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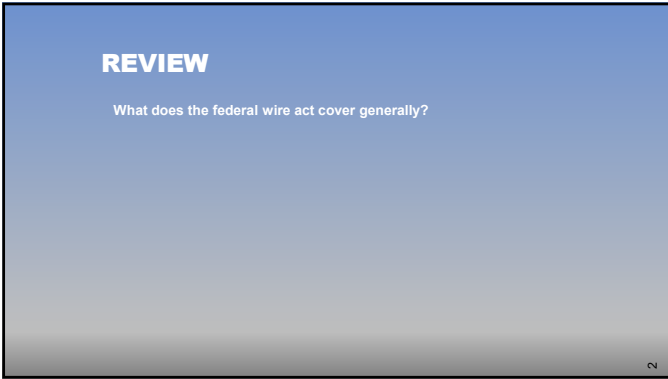
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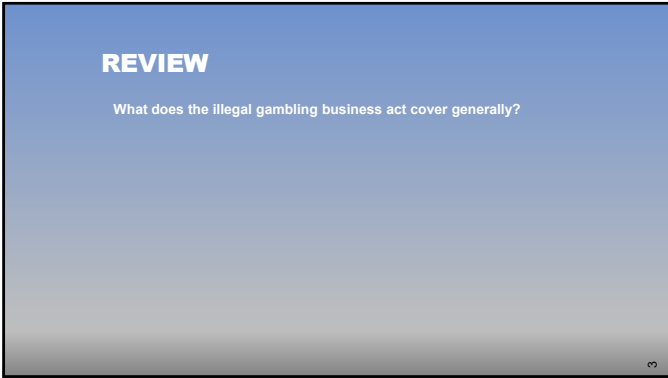
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**REVIEW**

What is a gambling business or an illegal gambling business?

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**RIGHTS?**

Is there a right to advertise gaming services?

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**RIGHTS?**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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### RIGHTS?

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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### RIGHTS?

What types of speech are protected?

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### RIGHTS?

- Political speech?
- Religious speech?
- All personal speech?
- Yelling "Fire" in a crowded theater?
- Inciting violence?
- Commercial speech?

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### RIGHTS?

- What is "commercial speech?"
- How would you define it?

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### COMMERCIAL SPEECH

- What is "commercial speech?" (according to the USSC)
- "expression related solely to the economic interests of the speaker and its audience" – Central Hudson 447 U.S. 557

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### COMMERCIAL SPEECH

- What is protected?
- "The First Amendment, as applied to the States through the Fourteenth Amendment, protects commercial speech from unwarranted governmental regulation." Central Hudson

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### COMMERCIAL SPEECH

What is the test for determining whether government prohibition or regulation is unwarranted?

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### COMMERCIAL SPEECH

What is the test for determining whether government prohibition or regulation is unwarranted?

- 4 Part Test in Central Hudson

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### COMMERCIAL SPEECH

What is the test for determining whether government prohibition or regulation is unwarranted?

- Part 1
  - Does the speech concern a legal activity, or is it misleading?
  - There is no protection for false or misleading speech.

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## COMMERCIAL SPEECH

What is the test for determining whether government prohibition or regulation is unwarranted?

- Part 2
  - Does the restriction serve a legitimate government interest?

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## COMMERCIAL SPEECH

What is the test for determining whether government prohibition or regulation is unwarranted?

- Part 3
  - Does the restriction directly advance the government's stated interest?

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## COMMERCIAL SPEECH

What is the test for determining whether government prohibition or regulation is unwarranted?

- Part 4
  - Is the regulation or restriction no broader than necessary to serve the government's stated interest?

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### COMMERCIAL SPEECH

What is the test for determining whether government prohibition or regulation is unwarranted?

- Part 1
  - Does the speech concern lawful conduct or is it misleading?
- Part 2
  - Does the restriction serve a legitimate government interest?
- Part 3
  - Does the restriction directly advance the government's stated interest?
- Part 4
  - Is the regulation or restriction no broader than necessary to serve the government's stated interest?

