, 2019, the OLC publicly issued a new opinion—dated November 2, 2018—reversing the interpretation of the Wire Act set forth in the 2011 Opinion. *See Reconsidering Whether the Wire Act Applies to Non-Sports Gambling*, 42 Op. O.L.C. (2018) (the “2018 Opinion”).

9. In the 2018 Opinion, the OLC concluded that the 2011 Opinion was wrong to have limited the scope of the Wire Act only to gambling on sporting events. The OLC posited instead that the phrase “on any sporting event or contest” modifies only the phrase “information assisting in the placing of bets or wagers” such that all other prohibitions in the statute apply to all types of gaming.

10. The 2018 Opinion's analysis of the Wire Act is deeply flawed, contradicts authority from two federal courts of appeals, and represents an unwarranted departure from the original and intended scope of the Act. The text, structure, and history of the Wire Act make clear that its prohibitions extend only to gambling on sporting events.

11. As a result of the OLC's erroneous change in position, gaming activities long thought to be lawful are now under threat of imminent criminal and civil prosecution. This includes not only making lottery products available to consumers for purchase via personal computers and mobile devices, but also traditional lottery sales via brick-and-mortar retail sales agents.

12. In particular, under the OLC's revised interpretation of the Wire Act in the 2018 Opinion, Plaintiffs reasonably believe that they may be subject to criminal prosecution or a civil suit under the Racketeer Influenced and Corrupt Organizations Act based on their provision of online gaming services and technologies to the New Hampshire Lottery and Michigan Lottery, among others.

13. Declaratory relief is necessary to permit Plaintiffs to continue their lawful business practices without the threat of criminal or civil prosecution that, even if unsuccessful, could irreparably injure Plaintiffs' operations and cost them millions of dollars in commissions and player goodwill.

JURISDICTION AND VENUE

14. This case arises under 18 U.S.C. § 1084. The Court therefore has jurisdiction pursuant to 28 U.S.C. § 1331 and may grant declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

15. Venue is appropriate in this jurisdiction pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred here. NeoPollard's equipment and services related to its iLottery operations in support of the New Hampshire Lottery are located exclusively within the borders of New Hampshire and its operations are exclusively for customers located within the State.

PARTIES

16. NeoPollard is North America's leading provider of iLottery systems and technologies. NeoPollard's online gaming technology has been successfully deployed in Michigan, Virginia, and New Hampshire.

17. Pollard is the 50% joint owner of NeoPollard and is a leading supplier of gaming services to lotteries and charitable gaming organizations around the world.

18. Plaintiffs have standing to bring this action because the OLC's new interpretation of the Wire Act potentially requires them to discontinue their current business practices related to the delivery of iLottery systems and related services.

19. William P. Barr is the Attorney General of the United States of America. The Attorney General is the head of the Department of Justice and is responsible for administering the laws of the United States.

20. The United States Department of Justice is an executive department of the United States and, under the leadership of the Attorney General, is responsible for administering the laws of the United States.

FACTS

21. The Wire Act was passed in 1961 and provides, in relevant part:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

18 U.S.C. § 1084(a).

22. Prior to 2011, the only federal court of appeals to address the issue held that the phrase "on any sporting event or contest" applies to all prohibitions set forth in Section 1084(a). *See In re Mastercard Int'l, Inc.*, 313 F.3d 257, 262–63 (5th Cir. 2002) ("[T]he Wire Act does not prohibit non-sports internet gambling . . ."). *But see United States v. Lombardo*, 639 F. Supp. 2d 1271, 1281 (D. Utah 2007) ("[Section] 1084(a) is not confined entirely to wire communications related to sports betting or wagering.").

I. The 2011 Opinion

23. In 2009, New York and Illinois sought guidance from the Department of Justice regarding whether the sale of lottery tickets via the Internet would violate the Wire Act if the transmissions over the Internet crossed state lines.

24. In response to those requests, the Criminal Division of the Department of Justice asked the OLC to provide an opinion on whether the in-state sale of lottery tickets via the Internet would violate the Wire Act if those sales resulted in the transmission of lottery product purchase transactions and related information over state lines. 2011 Opinion at 1.

