UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

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.	)	

SUPPLEMENTAL MEMORANDUM OF AMICI CURIAE COALITION TO STOP INTERENT GAMBLING AND THE NATIONAL ASSOCIAITON OF CONVENIENCE STORES

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INTRODUCTION

The federal government has long struck a careful balance when it comes to the regulation of lotteries and gambling, allowing States that wish to do so to embrace certain types of gambling within their borders, while respecting and assisting other States' decisions to adopt more restrictive gambling policies. But New Hampshire's proposed reading of the Wire Act, if adopted by this Court and applied to other federal gambling laws that use similar language, will upend this careful balance—allowing a single State that wants to permit gambling as broadly as possible to export that policy to every other State in the Union.

Not only does New Hampshire's argument contravene clear federal policy on gambling, it would also punt regulation of interstate gambling to the States—which are woefully unprepared for such responsibilities. Take, for example, the fact that States today are already struggling to prevent children from accessing online casinos on mobile devices. As a former state attorney general explained in testimony to Congress, "technological advances, and the ease of access to the Internet by children, makes the challenges imposed on states where Internet gambling is illegal even greater today," and "states simply do not have the legal authority or the resources to protect our citizens, including children" from illegal online casinos. *Post-PASPA: An Examination of Sports Betting in America: Hearing before the Crime, Terrorism, and Homeland Security and Investigations Subcomm. of the H. Judiciary Comm.*, 115th Cong., (Sept 27, 2018) (written testimony of Jon C. Bruning at 5), *available at* https://bit.ly/2ZNDXAN (last visited May 1, 2019). States that operate lotteries for profit face an inherent conflict of interest when enforcing regulations that restrict online access to their gambling websites, and exempting the States from all federal gambling regulation would create a race to the bottom in which the State with the laxest

gambling regulations and most generous pay-outs would generate the most revenue from online gambling activities and effectively set internet gambling policy for the entire nation.

With substantial reason to doubt that pro-gambling States are able and willing to police even the basic confines of their own internet-based gambling systems, federal law should not be watered down. Nor can it be: the Wire Act on its plain terms applies to the States, State employees, and State vendors.

ARGUMENT

I. If the Wire Act's "whoever" language is read *not* to include States, such a reading would compel the conclusion that *no* major federal gambling or lottery statute applies to States—upending federal gambling regulation as we know it.

Although New Hampshire's supplemental brief focuses only on the meaning of "whoever" as that term is used in the Wire Act, the Court must not lose sight of the fact that the logic of its position applies with equal force to every major federal gambling statute. *See* 18 U.S.C. §§ 1301, 1302, 1304, 1952, 1953, 1955 (prohibitions apply to "whoever" engages in specified conduct); 31 U.S.C. § 5363 (prohibition applies to any "person engaged in the business of betting or wagering"). None of these statutes define the terms "whoever" or "person," yet they have long played a crucial part in the federal approach to gambling regulation *because* they apply to States. These statutes work together to allow States that wish to embrace gambling to do so within their borders while preventing pro-gambling States from adopting policies that abuse the channels of interstate commerce and thwart enforcement of other States' gambling prohibitions. As the Supreme Court explained in *United States v. Edge Broadcasting Co.*, 509 U.S. 418, 434 (1993), a key goal of federal regulation of lotteries is "to accommodate non-lottery States' interest in discouraging public participation in lotteries, even as they accommodate the countervailing interests of lottery States."

If States are exempt from the Wire Act because they do not fit within the term "whoever," it necessarily follows that they are also exempt from all of these other statutes that use the same term and have a related purpose. But if the term "whoever" in these statutes does not include States, there is *nothing* in federal law preventing a State from exploiting the channels of interstate commerce to undermine the gambling laws of other States. New Hampshire could sell its lottery tickets by mail to people in Alabama or offer online slot machines accessible from computers in Kansas. As NeoPollard observed at oral argument: "This is a big deal issue . . . . '[W]hoever' is throughout the United States Code," and a ruling here will have "ramifications that will ripple out far beyond the Wire Act." Transcript of Oral Argument Before the Honorable Paul J. Barbadoro, Morning Session 60:25–61:4 (April 11, 2019) ("Morning Session Tr."). A ruling from this Court holding that the term "whoever" in the Wire Act does not include States would upend the entire federal system of gambling regulation and undermine the strong and long-established federal interest and policy in respecting the ability of States to chart their own course when it comes to gambling—but only gambling entirely confined to their own borders.

