

Legalized Gambling and the Constitution

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To the Editor:

While we share William Safire's outrage about state-sponsored gambling in "Shame of the States" (column, April 22), his demand-based approach to change public policy may not be the most effective -- the present law may in fact be unconstitutional.

Between 1895 and 1975, Federal law forbade any advertisement of chance-based gambling activities by use of the mail, interstate commerce or the broadcast media. In 1975, Congress exempted state-sponsored lotteries from these restrictions, and in 1988 extended the exemption to nonprofit organizations and commercial organizations primarily involved in another activity. (Legal for-profit gaming organizations such as casinos still cannot use the broadcast media to advertise gambling opportunities.)

But because of these liberalizations and the legalization of gambling of some kind in the vast majority of states, three public policy and constitutional questions concerning gambling advertising must be addressed:

- (1) Is an advertising regulation that distinguishes between the nature of the sponsors justifiable under the free speech clause of the First Amendment and the equal protection clause of the 14th Amendment?
- (2) Is it justifiable on public policy grounds to permit a state government to run an ad for a state-sponsored casino and forbid a corporation from running exactly the same ad for a for-profit casino?
- (3) Whether or not the laws are changed, what kind of laws can (under free speech protections) and should (on consumer protection grounds) government approve to regulate the contents of gambling advertisements?

The spread of legal gambling to the majority of states and the removal of advertising restrictions for much of the gambling market has probably made statutes prohibiting gambling advertising

indefensible under the Supreme Court's interpretation of the First Amendment's commercial speech protection. If Federal law is invalidated by the courts or changed by Congress, there will be a pressing need for new law and regulation to set standards for honesty and disclosure in all gambling advertisements, including ads for state-sponsored lotteries. HOLLIS ROBBINS
MICHAEL ROTHMAN San Francisco, April 29, 1991

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