

SB

59

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
MAR 13 2007
SENATE FINANCE COMMITTEE

DATE: 3/2/07

FURTHER:

DATE TURNED IN TO OFFICE: 3/14/07

Finance Committee considered SENATE BILL NO. 59

SB 59 BROADCASTING PROMOTING CHARITABLE GAMING

"An Act relating to the use of broadcasting to promote charitable raffles and lotteries."

and recommends:

- be replaced with SCS or CS SB 59 (FIN)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:
 Same Title
 New Title

HOUSE BILL:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

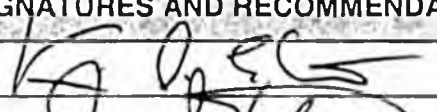
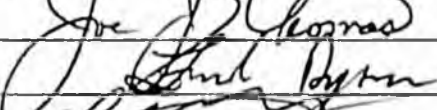
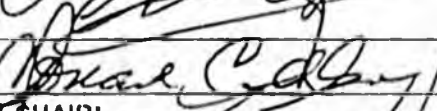
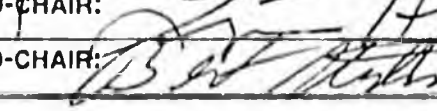


NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Revenue	3/10/07			✓	32

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	E. Thomas	✓		✓	
	Dyson	✓		✓	
	Huggins	✓			
	Oscar			✓	
CO-CHAIR: 	Hoffman	✓			
CO-CHAIR: 	Stedman	✓			

FISCAL NOTE

STATE OF ALASKA
 2007 LEGISLATIVE SESSION

Fiscal Note Number: CSHB59-(FIN)-DOR-TAX-3-13-07

Bill Version: CSSB 59 (FIN)

() Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Revenue 04

Title: Broadcasting Promoting Charitable Gaming

RDU: Taxation and Treasury

Component: Tax Division

Sponsor: Senator Stevens

Requester: (S) Finance

Component No.: 2476

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

(see attached)

Prepared by: Larry Meyers and Dan Sickel

Phone: (907) 269-6620

Division: Tax Division

Date/Time: 3/13/07 12:00 AM

Approved by: Jerry Burnett

Date: 3/13/2007

Agency: Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSB 59 (FIN)

ANALYSIS CONTINUATION

This bill will impact charitable gaming in Alaska in two ways: it will allow broadcasting to promote charitable gaming and it will formally authorize a specific cabbage classic. These two changes are addressed separately below.

Broadcasting Promoting Charitable Gaming

Section 4 of this bill would allow a permittee (or operator under contract with an authorizing permittee) to broadcast promotion of a charitable raffle or lottery. The means allowable include radio and television. Anyone who can conduct a raffle would be allowed to promote it by broadcasting via radio or television.

Though the bill language applies to raffles and lotteries, the statutory definition [AS 05.15.690(38)] equates the two, effectively giving two different names to the same activity. Thus, there is no apparent authorization to expand the kinds of gaming activity that can be promoted or conducted.

We do not anticipate any additional costs or revenues as a result of this section of the bill.

Cabbage Classic

Sections 1-3 and section 5 of this bill formally authorize in statute a cabbage classic. A cabbage classic is defined as "a game of chance where a prize of money is awarded for the closest guess of the weight of the winning cabbage at the Giant Cabbage Weigh-Off." This contest would be formally authorized only for the specific cabbage classic operated and administered by the Palmer Rotary Club at the Alaska State Fair in Palmer. There is no authorization to expand gaming activity other than to formally allow this specific cabbage classic.

Since only one specific cabbage classic is authorized, we expect one additional charitable gaming permit. The cost of this annual permit will range from \$20 to \$100 depending on gross receipts of the permittee. Also, assuming gross receipts are at least \$20,000, a small amount of revenue would be collected from the 1% net proceeds fee. Revenues are shown as indeterminate because they would depend on the amount of net proceeds from the cabbage classic.

We anticipate that any additional costs can be absorbed.

CS FOR SENATE BILL NO. 59(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR STEVENS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the use of broadcasting to promote charitable raffles and lotteries
2 and to establishing cabbage classics as a form of charitable gaming."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 05.15.100(a) is amended to read:

5 (a) The department may issue a permit to a municipality or qualified
6 organization. The permit gives ' e municipality or qualified organization the privilege
7 of conducting bingo, raffles and lotteries, pull-tab games, ice classics, race classics,
8 rain classics, goose classics, mercury classics, deep freeze classics, canned salmon
9 classics, salmon classics, king salmon classics, dog mushers' contests, snow machine
10 classics, fish derbies, animal classics, crane classics, a cabbage classic, Calcutta
11 pools, and contests of skill.

12 * Sec. 2. AS 05.15.115(c) is amended to read:

13 (c) A permittee may not contract with more than one operator at a time to
14 conduct the same type of activity. For the purposes of this subsection, bingo games,

*Amend.
#1*

1 raffles, lotteries, pull-tab games, ice classics, race classics, rain classics, goose
 2 classics, mercury classics, deep freeze classics, canned salmon classics, salmon
 3 classics, king salmon classics, dog mushers' contests, snow machine classics, fish
 4 derbies, animal classics, crane classics, a cabbage classic, and contests of skill are #1
 5 each a different type of activity.

6 * Sec. 3. AS 05.15.180(b) is amended to read:

7 (b) With the exception of raffles, lotteries, bingo games, pull-tab games, race
 8 classics, rain classics, goose classics, mercury classics, deep freeze classics, dog
 9 mushers' contests, snow machine classics, canned salmon classics, salmon classics,
 10 animal classics, crane classics, a cabbage classic, Calcutta pools, and king salmon #1
 11 classics, an activity may not be licensed under this chapter unless it existed in the state
 12 in substantially the same form and was conducted in substantially the same manner
 13 before January 1, 1959. A snow machine classic may not be licensed under this
 14 chapter unless it has been in existence for at least five years before the licensing. An
 15 animal classic may not be licensed under this chapter unless it was in existence before
 16 November 1, 2002.

17 * Sec. 4. AS 05.15.640(a) is amended to read:

18 (a) A person may not use broadcasting to promote or conduct a charitable
 19 gaming activity under this chapter except that a person may use (1) broadcasting to
 20 promote a fish derby or a type of classic [OR SWEEPSTAKES] defined in
 21 AS 05.15.690, or (2) radio or television broadcasting to promote a charitable
 22 raffle and lottery. In this subsection, "broadcasting" includes television and radio
 23 transmission by 2,500 megahertz, microwave video and audio programming, slow-
 24 scan television programming, and programming by way of [VIA] satellite, cable,
 25 teletype, or facsimile transmission and distribution methods; "raffle and lottery" has
 26 the meaning given in AS 05.15.690.

27 * Sec. 5. AS 05.15.690 is amended by adding a new paragraph to read:

28 (48) "cabbage classic" means a game of chance where a prize of
 29 money is awarded for the closest guess of the weight of the winning cabbage at the
 30 Giant Cabbage Weigh-Off at the Alaska State Fair in Palmer operated and
 31 administered by the Palmer Rotary Club.

25-LS0410\E
Luckhaupt
3/13/07

CS FOR SENATE BILL NO. 59(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATOR STEVENS

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11 pools, and contests of skill.

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14 conduct the same type of activity. For the purposes of this subsection, bingo games,

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31 administered by the Palmer Rotary Club.



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 14 March 2007 TIME: 10:15 am

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 1

FROM: MINDY ROWLAND
SENATE FINANCE COMMITTEE SECRETARY
PHONE: 465-4935
FAX: 465-2187

NOTES: Final Please

CS SB 59 (FIN) 25-LS0410\ E

Luckhaupt 3/13/07

no changes

If possible - please deliver before

11:00 am floor session

*Thx
Mindy*

CS FOR SENATE BILL NO. 59()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR STEVENS

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11 and contests of skill.

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Alaska State Senate

Senate Finance Committee

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 13 March 2007 TIME: 9:34 AM

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 3

FROM: MINDY ROWLAND
SENATE FINANCE COMMITTEE SECRETARY
PHONE: 465-4935
FAX: 465-2187

NOTES: Final Please

CS BB 59 (FIN) 25-LS04101C

Luckhaupt 3/2/07

Plus 1 amendment - attached

(delete "cabbage classics")

insert "cabbage classic"

where appears in bill

*Thx
Mindy*

*need new
fiscal note*

Adopted
3/13/07

WORK DRAFT

WORK DRAFT

WORK DRAFT

25-LS0410C
Luckhaupt
3/2/07

CS FOR SENATE BILL NO. 59()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

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SESSION ADDRESS:
Alaska State Capitol
Juneau, Alaska 99801-1182
(907) 465-4925
Fax: (907) 465-3517
Toll Free: 1-800-821-4925

Senator Gary Stevens
Alaska State Legislature

INTERIM ADDRESS:
112 Mill Bay Road
Kodiak, Alaska 99615
(907) 486-4925
Fax: (907) 486-5264

Sponsor Statement SB 59

“An Act relating to the use of broadcasting to promote raffles and lotteries”

SB 59 would afford an equal playing field for Alaska's broadcasters. Alaska Statute prohibits broadcasters from airing truthful and non-misleading advertisements of lawful “charitable gaming activity.” SB 59 would avoid a likely constitutional challenge to the Statute.

As it stands now, AS 05.15.640(a) bans, but only via radio and television, the advertising of lawful charitable gaming or conduct. Newspapers are free to advertise the very same activity and conduct that radio and television stations may not advertise.

In addition, the statute also impedes positive governmental interests. ABA member stations cannot assist deserving not-for-profit organizations in their efforts to raise money to meet their goals.

AS 05.15.640(a) may well deny broadcasters equal protection under the Federal and State Constitutions since the act prohibits, without rational basis, the broadcast media from engaging in conduct which is allowed by the print media, namely the carriage of third party advertising promoting a lawful “charitable gaming activity.”

As an example of the current misguided law, local church raffles cannot be promoted by local radio and TV stations. Boy Scout fundraisers involving raffles may not be included in public service announcements. Not-for-profit groups such as the Boys and Girls Club are excluded from promoting fundraisers involving games of chance using radio and TV. Even various statewide fundraising events such as the Iditarod may not be promoted by broadcasters, thus reducing the organizations fundraising ability.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3667 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 22, 2007

SUBJECT: Sectional Summary - SB 59 (Work Order No. 25-LS0410\A)

TO: Senator Gary Stevens

FROM: Gerald P. Luckhaupt *GPL*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1. Amends AS 05.15.640(a) to allow radio and television broadcasting to promote raffles and lotteries.

GPL:med
07-035.med



Alaska Broadcasters Association

AN ALASKAN CORPORATION

700 W 41st Avenue #102 Anchorage, AK 99503

P: 907-258-2424

F: 907-258-2414

Email: akba@gci.net

January 25, 2007

Senator Gary Stevens
State Capitol Room 103
Juneau, AK 99801-1182

Dear Senator Stevens:

Thank you for your introduction of SB 59 as a solution to the disparate treatment currently being imposed on Alaska's broadcasters by existing Alaska Statute.


As you know, Alaska Statute §05.15.640(a) bans, but only via radio and television, the advertising of charitable raffles and lotteries. Newspapers are free to advertise the very same activity that radio and television stations may not.

In fact, the current law actually impedes positive governmental interests by prohibiting Alaska's broadcasters from assisting nonprofit organizations in their efforts to raise money to reach their goals. This restriction is simply flawed policy.

This unwarranted restriction in Alaska law, removed from Federal Law many years ago, means that raffles cannot be promoted by organizations such as the VFW, the Boys and Girls Club, and other local nonprofits through the means of broadcasting.

On behalf of all broadcasters in Alaska, we appreciate and support your willingness to seek this amendment to allow each of us, through the power of radio and television broadcasting, to better serve our communities in their fundraising efforts.

Sincerely,


Scott Smith
President

Senator Gary Stevens
Majority Leader of the Senate
State Capitol, Room 103
Juneau, Alaska 99801-1182

February 8th 2007

RE: LETTER OF SUPPORT SENATE BILL 59 Introduction charitable raffles and lotteries

Dear Senator Stevens,

Due to unforeseen a work related situation today (February 8th 2007 at 2:00PM) during the legislative teleconference at 2:00PM I was not able to (testify) in support of (SB 59) related to Charitable raffles and Lotteries. I would like to provide my letter of support for the following reasons. I have been involved for several years in the Ketchikan Running Club, Rotary 2000, Big Brothers Big Sisters, Team Diabetes Pennock Swim, Ketchikan Youth Court, Ketchikan Lions Club, Revilla Island Prevention Coalition, and Ketchikan Chamber of Commerce. While not all of these organizations run raffles they are connected in many ways to those who do run raffles.

The reality is that budgets are tight everywhere and will become tighter. Businesses have a long-term plan if they want to survive. Non-profits need to think like business people, and diversify their funding sources too. Many non-profits don't have (a service or product) to sell so they use raffles to generate funds for the non-profit programs and projects. Raffles also allows youth and adult a chance to give their pitch on their organization. The better they can promote the raffle the better the outcome. The great thing about raffles too is it allows everyone to make their own decision whether or not to purchase a raffle ticket.

Today, more than ever with both parents and single parents including myself, working sometime (2 or more) jobs to make ends meet because of the simple cost of increases in day to day living and medical expenses there is a need for many non-profits more than ever. These non-profit programs serve important purposes in our communities. They enhance the quality of our lives and sometimes give us the assets that are missing in our fast paced lives.

These programs make people feel good and they give adults, seniors, teenagers, and kids an improved quality of life. Many sports teams, senior programs, civil groups, and a wide-range of different non-profits rely on raffles to balance their operating budgets. During a time of decreased funds from Federal and State Grants many of us have depended on these local fundraisers to assure we can keep our doors open, send a child on a sports event, debate, or drama event, and generate funds for Senior programs, Homeless Shelter, or Youth programs.

SB 59 will allow raffles to be advertised on the radio and television. This will allow us not only to thank everyone who was involved, but promote it in an effective and professional manner. There is no better time than now to help keep programs in solid positions to reassure our children, teenagers, and adults that we care about the quality of life they have in their communities. It is an awesome opportunity to streamline our fundraising efforts when other funds sources are drying up.

I leave you with these thoughts as these show the impact raffles have on our programs.

----" A little person beams and raves about the opportunity have a Big in their life who took time to come each week to school. The quiet child is glowing with happiness that someone cares-that someone remembers to follow through—someone did not let them down."
Big Brothers Big Sisters Raffle

----"A youth court member sticks youth court out for 5 years --graduates high school after struggling in a single family home for years. Not only did that member learn leadership and public speaking skills, took part in countless hours of community service projects, but lead a sport team at school, graduated with honors, and had a chance to go to college."
Ketchikan Youth Court Raffle

----"The sky lights up with brilliant fireworks and a family of four watches from the 3rd Ave. The fireworks doesn't last more than 15 minutes, but just for those simple moments a family enjoys together time."
Ketchikan Lions Club Raffle

----"Diabetic Educator Janet takes the opportunity to gives a support group training to teenagers and kids. Those moments when they think they are all (alone) gives them hope that there are others out there fighting the same thing."
Team Diabetes Raffle Fundraiser

----A soccer team member comes up smiling about a successful win. Dirtying and wet, but smiling because of enough people supported their fundraiser and they get to go to the finals." ---These are just samples of simple thoughts I have heard over the years)
Raffle for Soccer, Wrestling, Or Swim Team

Thank you for your time and consideration of this important SB 59. It will allow us to continue to work we all do to make each community a wonderful place to live.