II. The presumption that terms such as "person" and "whoever" do not include the sovereign is inapplicable to the Wire Act.

In arguing that it is exempted from the Wire Act, New Hampshire has cited the "presumption" that "the word *person* traditionally excludes the sovereign." *See* ANTONIN SCALIA AND BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 273 (2012). But the "presumption" must yield in the face of contextual evidence to the contrary; it is not a hard-and-fast rule, and the context plainly indicates that the Wire Act applies to the States.

As an initial matter, and as the Supreme Court has emphasized time and again, the presumption is not absolute; there "is, of course, *not* a hard and fast rule of exclusion." *Vermont Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 781 (2000) (quotation marks

omitted; emphasis added); *see United States v. Cooper Corp.*, 312 U.S. 600, 604–05 (1941); *Wilson v. Omaha Indian Tribe*, 442 U.S. 653, 667 (1979). This is not a platitude to which the Court pays lip service and then ignores. Rather, on numerous occasions the Court has concluded that the term "person" *includes* States. For example, in *California v. United States*, 320 U.S. 577, 585 (1944), the Supreme Court held that the phrase "any person not included in the term 'common carrier by water' " who furnished docking-related facilities included States that owned wharves and piers. The Court reasoned that States owned a "large . . . portion of the nation's dock facilities" and that reading the statute to exclude them "would have defeated the very purpose for which Congress framed the scheme for regulating waterfront terminals to exempt those operated by governmental agencies." *Id.* at 585–86.

Other cases are similar. For instance, in *Georgia v. Evans*, 316 U.S. 159, 161–63 (1942), the Court ruled that a State is a "person" for the purposes of the Sherman Act and is entitled to sue for treble damages. In *Green v. United States*, 76 U.S. 655, 657–58 (1869), the Court held that civil rules that applied to "witnesses" and "parties" included the United States in those terms. And in *Nardone v. United States*, 302 U.S. 379, 380–82 (1937), the Court held that a federal law that provided that "no person" shall engage in wiretapping "comprehends federal agents." Numerous other cases come out the same way. *See, e.g.*, *United States v. Persichilli*, 608 F.3d 34, 37–39 (1st Cir. 2010) (holding that a statute that prohibited acts taken "for the purpose of obtaining anything of value from any person" included States within the sweep of the term "person"); *see also United States v. California*, 297 U.S. 175 (1936) (discussed below); *Jefferson Cty. Pharm. Ass'n, Inc. v. Abbott Labs.*, 460 U.S. 150 (1983) (discussed below).

As these cases show, when determining whether a statute should be interpreted to include a State or other sovereign, "much depends on the context." *Wilson*, 442 U.S. at 667; *see California*

v. United States, 320 U.S. at 585. Under the Supreme Court's caselaw and a contextual analysis, there are numerous reasons to conclude that the presumption either does not apply to the Wire Act at all or is overcome by countervailing considerations.

A. The presumption does not apply when a State is acting in a business capacity.

The presumption is inapplicable where a State is acting in a business capacity and being subjected to general regulations—which alone disposes of the presumption here. As the Supreme Court explained in *United States v. California*, 297 U.S. at 186, "[w]e can perceive no reason for extending [this presumption] so as to exempt a business carried on by a state from the otherwise applicable provisions of an act of Congress, all-embracing in scope and national in its purpose, which is as capable of being obstructed by state as by individual action." The Court has relied on and endorsed this principle on multiple occasions. For example, in *California v. Taylor*, 353 U.S. 553, 562–63 (1957), the Court held that the Railway Labor Act applied to a state-run railroad—and quoted the language from *United States v. California en route* to finding that although "Congress apparently did not discuss the applicability of the Railway Labor Act to a state-owned railroad," the presumption was inapplicable. *See also Abbott Labs.*, 460 U.S. at 161 n.21 (endorsing the language quoted above from *United States v. California*); *Pfizer, Inc. v. Government of India*, 434 U.S. 308, 318 (1978) (holding, in the context of the Sherman Act, that the term "person" included foreign sovereigns and rejecting the presumption because "[w]hen a foreign nation enters our commercial markets as a purchaser of goods or services, it can be victimized by anticompetitive practices just as surely as a private person or a domestic State").

