



involving expression that, while politically unpopular, is nevertheless protected by the First Amendment. Subchapter B does not pass muster under this standard because Defendants failed to—and conceded that they cannot—meet their burden to show that it is necessary to serve a compelling state interest and narrowly tailored for that purpose.

Even if the subchapter were analyzed as a content-neutral measure aimed at the secondary effects of protected speech, using intermediate scrutiny, it must be held unconstitutional.

If reliance by the Legislature on some pre-enactment evidence of links between the secondary effects addressed by the programs funded by the subchapter's tax and the business activity subject to the tax is a constitutional requirement (as is suggested, but not expressly held, by Supreme Court caselaw), Subchapter B must be held unconstitutional because no evidence indicating that any legislators actually considered any evidence of such links was presented at trial. Tori Camp's testimony indicated that materials supporting the existence of such links were made available to certain legislators, but no evidence showed that any legislator had actually considered or even seen those materials.

If pre-enactment evidence is not required, the subchapter must still be held unconstitutional because Defendants, while presenting persuasive trial evidence supporting a link between the business activity subject to the tax and the secondary effects addressed by the sexual assault program fund, presented no evidence supporting a link between the business activity subject to the tax and the alleged secondary effects addressed by the Texas health opportunity pool. There is no evidence that combining alcohol with nude erotic dancing causes dancers to be uninsured, that any dancer is in fact uninsured, or that any uninsured dancer could qualify for assistance from the fund.

Subchapter B also fails to pass muster under intermediate scrutiny because it is not narrowly tailored. First, only one of the two alleged secondary effects was ever shown to be possibly connected to the combination of nude erotic dancing and the consumption of alcohol. Second, no evidence was presented to show that the amount of the tax is related in any way to the degree to which the taxed business activity contributes to the alleged secondary effects or to the financial cost of that contribution.

For the foregoing reasons, the Court DECLARES that sections 47.051-.056 of the Texas Business and Commerce Code are unconstitutional and invalid. It is therefore unnecessary to reach Plaintiffs' state constitutional claims.

The Court ORDERS that Defendants are PERMANENTLY ENJOINED from assessing or collecting the tax imposed by sections 47.051-.056.

The Court ORDERS, pursuant to section 37.009 of the Texas Civil Practice and Remedies Code and 42 U.S.C. § 1988, that Plaintiffs recover from Defendants their reasonable and necessary attorneys' fees in an amount to be determined by the Court after receiving letters from Plaintiffs and Defendants on this issue. The letters must contain no more than three pages and be filed by April 4, 2008.

SIGNED this 28 th day of March, 2008.

  
SCOTT H. JENKINS  
JUDGE PRESIDING



**53RD DISTRICT COURT**

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March 28, 2008

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Re: Cause No. D-1-GN-07-004179; *Texas Entertainment Association, Inc. et al. v. Susan Combs et al.*, in the 345th Judicial District, Travis County, Texas

Dear Counsel:

Enclosed is a copy of an order in the above cause. This order has been signed by the Court and filed with the District Clerk's office.

Sincerely,

A handwritten signature in black ink, appearing to be "Matt Bachop", written over a horizontal line.

**MATT BACHOP**  
Staff Attorney, 53rd District Court  
Travis County, Texas

Orig: Ms. Amalia Rodriguez-Mendoza, Travis County District Clerk