Case No. 18-3962

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WCI, INC., Plaintiff-Appellant, v. OHIO DEPARTMENT OF PUBLIC SAFETY; OHIO LIQUOR CONTROL COMMISSION, Defendants-Appellees.	:	On Appeal from the United States District Court for the Southern District of Ohio, Western Division Case No. 3:17-cv-00282

BRIEF IN OPPOSITION OF DEFENDANTS-APPELLEES OHIO DEPARTMENT OF PUBLIC SAFETY AND OHIO LIQUOR CONTROL COMMISSION

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STATEMENT REGARDING ORAL ARGUMENT

Defendants-Appellees the Ohio Department of Public Safety ("Public Safety") and the Ohio Liquor Control Commission ("Liquor Commission") respectfully assert that oral argument is unnecessary and rest upon their brief and supporting case law in the determination of this matter.

JURISDICTIONAL STATEMENT

Generally, 28 U.S.C. § 1291 provides the statutory authority for jurisdiction regarding appeals before this Court and states, "The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . .". WCI appealed the District Court's September 5, 2018 order (Doc# 9 Page ID# 96-106), which was a final order.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Whether the District Court erred in dismissing WCI's Complaint under Fed. R. Civ. P.12(b)(6) for failing to state a claim upon which relief could be granted when it found that the Complaint failed to allege any constitutional violation. .

STATEMENT OF THE CASE

DPS and the Liquor Commission generally agree with the Statement of the Case submitted by WCI.

STANDARD OF REVIEW

The Court of Appeals reviews the dismissal of a claim under Fed. R. Civ. P. 12(b)(6) de novo. The allegations in the complaint are assumed to be true and the court must accept all well-pleaded factual allegations as true. The question is whether relief could be granted under any set of facts that could be proved consistent with the allegations. The court need not, however, accord the presumption of truthfulness to any legal conclusion, opinion or deduction, even if it is couched as a factual allegation. *Sexton v. Barry*, 233 F.2d 220, 223 (6th Cir. 1956), cert. denied, 352 U.S. 870 (1956).

The Sixth Circuit Court of Appeals has recognized that when reviewing the factual allegations contained within a Complaint for failure to state a claim the asserted factual allegations must "raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true." *Ass'n of Cleveland Fire Fighters v. City of Cleveland*, 502 F.3d 545, 548 (6th Cir. 2007) (internal citations omitted). Furthermore, the Court in *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009), stated that "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" (internal citations omitted) (second alteration in original).

SUMMARY OF THE ARGUMENT

The District Court properly dismissed WCI's complaint for failing to state a claim for which relief could be granted. Specifically, as to Public Safety and Defendant Born, WCI failed to state any claims against them in their complaint. As to the Liquor Commission, WCI possesses a license to sell liquor in the State of Ohio. For this privilege, liquor permit holders are required to follow the laws and Administrative rules of the State of Ohio. WCI acknowledges they repeatedly continue to violate Ohio liquor laws; specifically, the constitutionally upheld Ohio Administrative Code 4301:1-1-52 ("Rule 52"). WCI's claim that the Liquor Commission violated their Federal Constitutional rights under the First, Fifth, Eighth and Fourteenth Amendments is without merit. Their grievance at this level is that they believe the sanction levied by the Liquor Commission (revocation of their permit privileges with the option to pay a forfeiture) is too severe. Countless liquor permits have been revoked based on the misconduct associated with the liquor permit premises. These are not limited to "Gentlemens' Clubs" but include drug offenses, gambling offenses, receiving stolen property, and sale of alcohol to an underage person, sale of alcohol to an intoxicated person to name a few.

Progressive penalties for repeat offenders are not unusual and WCI was afforded due process from their initial hearing before the Liquor Commission

through three levels of appeal including the Ohio Supreme Court and finally this action.

The District Court was correct in dismissing WCI's Complaint as nothing alleged violated anyone's constitutional rights.

ARGUMENT

I. WCI's Complaint fails to assert any facts or claims against Public Safety or Director Born.

The District court was correct in dismissing the Complaint against Public Safety and Director Born as WCI failed to state *any* facts or claims asserted against them in Counts I-VIII of their Complaint. All of WCI's allegations are rendered against the Liquor Commission.

II. WCI's Complaint fails to assert any facts or claims against the Liquor Control Commission that violated their rights under the United States Constitution.

