

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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INTERACTIVE MEDIA ENTERTAINMENT )  
AND GAMING ASSOCIATION, LLC, )  
 )  
Plaintiff-Appellant, )  
 )  
v. )  
 )  
ATTORNEY GENERAL ERIC H. HOLDER, )  
et al., )  
 )  
Defendants-Appellees. )

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**OPPOSITION TO PLAINTIFF-APPELLANT'S  
MOTION TO SUPPLEMENT THE RECORD**

On March 10, 2009, plaintiff-appellant Interactive Media Entertainment & Gaming Association, LLC (iMEGA) moved to supplement the record in this case. In iMEGA's view, the supplemental material--which includes four on-line articles, a record of a conference call between the Treasury Department and the North American Association of State and Provincial Lotteries (NASPL), a final rulemaking from the Treasury Department, and internal operational guidelines from Visa International--relates to alleged problems that state lotteries doing business over the Internet have had with private banks' refusals to process certain credit card transactions. This material was not before the district court, see Fassett v. Delta Kappa Epsilon, 807 F.2d 1150, 1165 (3d Cir. 1986) (explaining that "[t]he only proper function of a court of appeals is to review the decision below on

the basis of the record that was before the district court"), and is not germane to iMEGA's facial constitutional challenge to the Unlawful Internet Gambling Enforcement Act of 2006. Because this is not an "exceptional cas[e]" that would warrant supplementing the district court record, In re Community Bank of Northern Virginia, 418 F.3d 277, 317 n.32 (3d Cir. 2005), the government opposes the motion to supplement.

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