

SUPREME COURT OF LOUISIANA

No. 02-CA-0265

CASINO ASSOCIATION OF LOUISIANA & INDIVIDUAL MEMBERS

VERSUS

**STATE OF LOUISIANA,
THROUGH THE HONORABLE MURPHY J. FOSTER, GOVERNOR,
THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL**

**ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT,
PARISH OF EAST BATON ROUGE, JUDGE TIMOTHY E. KELLEY**

CALOGERO, Chief Justice, dissents and assigns the following reasons:

I dissent from the majority’s disposition upholding the constitutionality of the certain provisions of La. Rev. Stat. 18:1505.2(L) prohibiting campaign contributions from the riverboat and land-based casino industry because I find this case indistinguishable from our recent decision in Penn v. State, 99-2337 (La. 10/29/99), 751 So. 2d 823, cert. denied, 529 U.S. 1109, 120 S.Ct. 1962, 146 L.Ed. 2d 793 (2000), in which we declared unconstitutional certain provisions of La. Rev. Stat. 18:1505.2(L) prohibiting campaign contributions by the video poker industry. The provisions at issue in this case, like the provisions at issue in Penn, are an absolute prohibition to candidate and political committee contributions by casinos, not merely a limit on such contributions. The provisions thus entirely disallow the symbolic act of contribution. Therefore, as the majority of this court found in Penn, I find in this case that the contested provisions’ complete prohibition of contributions is more than merely a “marginal restriction” on the casino’s First Amendment rights as allowed by Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed. 659 (1976), and therefore cannot be outweighed by the government’s interest in preventing “political corruption.”

Furthermore, I do not believe that the United State's Supreme Court's more recent decision of Nixon v. Shrink Missouri Government PAC, 528 U.S. 377, 120 S.Ct. 897, 145 L.Ed. 2d 886 (2000), is applicable to this case. I disagree with the majority that Shrink Missouri sets out the burden of proof that the government must meet in analyzing this particular restriction on campaign contributions. Shrink Missouri involved a "contribution limit," not a contribution prohibition, a critical distinction recognized by this court in Penn.

Although the majority attempts to distinguish this case from Penn, I do not believe a significant distinction exists, and therefore, I believe that the majority's decision effectively overrules our prior jurisprudence on this issue. Because I believe our decision in Penn is correct, I respectfully dissent from the majority's decision, and I would find unconstitutional the provisions of La. Rev. Stat. 18:1505.2(L) prohibiting campaign contributions by the riverboat and land-based casino industry.