25. The Criminal Division noted the potential conflict between the Unlawful Internet Gambling Enforcement Act (“UIGEA”), 31 U.S.C. §§ 5361 et seq., and the Wire Act, because the UIGEA permits intermediate out-of-state routing of electronic data associated with lawful lottery transactions that otherwise occur in-state. *Id.*

26. In 2011, the OLC published an opinion concluding that “the [Wire] Act’s prohibitions relate solely to sports-related gambling activities in interstate and foreign commerce.” *Id.* at 12. The OLC stated: “Given that the Wire Act does not reach interstate transmission of wire communications that do not relate to a “sporting event or contest,” and that the state-run lotteries proposed by New York and Illinois do not involve sporting events or contests, we conclude that the Wire Act does not prohibit the lotteries described in these proposals.” *Id.* at 13.

27. First, the OLC considered whether the phrase “on any sporting event or contest” in the first clause of the Act applies to both “the transmission in interstate or foreign commerce of bets or wagers” and “information assisting in the placing of bets or wagers,” or only to the latter phrase. 2011 Opinion at 5. The OLC concluded that both parts of the first clause were limited to gambling on sporting events. *Id.* at 5–7.

28. The OLC began by analyzing the text of the statute, and determined that the text was inconclusive. In the absence of clear textual guidance, the OLC reasoned that reading “on any sporting event or contest” to also modify “the transmission . . . of bets or wagers” produces a more logical result consistent with the structure of the Act. *Id.* at 5.

29. The OLC observed that it would have made no sense for Congress to forbid the transmission of all types of wagers, but prohibit the transmission of *information assisting in* only bets or wagers on sporting events. *Id.* at 5. Such a reading would produce an absurd regime inconsistent with the text and purpose of the Act.

30. The OLC also consulted the Wire Act’s legislative history. The OLC pointed out that an earlier draft of the provision had included two additional commas that made clear that the phrase “on any sporting event or contest” modifies both parts of the first clause: the original draft would have imposed criminal penalties on anyone who “leases, furnishes, or maintains any wire communication facility with intent that it be used for the transmission in interstate or foreign commerce of bets or wagers, or information assisting the placing of bets or wagers, on any sporting event or contest.” *Id.* at 6 (citing S. 1656, 87th Cong. § 2 (1961) (as introduced) (emphasis added)). When the bill was redrafted to remove the commas, the Senate Judiciary Committee Report indicated that the intent of the amendment was to shift the statute’s focus to persons engaged in the gaming business and to expand the statute to include communications entitling one to receive “money or credit” as a result of bets or wagers. *Id.* Nowhere did the legislative history indicate that this amendment was intended to expand the scope of the first clause to cover more than just gaming on sporting events. *Id.* The OLC therefore concluded that the phrase “on any sporting event or contest” modifies both “the transmission in interstate or foreign commerce of bets or wagers” and “information assisting in the placing of bets or wagers.” *Id.* at 6–7.

31. Second, the OLC concluded that the phrase “on any sporting event or contest” also modifies Section 1084(a)’s second clause, prohibiting “the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers.” *Id.* at 7 (citing 18 U.S.C. § 1084(a)).

32. The OLC acknowledged that Congress could have written “on any sporting event or contest” into the second clause to make clear its limited application, but reasoned that even in the absence of such language, the references to “bets or wagers” in the second clause were best understood as shorthand references to the “bets or wagers on any sporting event or contest” described in the second half of the first clause. *Id.* at 7.

33. The OLC further pointed out that the phrase “in interstate and foreign commerce” was also omitted from the second clause, even though there is little doubt Congress intended all of the prohibitions in the Wire Act to be limited to interstate or foreign wire communications. *Id.* at 7.

34. Reading all of Section 1084(a) as limited to gambling on sporting events, the OLC concluded, made functional sense of the statute. By applying the limitation on sporting events to both clauses, all of the subsection’s prohibitions would serve the same end. *Id.* at 7.

35. By contrast, reading Section 1084(a) to contain some prohibitions applying only to gambling on sporting events and other prohibitions that apply to all types of gaming activities would create a disparate patchwork of prohibitions. The second clause would prohibit money or credit communications for *all* kinds of gaming, whereas the first clause would prohibit only the placement of bets or wagers (or information related to the placement of bets or wagers) on sporting events. *Id.* at 7–8.

36. Again, the OLC turned to the legislative history to support its conclusion. The OLC first noted that there was no indication that when Congress amended the bill to add the second clause, it intended to dramatically expand the scope of the existing bill to cover all types of gaming. *Id.* at 8.

37. Next, the OLC pointed out that ample legislative history showed that the intended and widely understood purposes of the Wire Act were to assist the states in the enforcement of their state laws and to crack down on the bookmaking activities of organized criminals by supplementing existing state-law prohibitions against unlawful sports betting.

