

The Burger Court Opinion Writing Database

Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico

478 U.S. 328 (1986)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

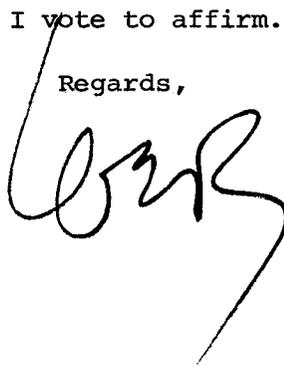
May 5, 1986

Re: 84-1903 - Posadas de Puerto Rico Association v. Tourism Company

MEMORANDUM TO THE CONFERENCE:

Like Byron, after considering this case in light of the
Conference discussions, I vote to affirm.

Regards,

A handwritten signature in black ink, appearing to be 'Byron', written over the typed name 'Byron' in the signature line.



CHAMBERS OF
THE CHIEF JUSTICE

Supreme Court of the United States
Washington, D. C. 20543

June 7, 1986

Re: No. 84-1903 - Posadas de Puerto Rico Assoc.
v. Tourism Co.

Dear Bill,

I had my doubts, but you have persuaded me.

Regards,

Justice Rehnquist

Copies to the Conference

MA
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 5, 1986

No. 84-1903

Posadas de Puerto Rico
Association v. Tourism Company

Dear Thurgood, Harry and John,

We four are in dissent in the
above. I'll try my hand at it.

Bill

Justice Marshall

Justice Blackmun

Justice Stevens

p-8

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: JUN 23 1986

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WJB
Please join me in your dissent
JTB

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1903

POSADAS DE PUERTO RICO ASSOCIATES, DBA
CONDADO HOLIDAY INN, APPELLANT *v.*
TOURISM COMPANY OF PUERTO RICO

ON APPEAL FROM THE SUPREME COURT OF PUERTO RICO

[June —, 1986]

JUSTICE BRENNAN, dissenting.

The Puerto Rico Games of Chance Act of 1948, Act 221 of May 15, 1948, legalizes certain forms of casino gambling in Puerto Rico. Section 8 of the Act nevertheless prohibits gambling casinos from "advertis[ing] or otherwise offer[ing] their facilities to the public of Puerto Rico." *Id.*, p. 754, § 8, codified at 15 P. R. Laws Ann. § 77. Because neither the language of § 8 nor the applicable regulations define what constitutes "advertis[ing] or otherwise offer[ing] gambling facilities to the public of Puerto Rico," appellee Tourism Company was found to have applied the Act in an arbitrary and confusing manner. To ameliorate this problem, the Puerto Rico Superior Court, to avoid a declaration of the unconstitutionality of § 8, construed it to ban only advertisements or offerings directed to the residents of Puerto Rico, and listed examples of the kinds of advertisements that the court considered permissible under the Act. I doubt that this interpretation will assure that arbitrary and unreasonable applications of § 8 will no longer occur.¹ However, even

¹Beyond the specific areas addressed by the Superior Court's "guidelines," § 8 must still be applied on a case-by-case basis; a casino advertisement "passes legal scrutiny" if "the object of the advertisement is the tourist." App. to Juris. Stmt. 41b. Appellee continues to insist that a newspaper photograph of appellant's slot machines constituted an impermissible "advertisement," even though it was taken at a press conference

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To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1903

POSADAS DE PUERTO RICO ASSOCIATES, DBA
CONDADO HOLIDAY INN, APPELLANT *v.*
TOURISM COMPANY OF PUERTO RICO

ON APPEAL FROM THE SUPREME COURT OF PUERTO RICO

[July 1, 1986]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and
JUSTICE BLACKMUN join, dissenting.

The Puerto Rico Games of Chance Act of 1948, Act 221 of May 15, 1948, legalizes certain forms of casino gambling in Puerto Rico. Section 8 of the Act nevertheless prohibits gambling casinos from "advertis[ing] or otherwise offer[ing] their facilities to the public of Puerto Rico." § 8, codified, as amended, at P. R. Laws Ann., Tit. 15, § 77 (1972). Because neither the language of § 8 nor the applicable regulations define what constitutes "advertis[ing] or otherwise offer[ing] gambling] facilities to the public of Puerto Rico," appellee Tourism Company was found to have applied the Act in an arbitrary and confusing manner. To ameliorate this problem, the Puerto Rico Superior Court, to avoid a declaration of the unconstitutionality of § 8, construed it to ban only advertisements or offerings directed to the residents of Puerto Rico, and listed examples of the kinds of advertisements that the court considered permissible under the Act. I doubt that this interpretation will assure that arbitrary and unreasonable applications of § 8 will no longer occur.¹ However,

¹Beyond the specific areas addressed by the Superior Court's "guidelines," § 8 must still be applied on a case-by-case basis; a casino advertisement "passes legal scrutiny" if "the object of the advertisement is the tourist." App. to Juris. statement 40b. Appellee continues to insist that a newspaper photograph of appellant's slot machines constituted an imper-

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 1, 1986

84-1903 - Posadas de Puerto Rico
Association v. Tourism Company

Dear Chief,

Having considered this case again in
light of the Conference discussion, I now
vote to affirm.

Sincerely yours,



The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 26, 1986

84-1903 - Posadas de Puerto Rico
v. Tourism Company of Puerto Rico

Dear Bill,

Please join me.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 23, 1986

Re: No. 84-1903-Posadas de Puerto Rico Associates v.
Tourism Company of Puerto Rico

Dear Bill:

I await the dissent.

Sincerely,

T.M.

T.M.

Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 23, 1986

Re: No. 84-1903-Posadas de Puerto Rico Associates v.
Tourism Company of Puerto Rico

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 27, 1986

Re: No. 84-1903-Posadas de Puerto Rico Associates v.
Tourism Company of Puerto Rico

Dear John:

Please join me in your dissent.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

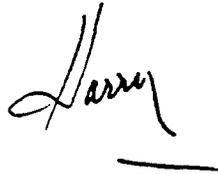
June 27, 1986

Re: No. 84-1903, Posadas de Puerto Rico
Associates v. Tourism Company

Dear Bill:

Please join me in your dissenting opinion. I am also
joining John.

Sincerely,



Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 27, 1986

Re: No. 84-1903, Posadas de Puerto Rico
Associates v. Tourism Company

Dear John:

Please join me in your dissenting opinion. I am also
joining Bill.

Sincerely,



Justice Stevens

cc: The Conference

15

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 28, 1986

84-1903 Posadas de Puerto Rico v. Tourism Company

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1903

POSADAS DE PUERTO RICO ASSOCIATES, DBA
CONDADO HOLIDAY INN, APPELLANT *v.*
TOURISM COMPANY OF PUERTO RICO

ON APPEAL FROM THE SUPREME COURT OF PUERTO RICO

[May —, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

In this case we address the facial constitutionality of a Puerto Rico statute and regulations restricting advertising of casino gambling aimed at the residents of Puerto Rico. Appellant Posadas de Puerto Rico Associates, doing business in Puerto Rico as Condado Holiday Inn Hotel and Sands Casino, filed suit against appellee Tourism Company of Puerto Rico in the Superior Court of Puerto Rico, San Juan Section. Appellant sought a declaratory judgment that the statute and regulations, both facially and as applied by the Tourism Company, impermissibly suppressed commercial speech in violation of the First Amendment and the equal protection and due process guarantees of the United States Constitution.¹ The superior court held that the advertising restrictions had been unconstitutionally applied to appellant's past conduct. But the court adopted a narrowing construction of the statute and regulations and held that, based on such a construction,

¹We have held that Puerto Rico is subject to the First Amendment Speech Clause, *Balzac v. Porto Rico*, 258 U. S. 298, 314 (1922), the Due Process Clause of either the Fifth or the Fourteenth Amendment, *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U. S. 663, 668-669, n. 5 (1974), and the equal protection guarantee of either the Fifth or the Fourteenth Amendment, *Examining Board v. Flores de Otero*, 426 U. S. 572, 599-601 (1976). See generally *Torres v. Puerto Rico*, 442 U. S. 465, 468-471 (1979).