The Wire Act and related statutes covering gambling are "all-embracing in scope," "national in [their] purpose," and "as capable of being obstructed by state as by individual action" (such as by a State launching a gambling operation that transcends state borders). *United States v.*

California, 297 U.S. at 186. The text of the Wire Act buttresses the conclusion that the presumption should not apply for this reason; it applies to "[w]hoever *being engaged in the business* of betting or wagering." 18 U.S.C. § 1084(a) (emphasis added). Thus, the term "whoever" includes States running gambling businesses—and no presumption suggests otherwise.

B. Other aspects of the Wire Act's context demonstrate that the presumption does not apply here.

Numerous additional contextual clues reinforce the conclusion that Congress meant to include the States when it used the term "whoever" in the Wire Act.

First, when another, related statute has already been interpreted to include a State, the instant statute should be interpreted the same way. In *Abbott Labs.*, 460 U.S. at 154–57, the Supreme Court reasoned that because in prior cases it had found that the general term "person" included States in the Sherman Act and Clayton Act, that term in another federal antitrust statute (the Robinson-Patman Act, which amended the Clayton Act) should be interpreted the same way. *California v. Taylor*, 353 U.S. at 562, applied the same principle, finding that where "federal statutes regulating interstate railroads, or their employees, have consistently been held to apply to publicly owned or operated railroads"—although "none of these statutes referred specifically to public railroads as being within their coverage"—the prior interpretation of related statutes cut in favor of interpreting the Railway Labor Act as applying to state-owned railroads. As discussed in detail in Section III of this brief, Congress amended other federal statutes that regulate gambling—18 U.S.C. §§ 1301–07 and 18 U.S.C. § 1953—on the clear assumption that those statutes include States in their default definition of the term "whoever," which means that the Wire Act should be interpreted the same way.

Second, the Supreme Court often declines to apply the presumption to any sovereign other than the sovereign that enacted the law. As the Supreme Court explained in *United States v. Fox*,

94 U.S. 315, 319 (1876), "the principle that 'the king is not bound by any act of Parliament, unless he be named therein by special and particular words' . . . only extends to the sovereign by or under whom the law was enacted." This is not an ancient principle that has worn thin over time; more than a century later, in 1983, the Supreme Court highlighted its validity yet again. In *Abbott Labs.*, 460 U.S. at 162 n.21, the Court explained that "this sovereign-exception rule of statutory construction simply means that a government, when it passes a law, gives up only what it expressly surrenders" and reasoned that in the context of a federal antitrust statute, cases in this area "support[], at the most, an exemption for the *Federal* Government's purchases"—not a State's. Here, because the federal government enacted the Wire Act, States such as New Hampshire cannot rely on the presumption to avoid the reality that they are included in the Wire Act's use of "whoever."

Third, the legislative history of the Wire Act, which this Court should consider as part of the contextual inquiry, *Wilson*, 442 U.S. at 667, points in the same direction. The Wire Act was enacted to help States enforce anti-gambling laws, and New Hampshire's interpretation of "whoever" would undermine that purpose. As then-Attorney General Robert F. Kennedy explained when discussing the need for the Wire Act, "[i]ts purpose is to assist the various States in enforcement of their laws pertaining to gambling and bookmaking" because "[t]he most diligent efforts of local law-enforcement officers are often frustrated by the ease with which information essential to gambling operations can be disseminated in interstate commerce." *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. 5 (1961) (statement of Hon. Robert F. Kennedy, Attorney General (May 17, 1961)); *see also id.* at 6; S. REP. NO. 87-588, at 2 (1961) ("The purpose of the bill . . . is . . . to assist the several States in the

enforcement of their laws pertaining to gambling."). In view of this purpose, Congress plainly did not intend to leave a loophole through which New Hampshire, its employees, and vendors could exploit the channels of interstate commerce free from federal regulation and thereby prevent other States from enforcing their laws against gambling.

Fourth, the additional "context" provided by related statutes and their legislative history clearly indicates that the Wire Act applies against States. Even were the Court to ignore all of the considerations laid out above, as discussed *infra* in Section III, the context provided by related statutes and their legislative history mandates this reading.