38. The OLC cited extensive testimony before both the House and the Senate from Attorney General Robert F. Kennedy speaking to the importance of cutting off bookmakers' ability to quickly transmit bets and wagers across the wires. *Id.* at 8–9.

39. The OLC also cited an exchange before the Senate in which Herbert Miller, the Assistant Attorney General of the Criminal Division, stated that the Wire Act would not cover “gambling on other than a sporting event or contest” because “it is limited to sporting events or contests.” *Id.* at 10 n.7 (quoting *The Attorney General’s Program to Curb Organized Crime and Racketeering: Hearings on S. 1653, S. 1654, S. 1655, S. 1656, S. 1657, S. 1658, S. 1665 Before the S. Comm. on the Judiciary, 87th Cong. 277–78 (1961)*).

40. Also supporting the OLC’s interpretation were several statements from members of Congress, who each expressed their understanding that the Wire Act was intended to combat illegal bookmakers who used wires to quickly transmit betting lines and wagers. *Id.* at 9.

41. The OLC noted that on the same day Congress enacted the Wire Act, it also passed the Interstate Transportation of Wagering Paraphernalia Act, Pub. L. No. 87-218, 75 Stat. 492 (1961) (codified at 18 U.S.C. § 1953), in which Congress specifically prohibited the interstate

transportation of wagering paraphernalia, including materials used in lottery-style games. *Id.* at 10–11. That Act used specific words—“numbers, policy, bolita, or similar game”—to describe games of chance, and distinguished those games from “bookmaking” and “wagering pools with respect to a sporting event.” *Id.* at 11. According to the OLC, Congress’s explicit enumeration of those games of chance suggests that the Wire Act was intended to be limited in scope.

42. Since the Wire Act reaches only gambling on sporting events, the OLC reasoned, there was no need to determine whether the Wire Act should be construed to apply in cases of intermediate out-of-state routing of electronic data associated with in-state transactions and, if so, whether there was a potential conflict between the Wire Act and the UIGEA. *Id.* at 12–13.

II. Post-2011 Developments

43. Following the 2011 Opinion, several state lotteries, including the lotteries in New Hampshire, Illinois, Michigan, Georgia, New Jersey, Pennsylvania, Delaware, Kentucky, Virginia, and North Carolina, began selling lottery tickets and other gaming products over the Internet to individuals that were located within the particular states at the time of the bet or wager or were in states that had agreed with each other to permit their residents to wager together.

44. In 2014, NeoPollard was formed as a joint venture between Pollard and NeoGames S.A.R.L., with a focus on creating online and mobile gaming products.

45. Plaintiffs partner with state governments by providing the hardware and software necessary to deliver a comprehensive, end-to-end online gaming solution. Plaintiffs’ iLottery system includes not only the gaming software itself, but also electronic wallet and payment processing systems.

46. Plaintiffs invested tens of millions of dollars to develop their iLottery system, which was subsequently configured according to state specifications for deployment in both Michigan and New Hampshire.

47. For their services, Plaintiffs receive a commission in the form of a percentage of iLottery receipts.

48. In 2018, New Hampshire began operating its iLottery program, which is powered by Plaintiffs' comprehensive technology suite.

49. "All profits from the New Hampshire Lottery are designated for education by the [New Hampshire] State Constitution." *Comprehensive Annual Financial Report* 11, N.H. Lottery Comm'n (2018), https://www.nhlottery.com/Files/PDFs/Financial-Reports/CAFR_2018.aspx

50. Prior to the rollout of New Hampshire Lottery's iLottery, NeoPollard engaged in extensive consultations with the State to ensure strict compliance with all applicable state and federal regulations.

51. Every time a customer logs onto the iLottery software platform, NeoPollard employs geolocation technology to verify that the customer is located within the borders of New Hampshire. Customers located outside the borders of New Hampshire cannot place any bets or wagers.

52. Transmissions through New Hampshire Lottery's iLottery may sometimes travel across interstate lines.

53. In 2013, Pollard signed a contract to provide an iLottery system and related services to the Michigan Lottery, and in 2014, Pollard commenced operations in Michigan.

54. That contract was subsequently renewed in 2018, with Pollard continuing to serve as provider of Michigan Lottery's iLottery. Michigan Lottery's iLottery now offers dozens of instant-win, draw-based, and keno games to customers across the state.

55. As in New Hampshire, every time a Michigan Lottery customer logs onto the iLottery software platform, Pollard employs geolocation technology to verify that the customer is

located within the borders of Michigan. Customers located outside of Michigan cannot place any bets or wagers.

56. Pollard's contract with Michigan entitles Pollard to receive commissions through the iLottery by retaining a percentage of iLottery sales.

57. iLottery daily sales in Michigan surpassed \$1 million within the first few years of release. iLottery revenue increased by 103% between the 2015–16 and 2016–17 fiscal years, and initial results for the 2018 fiscal year indicate that Michigan Lottery's iLottery generated over \$100 million net returns, approximately 10% of the Michigan Lottery's entire contribution to the state's School Aid Fund.

58. Since 2011, no court has held in a published opinion that the Wire Act applies to any type of gaming other than gambling on sporting events.

59. In 2014, the First Circuit agreed with the conclusions of the 2011 Opinion, concluding that the Wire Act is limited to betting and wagering on "any sporting event or contest." *United States v. Lyons*, 740 F.3d 702, 718 (1st Cir. 2014).

III. The 2018 Opinion

60. In April 2017, a lobbyist for Sheldon Adelson—the chairman and chief executive officer of Las Vegas Sands Corp.—or for one or more advocacy organizations that Mr. Adelson has funded, forwarded a memorandum to the Department of Justice arguing that the 2011 Opinion wrongly interpreted the Wire Act.

61. Mr. Adelson has long opposed online gaming. See Tom Hamburger et al., *Justice Department Issues New Opinion That Could Further Restrict Online Gambling*, Wash. Post (Jan. 14, 2019), https://www.washingtonpost.com/politics/justice-department-issues-new-opinion-that-could-further-restrict-online-gambling/2019/01/14/a501e2da-1857-11e9-8813-cb9dec761e73_story.html?utm_term=.9a51fa605fd1.

62. Online gaming purportedly is also harmful to Mr. Adelson's business because it potentially attracts players away from the casinos that he owns in Las Vegas and Pennsylvania.

63. Mr. Adelson is a funder of the Coalition to Stop Internet Gambling. *See id.*

64. Mr. Adelson and his wife gave \$113 million to support Republicans during the 2016 election cycle, including \$20 million to back President Trump's campaign. *See id.*

65. Third-party sources have reported that, one month after receiving the memorandum from Mr. Adelson's lobbyist, the Criminal Division of the Department of Justice forwarded the lobbyist's memorandum to the OLC, seeking reconsideration of the 2011 Opinion's conclusion. *See* Byron Tau & Alexandra Berzon, *Justice Department's Reversal on Online Gambling Tracked Memo from Adelson Lobbyists*, Wall St. J. (Jan. 18, 2019), <https://www.wsj.com/articles/justice-departments-reversal-on-online-gambling-tracked-memo-from-adelson-lobbyists-11547854137>; *see also* 2018 Opinion at 1–2 (citing Memorandum for Curtis E. Gannon, Acting Assistant Attorney General, Office of Legal Counsel, from Kenneth A. Blanco, Acting Assistant Attorney General, Criminal Division (May 26, 2017)).

66. On January 14, 2019, the OLC published the 2018 Opinion, in which it disagreed with the 2011 Opinion on both interpretive questions regarding the scope of the Wire Act.

67. First, the OLC concluded that the language of the statute was unambiguous and that the phrase “on any sporting event or contest” in the first clause modifies only the second prohibition in that clause. That is, “on any sporting event or contest” modifies only “information assisting in the placing of bets or wagers” and not “the transmission in interstate or foreign commerce of bets and wagers.” 2018 Opinion at 6.

68. To reach this conclusion, the OLC applied the canon of statutory interpretation that a modifier should ordinarily be read as modifying only the noun or phrase that it immediately

follows. Under that canon, the phrase “on any sporting event or contest” modifies only the phrase it immediately follows: “information assisting in the placing of bets or wagers.” *Id.* at 7–8. According to the OLC, the interstate transmission of “bets and wagers”—irrespective of subject matter—is prohibited.

69. Second, the OLC concluded that “on any sporting event or contest” does not modify any part of the second clause of Section 1084(a). *Id.* at 11. The OLC stated that there was no textual or grammatical reason for applying the phrase “on any sporting event or contest” forward to the second clause, and that no canon of construction supported reading the “on any sporting event or contest” modifier as applying to the second clause. *Id.* at 11–12.

70. The OLC pointed also to Section 1084(b), which contains a limited exception to Section 1084(a)’s prohibition:

Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

18 U.S.C. § 1084(b). Disregarding the legislative intent addressed in the 2011 Opinion, the OLC argued that Congress’s use of the phrase “sporting events or contests” three times in Section 1084(b) supports the notion that Congress intended the phrase—when used in Section 1084(a)—to apply to only its nearest referent. 2018 Opinion at 12.

71. The OLC dismissed the extensive legislative history indicating that the Wire Act has only a limited reach. The OLC contended that such history and practice is irrelevant to the interpretation of the plain language of the statute, and that its new interpretation of the statute did not produce an absurd result. *Id.* at 14–17.

72. The OLC's position reversal on the reach of the Wire Act has significant consequences for gaming operators like Plaintiffs that facilitate online gaming.

73. Ten states and other stakeholders that acted in reliance on the 2011 Opinion to develop markets for online gaming—albeit not on sporting events—are now confronted with the OLC's sudden declaration that their activities may be unlawful.

74. The new opinion perfunctorily acknowledged that some entities might have relied on the views of the OLC as expressed in the 2011 Opinion, but concluded that such reliance interests were not “sufficient to justify continued adherence to the 2011 opinion.” *Id.* at 23.

75. Such a massive federal overreach directly contradicts the purpose of the Wire Act, which was enacted to “assist the several States in the enforcement of their laws pertaining to gambling.” S. Rep. No. 87-588, at 2 (1961); *see also* H.R. Rep. 87-967, at 1 (1961) (“The purpose of the bill is to assist the various States and the District of Columbia in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses.”), *reprinted in* 1961 U.S.C.C.A.N. 2631, 2631. The Wire Act was intended to assist states in enforcing their state gaming laws, not to impair states' development of gaming policies within their borders. *See, e.g., Lyons*, 740 F.3d at 713 (“[T]he Wire Act prohibits interstate gambling *without criminalizing lawful intrastate gambling.*” (emphasis added)); *see also United States v. Yaquinta*, 204 F. Supp. 276, 279 (N.D. W. Va. 1962) (“[T]he objective of the [Wire] Act is not to assist in enforcing the laws of the States through which the electrical impulse traversing the telephone wires pass, but the laws of the State where the communication is received.”).

76. On January 15, 2019, Deputy Attorney General Rod J. Rosenstein issued a memorandum indicating that the Department of Justice would not begin enforcing the broader interpretation of the Wire Act for 90 days, so that “businesses that relied on the 2011 OLC opinion

[have] time to bring their operations into compliance with federal law.” Memo to U.S. Att’ys, from Rod A. Rosenstein, Dep. Att’y Gen., *Re: Applicability of the Wire Act to Non-Sports Gambling* at 1 (Jan. 15, 2019).

77. That memorandum observed, however, that this was “an internal exercise of prosecutorial discretion” and “not a safe harbor for violations of the Wire Act.” *Id.*

78. The possibility of imminent criminal prosecution by the Department of Justice is real and substantial.

79. Following publication of the 2018 Opinion, members of the gaming industry have questioned whether the 2018 Opinion is connected to Mr. Adelson’s lobbying efforts.

80. One former Associate Deputy Attorney General has expressed dismay at the apparent connection between Mr. Adelson’s political contributions to the current administration and the Department’s change in position. *See* Peter J. Ferrara, *Department of Justice Shouldn’t End Online Gambling to Appease Trump Donor Sheldon Adelson*, USA Today (Feb. 7, 2019), <https://www.usatoday.com/story/opinion/2019/02/07/justice-department-online-gambling-gop-donor-sheldon-adelson-trump-column/2787194002/>.

81. In a hearing before the House Judiciary Committee on February 8, 2019, Rep. Jamie Raskin asked then-Acting Attorney General Matthew Whitaker whether he was involved in the decision to overturn the 2011 Opinion.

82. Acting Attorney General Whitaker testified that he was not involved in the decision.

CAUSE OF ACTION

COUNT I (Declaratory Judgment)

83. Plaintiffs incorporate the foregoing paragraphs as if set forth fully herein.

84. The reasoning of the 2018 Opinion is deeply flawed. Despite the holdings of two federal courts of appeals, the OLC has insisted that the text of the Wire Act reaches conduct other than gambling on sporting events.

85. The OLC ignored key structural features of the statute, all of which indicate a limited scope. It is not only “improbable,” 2018 Opinion at 15, but *absurd* to conclude that Congress sought to prohibit all direct betting and wagering across state lines, but specifically prohibited only the transmission of “information” related to bets and wagers on sporting events or contests. There is no conceivable legislative logic underlying such a scheme.