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### COMMERCIAL SPEECH

What is the test for determining whether government prohibition or regulation is unwarranted?

- Part 1
  - Does the speech promote an illegal activity or is it misleading?
- Part 2
  - Does the restriction serve a legitimate government interest?
- Part 3
  - Does the restriction directly advance the government's stated interest?
- Part 4
  - Is the regulation or restriction no broader than necessary to serve the government's stated interest?



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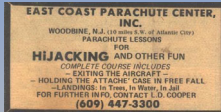
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### COMMERCIAL SPEECH

What is the test for determining whether government prohibition or regulation is unwarranted?

- Part 1
  - Does the speech promote an illegal activity or is it misleading?
- Part 2
  - Does the restriction serve a legitimate government interest?
- Part 3
  - Does the restriction directly advance the government's stated interest?
- Part 4
  - Is the regulation or restriction no broader than necessary to serve the government's stated interest?



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### COMMERCIAL SPEECH

What is the test for determining whether government prohibition or regulation is unwarranted?

<https://youtu.be/gRO9Uwm1tes>

- Part 1
- Does the speech promote an illegal activity or is it misleading?
- Part 2
- Does the restriction serve a legitimate government interest?
- Part 3
- Does the restriction directly advance the government's stated interest?
- Part 4
- Is the regulation or restriction no broader than necessary to serve the government's stated interest?

<https://youtu.be/7lsvFX1AWTc>

<https://youtu.be/r5rBQqQ7w>

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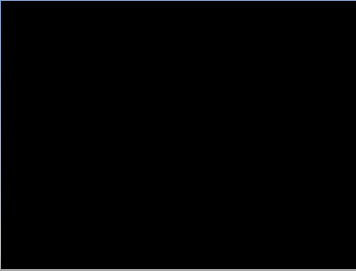
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### COMMERCIAL SPEECH



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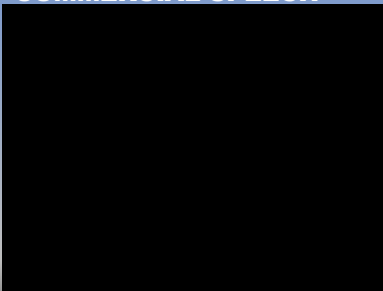
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### COMMERCIAL SPEECH



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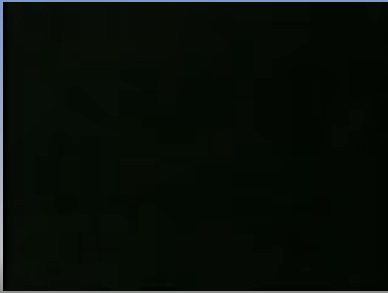
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**COMMERCIAL SPEECH**



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**COMMERCIAL SPEECH**

With respect to gaming – first restrictions appear in the late 1800's as postal regulations prohibiting the transportation and importation into the U.S. of lottery tickets and prize lists.

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**COMMERCIAL SPEECH**

Postal lottery prohibitions were expanded by the 1934 Communications Act  
 18 U.S.C. §1304 Broadcasting lottery information  
 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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### COMMERCIAL SPEECH

FCC Regulations  
 47 CFR §73.1211 Broadcast of lottery information.  
 (a) No licensee of an AM, FM, television, or Class A television broadcast station, except as in paragraph (c) of this section, shall broadcast 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...

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### COMMERCIAL SPEECH

- FCC Interpretations – The Exceptions
- State run lotteries
    - Broadcast within the state
    - Broadcast in an adjacent stat that also had a legal lottery
    - Any other state with a legal lottery
  - Non-profit games
  - Horse Racing
  - Poker Tournaments (based on skill)
  - Native American Casinos as part of IGRA

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### COMMERCIAL SPEECH

- POSADAS de PUERTO RICO
- BASIC FACTS
    - Casino in Puerto Rico challenges statute and regulations restricting advertisements to residents of Puerto Rico by filing a declaratory relief action
    - The enabling legislation also prohibited advertising gaming facilities to residents of Puerto Rico
    - Appellant was fined on several occasions and faced non-renewal of its gaming franchise
    - Ads reviewed by the Tourism Development Company

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### COMMERCIAL SPEECH

#### POSADAS de PUERTO RICO

- BASIC FACTS – How did the Tourism Development Company Interpret the Statute
  - "This prohibition includes the use of the word 'casino' in matchbooks, lighters, envelopes, inter-office and/or external correspondence, invoices, napkins, brochures, menus, elevators, glasses, plates, lobbies, banners, flyers, paper holders, pencils, telephone books, directories, bulletin boards or in any hotel dependency or object which may be accessible to the public in Puerto Rico."

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### COMMERCIAL SPEECH

#### POSADAS de PUERTO RICO

- Does the court analyze the matter using the Central Hudson Test?
  - Because this case involves the restriction of pure commercial speech which does "no more than propose a commercial transaction," our First Amendment analysis is guided by the general principles identified in *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*.

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### COMMERCIAL SPEECH

#### POSADAS de PUERTO RICO

- Does the speech concern a legal activity, is it misleading?
  - The particular kind of commercial speech at issue here, namely, advertising of casino gambling aimed at the residents of Puerto Rico, concerns a lawful activity and is not [misleading or fraudulent, at least in the abstract. We must therefore proceed to the three remaining steps of the Central Hudson analysis in order to determine whether Puerto Rico's advertising restrictions run afoul of the First Amendment.

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### COMMERCIAL SPEECH

#### POSADAS de PUERTO RICO

- Does the restriction serve a legitimate government interest?
- The Tourism Company's brief before this Court explains the legislature's belief that "[e]xcessive casino gambling among local residents . . . would produce serious harmful effects on the health, safety and welfare of the Puerto Rican citizens, such as the disruption of moral and cultural patterns, the increase in local crime, the fostering of prostitution, the development of corruption, and the infiltration of organized crime." .... We have no difficulty in concluding that the Puerto Rico Legislature's interest in the health, safety, and welfare of its citizens constitutes a "substantial" governmental interest.

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### COMMERCIAL SPEECH

#### POSADAS de PUERTO RICO

- Does the restriction serve a legitimate government interest? (what is the standard of proof for determining whether the interest is legitimate?)
- .... We have no difficulty in concluding that the Puerto Rico Legislature's interest in the health, safety, and welfare of its citizens constitutes a "substantial" governmental interest.

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### COMMERCIAL SPEECH

#### POSADAS de PUERTO RICO

- Does the restriction directly advance the government's stated interest?
- The last two steps of the Central Hudson analysis basically involve a consideration of the "fit" between the legislature's ends and the means chosen to accomplish those ends. Step three asks the question whether the challenged restrictions on commercial speech "directly advance" the government's asserted interest. In the instant case, the answer to this question is clearly "yes." The Puerto Rico Legislature obviously believed, when it enacted the advertising restrictions at issue here, that advertising of casino gambling aimed at the residents of Puerto Rico would serve to increase the demand for the product advertised. We think the legislature's belief is a reasonable one, and the fact that appellant has chosen to litigate this case all the way to this Court indicates that appellant shares the legislature's view.

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### COMMERCIAL SPEECH

#### POSADAS de PUERTO RICO

- How does the regulation/restriction directly advance the government's asserted interest?
- The court essentially defers to the legislature
- The court ignores unregulated advertising for other forms of gambling
- In other words, if the legislature says it advances the interest, then the court is willing to accept that since it is not manifestly unreasonable.

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### COMMERCIAL SPEECH

#### POSADAS de PUERTO RICO

- Is the regulation or restriction no broader than necessary to serve the government's stated interest?
- We also think it clear beyond peradventure that the challenged statute and regulations satisfy the fourth and last step of the Central Hudson analysis, namely, whether the restrictions on commercial speech are no more extensive than necessary to serve the government's interest. The narrowing constructions of the advertising restrictions announced by the Superior Court ensure that the restrictions will not affect advertising of casino gambling aimed at tourists, but will apply only to such advertising when aimed at the residents of Puerto Rico.

