

June 15, 1999

SUPREME COURT EXPANDS COMMERCIAL SPEECH RIGHTS

(Greater New Orleans Broadcasting Assn v. U.S., No. 98-387)

The U.S. Supreme Court ruled yesterday that the First Amendment in almost all instances protects the right of businesses to provide consumers with truthful information about their products.

The decision was a victory for the Washington Legal Foundation (WLF), which had filed a brief in the case, *Greater New Orleans Broadcasting Assn v. United States*, in support of increased protection for commercial speech. WLF had argued that the government may not prevent businesses from conveying truthful product information based solely on a desire to keep consumers ignorant of the information.

The case before the High Court challenged a federal law that prohibited television and radio broadcast of casino advertising -- even in states (such as Louisiana) where casino gambling is legal. A group of broadcasters in the New Orleans area brought the challenge, which was rebuffed last year by the U.S. Court of Appeals for the Fifth Circuit. Yesterday's decision overturned the appeals court.

"The business community's right to speak freely in a truthful manner has come under increasing attack in recent years; it is important that the Supreme Court has stepped in and reaffirmed that the First Amendment's protections apply to everyone, including the business community," said WLF Chief Counsel Richard Samp after the Supreme Court issued its ruling.

The federal law at issue applied only to radio and television advertising; the federal government makes no effort to restrict casino advertising in the print media or elsewhere. Moreover, the law was riddled with exceptions; for example, while the broadcast prohibition applied to private, for-profit casinos, it did not apply to Indian tribes (which operate a sizeable percentage of all casinos in this country), government-run casinos, and to charitable groups. The Supreme Court held that those massive exceptions made it impossible for the federal government to achieve the goal it allegedly sought through the broadcast ban: preventing excessive and compulsive gambling.

The Supreme Court held that if the government seeks to limit the amount of gambling in this country, it should do so by applying direct controls on gambling facilities rather than by censoring speech. The Court stated, "[T]he power to prohibit or to regulate particular conduct does not necessarily include the power to prohibit speech about that conduct." Among permissible controls mentioned by the Court were: prohibition or supervision of gambling on credit, limitations on the use of cash machines on casino premises, controls on admissions, location restrictions, and licensing requirements.

The Court accepted WLF's argument that the First Amendment does not permit speech prohibitions designed solely to keep consumers ignorant of factual matters. WLF argued that while the government has an interest in preventing false or misleading advertising, there is no indication that casinos have any desire to place anything other than factual, non-misleading information in their advertising. WLF argued that the First Amendment prohibits government from restricting speech to influence choice -- either in the voting booth or in the marketplace.

WLF filed its brief with the *pro bono* assistance of David H. Remes, Patricia A. Barald, and Faith D. Kasparian of the Washington, D.C. law firm of Covington & Burling.

The Washington Legal Foundation is a nonprofit public interest law and policy center with supporters nationwide. It devotes a substantial portion of its resources to defending the rights of business persons who have become the targets of unwarranted government regulation.

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