

THE FIGHT IS OVER

NATION'S FIRST LOTTERY AGAIN LEADS THE WAY, THIS TIME FOR ILOTTERY *Jim Acton, Lottery Industry Consultant*

More than two years ago, New Hampshire Lottery Executive Director Charlie McIntyre decided to take on the U.S. Department of Justice. His goal – keep his state's iLottery program running.

Many court filings, a trip to Washington, and a favorable lower court ruling later, Charlie finally got the outcome he sought. Did it come in the form of a breaking news announcement or a call from high-level DOJ lawyer? Not exactly.

"The deadline for the DOJ to appeal the ruling was June 21," said Charlie, "and June 21 came and went without a word from Washington. In the law world, that's called a win."

The U.S. Department of Justice declined to appeal the First U.S. Circuit Court of Appeals' January 2021 ruling that the 1961 Wire Act does not apply to non-sports betting or wagering activity over the Internet. This basically ends the case in favor of the New Hampshire Lottery, which initiated the case following a 2019 memorandum that reinterpreted the language of the Wire Act. This ruling confirms that the Wire Act is limited to sports betting and paves the way for state-run lotteries to continue to sell lottery products online without threat of prosecution.

Prior to the appeals deadline passing in June, attorneys general from 26 states released a joint letter seeking clarity from the DOJ

surrounding the Wire Act and its application in other federal circuits, so that all stakeholders in the lottery industry may confidently move forward in this growth area.

To date, six states, plus the District of Columbia, have introduced full iLottery programs that sell instant and draw-based games online, while an additional four lotteries offer draw-games only. With the ruling, more lotteries are expected to begin offering lottery products online, particularly with consumers now accessing more products and services online.

Charlie, who prior to joining the lottery industry in 2003 was a prosecutor in Massachusetts, said that when the DOJ issued its opinion in February 2019 stating the Wire Act applied to all forms of gaming and not just sports betting, he knew that New Hampshire had to take a stand.

"It's as simple a fact as some fights need fighting," he said. "While we have been confident in this outcome throughout this process, we are extremely pleased to have closure. This case represents an historic victory for the New Hampshire Lottery and lotteries across the country."

New Hampshire was joined in fighting the DOJ by NeoPollard Interactive, which powers the iLottery programs for New Hampshire,

Virginia, Michigan and North Carolina in the U.S. NPI also celebrated the DOJ's ruling.

"We commend the New Hampshire Lottery for its leadership moving this initiative forward," said Liz Siver, General Manager, NeoPollard Interactive. "Reaching players online is a proven way to meet consumer demand and responsibly generate critical funds for good causes. As market leaders in iLottery, NPI applauds this outcome and looks forward to expanding our partnerships with lotteries to successfully leverage this delivery channel. The time is now for lotteries to engage in this strategic area given the increasingly competitive nature of the digital gaming landscape."

Charlie had many reasons to take on the DOJ, led by the revenue the iLottery program has brought to New Hampshire. Since launching in 2018, the NH iLottery program has generated over \$46 million in net gaming revenue, including net gaming revenue of \$28 million in the recently-concluded fiscal year.

The end to the Wire Act case is also expected to impact legal regulated online poker in the US. Several states are expected to sign deals that would allow online poker operators to form interstate player pools by year's end.

Regulators in Michigan and Pennsylvania are expected to pursue this opportunity soon. It also opens up the possibility of online poker in West Virginia, could attract more operators seeking approval in Nevada, and makes smaller states like Connecticut much more feasible.

