

such statements as well. Had the United States chosen to name NCPG's officers individually, they could have extended the Section IV(B) speech restrictions to them.

The First Amendment also protects the right of individuals to "peaceably" assemble and "petition the Government for a redress of grievances". The PFJ imposes restraints on these rights. By forbidding NCPG from expressing views that disagree with the United States' position on competition, NCPG is arguably prohibited from lobbying other branches of the government, such as Congress, to alter or abolish the policy set forth by the Department of Justice in this matter. The United States is trying to prevent any future dissent or discussion of the merits of NCPG's policies with respect to competition among its affiliates. This not only violates the plain meaning of the First Amendment, but it usurps the potential role of Congress and the judiciary in making future assessments arising from this case. Such drastic measures bear no relation to the stated objectives of the PFJ, namely to prevent allegedly anticompetitive conduct. The Constitution makes a clear distinction between punishing speech and punishing actual illegal conduct. The United States failed to make this distinction in formulating the PFJ.

Finally, the entire PFJ unreasonably interferes with the free association and assembly rights of NCPG and its members. For all the Government's complaining over alleged restraints of trade, this case arises solely from the voluntary actions of NCPG's members. The state affiliates agreed to participate in, and abide by, NCPG's collective decision-making process. They agreed to restrict their competitive conduct, as was their right. A key element of contract law is that a party may agree not to do something in exchange for consideration, which in this case was continued membership in NCPG. These rights should not be impugned upon by the United States for no better reason than certain consumers might be temporarily inconvenienced. Consumers, in this context, have no right to demand NCPG act a certain way or promulgate certain rules. There is a right to contract; there is no corresponding right to demand a service from certain producers, as the United States erroneously argues.

4. Availability of Other Remedies

The United States does not identify any specific "private" customers that were allegedly injured by NCPG's policies, only a few state governments. It is odd for the United States to contend

state governments are powerless to direct the procurement of particular services as the result of a private association's "anticompetitive" actions. For instance, the United States contends Nebraska was denied the benefits of competition when the Minnesota NCPG affiliate was barred under the organization's rules from bidding for Nebraska's business. If this were the case, and Nebraska was unhappy with the options presented, why then didn't Nebraska simply create another option? If NCPG is getting in the way, a state could easily create its own agency to provide problem gambling services. Alternatively, the state could impose licensing or other professional requirements to ensure problem gambling services are provided on terms deemed acceptable to the state's interests.¹⁰ In any case, there appears to be little practical justification for wielding a blunt federal remedy like this PFJ to dispose of a matter that could be dealt with better by the states.

5. Conclusion

For the numerous independent grounds discussed above, the Court should reject the PFJ as inconsistent with the public interest under the Tunney Act. The Government has not alleged facts sufficient to warrant any antitrust relief, and the remedies contained in the PFJ unreasonably restrain NCPG's First Amendment rights, as well as the right of NCPG members to voluntarily contract.

Respectfully Submitted, The Center for the Advancement of Capitalism

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¹⁰ CAC does not support any governmental use of force to affect economic outcomes. Nor do we consider "problem gambling services" the proper domain of the state. This case, however, involves only the alleged restraint of competition in the marketplace, and to that end, our suggestion is merely that state customers can remedy their situation without resorting to federal antitrust intervention.

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day emergency notice of information collection under review: reinstatement, with change, of a previously approved collection for which approval has expired; claim for death benefits.

The U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by October 30, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395-5806, Washington, DC 20503. Comments are encouraged and will be accepted for 60 days until December 22, 2003.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments, suggestions, or questions regarding additional information, including requests for copies of the proposed information collection instrument with instructions, should be directed to Sharon Williams via e-mail at SharonW@ojp.usdoj.gov or via facsimile at (202) 307-0036.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who