



TheState.com | News | Business | Sports | Entertainment | Living | Classifieds | Jobs | Cars | Homes |

State, The (Columbia, SC)

2000-06-30

Section: METRO/REGION

Edition: FINAL

Page: B1

## POKER HAD ROLLER-COASTER RIDE THROUGH COURTS

*CLIF LeBLANC, Staff Writer*

When video poker was gaining a foothold in South Carolina in the early 1980s, the courts and the law were its best friends.

Judge after judge ruled in favor of electronic gambling, bound by their interpretations of laws that critics now say were written vaguely by design. The industry and its stable of crafty lawyers beat back every attempt to declare machines or payouts illegal. Defending gambling interests grew so lucrative that some lawyers who once prosecuted poker operators switched sides.

The Supreme Court, whose motto is "None higher," initially gave the industry its blessing.

In 1984 and '91, the justices issued seminal rulings that cleared the way for a gambling explosion that burgeoned into \$3 billion in annual poker revenues. That's about half the state budget.

More than a decade and lots of battles in courtrooms and the chambers of the Legislature later, those who birthed video gaming would kill it.

Last year, the Supreme Court - with different members and tougher laws on which to rule - pulled the plug, effective Saturday, July 1.

This court ruled the machines legal 15 years before, then approved payouts.

The court would finally interpret the current \$125 daily payout cap to mean that gamblers cannot walk away with thousands in winnings. It took six years to settle that critical battle in the poker wars.

Poker wins, loses in same courts. The court reversed itself in another big poker fight.

In July 1995, the court told poker operators they would not win a fight to keep poker legal in 12 counties that voted to ban gambling the year before.

"We do not believe appellant has made a sufficient showing that he will be likely to succeed on the merits," the court wrote.

Sixteen months later the justices ruled the other way. They reinstated poker in all counties,

saying it's unconstitutional to make gambling legal in 34 counties and illegal in 12.

Overturing the 12-county ban helped the industry's pocketbook but damaged it politically.

"We made a deal, had this election and a lot of the political people felt the industry hadn't kept up its end of the bargain," Ken Allen, a Columbia lawyer who represents many of the large casino operations, said this week. "It got personal for some people at that point."

Poker operators enjoyed success, then setbacks in federal court, too.

A few blocks from the Supreme Court, a federal judge who, as the '90s ended, was credited with speeding the end of the industry, issued a ruling that gave operators protection from criminal prosecution.

In January 1991, Judge Joe Anderson stopped an indictment of Jimmy McDonald, the man who would become the gambling king of South Carolina.

In that case, Anderson upheld a law that said payouts were legal as long as people, not the machines themselves, distributed winnings. Unlike gambling devices in other states, the machines here print ticket stubs that show the payout.

Anderson made clear even at that time that he felt shackled by the law. His written decision chastised the Legislature.

"As simple as it may appear to extend the meaning of the statute to prohibit the human action just as it prohibits the mechanical action, the Legislature's failure to directly address this precise activity must be acknowledged," Anderson wrote on Jan. 18, 1991.

In the beginning. The cases that rooted video poker in this state began in 1984.

Machines were starting to crop up in mom-and-pop stores, night clubs and seedy backrooms.

Owners were capitalizing on an exception to the state's general ban on gambling. Lawmakers had made certain coin-operated machines a legal form of gambling.

Richland County deputies seized machines with names like "Cute Girl," "Carolina Cup" and "Bally Double Up" from the Red Carpet Lounge and Darrells Club.

Then-Sheriff Frank Powell and then-5th Circuit Deputy Solicitor Dick Harpootlian wanted the courts to settle whether the machines amounted to unconstitutional lotteries because they were games of chance, not skill. Powell and Harpootlian never argued the machines were used for illegal gambling.

The Supreme Court unanimously settled the question. It ruled on Jan. 10, 1984, "A lottery as contemplated by the constitution simply is not involved." It underscored that opinion four years later, but by a slim margin.

By 1991, when the next big poker case was before the justices, Harpootlian was a defense attorney.

He and then-partner **Jack Swerling** made the first courtroom argument that payouts by people rather than machines were legal.

"It's a clever lawyer trick," **Swerling** said this week. "The credit ought to go to Dick and me with coming up with the idea that it was an exception to the statute."

Harpootlian, now state Democratic Party chairman, and other leading poker lawyers did not return calls for comment.

**Swerling** suspects that their client, Terry Blackmon of Lancaster, already had gotten legal advice that the law was vulnerable.

On April 22, 1991, a unanimous Supreme Court decision said such payouts were legal because the law prohibited the machines from delivering cash.

"I certainly had no idea where this was going to go," **Swerling** said. "It got out of hand."

Big wins and gnats. Poker erupted as it won skirmishes.

Gambling regulators wrote rules that allowed casinos to sprout all over, especially in the growing tourist markets at state lines.

In October 1995, a state judge ruled that the \$125 gambling cap did not count the money wagered. That allowed the industry to press its argument that the payout cap didn't mean what the law said.

The gambling bonanza grew unabated.

In early 1996, there were 18,400 machines. By mid-1997, the number jumped to 31,000. At its peak, there were almost 37,000 machines raking in average gross profits of \$25,000 each per year.

Judge Anderson once observed: "This translates into over \$660 being wagered on video poker by every man, woman and child in South Carolina."

The industry's only apparent weakness in court was a growing number of lawsuits that sought to reclaim players' gambling losses.

Judges routinely upheld a 1712 law that lets even relatives of gamblers sue for losses greater than \$50.

Poker lawyer Allen dismissed those losses as "the proverbial gnat" buzzing around the behemoth gaming industry.

Yet by 1997, storm clouds were developing around poker.

An administrative law judge, Ralph King Anderson III, began turning the tide in January 1997. He ruled the cap is strictly limited to \$125 per day per location.

A little-noticed lawsuit in Richland County accused the industry of racketeering because it lured gamblers with payouts that exceeded \$125.

Ultimately, a federal appeals court stripped the suit of its sting. But the suit, spurred by Anderson's rulings, pressured poker operators to the legislative bargaining table.

While the payout cap was fought in courtrooms and the General Assembly, poker stayed profitable and risk free.

State regulators never enforced payout violations as criminal offenses. They said the law was unclear.

The Supreme Court clarified it in July 1999. It said violators can be declared racketeers and go to prison for up to 20 years. That ruling was six years after the law creating the payout cap was enacted.

Poker takes the hit. Later in 1999, the justices dropped a bombshell on the industry.

On Oct. 14, a unanimous court stopped a referendum that would have allowed voters to decide whether machine gambling would remain legal.

But the court upheld a portion of the same new poker law that declared it illegal unless voters approved.

"That was the nuclear hit," Allen said.

Just last week, the court rejected the industry's latest attempt to hold off its sunset.

Call Clif LeBlanc at (803) 771-8664 or reach him by e-mail at [cleblanc@thestate.com](mailto:cleblanc@thestate.com).



[News](#) | [Business](#) | [Sports](#) | [Entertainment](#) | [Living](#) | [Shop Local](#) | [Classifieds](#) | [Jobs](#) | [Cars](#) | [Real Estate](#)

[About TheState.com](#) | [About the Real Cities Network](#) | [About the McClatchy Company](#)  
[Terms of Use](#) | [Privacy Policy](#) | [Copyright](#)