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

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J. 14

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1903

POSADAS DE PUERTO RICO ASSOCIATES, DBA
CONDADO HOLIDAY INN, APPELLANT *v.*
TOURISM COMPANY OF PUERTO RICO

ON APPEAL FROM THE SUPREME COURT OF PUERTO RICO

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PP 15, 16, 18, AND

STYLISTIC CHANGES THROUGHOUT

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1903

POSADAS DE PUERTO RICO ASSOCIATES, DBA
CONDADO HOLIDAY INN, APPELLANT *v.*
TOURISM COMPANY OF PUERTO RICO

ON APPEAL FROM THE SUPREME COURT OF PUERTO RICO

[June —, 1986]

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In this case we address the facial constitutionality of a Puerto Rico statute and regulations restricting advertising of casino gambling aimed at the residents of Puerto Rico. Appellant Posadas de Puerto Rico Associates, doing business in Puerto Rico as Condado Holiday Inn Hotel and Sands Casino, filed suit against appellee Tourism Company of Puerto Rico in the Superior Court of Puerto Rico, San Juan Section. Appellant sought a declaratory judgment that the statute and regulations, both facially and as applied by the Tourism Company, impermissibly suppressed commercial speech in violation of the First Amendment and the equal protection and due process guarantees of the United States Constitution.¹ The Superior Court held that the advertising restrictions had been unconstitutionally applied to appellant's past conduct. But the court adopted a narrowing construction of the statute and regulations and held that, based on such a construction,

¹We have held that Puerto Rico is subject to the First Amendment Speech Clause, *Balzac v. Porto Rico*, 258 U. S. 298, 314 (1922), the Due Process Clause of either the Fifth or the Fourteenth Amendment, *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U. S. 663, 668-669, n. 5 (1974), and the equal protection guarantee of either the Fifth or the Fourteenth Amendment, *Examining Board v. Flores de Otero*, 426 U. S. 572, 599-601 (1976). See generally *Torres v. Puerto Rico*, 442 U. S. 465, 468-471 (1979).

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 23, 1986

Re: 84-1903 - Posadas de Puerto Rico Associates
v. Tourism Company of Puerto Rico

Dear Bill:

I shall await further writing.

Respectfully,



Justice Rehnquist

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

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JPS
Please join me
you dissent
M

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1903

POSADAS DE PUERTO RICO ASSOCIATES, DBA
CONDADO HOLIDAY INN, APPELLANT *v.*
TOURISM COMPANY OF PUERTO RICO

ON APPEAL FROM THE SUPREME COURT OF PUERTO RICO

[June —, 1986]

JUSTICE STEVENS, dissenting.

The Court concludes that “the greater power to completely ban casino gambling necessarily includes the lesser power to ban advertising of casino gambling.” *Ante*, at 16. Whether a State may ban all advertising of an activity that it permits but could prohibit—such as gambling, prostitution, or the consumption of marijuana or liquor—is an elegant question of constitutional law. It is not, however, appropriate to address that question in this case because Puerto Rico’s rather bizarre restraints on speech are so plainly forbidden by the First Amendment.

Puerto Rico does not simply “ban advertising of casino gambling.” Rather, Puerto Rico blatantly discriminates in its punishment of speech depending on the publication, audience, and words employed. Moreover, the prohibitions, as now construed by the Puerto Rico courts, establish a regime of prior restraint and articulate a standard that is hopelessly vague and unpredictable.

With respect to the publisher, in stark, unabashed language, the Superior Court’s construction favors certain identifiable publications and disfavors others. If the publication (or medium) is from outside Puerto Rico, it is very favored indeed. “Within the ads of casinos allowed by this regulation figure . . . movies, television, radio, newspapers, and trade magazines which may be published, taped, or filmed in

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Estabrook
Justice O'Connor

From: Justice Stevens

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SUPREME COURT OF THE UNITED STATES

No. 84-1903

POSADAS DE PUERTO RICO ASSOCIATES, DBA
CONDADO HOLIDAY INN, APPELLANT *v.*
TOURISM COMPANY OF PUERTO RICO

ON APPEAL FROM THE SUPREME COURT OF PUERTO RICO

[July 1, 1986]

JUSTICE STEVENS, with whom JUSTICE MARSHALL and
JUSTICE BLACKMUN join, dissenting.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 23, 1986

Re: 84-1903 Posadas de Puerto Rico Associates, dba
Condado Holiday Inn v. Tourism Company
of Puerto Rico

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference