

VIRGINIA : IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

HIMANSU PATEL,

MELODY WEEKLY,

JUDITH HENDRICKS,

TAKIS KARANGELEN,

TOMMY POSILERO,

and

BOYD MELCHOR,

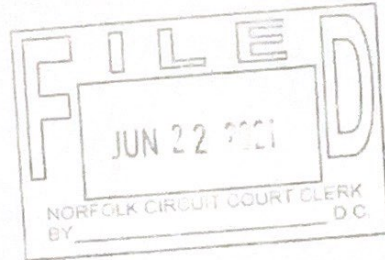
Plaintiffs,

v.

Case No. CL21- 6527

THE COMMONWEALTH OF VIRGINIA,

Defendant.



COMPLAINT FOR INJUNCTIVE RELIEF

COMES NOW the Plaintiffs, Himansu Patel, Melody Weekly, Judith Hendricks, Takis Karangelen, Tommy Posilero, and Boyd Melchor, by undersigned counsel, who seeks a preliminary and permanent injunction halting the termination of their respective rights to operate skill games at their places of business.

In support hereof, the Plaintiffs aver as follows:

1. That the Plaintiffs are residents of the Commonwealth of Virginia, who own and operate businesses in the cities of Norfolk and Virginia Beach, Virginia;
2. That the Plaintiffs are of mixed racial, gender, religious, and national origins;
3. That on April 22, 2020, the Commonwealth of Virginia enacted amendments to



Section 18.2-325 of the Code of Virginia so as to define, regulate, and license the operation of "skill games" throughout the Commonwealth. See, Acts of Assembly, Chapters 1217, 1277 (2020);

4. That those Acts of Assembly variously required any distributor of skill games to seek licensure for such games with the Virginia Alcoholic Beverage Control Authority, to register the locations of all such games in Virginia, and to pay monthly taxes for such games to the Commonwealth. See, Sections 18.2-334.5 of the Code of Virginia (1950), as amended;
5. That pursuant to these Acts of Assembly, a Covid Relief Fund was established for the purpose of "responding to the Commonwealth's needs related to the Coronavirus Disease of 2019 (COVID-19) pandemic." See, Section 2.2-115.1 of the Code of Virginia (1950), as amended;
6. That in order to raise revenue for the Covid Relief Fund, the General Assembly identified, defined, and regulated "skill games" as its sole or primary source of funding;
7. That "skill games" were defined pursuant to those Acts of Assembly as:

[A]n electronic, computerized, or mechanical contrivance, terminal, machine, or other device that requires the insertion of a coin, currency, ticket, token, or similar object to activate or play a game, the outcome of which is determined by any element of skill of the player and that may deliver or entitle the person playing or operating the device to receive cash; cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash; merchandise; or anything of value whether the payoff is made automatically from the device or manually.

See, Section 18.2-325(3)(c)(6) of the Code of Virginia (1950), as amended;



8. That in connection with the operation of their businesses, the Plaintiffs have undertaken and obtained the required licenses authorizing them to operate "skill games" as defined under Section 18.2-325 of the Code of Virginia (1950), as amended;
9. That the Plaintiffs have been lawfully operating skill games upon their businesses premises under the authorities of these Acts of Assembly;
10. That these Acts of Assembly conferred upon the Plaintiffs a legitimate property interest in conducting skill games upon the premises of his business;
11. That the limitations imposed by emergency executive orders restricting public access to businesses during the pendency of the COVID-19 pandemic has substantially negatively affected the Plaintiffs' businesses;
12. That the Plaintiffs' businesses and their continuing business interests are substantially dependent upon the additional revenue derived from the operation of skill games upon their premises in order to remain financially viable;
13. That the termination of skill games in Virginia as of July 1, 2021, will substantially affect, damage, and hinder the Plaintiffs' businesses, potentially to the point of insolvency and closure, for which there is no adequate remedy at law;
14. That notwithstanding the termination of skill games in Virginia as of July 1, 2021, games which are identical or substantially similar remain available for play by casinos or by operators of "historic horse racing" games, which are not owned or operated by individuals of constitutionally-identified suspect classifications;
15. That by virtue of their status as a members of constitutionally-defined suspect classifications, on July 1, 2021 the Plaintiffs will become subject to disparate



treatment from others who operate similar games which are regulated under the Code of Virginia;

16. That the Virginia Human Rights Act, Sections 2.2-3900 *et seq.*, establish that it is the policy of the Commonwealth to:

Safeguard all individuals within the Commonwealth from unlawful discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, status as a veteran, or disability in places of public accommodation . . .

And

Further the interests, rights, and privileges of individuals within the Commonwealth.

See, Sections 2.2-3900(B)(1), (4);

17. That the Plaintiffs each own and operate a "place of public accommodation" within the definition of Section 2.2-3904 of the Code of Virginia;

18. That it is

an unlawful discriminatory practice for any person . . . to refuse, withhold from, or deny any individual, or to attempt to refuse, withhold from, or deny any individual, directly or indirectly, any of the accommodations, advantages, facilities, services, or privileges made available in any place of public accommodation, or to segregate or discriminate against any such person in the use thereof . . . on the basis of race, color, religion, national origin, [or] sex . . .

See, Section 2.2-3904(B);

19. That the Plaintiffs are members of constitutionally-recognized "suspect classifications" by virtue of their race, color, religion, and national origin;
20. That the discriminatory termination of skill games in Virginia deprives the Plaintiffs



of their legitimate property interests in conducting skill games as an integral aspect of their businesses;

21. That a significant proportion of the owners of businesses operating skill games, including the Plaintiffs, are comprised of ethnic minorities and religious minorities;
22. That the discriminatory termination of skill games violates the Virginia Human Rights Act in that it unfairly and prejudicially affects the rights, titles, and interests that the Plaintiffs and other similarly affected business owners have in the conduct of their businesses;
23. That the Court's construction of the Virginia Human Rights Act is subject to liberal interpretation so as to give full effect to the protections intended by the Act. See, Section 2.2-3902;
24. That the Commonwealth of Virginia has no legitimate interest in terminating skill games, particularly when other similarly regulated games remain available for play by other entities;
25. That the termination of skill games in Virginia is arbitrary and capricious in its implementation and discriminatory effect;
26. That the Plaintiffs have filed complaints of unlawful discriminatory practices with the Attorney General of Virginia as required under Section 2.2-3907(A). See, Complaint Pursuant the Virginia Human Rights Act, attached hereto as Exhibit 1;
27. That there is insufficient time remaining before the repeal of skill gaming in Virginia, which is due to commence on July 1, 2021, for the Attorney General to properly conduct and investigation and to issue his findings before that date;
28. That the Plaintiffs respectfully seek a temporary injunction to maintain the status



quo ante delaying any repeal of skill gaming in Virginia so as to allow the Attorney General sufficient time and opportunity to investigate their respective complaints under the Virginia Human Rights Act, which could comprise up to one hundred eighty (180) days as provided under Section 2.2-3907(H), and to allow the Plaintiffs to pursue their claims under the Act;

29. That the Plaintiffs have no other adequate remedy at law;
30. That the Plaintiffs are likely to prevail on their underlying causes of action;
31. That the Plaintiffs would each be substantially and irrevocably injured if injunctive relief is not granted in this matter;
32. That the Commonwealth and its interests would not be injured if injunctive relief is granted in this matter;
33. That upon a balancing of the equities, the Plaintiffs are entitled to the limited injunctive relief sought in this matter;
34. That the public interest lies in the grant of temporary injunctive relief.

WHEREFORE, on the basis of the foregoing, the Plaintiffs, Himansu Patel, Melody Weekly, Judith Hendricks, Takis Karangelen, Tommy Posilero, and Boyd Melchor, each and together respectfully move this Court to enter a temporary restraining order delaying repeal of skill gaming authorization from July 1, 2021, until such time as the Attorney General may review and act upon their complaints of discrimination pursuant to the provisions of the Virginia Human Rights Act, and thereby to vest the Plaintiffs with the legal authority provided under that Act to further protect their business interests, together with such other relief as the Court may determine to be appropriate under the circumstances of this cause.