

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

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NEW HAMPSHIRE LOTTERY COMMISSION, )  
)  
NEOPOLLARD INTERACTIVE LLC, *and* )  
)  
POLLARD BANKNOTE LIMITED, )  
)  
*Plaintiffs,* )

Civil Action No. 1:19-cv-00163-PB

v. )

WILLIAM P. BARR, in his official capacity as )  
Attorney General of the United States, )  
)  
UNITED STATES DEPARTMENT OF JUSTICE, )  
)  
AND UNITED STATES OF AMERICA, )  
)  
*Defendants.* )

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**NOTICE OF SUPPLEMENTAL AUTHORITY**

At oral argument, Plaintiffs attributed great significance to a statement by Assistant Attorney General Byron White during a July 10, 1961, meeting of the Senate Judiciary Committee. The transcript of that meeting records Assistant Attorney General White saying that the bill “is aimed now at those who use the wire communication facility for the transmission of bets or wagers in connection with a sporting event and also who use the facility for the transmission of the winnings.” Transcript of Senate Judiciary Committee Meeting at 2 (July 10, 1961) (“Exhibit A”). Following oral argument, amici the Coalition to Stop Internet Gambling and the National Association of Convenience Stores obtained two documents through additional archival research that show that the placement of commas in the Wire Act had not yet been finalized when Assistant Attorney General White made this statement. These documents are important because the

punctuation of subsection (a) of the Wire Act is key to whether the Act's prohibitions extend to non-sports betting.

First, minutes from the July 10 meeting obtained from the papers of Senator James Eastland at the University of Mississippi reveal that the relevant discussion of the bill was "recorded verbatim by an official shorthand reporter." Senate Judiciary Committee Meeting Minutes at 5 (July 10, 1961) ("Exhibit B"). Whether this "verbatim" transcript of *oral* testimony accurately captures how the *written* bill was punctuated at the time is unknown. Thus, although the transcript does not include commas in the first clause of subsection (a) when it records how the text of the bill was read aloud, *see* Exhibit B at 1, amici submit that this is not a reliable indication of how the written bill was actually punctuated on July 10.

Second, from the National Archives in Washington, D.C., amici obtained a draft of the bill dated July 21, 1961, which includes a comma in the first clause of subsection (a) between the words "information" and "assisting." S. 1656, 87th Cong. § 1084(a) (as reported by S. Comm. on the Judiciary, July 21, 1961) ("Exhibit C"). Amici have been unable to identify a document that definitively establishes how the written text of the bill was punctuated on July 10, but the July 21 draft shows that eleven days after Assistant Attorney General White made his statement the punctuation of the bill had not yet been finalized.

In the absence of anything that definitively shows how the bill was punctuated on July 10, 1961, Assistant Attorney General White's statement on that date should not be given any weight. A more reliable indication of Assistant Attorney General White's views can be found in the September 1, 1961, memorandum he wrote recommending that the President sign the bill into law. In describing the purpose of the bill as passed by Congress and ready for the President's signature, Assistant Attorney General White did not suggest that the bill was limited to sports betting but

instead said that it “would make it criminal for one engaged in the business of betting to knowingly use a wire communication facility in interstate or foreign commerce for the transmission of bets or wagers or information assisting in the placing of bets or wagers.” Memorandum Byron R. White, Deputy Attorney General, to Hon. David E. Bell, Director, Bureau of the Budget (Sept. 1, 1961), *excerpted from* Doc. 61-1 (“Exhibit D”).

Dated: May 2, 2019

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Notice of Supplemental Authority was served via the Case Management/Electronic Case Files (CM/ECF) system on May 2, 2019, upon all counsel of record, including:

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