86. The OLC also neglected the substantial legislative history of the Wire Act, all of which points to a narrow understanding and purpose of the Act. The great weight of this history shows that members of Congress, at the time of the Wire Act’s enactment, understood that the Act was limited to gambling on sporting events.

87. The interpretation of the Wire Act set forth in the 2018 Opinion is wrong as a matter of law.

88. As a result of the 2018 Opinion, there is an actual controversy between the parties as to the proper scope of the Wire Act, that controversy is immediate and real, and in light of all the attendant circumstances, Plaintiffs face sufficient hardship to justify a finding that the dispute is ripe for declaratory judgment.

89. The impact of the 2018 Opinion is sufficiently direct and immediate to create an adversity of interest between Plaintiffs and Defendants.

90. Plaintiffs are currently facing the possibility that their operation of New Hampshire Lottery’s iLottery is unlawful.

91. Pollard currently faces the possibility that its operation of Michigan Lottery's iLottery is unlawful.

92. To ensure compliance with the OLC's new interpretation of the Wire Act, Plaintiffs may have to discontinue their current business practices pertaining to the delivery of iLottery systems and related services.

93. Were Plaintiffs to discontinue their current business practices pertaining to the delivery of iLottery systems and related services, they would suffer economic harm.

94. The 2018 Opinion indicates that the Department of Justice contemplates rigorous and broad enforcement of the Wire Act against operators facilitating gaming activity over the Internet.

95. One of the justifications offered by the OLC in departing from its prior position was that its new position will "make it more likely that the Executive Branch's view of the law will be tested in the courts." *Id.* at 22.

96. This statement signals that the Department of Justice intends to seek enforcement of the Wire Act under the OLC's broader interpretation.

97. The threat of impending criminal prosecution poses a severe hardship to Plaintiffs' current operations.

98. A judgment declaring the Wire Act is limited to gambling on sporting events would permit Plaintiffs to continue operating the New Hampshire and Michigan iLotteries and facilitating online lottery product sales without fear of criminal prosecution.

99. Plaintiffs expect that New Hampshire and Michigan will adhere to federal law with respect to their online gaming operations.

100. There is therefore a strong possibility that New Hampshire and/or Michigan will discontinue their iLottery operations in light of the Wire Act so as not to violate federal law.

101. Termination of the iLottery would severely harm Plaintiffs' economic and business interests, since Plaintiffs have already invested heavily in developing the iLottery and can only recoup their costs through the iLottery commissions they earn.

102. The possibility that New Hampshire and/or Michigan will discontinue their iLotteries is real and imminent.

103. 18 U.S.C. § 1962 (RICO) prohibits any person from participating in an enterprise engaging in a pattern of racketeering.

104. Under 18 U.S.C. § 1961(1), racketeering includes violations of the Wire Act.

105. 18 U.S.C. § 1964 provides a private right of action for individuals to bring civil lawsuits for violations of 18 U.S.C. § 1962.

106. As a result of the 2018 Opinion, Plaintiffs face a real and immediate threat that they will be subject to civil lawsuits by private plaintiffs under 18 U.S.C. § 1964.

107. Plaintiffs therefore request that this Court declare that the Wire Act does not prohibit the use of a wire communication facility to transmit in interstate commerce bets, wagers, receipts, money, credits, or any other information related to any type of gaming other than gambling on sporting events and contests.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Declare that the Wire Act does not prohibit the use of a wire communication facility to transmit in interstate commerce bets, wagers, receipts, money, credits, or any

other information related to any type of gaming other than gambling on sporting events and contests.

2. Award Plaintiffs their costs and reasonable attorneys' fees as appropriate.
3. Grant such further relief as this Court deems proper.

Respectfully submitted,

Dated: February 15, 2019

/s/ Michael A. Delaney

Michael A. Delaney
NH Bar No. 10504
MCLANE MIDDLETON, Professional Association
900 Elm Street
10th Floor
Manchester, NH
(603) 628-1248
michael.delaney@mclane.com

Theodore B. Olson, *pro hac vice pending*
TOlson@gibsondunn.com
Matthew D. McGill, *pro hac vice pending*
MMcgill@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500
*Counsel for Plaintiffs NeoPollard Interactive LLC
and Pollard Banknote Limited*

CERTIFICATE OF SERVICE

I certify that, on February 15, 2019, I served the foregoing via ECF electronic transmission in accordance with the Court's Administrative Procedures for ECF to the registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants, if any.

Dated: February 15, 2019

/s/ Michael A. Delaney

Michael A. Delaney, NH Bar No. 10504