A. Background

The Complaint rehashes the same arguments made before the Commission (Doc# 1-1 Page ID# 21-24), the Franklin County Common Pleas Court (Doc#1-4 Page ID# 24-30), Ohio's 10th District Court of Appeals (Doc# 1-5 Page ID# 31-42), and the Ohio Supreme Court. (Doc# 1-6 Page ID# 43) Notwithstanding conclusory allegations, the set of facts provided by WCI fail to state a claim for which relief can be granted (Doc# 1 Page ID# 1-20). There have been no violations of WCI's constitutional rights. The facts are quite simple and were

stipulated to by WCI at the August 5, 2015 hearing before the Commission and acknowledged by WCI in paragraph 18 of their Complaint (Doc #1, Page ID# 4). At the hearing before the Commission, WCI denied the violation, but stipulated to the facts in the officers/investigators' report which was admitted without objection for violating Ohio Admin. Code 4301:1-1-52(B)(2), improper display of nudity. WCI has since acknowledged the propriety of the violation and the constitutionality of the rule.

The violation arose from observations made by Agents of Public Safety's Ohio Investigative Unit (OIU), Department of Public Safety at WCI's liquor permit premise known as "Cheeks", which is located in West Carrollton, Ohio. Cheeks is an establishment that provides "dancers" who perform on stage as well as providing individual dances for patrons in private areas. On March 8, 2014, OIU Agents entered the permit premises and seated themselves at a table near the bar. (Doc# 9 Page ID# 96-98) A dancer, later identified as Jessica L. Clarke approached the agents and began a conversation with them. Clarke indicated that when dancers were on the stage, they are required to wear pasties, but for private dances it is okay to take the pasties off. Clarke asked the agents if they were ready for a dance. One agent asked Clarke where the dance would take place and what she would do. Clarke indicated that "It isn't a lot, but I'll dance in your lap and take my top off, you can even touch me." Clarke led him to a private area where

Clarke took off her top, removed her pasties, and placed them on the ledge attached mid-way up the wall. Clarke proceeded to sit on the agent's lap and dance without a top or pasties. She grinded her crotch against the agent's crotch, and bounced up and down on his crotch. While performing her "dance" she put her bare breast in the agent's face moving side to side touching his face with her breasts and nipples. She turned with her back against the agent and continued to move her hips and grind her bottom into the agent's crotch area. Clarke started kissing the agent's neck and ear and told him to touch her as she guided his left hand on her left breast. She stood up on the couch and guided the agent's hands on her butt and began to put her crotch in his face and rubbed her crotch on his nose. Clarke pulled her G-string down so that he could observe her vagina. She continued grinding and massaging the agent's inner thigh. When Clarke finished her dance she put her top on and walked the agent to a table that was located at the entrance to the private area where she gave an employee an undetermined amount of money. They exited the private area and went back to the table where the other was seated. The agents exited the premises and advised their supervisor of the violation. A short time later, agents, along with uniformed West Carrollton Police Officers returned to the permit premises, identified Jessica Clarke as the dancer and issued her a summons in lieu of arrest reflecting a charge of ORC 2907.40(C)(2) Illegal Sexually Oriented

Contact While Being Nude. An agent prepared, explained and issued a Liquor violation to WCI/Cheek's manager, Erick Cochran.

Clarke later pled no contest and was found guilty to an amended charge of disorderly conduct and sentenced to 30 days jail, 1 year reporting probation and ordered to pay $1000.00 in fines and costs.

WCI's prior liquor violation history was part of the report admitted without objection at the Liquor Commission hearing and included numerous sanctions previously rendered by the Liquor Commission. (Doc# 9 Page ID# 98) Of note, in September 2013, WCI was sanctioned for similar misconduct and received a revocation, or a $10,000.00 forfeiture. In May 2007, WCI received a 100 day suspension or a $10,000.00 forfeiture. In both of those cases WCI paid the forfeiture. *Id.*

On August 20, 2015, after the Liquor Commission considered the report, WCI's violation record and WCI's evidence in mitigation, the Liquor Commission issued an order finding a violation of Rule 52 and revoking WCI's liquor permit, or in lieu of revocation, the option to pay a $25,000.00 forfeiture. *Id.* Of note, WCI's liquor permit record included a case involving WCI owner Elbert Lee Hale who was convicted in Federal District Court, Southern District of Ohio for a crime related to WCI's business. Mr. Hale was fined $99,000 and ordered to pay restitution of $961,271.42. *United States. v. Elbert Lee Hale*, 3:08cr53-1.

B. The Liquor Commission's sanction was clearly supported by reliable, probative and substantial evidence and was in accordance with law.