Sincerely,

Gretchen Klein

Affiliations and Memberships

Ketchikan Youth Court Director

8 years

Alaska Community Services Program Manager

3 years

Ketchikan Lions Club Member

9 years

Ketchikan Chamber of Commerce Member

6 years

Team Diabetes for Running and Swimming Annual Fundraiser

7 years

Ketchikan Running Club Member

15 years

Rotary 2000 Member

3 years

Big Brothers Big Sisters of Ketchikan Friend of Program

5 years

Association for the Education of Young Children Liaison Ketchikan

2034 First Ave

Ketchikan, Alaska 99901

907 225-2072

Doug Letch

From: Sen. Gary Stevens
Sent: Thursday, February 08, 2007 10:08 AM
To: Doug Letch
Subject: FW: Letter In support of HB116 and SB59

-----Original Message-----

From: Alaska Broadcasters Association [mailto:akba@gci.net]
Sent: Thursday, February 08, 2007 9:58 AM
To: David Scott; Sen. Gary Stevens
Cc: clark gruening; egan@ptialaska.net
Subject: Letter In support of HB116 and SB59

----- Original Message -----

From: "Ric Schmidt" <rschmidtknom@nome.net>
To: "Alaska Broadcasters Association" <akba@gci.net>
Sent: Monday, February 05, 2007 4:48 PM
Subject: Raffle ad story from KNOM

Darlene:

In the first week of January, when the thermometer was routinely dipping below -20, I received a call from Winnifred in Kotlik.

She politely asked if the folks in Kotlik could announce a charitable raffle on KNOM AM & FM.

She said that the city office needed a monitor heater and due to the lack of city funds the citizens had put together a raffle to collectively raise enough money to purchase the desperately needed heater.

I was forced by Alaska State law to tell her NO! I told her that newspapers are allowed to promote this type of effort, but we are not!

She said that the best way to raise the money was this raffle and the best way to promote it, would be announcing it on KNOM.

I apologized to her, and honestly...I was embarrassed!

Here was a community that didn't look to the state or federal government for help.

They were raising the money themselves, and state law was preventing them from standing on their own and buying a monitor heater for their city office.

I would hope that the people of Alaska can work to help communities like Kotlik, help themselves, without restricting their efforts through outdated laws and regulations.

We can't ask people to stand up and help, if we don't give them the tools to succeed.

Thank you for your interest in this sad story. I hope the future brings bright promise to all Alaskans.

Ric Schmidt
KNOM General Manager

I have her phone number if we want to contact her for any reason. I'd prefer to make the contact, so she has a frame of reference for this issue. Thanks. Ric

Emily Stancliff

From: Glen Anderson [glen.anderson@nnbradio.com]
Sent: Thursday, February 08, 2007 5:52 AM
To: Rep. Jay Ramras
Subject: Hi from Glenner

Hi Jay!

Hope all is going well in the city of rain.

I am sending this e-mail in hopes of gaining support for House Bill 116 in regards to advertising gaming and lottery for charitable organizations on TV and Radio. As I am sure you are aware, there is currently a double standard regarding this issue. While the advertisement of charitable gaming and raffles are legal in print form, they are still illegal in our media even though no other form of media does more for charitable organizations than radio. From United Way to FRA, Big Brothers/Big Sisters to RCPC, we constantly receive countless Public Service announcements for various fundraisers and charities which we can not do anything about due to the fact that they are using some form of games of chance. We air more than 50 PSA's per week per station) both recorded and live each and every week over the airwaves. Unfortunately, most charities use some form of gaming, lottery or raffle to raise funds and we can not help them.

Is there a monetary gain for the industry? Of course there is, one that Newspapers and magazines have used successfully for years. It is time to level the playing field.



Thanks Jay

Glen Anderson
Operations Manager
New Northwest Broadcasters
Fairbanks, Alaska
KXLR/KCBF/KWLF/KUWL/KEAR
(907)451-5910
Cell:907-378-2796

Emily Stancliff

From: Hutton, Pete [PeteHutton@clearchannel.com]
Sent: Thursday, February 08, 2007 12:25 PM
To: Rep. Jay Ramras
Subject: House bill 116

Jay, we would really like to see your support for this bill. thanks

Pete Hutton

General Manager

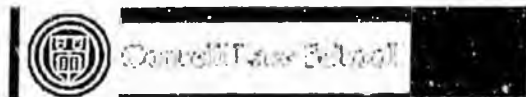
Clear Channel Radio-Fairbanks

KFBX-AM~KIAK-FM~KAKQ-FM~KKED-FM

907 450-1023-direct

907 450-1094-fax

907 347-7136-cell



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TITLE 18 > PART I > CHAPTER 61 > § 1304

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§ 1304. Broadcasting lottery information

How Current is This?

Whoever broadcasts by means of any radio or television station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined under this title or imprisoned not more than one year, or both.

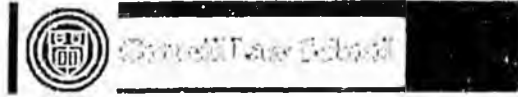
Each day's broadcasting shall constitute a separate offense.

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§ 1307. Exceptions relating to certain advertisements and other information and to State-conducted lotteries

How Current is This?

(a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to—

(1) an advertisement, list of prizes, or other information concerning a lottery conducted by a State acting under the authority of State law which is—

(A) contained in a publication published in that State or in a State which conducts such a lottery; or

(B) broadcast by a radio or television station licensed to a location in that State or a State which conducts such a lottery; or

(2) an advertisement, list of prizes, or other information concerning a lottery, gift enterprise, or similar scheme, other than one described in paragraph (1), that is authorized or not otherwise prohibited by the State in which it is conducted and which is—

(A) conducted by a not-for-profit organization or a governmental organization; or

(B) conducted as a promotional activity by a commercial organization and is clearly

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Your comments

occasional and ancillary to the primary business of that organization.

(b) The provisions of sections 1301, 1302, and 1303 shall not apply to the transportation or mailing—

(1) to addresses within a State of equipment, tickets, or material concerning a lottery which is conducted by that State acting under the authority of State law; or

(2) to an addressee within a foreign country of equipment, tickets, or material designed to be used within that foreign country in a lottery which is authorized by the law of that foreign country.

(c) For the purposes of this section (1) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and (2) "foreign country" means any empire, country, dominion, colony, or protectorate, or any subdivision thereof (other than the United States, its territories or possessions).

(d) For the purposes of subsection (b) of this section "lottery" means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds or parts thereof by chance to one or more chance takers or ticket purchasers. "Lottery" does not include the placing or accepting of bets or wagers on sporting events or contests. For purposes of this section, the term a "not-for-profit organization" means any organization that would qualify as tax exempt under section 501 of the Internal Revenue Code of 1986.

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Legislative Research Services

Alaska State Legislature
Legislative Affairs Agency
Division of Legal and Research Services

State Capitol, Juneau, AK 99801
Phone: 907-465-3991
Fax: 907-465-3908

February 19, 2007

Memorandum

TO: Representative Johansen

FROM: Chuck Burnham, Legislative Analyst

RE: States Prohibiting Broadcast Media Promotion of Charitable Gaming
LRS Report 07.112

You asked for a list of states' laws that, like Alaska Statute § 05.15.640, prohibit advertising of charitable gaming through television and radio broadcasts.¹

Our research found just one state—New York—that appears to completely prohibit advertising of charitable gaming through broadcast media. Although New York General Municipal Law § 195-e does not directly ban television and radio broadcasting of such advertisements, the law appears to limit organizations licensed to conduct charitable gaming to highly specified methods of advertisement, as follows:

A licensee may advertise the conduct of games of chance to the general public by means of newspaper, circular, handbill and poster, and by one sign not exceeding sixty square feet in area, which may be displayed on or adjacent to the premises owned or occupied by a licensed authorized organization, and when an organization is licensed to conduct games of chance on premises of an authorized games of chance lessor, one additional such sign may be displayed on or adjacent to the premises in which the games are to be conducted. Additional signs may be displayed upon any fire fighting equipment belonging to any licensed authorized organization which is a volunteer fire company, or upon any equipment of a first aid or rescue squad in and throughout the community served by such volunteer fire company or such first aid or rescue squad, as the case may be. All advertisements shall be limited to the description of such event as "Games of chance" or "Las Vegas Night", the name of the authorized organization conducting such games, the license number of the authorized organization as assigned by the clerk or department and the date, location and time of the event.

We assume that the omission of radio and television broadcasts from the provisions above to mean that those methods of advertising are not permitted.

¹ As you know, federal law at 18 U.S.C. 1304 prohibits broadcast advertising of games of chance through radio and television. Although this law still exists on paper, the Supreme Court in 1999 found the law, and the related Federal Communication Commission regulations restricting advertisements related to gambling, in states where such gambling is legal, violated constitutional free speech protections. We include, as Attachment A, the Supreme Court's decision in *Greater New Orleans Broad. Ass'n v. United States*, 527 U.S. 173.

A number of other states prohibit broadcast advertising of certain types of charitable gaming. For instance, Maryland prohibits virtually all mass media advertising of "bingo" games. Other states, Rhode Island for instance, allow advertising of bingo, but limit those advertisements to print media only.²

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

² We include, as Attachment B, the relevant laws of New York, Maryland, and Rhode Island. Although we believe our research to be thorough, there may be other states' laws that prohibit broadcast advertising of charitable gaming but were not located by our search due to variations in construction and wording.

Attachment A

*Greater New Orleans Broad. Ass'n. v. United States, 527 U.S.
173.*

3 of 10 DOCUMENTS

GREATER NEW ORLEANS BROADCASTING ASSOCIATION, INC., ETC., ET
AL., PETITIONERS v. UNITED STATES ET AL.

No. 98-387

SUPREME COURT OF THE UNITED STATES

527 U.S. 173; 119 S. Ct. 1923; 144 L. Ed. 2d 161; 1999 U.S. LEXIS 4010; 67
U.S.L.W. 4451; 27 Media L. Rep. 1769; 99 Cal. Daily Op. Service 4633; 99 Daily
Journal DAR 5900; 16 Comm. Reg. (P & F) 162; 1999 Colo. J. C.A.R. 3436; 12 Fla. L.
Weekly Fed. S 352

April 27, 1999, Argued

June 14, 1999, Decided

PRIOR HISTORY: ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT.

DISPOSITION: 149 F.3d 334, reversed.

SYLLABUS: Title 18 U.S.C. § 1304 and an implementing Federal Communications Commission (FCC) regulation prohibit, *inter alia*, radio and television broadcasters from carrying advertising about privately operated commercial casino gambling, regardless of the station's or casino's location. In *United States v. Edge Broadcasting Co.*, 509 U.S. 418, 125 L. Ed. 2d 345, 113 S. Ct. 2696, this Court upheld the constitutionality of § 1304 as applied to advertising of Virginia's lottery by a broadcaster in North Carolina, where no such lottery was authorized. Petitioners -- representing New Orleans area broadcasters -- wish to run advertisements for private commercial casinos that are lawful and regulated in Louisiana and Mississippi, and they filed this suit for a declaration that § 1304 and the FCC's regulation violate the First Amendment as applied to them. The District Court utilized the test for assessing commercial speech restrictions set out in *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N. Y.*, 447 U.S. 557, 566, 65 L. Ed. 2d 341, 100 S. Ct. 2343, and granted the Government's cross-motion for summary judgment. The Court of Appeals affirmed.

Held: Section 1304 may not be applied to advertisements of lawful private casino gambling that are broadcast by

petitioners' radio or television stations located in Louisiana, where such gambling is legal. Pp. 9-22.

(a) *Central Hudson's* four-part test asks (1) whether the speech at issue concerns lawful activity and is not misleading and (2) whether the asserted governmental interest is substantial; and, if so, (3) whether the regulation directly advances the governmental interest asserted and (4) whether it is not more extensive than is necessary to serve that interest. The four parts of the *Central Hudson* test are not entirely discrete; all are important and, to a certain extent, interrelated. While some advocate a more straightforward and stringent test, *Central Hudson*, as applied in the Court's more recent commercial speech cases, provides an adequate basis for decision in this case. Pp. 9-10.

(b) All parties agree that petitioners' proposed broadcasts constitute commercial speech, and that they would satisfy the first part of the *Central Hudson* test: Their content is not misleading and concerns lawful activities, *i.e.*, private casino gambling in Louisiana and Mississippi. In addition, the interests asserted by the Government are "substantial": (1) reducing the social costs associated with casino and other forms of gambling; and (2) assisting States that restrict or prohibit casino and other forms of gambling. However, that conclusion is by no means self-evident, since, in the judgment of both Congress and many state legislatures, the social costs that support the suppression of gambling are offset, and sometimes outweighed, by countervailing policy

527 U.S. 173, *176; 119 S. Ct. 1923, **1926;
144 L. Ed. 2d 161, ***170; 1999 U.S. LEXIS 4010

1

Through most of the 19th and the first half of the 20th centuries, Congress adhered to a policy that not only discouraged the operation of lotteries and similar schemes, but forbade the dissemination of information concerning such enterprises by use of the mails, even when the lottery in question was chartered by a state legislature. n1 Consistent with this Court's earlier view that commercial advertising was unprotected by the First Amendment, see *Valentine v. Chrestensen*, [****1927**] 316 U.S. 52, 54, 86 L. Ed. 1262, 62 S. Ct. 920 (1942), we found that the notion that "lotteries . . . are supposed to have a demoralizing influence upon the people" provided sufficient justification for excluding circulars concerning such enterprises from the federal postal system. *Ex parte Jackson*, 96 U.S. 727, [***177**] 736-737, 24 L. Ed. 877 (1878). We likewise deferred to congressional judgment in upholding the similar exclusion for newspapers that contained either lottery advertisements or prize lists. *In re Rapier*, 143 U.S. 110, 134-135, 36 L. Ed. 93, 12 S. Ct. 374 (1892); see generally *Edge*, 509 U.S. at 421-422; *Lottery Case*, 188 U.S. 321, 47 L. Ed. 492, 23 S. Ct. 321 (1903). The current versions of these early antilottery statutes are now codified at 18 U.S.C. §§ 1301-1303.

n1 See, e.g., Act of Mar. 2, 1895, 28 Stat. 963 (prohibiting the transportation in interstate or foreign commerce, and the mailing of, tickets and advertisements for lotteries and similar enterprises); Act of Mar. 2, 1827, § 6, 4 Stat. 238 (restricting the participation of postmasters and assistant postmasters in the lottery business); Act of July 27, 1868, § 13, 15 Stat. 196 (prohibiting the mailing of any letters or circulars concerning lotteries or similar enterprises); Act of July 12, 1876, § 2, 19 Stat. 90 (repealing an 1872 limitation of the mails prohibition to letters and circulars concerning "illegal" lotteries); Anti-Lottery Act of 1890, § 1, 26 Stat. 465 (extending the mails prohibition to newspapers containing advertisements or prize lists for lotteries or gift enterprises).