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### COMMERCIAL SPEECH

#### POSADAS de PUERTO RICO

- THE BRIGHT LINE RULE?
- "In our view, the greater power to completely ban casino gambling necessarily includes the lesser power to ban advertising of casino gambling"
- "it is precisely because the government could have enacted a wholesale prohibition of the underlying conduct that it is permissible for the government to take the less intrusive step of allowing the conduct, but reducing the demand through restrictions on advertising"

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### COMMERCIAL SPEECH

POSADAS de PUERTO RICO  
• Thoughts.

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### COMMERCIAL SPEECH

#### Edge Broadcasting

- The Basic Facts
  - A North Carolina radio station with 92.2% of its audience in Virginia seeks declaratory relief that 18 USC § 1304,1307 and corresponding regulations violate the First Amendment.
  - The radio station wants to broadcast Virginia Lottery advertisements.
  - North Carolina has no lottery.
  - In contrast, Virginia stations could broadcast into North Carolina with lottery ads.
  - In that part of North Carolina, 38% of all radio listening was tuned to Virginia stations and 50-75% of television viewing tuned to Virginia stations.

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### COMMERCIAL SPEECH

#### Edge Broadcasting

- How did the district court decide the matter?
  - Prong 1 – Illegal or misleading?
    - No
  - Prong 2 – Was there a legitimate government interest?
    - Yes
  - Prong 3 – Did the restriction advance the interest?
    - Not as applied to Edge
  - Prong 4 – Was it no more extensive than necessary?
    - Yes

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## COMMERCIAL SPEECH

### Edge Broadcasting

- Does the Court Apply The Central Hudson Test?
- At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

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## COMMERCIAL SPEECH

### Edge Broadcasting

- Does the speech concern a lawful activity, or is it misleading?
- Like the courts below, we assume that Edge, if allowed to, would air nonmisleading advertisements about the Virginia lottery, a legal activity.

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## COMMERCIAL SPEECH

### Edge Broadcasting

- Does the restriction serve a legitimate government interest?
- As to the second Central Hudson factor, we are quite sure that the Government has a substantial interest in supporting the policy of nonlottery States, as well as not interfering with the policy of States that permit lotteries.

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## COMMERCIAL SPEECH

### Edge Broadcasting

- Is the regulation or restriction no broader than necessary to serve the government's stated interest?
- we also agree that the statutes are no broader than necessary to advance the Government's interest and hence the fourth part of the Central Hudson test is satisfied

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## COMMERCIAL SPEECH

### Edge Broadcasting

- Does the restriction directly advance the government's stated interest?
- The third Central Hudson factor asks whether the "regulation directly advances the governmental interest asserted." It is readily apparent that this question cannot be answered by limiting the inquiry to whether the governmental interest is directly advanced as applied to a single person or entity.

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## COMMERCIAL SPEECH

### Edge Broadcasting

- Does the restriction directly advance the government's stated interest?
- The courts below thus asked the wrong question in ruling on the third Central Hudson factor. This is not to say that the validity of the statutes' application to Edge is an irrelevant inquiry, but that issue properly should be dealt with under the fourth factor of the Central Hudson test. As we have said, "[t]he last two steps of the Central Hudson analysis basically involve a consideration of the 'fit' between the legislature's ends and the means chosen to accomplish those ends." *Posadas, supra*.

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## COMMERCIAL SPEECH

### Edge Broadcasting

- What does the court think about the advancement of the interest and narrow focus "as applied"
- "This having been established, the State was entitled to protect its interest by applying a prophylactic rule to those circumstances generally; we declined to require the State to go further and to prove that the state interests supporting the rule actually were advanced by applying the rule in Ohralik's particular case."