In sum, all of this context differentiates the Wire Act from the statute that the Court confronted in *Vermont Agency*, a case upon which New Hampshire relies. Although in that case the Court referenced the "presumption" against reading the term "person" to include a sovereign, the Court then engaged in a careful study of the statute in question, the False Claims Act (FCA). The Court examined its "historical context," subsequent "housekeeping change[s]," the "current statutory scheme," and a related provision in the federal code. 529 U.S. at 780–87. In the case of the FCA, all of these considerations pointed to the conclusion that Congress, in enacting the FCA, did not intend the term "person" to include "sovereign." In contrast and as laid out below, those same considerations point the opposite direction for the Wire Act.

New Hampshire's two purported contextual clues—from the Dictionary Act and Section 1084(e) of the Wire Act—do nothing to support its position. The Dictionary Act only applies "unless the context indicates otherwise." 1 U.S.C. § 1. When faced with arguments based on the Dictionary Act in cases similar to this one, courts do not treat the Dictionary Act as dispositive. For example, in *Persichilli*, 608 F.3d at 37–38, the First Circuit considered a Dictionary Act argument, noted that "with or without a presumption, context still controls," and found that in the

statute in question the term "person" *included States*. *See also, e.g.*, *United States v. Schmidt*, 675 F.3d 1164, 1169 (8th Cir. 2012).

New Hampshire has also argued that the term "State" in the Wire Act cannot include the terms "whoever" and "person" because it is defined separately from those terms. This argument is illogical: the Wire Act does not define the term "whoever," and looking to a definition of a different term ("State") does not reveal anything about how "whoever" should be interpreted. What is more, the definition of "State" does not in any way indicate that it is addressing whether a State is a "whoever"; rather, it merely clarifies that "State" in this context includes the District of Columbia and the United States' commonwealths, territories, and possessions. 18 U.S.C. § 1084(e).

III. Other federal statutes that regulate gambling clearly indicate that, as a default, terms such as "person" and "whoever" include States—and the Wire Act *must* be read in the same way.

Numerous federal gambling and lottery statutes use terms such as "whoever" and "person," and both courts and legislatures have consistently read these statutes to include States within the ambit of these terms. A careful consideration of these statutes and their longstanding interpretation compels the conclusion that the Wire Act, too, includes States, because "when Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended that text to have the same meaning in both statutes." *Smith v. City of Jackson*, 544 U.S. 228, 233 (2005); SCALIA & GARNER, *supra*, at 172–73.

A. Sections 1301–07 of title 18 apply to States.

Sections 1301 through 1307 of title 18 include broad prohibitions on transmissions related to lotteries, and numerous sections that fall within this range use the term "whoever" when barring

lottery-related activities. Although as originally enacted these provisions *did not explicitly define "whoever" to include States*, they were widely interpreted to do just that. In *New York State Broadcasters Ass'n v. United States*, 414 F.2d 990, 995–96 (2d Cir. 1969), for example, the Second Circuit affirmed a holding by the Federal Communications Commission that Section 1304 "appl[ied] to legal state conducted lotteries as well as to lotteries that violate state law," finding that "[t]here can . . . be no doubt that Congress intended to prohibit broadcast of lottery information *regardless of the legality of the lottery* under local law." (emphasis added).

A subsequent legislative enactment modifying these sections supports the same conclusion: the term "whoever" in these sections included States by default. In 1975, Congress amended these sections to add Section 1307—which includes limited exemptions for communications and other activities related to state-run lotteries. For example, Section 1307(a) provided that

> [t]he provisions of sections 1301, 1302, 1303, and 1304 shall not apply to . . . an advertisement, list of prizes, or other information concerning a lottery conducted by a State acting under the authority of State law which is . . . contained in a publication published in that State or in a State which conducts such a lottery; or . . . broadcast by a radio or television station licensed to a location in that State or a State which conducts such a lottery.

As the Supreme Court explained, "[t]his exemption was enacted 'to accommodate the operation of legally authorized State-run lotteries consistent with continued Federal protection to the policies of non-lottery States.' " *Edge Broad. Co.*, 509 U.S. at 422–23 (citation and quotation marks omitted). When considering this provision, Congress fully realized that it was necessary to exempt States from general lottery provisions. As the December 4, 1974, House Report explained, "[p]resent Sections 1301, 1302, and 1303 of title 1[8] . . . *now bar any State conducting a lottery authorized by its laws from mailing any material concerning its lottery or any tickets*"—and, as the law currently stood, "the policy determinations of some States in authorizing a lottery are inhibited by provisions of Federal law even though the lottery functions only within that State."

