

IN THE CIRCUIT COURT FOR THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.

BOARDWALK BROTHERS, INC., a Florida
Corporation and PLAY IT AGAIN FLA, LLC, a
Florida Limited Liability Company,
Plaintiffs,

v.

MICHAEL SATZ, State Attorney for the 17th
Judicial Circuit, in and for the State of Florida,
Defendant,

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action for declaratory and injunctive relief seeking to declare unconstitutional and enjoin specific sections of the newly enacted Chapter 2013-2, the Committee Substitute for House Bill No. 155, amending, *inter alia*, sections 849.16 and 849.161, Florida Statutes, relating to “slot machine or device” and amusement games or machines. A copy of the Act, approved by the Governor on April 10, 2013, and taking effect on that day, is attached as Exhibit A to this Complaint.

PARTIES

2. BOARDWALK BROTHERS, INC., is a Florida Corporation operating an amusement game arcade at 7170-7172 North University Drive, Tamarac, Florida 33321. The Arcade provides 60 amusement game machines, and until April 10, 2013, the operation of, and use of those amusement game machines complied with the provisions of Florida Statute §849.161.

3. PLAY IT AGAIN FLA, LLC, is a Florida Limited Liability Company operating an amusement game arcade at 6740 Sterling Road, Davie, Florida 33324. The Arcade provides

105 amusement game machines and until April 10, 2013, the operation of, and use of those amusement games complied with the provisions of Florida Statute §849.161.

4. Defendant Michael Satz is the State Attorney for the Seventeenth Judicial Circuit in and for Broward County and in such capacity is charged with the enforcement and prosecution of Florida criminal laws within Broward County, Florida. Violations of Florida Statute §849.161 constitute violations of Florida criminal laws and therefore State Attorney Satz would be the enforcer/prosecutor of alleged violations of §849.161 occurring in Broward County.

JURISDICTION

5. This Court has jurisdiction to enter declaratory and injunctive relief pursuant to Florida Statute §86.011 and Article V, §20 of the Florida Constitution. This action is brought to enforce the guarantees of substantive due process of law and prohibitions against vagueness and arbitrary and irrational legislation that is discriminatory and does not bear a rational relationship to a legitimate governmental purpose. The prohibitions against such legislation are guaranteed by the 5th and 14th Amendments to the Constitution of the United States, and Article I, §9 of the Florida Constitution. Relief is sought pursuant to Florida law authorizing declaratory relief and injunctive relief and Title 42 U.S.C. §§1983 and 1988.

FACTS

6. For years, BOARDWALK BROTHERS, INC., has operated an amusement arcade in Tamarac. The present corporation owners have operated the Arcade since 2011.

7. PLAY IT AGAIN FLA, LLC, has operated an amusement arcade in Davie Florida since 2012.

8. Both Plaintiffs operate arcade amusement centers with bona fide amusement games and/or machines for the entertainment of the general public and tourists in conformity with the provisions of Section 849.161 Florida Statutes (1996) and interpretations of those

statutes. Neither of the Plaintiffs have ever been cited for any violations of Florida (or any other) law as a consequence of the operation of their respective amusement arcades. But for the provisions of Chapter 2013-2, they would be operating the aforementioned amusement arcade games.

9. Chapter 2013-2 excludes from the definition of slot machines the practices set forth in the amended section 849.161. That amendment provides, in relevant part:

849.161 Amusement games or machines; when chapter inapplicable. –

(1) As used in this section, the term:

(a) “Amusement games or machines” means games which operate by means of the insertion of a coin, and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons, the cost value of which does not exceed 75 cents on any game played, which may be exchanged for merchandise. The term does not include casino-style games in which the outcome is determined by factors unpredictable by the player or games in which the player may not control the outcome of the game through skill.

(b) “Arcade amusement center” means a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility.

(c) “Game played” means the event occurring from the initial activation of the machine until the results of play are determined without payment of additional consideration. Free replays do not constitute additional consideration.

(d) “Merchandise” means noncash prizes, including toys and novelties. The term does not include cash or any equivalent thereof, including gift cards or certificates, or alcoholic beverages.

10. The legislation makes clear that “Amusement games and machines” are not, and have not been, illegal machines and may be operated at “Arcade amusement centers” with 50 or

more machines. The Plaintiffs' amusement centers comply with the former and present legislative description.

11. However, Chapter 2013-2 in amending section 849.161, contains certain provisions and descriptions that render the statute arbitrary, irrational, not reasonably related to a legitimate governmental purpose, and void for vagueness.

12. Because the described amusement games are not illegal under Florida law, limiting operation of the machines to "insertion of a coin" is vague, arbitrary and not rationally related to any legitimate governmental purpose.

13. Because the described amusement games are not illegal, the definition of "merchandise" is vague, arbitrary and not rationally related to any legitimate governmental purpose. In addition, the specific exclusion of "gift cards or certificates" from the definition of "merchandise," is arbitrary and not rationally related to any legitimate governmental purpose.

14. Although the amended section 849.161 provides for the legal operation of amusement games or machines, the exclusion from that protection is compromised by the section 849.161(1)(a) provision that "the term [amusement games or machines] does not include casino style games in which the outcome is determined by factors unpredictable by the player or games in which the player may not control the outcome of the game." The term "casino style games" has no common definition and is therefore void for vagueness and leaves open the possibility of enforcement despite the lack of standards in describing "casino style games."

15. "Outcome is determined by factors unpredictable by the player" is void for vagueness. The outcome of life is determined by factors unpredictable by the player. The lack of standards leaves open the possibility of enforcement without restraint.

16. “Games in which the player may not control the outcome of the game through skill” is void for vagueness. The lack of definitions of “skill,” and “control of outcome” fails to meet the constitutional requirements that criminal offenses be defined with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.

CAUSE OF ACTION

17. As alleged above, the provisions set forth in paragraphs 12, 13, 14 15 and 16 are vague and not rationally related to any legitimate governmental purpose. As a result, those provisions deny the Plaintiffs rights guaranteed by the Fifth and Fourteenth Amendments and Article I, § 9 of the Florida Constitution.

PRAYER FOR RELIEF

18. The provisions complained of above subject the Plaintiffs to irreparable injury. The threat of criminal enforcement of statutory provisions that fail to define a criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and thus encourages arbitrary and discriminatory enforcement constitutes irreparable injury which is subject to injunctive relief.

19. The provisions complained of above, to the extent that they do not have a reasonable and substantial relation to the object sought to be obtained and are arbitrary, capricious and not rationally related to a legitimate governmental purpose, constitute irreparable injury because they threaten the Plaintiffs with criminal sanctions as a consequence of continuing conduct which had, prior to April 10, 2013, not been contrary to Florida law.

20. Wherefore, Plaintiffs respectfully request the Court to enter a temporary or preliminary injunction, and ultimately a permanent injunction, enjoining the operation of the

provisions of Chapter 2013-2 set forth above, and declare that those provisions violate the 5th and 14th Amendments to the United States Constitution and Article I, §9 of the Florida Constitution.

21. Plaintiffs also request that the Court award attorneys' fees and costs pursuant to Title 42 U.S.C. §§ 1983 and 1988 and such other relief as may be appropriate.

DATED this 18th day of April, 2013.

Respectfully submitted,

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VERIFICATION BY MITCHELL FISHER

Under penalties of perjury, I declare that I have read the above Pleading and foregoing and that the facts stated in it are true to the best of my personal knowledge and belief.

**BOARDWALK BROTHERS INC., AND
PLAY IT AGAIN FLA, LLC**

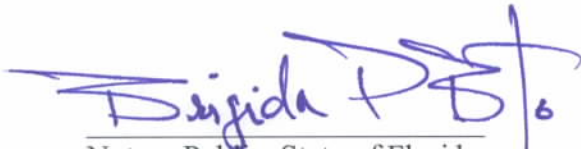
By: 

MITCHELL FISHER, President of Boardwalk Brothers, Inc., and Managing Member of Play It Again Fla, LLC

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing pleading was acknowledged before me this 18th day of April, 2013, by Mitchell Fisher, as President of Boardwalk Brothers Inc., and Managing Member of Play It Again Fla, LLC who is personally known to me or has produced the following identification:

Fla. Div. Lic.



Notary Public, State of Florida
My Commission Expires:

