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TEXAS SUPREME COURT TO HEAR "POLE-TAX" CASE

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The legal battle over Texas' so-called 'pole tax', a \$5 per patron fee at gentlemen's clubs in an effort to fund sexual assault programs in the Lone Star state, is going before the state Supreme Court.

The Supreme Court agreed last week to consider whether the fee is unconstitutional. Lower courts have ruled it an improper regulation of free expression.

Texas lawmakers approved the fee in 2007 and the money was intended to fund programs helping victims of sexual assault. Although many clubs have ignored the fee, the state has so far collected \$13.6 million from 115 businesses, according to the state comptroller's office. That money has been held in an account pending the outcome of the legal fight.

The Texas Entertainment Association, which represents the gentlemen's club industry across the state, sued in 2007 to block the fee. A state district judge first struck it down in 2008. In 2009, the Austin-based 3rd Court of Appeals said it improperly singled out a form of expression, nude dancing, for regulation.

Lawyers for Texas Attorney General Greg Abbott and state Comptroller Susan Combs appealed to the state Supreme Court.

The state has argued the fee is legal because it applies only to clubs that sell alcohol while offering live nude entertainment. The adult clubs argue it is unconstitutional because it applies only to clubs that have nude dancing.

The Texas Association Against Sexual Assault, which supports the fee, contends there's a proven link between live, nude entertainment, consumption of alcohol and sexual violence. The group wants the money to help survivors of sexual assault.

The Houston Chronicle reported in May that about half of the adult clubs in Texas were not paying the fee.

The comptroller's office has said if the state prevails in court, officials will try to collect all unpaid fees and clubs that haven't paid could also be fined.

The Supreme Court scheduled oral arguments in the case for March 25 at the St. Mary's University law school in San Antonio.



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CCV Community Defense Act Advances in Missouri

Legislation placing far-reaching restrictions on adult-entertainment businesses in Missouri won preliminary approval in the state Senate last week and may continue on a legislative fast track thanks to a federal investigation.

Sen. Matt Bartle presented the bill on the Senate floor just two days after he appeared before a federal grand jury in Kansas City to answer questions about the defeat of a nearly identical bill in 2005. To become law, legislation approved Thursday must be voted on once more in the Senate, passed through the House and ultimately signed by the governor. But if successful, it would represent a sea change for adult-oriented businesses. Among the provisions:

- Nudity would be banned in strip clubs.
- Semi-nude dancers would have to stay at least six feet away from and not touch patrons.
- Adult businesses would have to close between midnight and 6 a.m. and could not sell alcohol.
- Adult businesses could not be opened within 1,000 feet of a school, church, day-care facility, library, park, residence or another adult business.

If upheld in court, the law probably would shut down strip clubs and adult bookstores, said attorney Dick Bryant, who represents about a dozen adult entertainment businesses in the Kansas City area. "But I have every confidence that the courts will find the same problems that existed last time around," he said. "Once again, the First Amendment will protect what it's designed to protect." Bryant said that if passed into law, the legislation could wind up costing the state millions in lost tax revenue and in compensation payments for forcing the businesses to close. "I guess if taxpayers truly want to spend \$1 million a pop for getting rid of stores, more power to them," he said.

The proximity of Bartle's grand jury testimony to the Senate debate was a coincidence, the Lee's Summit Republican insisted, although he acknowledged that it might be a beneficial one for his bill. "I'm not going to deny that the environment right now is opportune for placing this legislation before the legislature," he said.

Coincidental or not, Capitol observers said that the ongoing investigation will make passage more likely of what is already a politically perilous bill to oppose during an election year.

"Because of the grand jury investigation, I hope Senator Bartle's bill will have a much easier time this session," said House Speaker Pro Tem Bryan Pratt, a Blue Springs Republican. "And it's my sense that it will."

The lone dissenter in the Senate was Kansas City Democrat Jolie Justus, who first attempted to exempt Kansas City from the legislation's restrictions, and then voiced the only audible vote against it. Justus cited Kansas City's local ordinances regulating adult businesses and invoked the right of cities and counties to manage their own affairs as reasons for the exemption. "(Cities) have shown it is possible to self-regulate on these issues," she said.

Justus also echoed Bryant's concern that the new regulations could force strip clubs and other adult businesses to close, which would have economic ramifications for the city and statewide.

Adult businesses in Missouri employ 3,000 people, she pointed out, and many of those could be forced out of their jobs by Bartle's bill.

"This is not the time to cut jobs," Justus argued. Her amendment was defeated.

Seeking to allay constitutional fears that typically arise in debates over regulating adult businesses, Bartle stressed that all the measures had been passed—and upheld—elsewhere. "I think this will withstand constitutional scrutiny."

ADULT ENTERTAINMENT NEWS AROUND THE COUNTRY:

Missouri Continued: As for what happened with his 2005 bill, Bartle said federal authorities are interested in how the legislation died in the House after being sent to an unfriendly committee. Four days before the bill was assigned to that committee, strip club owners gave \$35,000 to a fundraising group with ties to a top adviser to former House speaker Rod Jetton. Bartle said he thought that donation was directly related to the undermining of his legislation. Jetton has denied any wrongdoing in connection with the handling of the bill. The grand jury, which has not issued any indictments, is expected to reconvene on March 9.

ACE National & State Chapter Meeting Announcements:

The next ACE National Board meeting will be held at Ricks Cabaret in Las Vegas on Monday, March 8 at 4pm.

TO ALL OHIO STATE ACE MEMBERS: We will hold a meeting on February 16, 2010. Meeting will be held at the Downtown Executive Den located at 727 Bolivar, Cleveland at 2 pm. Our lobbyist will be in attendance. We will also discuss ASCAP and BMI issues. As you may be aware of the ongoing legal action that ACE National is considering. Both ASCAP and BMI have drafted new and considerably more expensive licensing agreements directed at the adult entertainment industry. Any questions, please call Mr. Al Spencer: 216.496.1737

Missouri: **MOACE Members,**

Matt Bartle managed to pass his adult entertainment bill through in the Senate last week. It was third read and passed 29-2 on Thursday and will head to the House. **We will all be out of business if this bill advances through the house.** The bill includes provisions that will eliminate nude dancing and alcoholic beverages. It will eliminate all tipping. It prohibits any touching between patrons and entertainers by creating a 6 foot buffer between dancers and patrons. It eliminates arcade doors and requires that store managers have a direct line of sight into each arcade booth. The law requires that we all close between midnight and 6AM. We have managed to defeat this same bill every year since 2005. House Bill 1551 has been assigned to the Crime Prevention Committee. We will inform you when the hearing is scheduled. Thanks for your continued support, we can not be successful with out your help!

On February 2, 2010 **the NJACA Executive Board** addressed many issues that affect New Jersey gentlemen clubs. "I am looking forward to working with the Executive Board in 2010, and protecting our industry and constitutional rights," said NJ Executive Director Jeff Levy. "We are together in spirit and professionalism to insure the well-being of our businesses and industry in New Jersey. The NJACA is taking a proactive position, to guarantee our industry remains free of bad bills and over restrictive legislation." Please become part of our cause, and fight to keep freedom alive. Levy may be contacted at jeff@ks-law.com or 954.253.6511.

South Carolina: Myrtle Beach Area Chamber of Commerce President/CEO Brad Dean says the adult industry is not one his organization wants associated with the city.

"We think the adult entertainment industry is inconsistent with the brand we like to promote -



good, clean, family, friendly fun," he said. "Personally, I'd be fine if we didn't have any clubs, but they're legal, permitted by local government and they're protected by the U.S. Constitution."

Rhodes added, "You go to other resorts and you don't see this image projected as you come in."

Ten years ago, Myrtle Beach City Council leaders asked Horry County Council for extra zoning permission, which require clubs on US-501 east of the Intracoastal Waterway to comply with the city's zoning rules. If they didn't, they would have to close in two years. They would have the option of moving to an area like Seaboard Street. Carter says each time this proposal came up, County Council members at that time didn't think county residents should be subjected to city laws.

"As the mayor feels his hands are tied in certain issues, I feel that my hands are tied with this issue," said Horry County Councilman Bob Grabowski, who said he recalled the proposals well. "Some of them are there and have been there since before we had zoning, so they're classified as kind of a legal non-conforming zoning status, which means they can stay there."

"I don't think the clubs themselves make the area that much money. Now the clubs make a lot of money off the area, but no different than Wal-Mart or McDonald's. Tourists frequent those places, but they don't come here because of those," Dean explained. "The ideal solution for us would be to locate them in areas where we don't all have to see them and then everybody wins."

The county still has an option of allowing the city to zone parts of US-501, which means the gentlemen's clubs there would have the option of moving to an area like Seaboard Street, or they would have to close. "Sure, if they want that. We can have a Broadway at the Beach of adult entertainment," one club owner laughed. "That'd be a great thing." Grabowski says for the time being city leaders will keep trying.

"I'll get with the mayor and maybe we can get them to move, but we're going to have to bring them to the table to [do that]," he said. Rhodes has a plan: "Start with the county first, then get to the club."

New York: Nude dancing is not necessarily a crime of "moral turpitude" warranting deportation, a divided federal appeals court ruled. The 2-1 ruling by the Ninth Circuit Court of Appeals in San Francisco is a defeat for the federal government and a victory for Victor Ocegueda Nunez, who was seeking to avoid being sent back to his native Mexico. A Justice Department spokesman said the government is reviewing the ruling. Cheryl Franke, a lawyer for Ocegueda, did not immediately return a call seeking comment. According to the ruling, the government sought to deport Ocegueda, who had entered the country illegally in 1993, after he was convicted over a 10-year period of what it called two crimes of moral turpitude: petty theft and indecent exposure. A federal immigration judge ordered Ocegueda's removal, and the Board of Immigration Appeals agreed. Ocegueda appealed, saying this would cause extreme hardship for his wife and three children, all of whom are U.S. citizens. Writing for the Ninth Circuit, Judge Stephen Reinhardt wrote that while California's indecent exposure law punishes conduct that "offends the sensibilities of many, and perhaps most people," it does not "categorically" meet the federal standard for moral turpitude. Citing a variety of case law, the judge also concluded that while the question of what constitutes moral turpitude is "nebulous," it is "as clear as can be" that nude dancing lies outside the definition. "Erotic, completely nude dancing is offensive to many people," Reinhardt wrote. "It is not, however, so 'base, vile, and depraved' that it shocks the conscience." Judge Jay Bybee dissented, accusing the majority of dismissing Ocegueda's conduct as "relatively harmless" without having any basis for its judgment. "Whatever Ocegueda did to

get himself convicted of indecent exposure, we can be fairly confident that it involved more than being a nude dancer at a bar or a 'tasteless prank,'" he wrote. Bybee added that he was "quite confident that there is nude dancing going on in California bars even as I write this," and which yet is not resulting in arrests under California law.

Judge Milan Smith joined Reinhardt in the majority. President Jimmy Carter appointed Reinhardt to the court. President George W. Bush appointed Bybee and Smith. The case was argued in April 2007. The case is Ocegueda Nunez v. Holder, U.S. Ninth Circuit Court of Appeals, No. 06-70219. **Reporting by Jonathan Stempel; Additional reporting by James Vicini in Washington, D.C**

Washington, D.C. :

Obama's Message to Employers: You Will Pay for Misclassifying Independent Contractors From the Law Firm of Jackson-Lewis

In this time of economic crisis, the Obama Administration has released details of its proposed budget for the fiscal year 2011. While job creation may be the first thing that comes to mind when determining how to strengthen economic security, the proposed budget contains significant investments in targeting the misclassification of independent contractors. It reads: "As part of the 2011 Budget, the Departments of Labor and Treasury are pursuing a joint proposal that eliminates incentives in law for employers to misclassify their employees; enhances the ability of both agencies to penalize employers who misclassify; and restores protections to employees who have been denied them because of their improper classification." According to this proposal, it would increase Treasury receipts by more than \$7 billion over 10 years. The 2011 Budget for [the Department of Labor] includes an additional \$25 million to target misclassification with 100 additional enforcement personnel and competitive grants to boost States' incentives and capacity to address this problem. While full details of this proposal have yet to be released, it is clear the Obama Administration is determined to make misclassification of workers a top priority. If employers are unsure of a worker's proper classification, they should seek advice from counsel.

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Connecticut: Berlin is attempting to define "adult-oriented stores" -- and keep them from opening up too close to schools and residential neighborhoods. A Berlin ordinance defines any establishment having "a substantial or significant portion" of its stock in trade in adult books, videos or novelties as an "adult-oriented store." When the VIP (short for Very Intimate Pleasures) chain applied to open a store on the Berlin Turnpike, the town's zoning officials received a list of the store's proposed inventory. Of the 62,000 items, some 8,200, or 12 percent, were concededly adult books, videos or novelties. Berlin officials decided 8,200 items were "substantial and significant," and ruled that VIP of Berlin was not a "non-adult" business. That decision stopped VIP from moving into its preferred location. In response, VIP claimed that the language of the ordinance was unconstitutional, because it was not exact enough to prevent it from being applied arbitrarily. Last summer, U.S. District Judge Stefan Underhill agreed the adjectives "substantial or significant" were unconstitutionally vague, and issued a preliminary injunction preventing town officials from using that language to deny VIP a license to open. The town appealed, and in a legally substantial -- and significant -- win for Berlin, a three-judge panel



of the 2nd U.S. Circuit Court of Appeals has ruled that descriptive language in ordinances, and not just mathematical percentages, can be used to determine when a business can be classified as "adult-oriented." The town is represented by Thomas Gerarde, of Hartford's Howd & Ludorf. "Its very important," he said, "that towns are able to use word definitions when deciding what qualifies as an adult use, rather than having to pick a concrete number, such as 'a business with more than 10 percent adult products.'" He acknowledged that when First Amendment issues are involved, courts don't like to give town officials a great deal of discretion. That's why numerical tests have been seen as more objective and easier to apply evenhandedly. However, Gerarde's concern is that when the definition of an adult-oriented store is expressed as a percentage of inventory items, stores can "game" the system by stocking thousands of regular greeting cards, small rocks with painted inscriptions and other innocuous low-cost items. In addition to inventory descriptions, Gerarde included photos of the company's Manchester store in his brief. "It really does go the whole yardstick," he said. "There's some very benign stuff you could buy at Victoria's Secret at Westfarms Mall. But then the curve bends downward to really, really, really graphic stuff. What they basically have done is like they've imported a hole-in-the wall adult bookstore and dropped it into another 15,000-square-foot store." He added that his legal research for the case was "quite an education," and that he found himself at one point explaining to the court the differences between three types of artificial penises.

AGAINST PRECEDENT?

This First Amendment and zoning battle has additional ongoing issues that delay a final answer any time soon. Daniel Silver, of New Britain's Silver & Silver, is defending VIP. He has carved out a niche First Amendment practice defending adult-oriented businesses. Silver said VIP of Berlin would be seeking a re-hearing before the full 2nd Circuit. "I really believe, with due respect for the Second Circuit, that they have gone against their own precedent," said Silver.

Judge Chester J. Straub, joined by Richard C. Wesley, wrote the majority opinion. Roger J. Miner dissented, on the ground that the Berlin ordinance had no interpretive language that would help a business wanting to open an adult-themed store figure out what was or was not "substantial or significant." He cited a ruling by 2nd Second Circuit Judge Sonia Sotomayor, who recently was appointed to the U.S. Supreme Court. Her 2007 opinion in *Thibodeau v. Portuondo* stated that the issue is "whether the [ordinance] presents an ordinary person with sufficient notice of or the opportunity to understand what conduct is prohibited or proscribed."

Silver said, "on the basis of that decision, we will be seeking en banc review. You can't get any better authority than that."

OPPOSITION RESEARCH: From the CCV website www.ccv.org

SEX TRAFFICKING MUST BE STOPPED

Citizens for Community Values (CCV) has long recognized the connection between human trafficking and the prevalence of sexually oriented businesses such as strip bars and pornography stores. Last year, CCV asked Steve Wagner, a former employee and expert on human trafficking for the U.S. Department of Health and Human Service (HHS), to write tough anti-trafficking legislation to protect girls and women from the worst type of abuse.

The Commission said that **human trafficking is the second-largest crime in the world** affecting at least 18,000 women and girls in the U.S. each year. Another 300,000, many of them girls as young as 11, are vulnerable. Instead of passing the tough law that CCV recommended, our legislators passed a law that the Commission called "weak."

The Commission noted that **Toledo is behind only Miami, Florida, Portland, Oregon, and Las Vegas in the sex trafficking industry.** What do all these cities have in common? Sexually oriented businesses, with Toledo boasting more per capita than any other city in Ohio. What's worse is that these sex businesses are supported by newspaper advertising. Some, like the **Toledo Blade and the Columbus Dispatch make millions off these establishments that abuse girls and women.**

Two years ago the OHIO legislature passed the Community Defense Act (CDA) by a 75% majority. CDA requires that all sexually oriented businesses must end their activity at midnight; if they do not have a liquor license, they must not operate between midnight and six in the morning. CDA also prohibits strippers from touching men. **This legislation is a powerful tool that law enforcers can use to help human trafficking victims.**

CALL TO ACTION:

Send a copy of this e-mail to your local police department and elected local and state officials, asking them to protect abused girls and women in the following ways:

1. **Strongly enforce the Ohio obscene pornography law** where selling, renting or giving away an adult movie is a felony.
2. **Strongly enforce CDA** statewide.
3. **Pass tough new anti-trafficking laws** that CCV recommended. ([Click here](#) to see a copy of CCV's proposed anti-trafficking law and [click here](#) to find your elected state officials.)



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The 18th Annual Gentlemen's Club Owners EXPO will feature a new location, new Awards, new parties and a new attitude.

No matter what news station you turn on, chances are you're going to hear about how bad things are; how bad the economy is, how bad the government is, how bad virtually *everything* is. But at the **2010 Gentlemen's Club Owners EXPO** this August 22-25 at The Mirage Hotel & Casino in Las Vegas there's going to be a different approach, a different attitude. Forget doom and gloom—at this year's EXPO, you're going to get some good news for a change.

"Every aspect of this year's convention is going to reflect our 'Positively EXPO' theme," says EXOTIC DANCER (ED) Publications' Publisher, Don Waitt. ED Publications has produced the Annual EXPO for the past 18 years. "We will have an agenda of panel sessions, special events, parties, exhibits and an Awards Show that will focus on the positive ways to motivate club owners, their staff and the entertainers. Think the smiley face's 'Have a nice day!' and Bobby McFerrin's song, 'Don't Worry Be Happy!' Its time we let our hair down, had some fun, and talked about how to *positively* improve club operations and increase sales at EXPO 2010."

To breathe even more fresh air into the EXPO, the convention has been moved to The Mirage Hotel & Casino, which means new restaurants, nightclubs and surroundings, and the lowest room rate of the past 10 years. There's also a poolside Hawaiian Luau Party planned and a "Swinging Sixties" rock-and-roll party on tap, as well as exclusive membership meetings for ACE, the Association of Club Executives. There will be a continuing focus on club staff as well, with specialized training and motivational workshops and new Awards Show categories for other key staff positions.

Also, ED Publications is pleased to announce the return of the STOREROTICA "What's New Marketplace" Convention & Tradeshow, which was a part of the Annual EXPO from 2007-2009. When combined, the Annual EXPO and Annual STOREROTICA conventions represent the largest convention and tradeshow for all adult retail venue owners and operators including adult retail stores, lingerie boutiques, erotic toy and apparel stores and adult nightclubs. It's the only event of its kind in the world – don't miss it!

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