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## COMMERCIAL SPEECH

### Edge Broadcasting

- Thoughts?

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## COMMERCIAL SPEECH

### 44 Liquor Mart

- The Basic Facts:
  - Rhode Island prohibits advertisements of liquor prices
  - 2 Appellants – Peoples and 44 Liquormart
  - Peoples advertises in Mass, but not in Rhode Island
  - 44 Liquormart places an ad with no pricing, but the word WOW next to photos of liquor bottles
  - 44 Liquormart fined \$400 for violating RI prohibition on ads with liquor prices
  - 44 Liquormart and Peoples file a declaratory relief action

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## COMMERCIAL SPEECH

- 44 Liquor Mart
- The Court's Opinion
- JUSTICE STEVENS announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, VII, and VIII, an opinion with respect to Parts III and V, in which JUSTICE KENNEDY, JUSTICE SOUTER, and JUSTICE GINSBURG join, an opinion with respect to Part VI, in which JUSTICE KENNEDY, JUSTICE THOMAS, and JUSTICE GINSBURG join, and an opinion with respect to Part IV, in which JUSTICE KENNEDY and JUSTICE GINSBURG join.

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## COMMERCIAL SPEECH

- 44 Liquor Mart
- What are the state's arguments?

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## COMMERCIAL SPEECH

- 44 Liquor Mart
- What are the state's arguments?
- Reliance on Posadas and Edge...

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### COMMERCIAL SPEECH

- 44 Liquor Mart
- How does the court address reliance on Posadas?
- The reasoning in Posadas does support the State's argument, but, on reflection, we are now persuaded that Posadas erroneously performed the First Amendment analysis. The casino advertising ban was designed to keep truthful, nonmisleading speech from members of the public for fear that they would be more likely to gamble if they received it. As a result, the advertising ban served to shield the State's antigambling policy from the public scrutiny that more direct, nonspeech regulation would draw. See Posadas, 478 U. S., at 351 (Brennan, J., dissenting).

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### COMMERCIAL SPEECH

- 44 Liquor Mart
- How does the court address reliance on Posadas?
- Given our longstanding hostility to commercial speech regulation of this type, Posadas clearly erred in concluding that it was "up to the legislature" to choose suppression over a less speech-restrictive policy.

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### COMMERCIAL SPEECH

- 44 Liquor Mart
- How does the court address reliance on Posadas?
- We also cannot accept the State's second contention, which is premised entirely on the "greater-includes-the-lesser" reasoning endorsed toward the end of the majority's opinion in Posadas.
- Further consideration persuades us that the "greater-includes-the-lesser" argument should be rejected for the additional and more important reason that it is inconsistent with both logic and well-settled doctrine.

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## COMMERCIAL SPEECH

- 44 Liquor Mart
- How does the court address reliance on Edge?
- In Edge, we upheld a federal statute that permitted only those broadcasters located in States that had legalized lotteries to air lottery advertising. The statute was designed to regulate advertising about an activity that had been deemed illegal in the jurisdiction in which the broadcaster was located.

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## COMMERCIAL SPEECH

- 44 Liquormart
- 3 justices held that truthful non-misleading speech is entitled to greater protection
- 3 justices suggested that no deference be given to the government's asserted interest and that strong evidentiary support must be present for the ban to be constitutional

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## COMMERCIAL SPEECH

### Greater New Orleans

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### COMMERCIAL SPEECH

#### Greater New Orleans

- Does the Court use Central Hudson?
  - "In this case, there is no need to break new ground. Central Hudson, as applied in our more recent commercial speech cases, provides an adequate basis for decision."

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### COMMERCIAL SPEECH

#### Greater New Orleans

- Part 1 – Legal Subject Matter
  - "Their content is not misleading and concerns lawful activities"

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### COMMERCIAL SPEECH

#### Greater New Orleans

- Part 2 – Whether the asserted governmental interest served by the restriction is substantial
  - (1) reducing the social costs associated with "gambling" or "casino gambling," and (2) assisting States that "restrict gambling" or "prohibit casino gambling" within their own borders.

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### COMMERCIAL SPEECH

#### Greater New Orleans

- Part 2 – Whether the asserted governmental interest served by the restriction is substantial
  - “We can accept the characterization of these two interests as “substantial,” but that conclusion is by no means self-evident.”
  - “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”
  - “we cannot ignore Congress’ unwillingness to adopt a single national policy that consistently endorses either interest asserted by the Solicitor General.”

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### COMMERCIAL SPEECH

#### Greater New Orleans

- Part 3 – whether the speech restriction directly and materially advances the asserted governmental interest
  - “This burden is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.”

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### COMMERCIAL SPEECH

#### Greater New Orleans

- Part 4 – Whether the speech restriction is not more extensive than necessary to serve the interests that support
  - “The Government is not required to employ the least restrictive means conceivable, but it must demonstrate narrow tailoring of the challenged regulation to the asserted interest—“a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served.”

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### COMMERCIAL SPEECH

- Greater New Orleans
  - So what happens....

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### COMMERCIAL SPEECH

- Greater New Orleans
  - As applied to petitioners' case, § 1304 cannot satisfy these standards.
  - State Interest # 1 - reducing the social costs associated with "gambling" or "casino gambling."
  - "any measure of the effectiveness of the Government's attempt to minimize the social costs of gambling cannot ignore Congress' simultaneous encouragement of tribal casino gambling"
  - "The operation of § 1304 and its attendant regulatory regime is so pierced by exemptions and inconsistencies that the Government cannot hope to exonerate it."

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### COMMERCIAL SPEECH

- Greater New Orleans
  - "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 non-misleading information about lawful conduct."

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### SUMMARY

DOJ Response

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### SUMMARY

DOJ Response

ENFORCEABILITY OF 18 U.S.C. § 1302  
Application of 18 U.S.C. § 1302 to prohibit the mailing of truthful advertising concerning lawful gambling operations (except as to state-operated lotteries in some circumstances) would violate the First Amendment. Accordingly, the Department of Justice will refrain from enforcing the statute with respect to such mailings.

LETTER TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES September 25, 2000

This is to inform you of the Department of Justice's determination that, in light of governing Supreme Court precedent, the Department cannot constitutionally continue to apply 18 U.S.C. § 1302 to prohibit the mailing of truthful information or advertisements concerning certain lawful gambling operations.

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### NEVADA

5.011 Grounds for disciplinary action. The board and the commission deem any activity on the part of any licensee, his agents or employees, that is inimical to the public health, safety, morals, good order and general welfare of the people of the State of Nevada, or that would reflect or tend to reflect discredit upon the State of Nevada or the gaming industry, to be an unsuitable method of operation and shall be grounds for disciplinary action by the board and the commission in accordance with the Nevada Gaming Control Act and the regulations of the board and the commission. Without limiting the generality of the foregoing, the following acts or omissions may be determined to be unsuitable methods of operation:

- Failure to conduct advertising and public relations activities in accordance with decency, dignity, good taste, honesty and offensiveness, including, but not limited to, advertising that is false or materially misleading.

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**NEVADA**

At the Hard Rock Hotel, we believe in your Monday Night Rights: Large quantities of prescription stimulants. Having wives in two states. The Big Score Football on Monday nights. . . . Tell your wives you are going; if they are hot, bring them along.

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**NEVADA**

The Hard Rock Story

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**NGC REGULATION 5.011**

Grounds for disciplinary action under 5.011 include:  
5.011(1)  
Failure to exercise discretion and sound judgment to prevent incidents which might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry.  
  
5.011(4)  
Failure to conduct advertising and public relations activities in accordance with decency, dignity, good taste, honesty and inoffensiveness, including, but not limited to, advertising that is false or materially misleading.

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In 2004, the Gaming Control Board tested that power when it filed a complaint against the Hard Rock Hotel.

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**THE COMPLAINT: COUNT 1**



Ad in Las Vegas Weekly:  
"There's always a temptation to cheat"

Board:  
"This ad conveys that cheating at gaming, and lounging on piles of gaming cards and chips"

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**THE COMPLAINT: COUNT 2**

Las Vegas Weekly magazine ad:  
"At the Hard Rock Hotel, we believe in your Monday Night Rights: Large quantities of prescription stimulants. Having wives in two states. The Big Score Football on Monday nights. . . . Tell your wives you are going; if they are hot, bring them along."

The Board:  
This ad conveys that possession of large quantities of prescription stimulants and having more wives than is legal is acceptable activity among Hard Rock's patrons in violation of NGC Reg. 5.011(1) and 5.011(4).

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### THE COMPLAINT: COUNT 3

Board:  
Following a 2002 disciplinary action, the Hard Rock represented it would take certain remedial actions...including review by its Compliance Officer and Committee of any "questionable elements" in its advertising. The ads described herein were not submitted to either. This failure demonstrates that the Hard Rock has "persistently failed to exercise discretion and sound judgment to prevent incidents which might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry in violation of NGC Reg. 5.011(1).



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### THE HARD ROCK'S COMMENTARY



FROM YOUR FRIENDS AT THE HARD ROCK HOTEL & CASINO A PETER MAROTON HOTEL

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### HARD ROCK

The Hard Rock found that this regulation was in violation of its 1st Amendment rights...

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### THE HARD ROCK'S RESPONSE...

"Regulation 5.011(4) is vague, ambiguous and overbroad, therefore unenforceable in the context for which enforcement is sought"  
"The advertisements described in the Complaint are forms of commercial speech protected by the First Amendment"  
The "Compliance Overview" cited by the Board did not address the type of advertising at issue here (it was meant to help employees deal with potentially objectionable 'contests and promotions') and was "not equivalent to a regulatory requirement."

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### THE HARD ROCK'S RESPONSE

The matter was settled with a \$300,000 fine and changes to the compliance plan and procedures for approving advertising.

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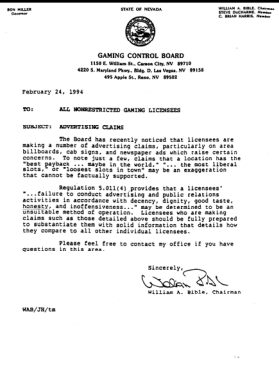
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### NEVADA

Letters



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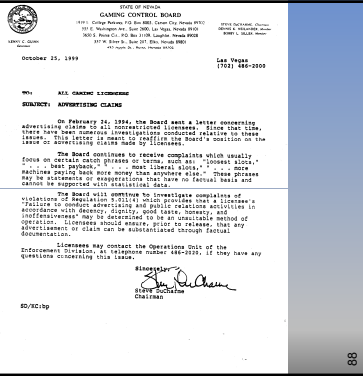
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# NEVADA

## Letters



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# QUESTION

## § 1304. Broadcasting lottery information

Whoever broadcasts by means of any radio or television station for which a license is required by any law of the United States, or otherwise, operating any such station, knowingly permits the broadcasting 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, shall be fined under this title or imprisoned not more than one year, or both.

- 1307. Exceptions relating to certain advertisements and other information and to State-conducted lotteries
  - (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—
      - (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 in a State which conducts such a lottery;
    - (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 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 address 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 allowing 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 "not-for-profit organization" means any organization that would qualify as tax exempt.

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# QUESTION

## § 1304. Broadcasting lottery information

Whoever broadcasts by means of any radio or television station for which a license is required by any law of the United States, or otherwise, operating any such station, knowingly permits the broadcasting 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, shall be fined under this title or imprisoned not more than one year, or both.

- 1307. Exceptions relating to certain advertisements and other information and to State-conducted lotteries
  - (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—
      - (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 in a State which conducts such a lottery;
    - (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 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 address 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 allowing 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 "not-for-profit organization" means any organization that would qualify as tax exempt.

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