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Disp Parties: ALL  
Disp code: CVD / CLS 4618  
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Judge SHJ Clerk SG

DC BK12193 PG272  
  
D-1-GN-07-004179

Filed in The District Court  
of Travis County, Texas BD  
  
JUL 09 2012  
at 12:11 P.M.  
Amalia Rodriguez-Mendoza, Clerk

TEXAS ENTERTAINMENT  
ASSOCIATION, INC., and  
KARPOD, INC.

Plaintiffs,

vs.

SUSAN COMBS, COMPROLLER  
of the STATE OF TEXAS and  
GREG ABBOTT, ATTORNEY  
GENERAL of the STATE OF TEXAS

Defendants.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

345<sup>TH</sup> DISTRICT COURT

### FINAL JUDGMENT

Plaintiffs present a constitutional challenge to a \$5.00 charge per customer on entry into a sexually oriented business that permits the consumption of alcoholic beverages levied by TEX. BUS. & COM. CODE §§47.051-.056 (West 2007), now redesignated TEX. BUS. & COM. CODE §§ 102.051 - 102.056 (hereinafter generally referred to as the Sexually Oriented Business "SOB Tax"). This case was tried from March 2, 2008 to March 6, 2008 after all parties announced ready. Plaintiffs Texas Entertainment Association, Inc. (TEA) and Karpod, Inc. appeared through their representatives and their attorneys. Defendants, Susan Combs, Comptroller of Public Accounts of the State of Texas, and Greg Abbott, Attorney General of the State of Texas, appeared through their representatives and attorneys. Plaintiff TEA sued the State under Chapter 37 of the Texas Rules of Civil Procedure (T.R.C.P.)(the Uniform Declaratory Judgment Action ["UDJA"]), Chapter 112 of the Texas Tax Code, the Texas Constitution article 7, section 3 (the "one-fourth rule") and article 1, section 8 (free speech) 42 U.S.C. § 1983 (free speech) for declaratory relief against the State.

A partial appeal was taken to, and affirmed by the 3<sup>rd</sup> Court of Appeals. The Texas Supreme Court reversed in *Combs v. Texas Entertainment Assoc., Inc.*, 347 S.W.3d 277 (Tex. 2011) on U.S. Constitutional grounds. Certiorari was denied by the U.S. Supreme Court, and the case remanded back to this district court for final adjudication of the remaining issues.

All matters in controversy, legal and factual, were submitted to the Court for its determination. The Court has heard the evidence and arguments of counsel. All parties

filed motions for judgment.

1. The Court HOLDS that the SOB Tax is an occupation tax. The Court also HOLDS that as an occupation tax it does not violate Texas Constitution Art. VII, § 3. Statutes are presumed to be constitutional. If a legislative plan can be justified under any possible state of facts, a court must assume the existence of those facts. A constitutional provision is said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced; and it is not self-executing when it merely indicates principles, without laying down rules by means of which these principles may be given force of law. Thus, the Court HOLDS that Art VII, § 3 is self-executing. It provides, in pertinent part:

(a) One-fourth of the revenue derived from the State occupation taxes shall be set apart annually for the benefit of the public free schools.

TEX. BUS. & COM. CODE §§ 102.054 and 102.055 allocate revenue. TEX. BUS. & COM. CODE § 102.054 provides that:

The comptroller shall deposit the first \$25 million received from the fee imposed under this subchapter in a state fiscal biennium to the credit of the sexual assault program fund.

TEX. BUS. & COM. CODE § 102.055 provides in relevant part that:

(a) The comptroller shall deposit all amounts received from the fee imposed under this subchapter after the first \$25 million in a state fiscal biennium in the Texas health opportunity pool established under Subchapter N, Chapter 531, Government Code. Money deposited in the pool under this section may be used only to provide health benefits coverage premium payment assistance to low-income persons through a premium payment assistance program developed under that subchapter.

The SOB Tax is administered by the Comptroller of Public Accounts of the State of Texas under Title 2 of the Tax Code, which comprehensively establishes collection and other procedural safeguards. TEX. BUS. & COM. CODE § 47.056. The Comptroller, in turn, is subject to the Government Code in the exercise of her tax and other fiscal responsibilities. TEX. GOV'T CODE ch. 403. Since the Legislature is presumed to enact constitutional provisions, and since the SOB Tax allocates revenues, Art VII, § 3 and §§ 102.054 and 102.055 must and can be read harmoniously by the Comptroller.

TEX. GOV'T CODE §403.035 grants the Comptroller authority to create and use accounts for the collection, allocation and distribution of revenue, including allocation of revenue to be deposited to the credit of the available school fund. This authority permits

the Comptroller to apportion one-fourth of the SOB Tax gross revenue to the public schools since this court of competent jurisdiction has ruled that the assessment is an occupation tax. TEX. BUS. & COM. CODE § 102.054 can reasonably be read to refer to net monies received. The effect would be that 25% of the SOB Tax gross revenues would be set aside for public schools, and of the 75% remaining net money received, the first \$25 million each biennium would then be deposited in the sexual assault program fund, and any additional revenue would be deposited to the Texas health opportunity pool established under Subchapter N, Chapter 531, Government Code.

2. The Court HOLDS that the SOB Tax does not violate the Equal Protection Clause of the Texas Constitution Art. VIII, § 2.
3. The Court HOLDS that the SOB Tax does not violate the Texas Constitution Art. I, §8.
4. The Court DENIES Plaintiffs' application for permanent injunction because the tax complained of is constitutional and enforceable.
5. This judgment finally disposes of all claims and all parties, and is appealable.
6. The Court orders execution to issue for this judgment.

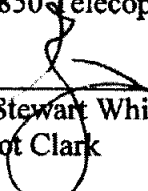
SIGNED on July 9, 2012.

  
JUDGE SCOTT JENKINS

APPROVED AS TO FORM ONLY

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