



IN THE CIRCUIT COURT OF ELMORE COUNTY, ALABAMA

STATE OF ALABAMA

Plaintiff,

v.

**PCI GAMING AUTHORITY,
BUFORD ROLIN, STEPHANIE BRYAN,
ROBERT MCGHEE, DAVID GEHMAN,
ARTHUR MOTHERSHED,
SANDY HOLLINGER, GARVIS SELLS,
EDDIE TULLIS, KEITH MARTIN,
BRIDGET WASDIN,
MATTHEW MARTIN, BILLY SMITH,
TIM MANNING,**

Defendants.

Civil Action No. _____

COMPLAINT

COMES NOW, the State of Alabama, by and through Attorney General Luther Strange via the undersigned counsel, and respectfully moves this Honorable Court for declaratory and injunctive relief to abate a public nuisance of unlawful gambling, pursuant to Ala. Code § 6-5-120 based on the following :

JURISDICTION

1. The Court has subject matter jurisdiction of this action pursuant to Ala. Code § 6-5-121.
2. This Court has jurisdiction over the parties.

3. Defendants have no tribal or sovereign immunity that would bar the declaratory and injunctive relief requested in this Complaint.

PARTIES

4. Plaintiff is the State of Alabama by and through Attorney General Luther Strange. *See* Ala. Code § 36-15-12.

5. Defendant PCI Gaming Authority is a commercial enterprise owned and operated by the Poarch Band of Creek Indians (“PBCI”).

6. Defendants Buford Rolin, Stephanie Bryan, Robert McGhee, David Gehman, Arthur Mothershed, Keith Martin, Sandy Hollinger, Garvin Sells, and Eddie Tullis are members of the PBCI Tribal Council and officials of PBCI sued in their official capacity.

7. Defendants Keith Martin, Bridget Wasdin, Matthew Martin, Billy Smith and Tim Manning are members of the PCI Gaming Authority and tribal officials sued in their official capacity.

VENUE

8. Venue is appropriate in this Court pursuant to Alabama Code §§ 6-3-2, 6-3-6, 6-3-7 and Rule 82 of the Alabama Rules of Civil Procedure.

GENERAL ALLEGATIONS

9. On information and belief, the Defendants are operating, advancing, and profiting from unlawful gambling activity at the Creek Casino in Wetumpka, the Wind Creek Casino in Atmore, and the Creek Casino in Montgomery in violation of Article IV, Section 65 of the Alabama Constitution (1901) and Ala. Code § 13A-12-20 *et seq.*

10. Lotteries and games of chance are strictly prohibited in Alabama except where a county has ratified an amendment to Article IV, Section 65 of the Alabama Constitution. Article IV, Section 65 of the Alabama Constitution (1901) states the following:

“The Legislature shall have no power to authorize lotteries or gift enterprises for any purposes, and shall pass laws to prohibit the sale in this State of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery...”

11. Slot machines and other gambling devices, as defined in Ala. Code § 13A-12-20 (1975), are illegal under Section 13A-12-27 of the Code of Alabama and Section 65 of the Alabama Constitution. *See State ex rel. Tyson v. Ted’s Game Enterprises*, 893 So. 2d 376, 380 (Ala. 2004).

12. On information and belief, devices being used at the Defendants’ casinos are prohibited gambling devices, as defined in Alabama Code § 13A-12-20(5). They are machines or equipment used in the playing phases of gambling activity between persons or machines. *Id.*

13. On information and belief, devices being used at the Defendants’ casinos are slot machines or readily convertible to slot machines, as defined in Alabama Code § 13A-12-20(10). As a result of the insertion of an object, Defendants’ devices operate with the aid of a physical act by the player to eject something of value based on the element of chance. They also “look like, sound like, and attract the same class of customers as conventional slot machines.” *Barber v. Jefferson County Racing Ass’n*, 960 So. 2d 599, 616 (Ala. 2006).

14. It is unlawful to possess or use Defendants’ devices. *See* Ala. Code §§ 13A-12-20(12) & - 27.

COUNT I – PUBLIC NUISANCE

15. The State incorporates paragraphs 1 through 14 as if fully stated in Count I.

16. The Defendants do not have legal authority to operate, advance, or profit from unlawful gambling activity in violation of Article IV, Section 65 of the Alabama Constitution (1901) and Ala. Code § 13A-12-20 *et seq.*

17. The continued operation of slot machines and unlawful gambling devices by Defendants is a public nuisance. *See* Ala. Code § 6-5-120 *et seq.*; Restatement (Second) of Torts § 821B; *Try-Me Bottling Company, et al v. State of Alabama*, 178 So. 231 (Ala. 1938).

18. The continued operation of slot machines and unlawful gambling devices by Defendants works hurt, inconvenience, or damage to the public interest.

19. The public policy of Alabama is emphatically against lotteries or any scheme in the nature of a lottery.

20. The State has an interest in the welfare of the people within her domain and, of consequence, in enforcement of the State's declared public policy against lotteries or gift schemes.

21. The Defendants' operation of lotteries and their use of slot machines and unlawful gambling devices are enjoinable in suit by the State by virtue of this Court's equity jurisdiction to abate a public nuisance. *See Try-Me Bottling Company, et al v. State of Alabama*, 178 So. 231 (Ala. 1938).

REQUEST FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the State of Alabama respectfully requests this Honorable Court enter an Order

- 1) declaring that the gambling activities being conducted by or through the Defendants is a public nuisance;
- 2) permanently enjoining such unlawful gambling activities; and
- 3) ordering such other and further relief as this Court deems appropriate.

Respectfully submitted,
LUTHER STRANGE (STR003)
ATTORNEY GENERAL

/s/ Andrew L. Brasher
Andrew L. Brasher (BRA143)
Deputy Solicitor General

OF COUNSEL:
Andrew L. Brasher (BRA143)
Deputy Solicitor General
Henry S. Reagan III (REA021)
Deputy Attorney General
Office of the Attorney General
501 Washington Avenue
Post Office Box 300152
Montgomery, AL 36130-0152
(334) 242-7300
(334) 242-4890 – FAX
abrasher@ago.state.al.us

DEFENDANTS' ADDRESSES (Plaintiff will serve):

PCI Gaming Authority
100 Brookwood Road
Atmore, AL 36502

Buford Rolin
308 Forest Avenue
Atmore, AL 36502

Stephanie Bryan
2159 Bell Fork Road
Atmore, AL 36502

Robert McGhee
92 Stokely Court
Atmore, AL 36502

David Gehman

380 Beacon Lane
Atmore, AL 36502

Arthur Mothershed

1690 Woodridge Drive
Atmore, AL 36502

Keith Martin

359 Ora Lane
Atmore, AL 36502

Sandy Hollinger

124 Darrells Road
Uriah, AL 36480

Garvis Eugene Sells

376 Martin Road
Atmore, AL 36502

Eddie Tullis

188 Lynn McGhee Drive
Atmore, AL 36502

Bridget Wasdin

38211 V. R. Byrd Road
Bay Minette, AL 36507

Matthew Martin

24 Big Creek Road
Atmore, AL 36502

Billy Smith

24 Big Creek Road
Atmore, AL 36502

Tim Manning

24 Big Creek Road
Atmore, AL 36502