

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

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

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 98–387. Argued April 27, 1999— Decided June 14, 1999

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, 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, 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, interre-

2 GREATER NEW ORLEANS BROADCASTING ASSN., INC.
v. UNITED STATES
Syllabus

lated. 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 considerations. The Court cannot ignore Congress' unwillingness to adopt a single national policy that consistently endorses either interest asserted by the Government. See, *e.g.*, *Edenfield v. Fane*, 507 U. S. 761, 768. Considering both the quality of the asserted interests and the information sought to be suppressed, the crosscurrents in the scope and application of §1304 become more difficult to defend. Pp. 10–14.

(c) As applied to petitioners' case, §1304 cannot satisfy the third and fourth parts of the *Central Hudson* test. With regard to the Government's first asserted interest—alleviating casino gambling's social costs by limiting demand—the operation of §1304 and its regulatory regime is so pierced by exemptions and inconsistencies that the Government cannot hope to exonerate it. See *Rubin v. Coors Brewing Co.*, 514 U. S. 476, 488. For example, federal law prohibits a broadcaster from carrying advertising about privately operated commercial casino gambling regardless of the station's or casino's location, but exempts advertising about state-run casinos, certain occasional commercial casino gambling, and tribal casino gambling even if the broadcaster is located in or broadcasts to a jurisdiction with the strictest of antigambling policies. Coupled with the FCC's interpretation and enforcement of the statute, it appears that the Government is committed to prohibiting certain accurate product information, not commercial enticements of all kinds, and then only for certain brands of casino gambling. The most significant difference identified by the Government between tribal and other classes of casino gambling is that the former are heavily regulated; but Congress' failure to institute such direct regulation of private casino gambling undermines the asserted justifications for the speech restriction before the Court. There may be valid reasons for imposing commercial

Syllabus

regulations on non-Indian businesses that differ from those imposed on tribal enterprises, but it does not follow that those differences justify abridging non-Indians' freedom of speech more severely than the freedom of their tribal competitors. For the power to prohibit or to regulate particular conduct does not necessarily include the power to prohibit or regulate speech about that conduct. To the extent that federal law distinguishes among information about tribal, governmental, and private casinos based on the identity of their owners or operators, the Government presents no sound reason why such lines bear any meaningful relationship to the Government's asserted interest. Pp. 14–20.

(d) Considering the manner in which §1304 and its exceptions operate and the scope of the speech proscribed, the Government's second asserted interest— “assisting” States with policies that disfavor private casinos— provides no more convincing basis for upholding the regulation than the first. 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 the diverse policies at stake and the social ills that one could reasonably hope such a ban to eliminate. Pp. 20–21.

149 F. 3d 334, reversed.

STEVENS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. REHNQUIST, C. J., filed a concurring opinion. THOMAS, J., filed an opinion concurring in the judgment.