H. R. REP. NO. 93-1517, at 3–5 (1974) (emphasis added). The Department of Justice likewise recognized that before the 1975 enactment, general lottery provisions applied against state-run lotteries. *See* Letter from William B. Saxbe, Attorney General, to Hon. Peter W. Rodino, Jr., Chairman of the H. Comm. on the Judiciary (Sept. 6, 1974), *in* H. R. REP. NO. 93-1517, at 12–13 (1974).

The limited carveouts in Section 1307 confirm that *absent* the exemptions for limited state-related activities in this section, the State is subject to the limits on lotteries laid out in Sections 1301, 1302, and 1304—and thus *is* included in the term "whoever." *See Smith*, 544 U.S. at 233; *West Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 100–01 (1991) (Scalia, J.) ("Where a statutory term presented to us for the first time is ambiguous, we construe it to contain that permissible meaning which fits most logically and comfortably into the body of both previously and subsequently enacted law."). In short, the text and history of Section 1307 clearly indicate that, as a default rule, terms such as "whoever" and "person" in federal gambling statutes *include States, absent a clear legislative enactment to the contrary.*

Of course, when the Wire Act was enacted in 1961, it was adopted against the background of this default rule. Like the term "whoever" in other federal gambling statutes, the Wire Act should be interpreted to include States.

B. Section 1953 of title 18 applies to States.

This provision, called the Paraphernalia Act and originally enacted the same day as the Wire Act, generally applies to ban interstate transportation of items related to gambling; it covers "whoever" ships certain gambling-related materials in interstate commerce. The Paraphernalia Act has always been understood to apply to States. For example, in *United States v. Fabrizio*, 385 U.S. 263, 268 (1966), a defendant argued that the Paraphernalia Act did not apply to items related

to New Hampshire's lottery. The Supreme Court rejected this argument. "Although at least one State had legalized gambling activities at the time the bill was passed, and the Congress was certainly aware of legal sweepstakes run by governments in other countries, Congress did not limit the coverage of the statute to 'unlawful' or 'illegal' activities." *Id.* at 268. The Court thus held that "[i]t is clear that the lottery statutes apply to state-operated as well as illegal lotteries, and that § 1953 was introduced to strengthen those statutes." *Id.* at 269.

Like Sections 1301–06, an amendment to the Paraphernalia Act also indicates that the term "whoever" in these sections included States by default. In 1975—as part of the same law that amended Sections 1301–06—Congress adopted the exemption that appears in Section 1953(b), exempting interstate transportation of "equipment, tickets, or materials used or designed for use within a State in a lottery conducted by that State acting under authority of State law." 18 U.S.C. § 1953(b). Yet again, this exemption would not have been necessary if the word "whoever" did not include the States.

C. Other federal statutes governing gambling apply to States.

Numerous other federal statutes apply to state-run lotteries. Take the Travel Act, Section 1952 of title 18, for example, which provides that "[w]hoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to" engage in various "unlawful activit[ies]" (including unlawful "business enterprise[s] involving gambling") is subject to penalties. This section was enacted to help prevent entities from exploiting interstate commerce to evade state laws—including state gambling laws. *See Perrin v. United States*, 444 U.S. 37, 45 (1979); *United States v. Nardello*, 393 U.S. 286, 290–91 (1969). But if New Hampshire is not subject to the Travel Act and the other federal gambling statutes, there would be nothing to stop it from mailing gambling materials to people in other States where

possession of the materials is illegal—in clear contravention of both the text and the purpose of federal gambling statutes.

Similar to Section 1952(a), Section 1955 provides for penalties against "[w]hoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business." 18 U.S.C. § 1955. This section was passed to manage issues similar to those that Section 1952 was crafted to address: "aid[ing] the enforcement of state law," *United States v. Farris*, 624 F.2d 890, 892 (9th Cir. 1980), regardless of whether the "underlying crime [was] typically associated with . . . organized crime," *United States v. Perrin*, 580 F.2d 730, 733 (5th Cir. 1978), *aff'd*, 444 U.S. 37 (1979). And, again similar to Section 1952, this section clearly includes States in the definition of "whoever": were they not so included, they could avoid prohibitions on gambling enacted by other States. Other statutes are of a piece—carefully crafted by Congress to ensure that States cannot subvert the policies of other States. *See, e.g.*, *See* H.R. REP. NO. 109-412, pt. 1 at 11 (2006) (explaining that the Unlawful Internet Gaming Enforcement Act, 31 U.S.C. §§ 5361–67, which uses the term "person" for its coverage, "would leave intact the current interstate gambling prohibitions such as the Wire Act, federal prohibitions on lotteries, and the Gambling Ship Act so that casino and lottery games could not be placed on websites").

* * *

In sum, federal gambling and lottery statutes that utilize the terms "whoever" and "person" include States within those terms. Most notably, statutes such as Sections 1301–06 and 1953 have always been interpreted to apply to States—and the Wire Act was enacted against the backdrop of Sections 1301–06 and in tandem with Section 1953. *See Taylor*, 353 U.S. at 564 (finding that where there was a "consistent congressional pattern" in railroad-related legislation "to employ all-inclusive language of coverage" that included state-run railroads, the Railway Labor Act should

be interpreted to include state-run railroads). The Wire Act—like all of these other statutes with the same language and similar purposes—itself applies to the States.

IV. The Wire Act applies to State employees and State vendors.

For the reasons given in the United States' supplemental brief, the Wire Act applies not only to the States but also to State employees. But even if the Court disagrees, it should at a minimum conclude that the Wire Act applies to State vendors—a point that NeoPollard all but conceded at oral argument. *See* Morning Session Tr. 35:17–19 (April 11, 2019) ("You asked why we didn't raise or endorse this argument and, frankly, I just didn't see any merit to it for us to do so.").

A private business or vendor is naturally included within the term "whoever." The Dictionary Act explicitly covers such entities: "the words 'person' and 'whoever' include corporations, companies, associations, . . . as well as individuals." 1 U.S.C. § 1. A straightforward reading of the Wire Act points in the same direction: it includes "[w]hoever being engaged in the business of betting or wagering." 18 U.S.C. § 1084(a). If a vendor is engaging in one or more of the activities prohibited by the Wire Act—such as "us[ing] a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers"—the vendor has engaged in illegal activity, and thus is subject to penalties. *Id.* This reality in no way rests on an aiding and abetting theory, as New Hampshire has suggested. Rather, because vendors are covered by the term "whoever," if they engage in conduct that the Wire Act prohibits they are culpable as principals; there is no need for the State or some other entity to have committed a predicate offense.

To put it another way, even assuming that New Hampshire skirts inclusion in the term "whoever," because the Wire Act explicitly prohibits the activities in which these private vendors engage, those activities are still illegal. Unlike the other federal gambling statutes that Congress

amended in 1975, the Wire Act contains no exception for gambling activities that are legal under State law. The status of vendors that engage in conduct prohibited by the Wire Act in connection with State lotteries is thus very similar to that of broadcasters and other entities that worked with State lotteries prior to 1975 to violate other federal gambling statutes. *See New York State Broads. Ass'n*, 414 F.2d at 995–96 (holding that Section 1304 "appl[ied] to legal state conducted lotteries as well as to lotteries that violate state law" and noting that "[t]here can . . . be no doubt that Congress intended to prohibit broadcast of lottery information regardless of the legality of the lottery under local law"); *Fabrizio*, 385 U.S. at 268–69 (finding that the Paraphernalia Act applied to items related to the State of New Hampshire's lottery, noting that "Congress did not limit the coverage of the statute to 'unlawful' or 'illegal' activities," and holding that "[i]t is clear that the lottery statutes apply to state-operated as well as illegal lotteries, and that § 1953 was introduced to strengthen those statutes"). Indeed, the understanding that an entity closely tied to the State is covered by federal lottery laws has its roots in one of the earliest pieces of federal lottery legislation, which was enacted to cabin the Louisiana lottery—an entity that was closely tied to the State, was granted monopoly status by the State, and paid massive amounts of money to the State to conduct its lottery. *See Edge Broad. Co.*, 509 U.S. at 421–22 (describing the history of legislation targeted at the Louisiana lottery); *see also* Berthold C. Alwes, *The History of the Louisiana State Lottery Company*, 27 LA. HIST. Q. 4: 964–1118, at 975–76 (October 1944).

CONCLUSION

For the reasons given above, the Wire Act unequivocally applies to States, State employees, and private vendors engaged in gambling-related business with the State.

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Respectfully submitted,

/s/ Michael J. Tierney

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Supplemental Memorandum of Amici Curiae the Coalition to Stop Internet Gambling and the National Association of Convenience Stores 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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