

FILED

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

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GUILFORD COUNTY, C.S.C.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
HIGH POINT DIVISION
08 CVS 457

HEST TECHNOLOGIES, INC. and
INTERNATIONAL INTERNET
TECHNOLOGIES, LLC,

Plaintiffs,

v.

STATE OF NORTH CAROLINA, ex rel.
BEVERLY PURDUE, GOVERNOR, in her
official capacity; NORTH CAROLINA
DEPARTMENT OF CRIME CONTROL
AND PUBLIC SAFETY; SECRETARY OF
CRIME CONTROL AND PUBLIC SAFETY
REUBEN YOUNG, in his official capacity;
ALCOHOL LAW ENFORCEMENT
DIVISION; DIRECTOR OF ALCOHOL
LAW ENFORCEMENT DIVISION JOHN
LEDFOED, in his official capacity.

Defendants.

ORDER AND FINAL JUDGMENT

THIS CAUSE coming to be heard, and being heard, by the undersigned Superior Court Judge Presiding over the November 18, 2010 civil session of Guilford County Superior Court, and by appointment of the Chief Justice pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts, on the Motion to Dismiss of Defendants (hereafter "the State") pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure and the Motion for Summary Judgment of Plaintiffs pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, and the Court having considered the motions, briefs, pleadings, and other materials of record, and having heard arguments of counsel, now makes the following findings:

1. Plaintiffs filed this action in 2008 seeking to enjoin the State and its officials from enforcing the gambling laws of North Carolina against their sweepstakes operations on the ground that said sweepstakes operations were not prohibited under the North Carolina General Statutes.

2. On April 16, 2008, the Court entered a Preliminary Injunction prohibiting state officials from prosecuting, or threatening to prosecute, Plaintiffs' sweepstakes operations.

3. Following the enactment of 2008 N.C. Sess. Laws 122 (which imposed certain restrictions on server-based electronic game promotion), Plaintiffs filed their First Amended Complaint, which alleged that Plaintiffs had modified their machines to comply with the 2008 legislation. The Court subsequently amended its Preliminary Injunction so as to also bar state officials from enforcing 2008 N.C. Sess. Laws 122 against Plaintiffs' sweepstakes operations.

4. On July 20, 2010, the General Assembly enacted 2010 N.C. Sess. Laws 103 (hereafter "House Bill 80"), which expressly prohibited the operating, or placing into operation, of an electronic machine or device to either (1) conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize; or (2) promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize.

5. Plaintiffs subsequently filed a Second Amended Complaint, alleging (1) that House Bill 80 is unconstitutional in that the phrase "entertaining display" is overbroad for purposes of the First Amendment of the United States Constitution, as made applicable to states under the Fourteenth Amendment to the United States Constitution, and Article I, § 14 of the North Carolina Constitution; and (2) that House Bill 80 also violated several other provisions of the United States Constitution and North Carolina Constitution. In their Second Amended

Complaint, Plaintiffs sought preliminary and permanent injunctive relief against the enforcement of House Bill 80 as to their sweepstakes operations.

6. The State filed a motion pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure seeking (1) the dismissal of the Second Amended Complaint; and (2) the dissolution of the Court's previously entered Preliminary Injunction.

7. Plaintiffs filed a motion for summary judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure seeking a declaration that House Bill 80 is unconstitutional.

8. The Court now rules as follows:

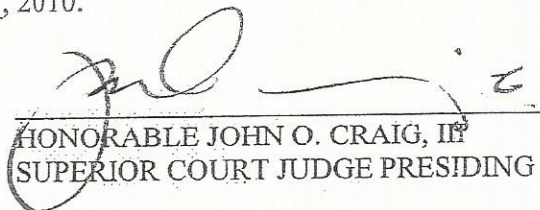
- a. The phrase "entertaining display" is statutorily defined in House Bill 80. That statutory definition is codified as N.C. Gen. Stat. § 14-306.4(a)(3)(a.- i.).
- b. The statutory definition of "entertaining display" contained in N.C. Gen. Stat. § 14-306.4(a)(3) does not violate the First Amendment of the United States Constitution or Article I, § 14 of the North Carolina Constitution, except with respect to subpart (i). The Court finds that subpart (i) is overbroad and constitutes a prior restraint on free expression in violation of the First Amendment of the United States Constitution and Article I, § 14 of the North Carolina Constitution. Accordingly, the State's Motion to Dismiss is denied, and Plaintiffs' Motion for Summary Judgment is hereby granted, with respect to Plaintiffs' challenge to subpart (i).
- c. In all other respects, House Bill 80 is constitutional and serves as a permissible exercise of the State's police powers as to the regulation of gambling. Accordingly, the State's Motion to Dismiss is hereby granted except as set out in Paragraph 8(b) of this Order. Plaintiffs' Motion for

Summary Judgment is denied except as set out in Paragraph 8(b) of this Order.

- d. The Preliminary Injunction previously entered by the Court in this action is hereby dissolved. As of December 1, 2010, promotional sweepstakes that use games of the types listed in N.C. Gen. Stat. § 14-306.4(a)(3)(a)–(h) shall be illegal and law enforcement shall be free to take enforcement action against and the State shall be free to prosecute violations of such statute that occur after such date.
- e. Promotional sweepstakes that use games of the types not listed in N.C. Gen. Stat. § 14-306.4(a)(3)(a)–(h) remain subject to compliance in all other respects with the North Carolina General Statutes and their operators may be prosecuted for any such violations of the North Carolina General Statutes.

9. With regard to the Motion to Intervene filed by petitioners Innovative Entertainment of North Carolina, LLC and Frontier Gaming, Inc., that motion is denied without prejudice to the right of these petitioners to renew said motion if any aspect of the rulings contained in this Order are remanded for further proceedings in this Court.

This the 30 day of Nov., 2010.


HONORABLE JOHN O. CRAIG, III
SUPERIOR COURT JUDGE PRESIDING

1. On November 30, 2010, the Court entered an Order and Final Judgment declaring that subsection (i) of N.C. Gen. Stat. § 14-306.4(a)(3) was overbroad and therefore violated the First Amendment of the United States Constitution.

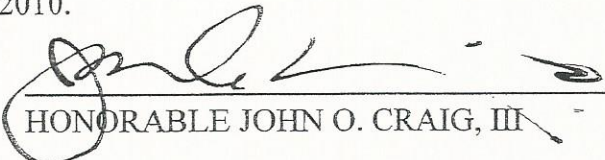
2. On December 6, 2010, the State filed a Motion to Stay the Court's Order and Final Judgment pending appeal, arguing that the State would be irreparably harmed if it is precluded from enforcing subsection (i) of N.C. Gen. Stat. § 14-306.4(a)(3) while this case is on appeal. Plaintiffs submitted a written response in opposition as well as supporting affidavits. Plaintiffs argued that a stay of the Court's Order and Final Judgment would result in irreparable injury to Plaintiffs and that the State failed to present sufficient evidence that it will suffer irreparable harm if a stay is not issued.

3. Based on the arguments of counsel and the evidence before the Court, the Court denies the State's motion to stay. The Court held in its Order and Final Judgment that subsection (i) of N.C. Gen. Stat. § 14-306.4(a)(3) is overbroad and violates the First Amendment. A stay is therefore inappropriate because it would permit ongoing violations of the First Amendment while the case is before the Court of Appeals.

4. The Court finds that the State will not suffer irreparable injury in the absence of a stay and that the balancing of the respective harms in this action are such that the Court will not stay the Order and Final Judgment pending appeal in this matter.

WHEREFORE, the State's Motion for Stay is hereby DENIED.

This the 22 day of December, 2010.


HONORABLE JOHN O. CRAIG, III