[**1. EdHR2] [2] Congress extended its restrictions on lottery-related information to broadcasting as communications technology made that practice both possible and profitable. It enacted the statute at issue in this case as § 316 of the Communications Act of 1934, 48

Stat. 1088. Now codified at 18 U.S.C. § 1304 ("Broadcasting lottery information"), the statute prohibits radio and television broadcasting, by any station for which a license is required, of

"any advertisement or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes."

The statute provides that each day's prohibited broadcasting constitutes a separate offense punishable by a fine, imprisonment for not more than one year, or both. *Ibid.* Although § 1304 is a criminal statute, the Solicitor General informs us that, in practice, the provision traditionally has been enforced by the Federal Communications Commission (FCC), which imposes administrative sanctions on radio and television licensees for violations of the agency's implementing regulation. See 47 CFR § 73.1211 (1998); Brief for Respondents 3. Petitioners [****171**] now concede that the broadcast ban in § 1304 and the FCC's regulation encompasses advertising for privately owned casinos -- a concession supported by the broad language of the statute, our precedent, and the [***178**] FCC's sound interpretation. See *FCC v. American Broadcasting Co.*, 347 U.S. 284, 290-291, 98 L. Ed. 699, 74 S. Ct. 593, and n. 8 (1954).

During the second half of this century, Congress dramatically narrowed the scope of the broadcast prohibition in § 1304. The first inroad was minor: In 1950, certain not-for-profit fishing contests were exempted as "innocent pastimes . . . far removed from the reprehensible type of gambling activity which it was paramount in the congressional mind to forbid." S. Rep. No. 2243, 81st Cong., 2d Sess., p. 2 (1950); see Act of Aug. 16, 1950, ch. 722, 64 Stat. 451, 18 U.S.C. § 1305.

Subsequent exemptions were more substantial. Responding to the growing popularity of State-run lotteries, in 1975 Congress enacted the provision that gave rise to our decision in *Edge*, 509 U.S. at 422-423; Act of Jan. 2, 1975, 88 Stat. 1916, 18 U.S.C. § 1307; see also § 1953(b)(4). With subsequent modifications, that amendment now exempts advertisements of State-conducted lotteries from the nationwide postal restrictions in §§ 1301 and 1302, and from the broadcast restriction in § 1304, when "broadcast by a radio or television station licensed to a location in . . . a State

527 U.S. 173, *181; 119 S. Ct. 1923, **1928;
144 L. Ed. 2d 161, ***172; 1999 U.S. LEXIS 4010

75-76-3, 97-33-25 (1972); see also La. Rev. Stat. Ann. §§ 27:202B-27:202D, 27:205(4), 27:205(12)-27:205(14), 27:210B (1999).

Petitioners brought this action against the United States and the FCC in the District Court for the Eastern District of Louisiana, praying [***173] for a declaration that § 1304 and the FCC's regulation violate the First Amendment [**1929] as applied to them, and for an injunction preventing enforcement of the statute and the rule against them. After noting that all parties agreed that the case should be decided on their cross-motions for summary judgment, the District Court ruled in favor of the *Government*. 866 F. Supp. 975, 976 (1994). The Court applied the standard for assessing commercial speech restrictions set out in *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N. Y.*, 447 U.S. 557, 566, 65 L. Ed. 2d 341, 100 S. Ct. 2343 (1980), and concluded that the restrictions at issue adequately advanced the Government's "substantial interest (1) in protecting the interest of nonlottery states and (2) in reducing participation in gambling and thereby minimizing the social costs associated therewith." 866 F. Supp. at 979. The Court pointed out that federal law does not prohibit the broadcast of all information about casinos, such as advertising that promotes a casino's amenities rather than its "gaming aspects," and observed that advertising for state-authorized casinos in Louisiana and Mississippi was actually "abundant." *Id.* at 980.

A divided panel of the Court of Appeals for the Fifth Circuit agreed with the District Court's application of *Central Hudson*, and affirmed the grant of summary judgment to the *Government*. 69 F.3d 1296, 1298 (1995). The panel majority's description of the asserted governmental interests, although more specific, was essentially the same as the District Court's:

"First, section 1304 serves the interest of assisting states that restrict gambling by regulating interstate activities such as broadcasting that are beyond the powers of the individual states to regulate. The second [*182] asserted governmental interest lies in discouraging public participation in commercial gambling, thereby minimizing the wide variety of social ills that have historically been associated with such activities." *Id.* at 1299.

The majority relied heavily on our decision in *Posadas de Puerto Rico Associates v. Tourism Co. of P.*

R., 478 U.S. 328, 92 L. Ed. 2d 266, 106 S. Ct. 2968 (1986), see 69 F.3d at 1300-1302, and endorsed the theory that, because gambling is in a category of "vice activity" that can be banned altogether, "advertising of gambling can lay no greater claim on constitutional protection than the underlying activity," *id.* at 1302. In dissent, Chief Judge Politz contended that the many exceptions to the original prohibition in § 1304 -- and that section's conflict with the policies of States that had legalized gambling -- precluded justification of the restriction by either an interest in supporting anticasinio state policies or "an independent federal interest in discouraging public participation in commercial gambling." *Id.* at 1303-1304.

While the broadcasters' petition for certiorari was pending in this Court, we decided *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 134 L. Ed. 2d 711, 116 S. Ct. 1495 (1996). Because the opinions in that case concluded that our precedent both preceding and following *Posadas* had applied the *Central Hudson* test more strictly, *id.* at 509-510 (opinion of STEVENS, J.); *id.* at 531-532 (O'CONNOR, J., concurring in judgment) -- and [***174] because we had rejected the argument that the power to restrict speech about certain socially harmful activities was as broad as the power to prohibit such conduct, see *id.* at 513-514 (opinion of STEVENS, J.); see also *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 482-483, n. 2, 131 L. Ed. 2d 532, 115 S. Ct. 1585 (1995) -- we granted the broadcasters' petition, vacated the judgment of the Court of Appeals, and remanded the case for further consideration. 519 U.S. 801 (1996).

On remand, the Fifth Circuit majority adhered to its prior conclusion. 149 F.3d 334 (1998). The majority recognized [*183] that at least part of the *Central Hudson* inquiry had "become a tougher standard for the state to satisfy," *id.* at 338, but held that § 1304's restriction on speech sufficiently advanced the asserted governmental interests and was not "broader than necessary to control participation in casino gambling," *id.* at 340. Because the Court of Appeals for the Ninth Circuit reached a contrary conclusion in *Valley Broadcasting Co. v. United States*, 107 F.3d 1328, cert. denied, 522 U.S. 1115, 140 L. Ed. 2d 114, 118 S. Ct. 1050 (1998), as did a Federal District Court in *Players Int'l, Inc. v. United States*, 988 F. Supp. 497 (DNJ 1997), we again granted the broadcasters' petition for certiorari. 525 U.S. (1999). We now reverse.

527 U.S. 173, *185; 119 S. Ct. 1923, **1931;
144 L. Ed. 2d 161, ***LEdHR7A; 1999 U.S. LEXIS 4010

contributes to corruption and organized crime; underwrites bribery, narcotics trafficking, and other illegal conduct; imposes a regressive tax on the poor; and "offers a false but sometimes irresistible hope of financial advancement." Brief for Respondents 15-16. With respect to casino gambling, the Solicitor General states that many of the associated social costs stem from "pathological" [***176] or "compulsive" gambling by approximately 3 million Americans, whose behavior is primarily associated with "continuous play" games, such as slot machines. He also observes that compulsive gambling has grown along with the expansion of legalized gambling nationwide, leading to billions of dollars in economic costs; injury and loss to these [*186] gamblers as well as their families, communities, and government; and street, white-collar, and organized crime. *Id.* at 16-20.

[***LEdHR7B] [7B]

n4 Brief for Respondents 12, 15, 28. We will concentrate on the Government's contentions as to "casino gambling": They are the focus of the Government's argument and are more closely linked to the speech regulation at issue, thereby providing a more likely basis for upholding § 1304 as applied to these broadcasters and their proposed messages.

[***LEdHR1D] [1D] We can accept the characterization of these two interests as "substantial," but that conclusion is by no means self-evident. No one seriously doubts that the Federal Government may assert a legitimate and substantial interest in alleviating the societal ills recited above, or in assisting like-minded States to do the same. *Cf. Edge, 509 U.S. at 428.* But in the judgment of both the Congress and many state legislatures, the social costs that support the suppression of gambling are offset, and sometimes outweighed, by countervailing policy considerations, primarily in the form of economic benefits. n5 Despite its awareness of the potential [*187] social costs, Congress has not only sanctioned casino gambling for Indian tribes through tribal-state compacts, but has enacted other statutes that reflect approval of state legislation that authorizes a host of public and private gambling activities. See, e.g., 18 U.S.C. §§ 1307, 1953(b); 25 U.S.C. §§ 2701-2702, 2710(d); 28 U.S.C. § 3704(a). That Congress has generally exempted state-run lotteries and casinos from

federal gambling legislation reflects a decision to defer to, and even promote, differing gambling policies in different States. Indeed, in *Edge* we identified the federal interest furthered by § 1304's partial broadcast [**1932] ban as the "congressional policy of balancing the interests of lottery and nonlottery States." 509 U.S. at 428. Whatever its character in 1934 when § 1304 was adopted, the federal policy of discouraging gambling in general, and casino gambling in particular, is now decidedly equivocal.

n5 Some form of gambling is legal in nearly every State. Government Lodging 192. Thirty-seven States and the District of Columbia operate lotteries. *Ibid.*; National Gambling Impact Study Commission, Staff Report: Lotteries 1 (1999). As of 1997, commercial casino gambling existed in 11 States, see North American Gaming Report 1997, Int'l Gaming & Wagering Bus., July 1997, pp. S4-S31, and at least 5 authorize state-sponsored video gambling, see *Del. Code Ann. Title 29, §§ 4801, 4803(f)-(g), 4820* (1974 and Supp. 1997); *Ore. Rev. Stat. § 461.215* (1998); *R. I. Gen. Laws § 42-61.2-2(a)* (1998); *S. D. Const. Art. III, § 25* (1999); *S. D. Codified Laws §§ 42-7A-4(4), (11A)* (1991); *W. Va. Code Ann. § 29-22A-4* (1999). Also as of 1997, about half the States in the Union hosted Class III Indian gaming (which may encompass casino gambling), including Louisiana, Mississippi, and four other States that had private casinos. United States General Accounting Office, Casino Gaming Regulation: Roles of Five States and the National Indian Gaming Commission 4-6 (May 1998) (including Indian casino gaming in five States without approved compacts); cf. National Gambling Impact Study Commission, Staff Report: Native American Gaming 2 (1999) (hereinafter Native American Gaming) (noting that 14 States have on-reservation Indian casinos, and that those casinos are the only casinos in 8 States). One count by the Bureau of Indian Affairs tallied 60 tribes that advertise their casinos on television and radio, Government Lodging 408, 435-437. By the mid-1990's, tribal casino-style gambling generated over \$ 3 billion in gaming revenue -- increasing its share to 18% of all casino gaming revenue, matching the total for the casinos in Atlantic City, New Jersey, and reaching

527 U.S. 173, *189; 119 S. Ct. 1923, **1933;
144 L. Ed. 2d 161, ***178; 1999 U.S. LEXIS 4010

[**LEdHR12B] [13B]

n6 The Government cites several secondary sources and declarations that it put before the Federal District Court in New Jersey and, as an alternative to affirming the judgment below, requests a remand so that it may have another chance to build a record in the Fifth Circuit. Remand is inappropriate for several reasons. First, the Government had ample opportunity to enter the materials it thought relevant after we vacated the Fifth Circuit's first ruling and remanded for reconsideration in light of *44 Liquormart*. Second, the Government's evidence did not convince the New Jersey court that § 1304 could be constitutionally applied in circumstances similar to this case, see *Players Int'l, Inc. v. United States*, 988 F. Supp. 497, 502-503, 506-507 (1997), and most of the sources that the Government cited in the New Jersey litigation were also presented to the Fifth Circuit, see Supplemental Brief for Appellees in No. 94-30732 (CA5), pp. iv-v. Indeed, the Government presented sources to the Fifth Circuit not provided to the New Jersey Court, and the Fifth Circuit relied on material that the Government had not proffered. In any event, as we shall explain, additional evidence to support the Government's factual assertions in this Court cannot justify the scheme of speech restrictions currently in effect.

[*190] [**LEdHRIG] [1G] [**LEdHR12B] [12B] We need not resolve the question whether any lack of evidence in the record fails to satisfy the standard of proof under *Central Hudson*, however, because the flaw in the Government's case is more fundamental: The operation of § 1304 and its attendant regulatory regime is so pierced by exemptions and inconsistencies that the Government cannot hope to exonerate it. See *Rubin*, 514 U.S. at 488. Under current law, a broadcaster may not carry advertising about privately operated commercial casino gambling, regardless of the location of the station or the casino. 18 U.S.C. § 1304; 47 CFR 73.1211(a) (1998). On the other hand, advertisements for tribal casino gambling authorized by state compacts -- whether operated by the tribe or by a private party pursuant to a management contract -- are subject to no such broadcast ban, even if the broadcaster is located in or broadcasts to a jurisdiction with the strictest of antigambling policies.

25 U.S.C. § 2720. Government-operated, nonprofit, and "occasional and ancillary" commercial casinos are likewise exempt. 18 U.S.C. § 1307(a)(2).

[**LEdHR12C] [12C] The FCC's interpretation and [**179] application of §§ 1304 and 1307 underscore the statute's infirmity. Attempting to enforce the underlying purposes and policy of the statute, the FCC has permitted broadcasters to tempt viewers with claims of "Vegas-style excitement" at a commercial "casino," if "casino" is part of the establishment's proper name and the advertisement can be taken to refer to the casino's amenities, [*191] rather than directly promote its gaming aspects. n7 While we can hardly fault the FCC in view of the statute's focus on the suppression of certain types of information, the agency's practice is squarely at odds with the governmental interests asserted in this case.

n7 See, e.g., *Letter to DR Partners*, 8 FCC Rcd 44 (1992); *In re WTMJ, Inc.*, 8 FCC Rcd 4354 (1993) (disapproving of the phrase "Vegas style games"); see also 2 *Record* 493, 497-498 (Mass Media Bureau letter to Forbes W. Blair, Apr. 10, 1987) (concluding that a proposed television commercial stating that the "odds for fun are high" at the sponsor's establishment would be lawful); *id.* at 492, 500-501.

From what we can gather, the Government is committed to prohibiting accurate product information, not commercial enticements of all kinds, and then only when conveyed over certain forms of media and for certain types of gambling -- indeed, for only certain brands of *casino* gambling -- and despite the fact that messages about the availability of such gambling are being conveyed over the airwaves by other speakers.

Even putting aside the broadcast exemptions for arguably distinguishable sorts of gambling that might also give rise to social costs about which the Federal Government is concerned -- such as state lotteries and parimutuel [*1934] betting on horse and dog races, § 1307(a)(1)(B); 28 U.S.C. § 3704(a) -- the Government presents no convincing reason for pegging its speech ban to the identity of the owners or operators of the advertised casinos. The Government cites revenue needs of States and tribes that conduct casino gambling, and notes that net revenues generated by the tribal casinos are dedicated to the welfare of the tribes and their members. See 25

527 U.S. 173, *194; 119 S. Ct. 1923, **1935;
144 L. Ed. 2d 161, ***LEdHR1H; 1999 U.S. LEXIS 4010

by the Government -- the derivative goal of "assisting" States with policies that disfavor private casinos -- adds little to its case. We cannot see how this broadcast restraint, ambivalent as it is, might directly and adequately further any *state* interest in dampening consumer demand for casino gambling if it ~~can~~ achieve the same goal with respect to the similar *federal* interest.

[***LEdHR11] [11] [***LEdHR19]
[19]Furthermore, even assuming that the state policies on which the Federal Government seeks to embellish are more coherent and pressing than their federal counterpart, § 1304 sacrifices an intolerable amount of truthful speech about lawful conduct when compared to all of the policies at stake and the social ills that one could reasonably hope such a ban to eliminate. The Government argues that petitioners' speech about private casino gambling should be prohibited in Louisiana because, "under appropriate conditions," 3 *Record* 628, citizens in neighboring States like Arkansas and Texas (which hosts tribal but not private commercial casino gambling) might hear it and make rash or costly decisions. To be sure, in order to achieve a broader objective such regulations may incidentally, even deliberately, restrict a certain amount of speech not thought to contribute significantly to the dangers with which the Government is concerned. See *Fox*, 492 U.S. at 480; cf. *Edge*, 509 U.S. at 429-430. n8 But Congress' choice here was neither a rough [*195] approximation of efficacy, nor a reasonable accommodation of competing State and private interests. Rather, the regulation distinguishes among the indistinct, permitting a variety of speech that poses the same risks the Government purports to fear, while banning messages unlikely to cause any harm at all. Considering the manner in which § 1304 and its exceptions operate and the scope of the speech it proscribes, the Government's second asserted interest provides no more convincing basis for upholding the regulation than the first.

n8 As we stated in *Edge*, "applying the restriction to a broadcaster such as [respondent] directly advances the governmental interest in enforcing the restriction in nonlottery States, while not interfering with the policies of lottery States like Virginia We judge the validity of the restriction in this case by the relation it bears to the general problem of accommodating the

policies of both lottery and nonlottery States." 509 U.S. at 429-430. The Government points out that *Edge* hypothesized that Congress "might have" held fast to a more consistent and broader antigambling policy by continuing to ban all radio or television advertisements for State-run lotteries, even by stations licensed in States with legalized lotteries. *Id.* at 428. That dictum does not support the validity of the speech restriction in this case. In that passage, we identified the actual federal interest at stake; we did not endorse any and all nationwide bans on nonmisleading broadcast advertising related to lotteries. As the Court explained, "Instead of favoring either the lottery or the nonlottery State, Congress opted to" accommodate the policies of both; and it was "this congressional policy of balancing the interests of lottery and nonlottery States" that was "the substantial governmental interest that satisfied *Central Hudson*." *Ibid.*

[***182]

VI

[***LEdHR11] [11] [***LEdHR20]
[20]Accordingly, respondents cannot overcome the presumption that the speaker and the audience, not the Government, should be left to assess the value of accurate and nonmisleading [*1936] information about lawful conduct. *Edenfield*, 507 U.S. at 767. Had the Federal Government adopted a more coherent policy, or accommodated the rights of speakers in States that have legalized the underlying conduct, see *Edge*, 509 U.S. at 428, this might be a different case. But under current federal law, as applied to petitioners and the messages that they wish to convey, the broadcast prohibition in 18 U.S.C. § 1304 and 47 CFR § 73.1211 (1998) violates the [*196] First Amendment. The judgment of the Court of Appeals is therefore

Reversed.

CONCUR BY: REHNQUIST; THOMAS

CONCUR:

CHIEF JUSTICE REHNQUIST, concurring.

Title 18 U.S.C. § 1304 regulates broadcast advertising of lotteries and casino gambling. I agree with

Attachment B

NY CLS Gen Mun § 195-e

Md. Crim. Law Code § 13-2612

R.I. Gen Laws § 11-19-32

NEW YORK CONSOLIDATED LAW SERVICE

GENERAL MUNICIPAL LAW

ARTICLE 9-A. LOCAL OPTION FOR CONDUCT OF GAMES OF CHANCE BY CERTAIN ORGANIZATIONS

NY CLS Gen Mun § 195-e (2006)

§ 195-e. Advertising games

A licensee may advertise the conduct of games of chance to the general public by means of newspaper, circular, handbill and poster, and by one sign not exceeding sixty square feet in area, which may be displayed on or adjacent to the premises owned or occupied by a licensed authorized organization, and when an organization is licensed to conduct games of chance on premises of an authorized games of chance lessor, one additional such sign may be displayed on or adjacent to the premises in which the games are to be conducted. Additional signs may be displayed upon any fire fighting equipment belonging to any licensed authorized organization which is a volunteer fire company, or upon any equipment of a first aid or rescue squad in and throughout the community served by such volunteer fire company or such first aid or rescue squad, as the case may be. All advertisements shall be limited to the description of such event as "Games of chance" or "Las Vegas Night", the name of the authorized organization conducting such games, the license number of the authorized organization as assigned by the clerk or department and the date, location and time of the event.

HISTORY: Add, L 1976, ch 960, amd, L 1978, ch 574, § 12, eff Aug 23, 1978, L 1981, ch 94, § 1, eff July 11, 1981.

Laws 1978, ch 574, § 16, provides as follows:

§ 16. This act shall take effect on the thirtieth day after it shall have become a law. The board shall adopt rules prior to the effective date of this act to provide prompt implementation of the provisions of this act. Such rules may be adopted as emergency measures pursuant to paragraph (c) of subdivision two of section two hundred two of the state administrative procedure act and subdivision three of section one hundred one-a of the executive law and shall be effective on the date this act shall take effect.

General Laws of Rhode Island

TITLE 11. CRIMINAL OFFENSES
CHAPTER 19. GAMBLING AND LOTTERIES

R.I. Gen. Laws § 11-19-32 (2007)

§ 11-19-32. Operation of bingo games

Any charitable organization approved by the department may promote, carry on, or conduct the game of bingo provided as follows:

- (1) The game is conducted by members of the organization.
- (2) No person in the actual or constructive management and control of the game receives any compensation for services connected to the game or receives any compensation from the gross receipts of the game.
- (3) The entire net receipts of the game are applied solely to the charitable purposes of the organization. All expenses deducted from gross receipts must be reasonable and related to the actual conduct of the game.
- (4) The total amount of all expenses deducted from the gross receipts shall not exceed twenty-five percent (25%) of the total annual gross receipts raised through bingo, not including monies raised through the sale of pull-tab lottery tickets.
- (5) The total prizes, in the form of cash and/or retail merchandise including prizes from winner-take-all games, which are offered or awarded do not exceed the sum of seven thousand five hundred dollars (\$ 7,500) in any one night.
- (6) The game is carried on or conducted not more than twice in any period of one calendar week under a license issued pursuant to the provisions of § 11-19-37.
- (7) That there be only one sponsor for each date of the proposed game and that the game shall be conducted only on the premises affiliated with the organization in conformance with rules and regulations.
- (8) That any building in which a game is played or conducted shall be used no more than three (3) times in any calendar week for conducting a game, and that no annex or subdivision of any building shall be permitted to be used to conduct a game in an attempt to increase the number of times the building may be used for bingo purposes.
- (9) The organization shall keep and maintain financial records relating to the game in accordance with rules and regulations and have the records available for inspection upon demand.
- (10) Payment of a prize in excess of two hundred fifty dollars (\$ 250) shall be made by check.
- (11) "Winner-take-all" games are prohibited, with the exception that each organization shall be permitted to play one optional "winner-take-all" game per night.
- (12) No person under the age of eighteen (18) years shall be permitted to play the game.
- (13) Notwithstanding any regulation to the contrary, any approved charitable organization conducting a lawful game of bingo pursuant to the provisions of this section shall be permitted to advertise their game in print media. As used in this chapter, "advertise" means an advertisement or announcement in print media containing the date, time, and place of the game, the charitable organization sponsoring and/or benefiting from the game, whether the game shall provide for a bonus building/prize pool, and the total amount of the prize pool as set forth in subdivision (14) of this section.
- (14) The game may provide for a bonus building prize pool which would start at five hundred dollars (\$ 500) and increase at one hundred dollar (\$ 100) increments each week until it reaches a maximum amount of one thousand dollars (\$ 1000).

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/19/07

FURTHER:

Rules

Date of 5-Day Notice: 2/1/07
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 2/8/07

Labor and Commerce Committee considered SENATE BILL NO. 59

SB 59 BROADCASTING PROMOTING CHARITABLE GAMING

"An Act relating to the use of broadcasting to promote charitable raffles and lotteries."

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

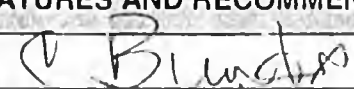
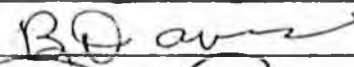
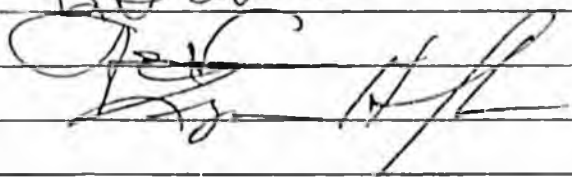
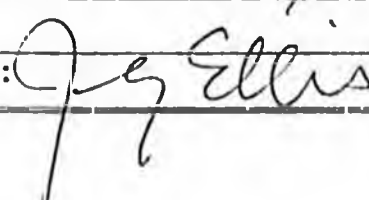
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
REVENUE	2/3/07			✓	1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Bunde	✓			
	DAVIS	✓			
	Hoffman	✓			
CHAIR: 	ELLIS	✓			

SENATE FINANCE COMMITTEE

SIGN-IN

SB 59-BROADCASTING PROMOTING CHARITABLE GAMING

NAME: PERMITS FEED Subject/Bill No: HR 59
Co./Dept./Title: PAK. BROADCASTERS ASSN Phone: 586-6037
Address: 1107 W. FULTON ST. SUITE 500 Zip: 95801
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

SCOTT SMITH

ABA

SB59

~~MIKE HOGAN~~

~~AKPS~~

~~LUWAMI~~

JAKE LIBBEY

PALMER ROTARY

SB59

* sorry printer problems.

Dennis Egan

THANK YOU FOR THE OPPORTUNITY TO TESTIFY IN SUPPORT OF SENATE BILL 59. SB59 AFFORDS A SOLUTION TO THE DISPARATE TREATMENT CURRENTLY BEING IMPOSED ON ALASKA'S BROADCASTERS BY CURRENT ALASKA STATUTE.

ALASKA STATUTE BANS, BUT ONLY VIA RADIO AND TELEVISION, THE ADVERTISING OF LAWFUL CHARITABLE GAMING OR CONDUCT. NEWSPAPERS AND RELATED MEDIA ARE FREE TO ADVERTISE THE VERY SAME ACTIVITY AND CONDUCT THAT RADIO AND TELEVISION STATIONS MAY NOT ADVERTISE.

RECOGNIZING THE UNFAIR BURDEN PLACED UPON BROADCASTERS, CONGRESS PASSED THE CHARITY GAMES ADVERTISING CLARIFICATION ACT OF 1988. IT HAS BEEN IN EFFECT SINCE 1990. CONGRESS OPENED TO DOOR FOR BROADCASTERS TO ADVERTISE FOR A CHARITY, NOT, TO CONDUCT CHARITABLE GAMING.

THE NEW FEDERAL LAW LEFT IT UP TO THE INDIVIDUAL STATES TO RATIFY THE FEDERAL LAW. TO THIS DATE, NEARLY EVERY STATE HAS ALLOWED BROADCASTERS IN THEIR RESPECTIVE STATES TO BECOME FULLY CONSISTENT WITH FEDERAL LAW.

UNDER THE CHARITY GAMES ADVERTISING ACT SIGNED INTO LAW BY PRESIDENT REAGAN IN 1988, FEDERAL LAW PROHIBITS THE ACCEPTANCE OF ANY ADVERTISING FROM A BUSINESS WHOSE PRIMARY PURPOSE IS THE CONDUCTING OF A GAMING ACTIVITY....CHARITABLE OR OTHERWISE.

WE FEEL THAT BEING ALLOWED TO ANNOUNCE THAT THE LOCAL VOLUNTEER FIRE DEPARTMENT IS HAVING A RAFFLE TO RAISE FUNDS FOR CPR EQUIPMENT, OR THE SENIOR CENTER IS SELLING TICKETS ON AN AFGHAN TO RAISE FUNDS FOR THE SENIOR CITIZEN CARE-A-VAN, OR THE HIGH SCHOOL

SPORTS TEAMS ARE SELLING TICKETS FOR A RAFFLE TO RAISE FUNDS FOR TRAVEL, IS NOT DETRIMENTAL TO ANYONE.

ALASKA'S BROADCASTERS ARE NOT TRYING TO SUGGEST TO YOU WHAT ACTIVITIES SHOULD BE PERMISSIBLE IN THE STATE. WHAT WE ARE ASKING IS THAT ALL MEDIA INCLUDING PRINT, ELECTRONIC, DIRECT MAIL AND EVEN THE SIGNS WE SEE ON MUNICIPAL BUSES HAVE THE SAME GROUND RULES WHEN IT COMES TO PROMOTION. CONGRESS RECOGNIZED THIS INEQUITY WITH PASSAGE OF THE 1988 CHARITY GAMES CLARIFICATION ACT.

AS A FEDERAL LICENSEE, BROADCASTERS ARE ONE OF THE MOST HIGHLY REGULATED INDUSTRIES IN THE UNITED STATES.

WE URGE YOU TO PROVIDE EQUITY, AND GIVE YOUR FAVORABLE CONSIDERATION OF SB59.