As WCI states in Paragraph 54 of their Complaint, "This action does not challenge the ***restrictions*** (emphasis theirs) imposed by Rule 52, but the apparently "content based" and disproportionately harsh punishments imposed by the Liquor Control Commission for "exposure," or other conduct inherent in the operation of a "Gentlemen's Club. (Doc# 1 Page ID# 14).

In Paragraph 57 of WCI's Complaint, they state "The continued threatened enforcement of Rule 52 by and through Defendants enforcement efforts and customs and practice described above, directly impairs and chills the First Amendment protected activities manifested by WCI's business and expressive activities of WCI's performers." *Id.* WCI cannot have it both ways. They claim that this action does not challenge the restrictions imposed by Rule 52 in paragraph 54 of their Complaint and then turn around and attempt to challenge the restriction in the rule that they have repeatedly violated. Nowhere in their complaint have they provided any factual basis that supports a violation of anyone's rights under the First Amendment.

There is no dispute that on multiple cases WCI committed and was found by the Liquor Commission to have violated O.A.C. 4301:1-1-52(B), a liquor control commission rule.

O.A.C. 4301:1-1-52(B) Prohibited activities; states that no permit holder, his agent, or employee shall knowingly or willfully allow in and upon his licensed permit premises any persons to: (2) Appear in a state of nudity.

Nudity is defined in O.A.C. 4301:1-1-52(A)(2). "Nudity" means the showing of the human male or female genital, pubic area or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple and/or areola; the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of the nipples and/or areola.

The facts were not in dispute as Jessica Clarke/"Kianna", while working as a dancer on WCI's liquor permit premise was nude in violation of Rule 52. WCI conceded that Ms. Clark violated Rule 52. The detailed stipulated investigative report which was admitted as evidence clearly indicated the violation. WCI stipulated to the facts in the investigators' reports. A "stipulation" has been held to be an admission made in a judicial proceeding by parties conclusively proving the facts contained therein. It is absolutely binding on both the trier of fact and a reviewing court. *Gambill v. United States* (6th Cir. 1960), 276 F. 2d l80;

Knowlson v. Bellman (l953), l60 Ohio St. The Ohio Supreme Court has also held that where the parties enter a joint stipulation of facts, the result is in the nature of a special verdict or special finding of fact, and the only function of the trier of facts is to apply the law to the facts so placed before it. *Cunningham vs. J.A. Myers Co.* (l964), l76 Ohio St. 4l0.

C. The Liquor Commission does not have "unbridled discretion" to sanction a liquor permit holder. Revocation of liquor permit privileges with the option to pay a financial forfeiture is well within the Commission's legal authority.

It is well-established that states have a substantial interest in regulating the sale and use of alcoholic beverages within their borders. See *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 712 (1984). Because the liquor industry is so heavily regulated, a liquor permit is a privilege; it is not a right. "Since the advent of the Eighteenth and Twenty-First Amendments to the United States Constitution, it is generally recognized that intoxicating liquor is peculiarly subject to regulation by the state and is not afforded the same type of constitutional rights as might be afforded other business pursuits." *Scioto Trails Company v. Ohio Dept. of Liquor Control* (10th Dist. 1983), 11 Ohio App.3d 75, 76. See also *State ex rel. Zugravu v. O'Brien* (1935), 130 Ohio St. 23, at 27. (Permits to carry on the liquor business are mere licenses, revocable as provided, and create no property right.) Failure to comply with the prohibitions and restrictions governing the liquor permit may result in the loss of the privilege.

When it promulgated the liquor laws the Ohio General Assembly clearly envisioned that factual situations in different cases would necessitate different penalties. For that reason, the legislature provided the Commission with the authority and discretion to impose three varying remedies: revocation, suspension, or financial forfeiture. That determination is particularly within the province and expertise of the Commission.

The decision to determine if a violation occurred and the appropriate penalty is a decision for the Commission under Ohio Revised Code 4301.25. R.C. § 4301.25 provides the Commission with the authority to determine the appropriate action to be taken against a permit holder that has abused its liquor privilege. It states in pertinent part:

> (A) The liquor control commission may suspend or revoke any permit issued pursuant to Chapters 4301 and 4303 of the Revised Code for the violation of any of the applicable restrictions of such chapters or of any lawful rule of the commission . . .

The 10th Appellate District for the Court of Appeals of Ohio, Franklin County, held in *Tolbert v. LCC* (Dec. 3, 1998), Franklin App. No. 98AP-285, that under § 4301.25(A):

> The commission may revoke a permit based on one violation. If there is reliable, probative and substantial evidence supporting the order, the court of common pleas has no authority to reverse an order on the basis that the penalty is harsh and an abuse of discretion, citing

> *Henry's Café, Inc. v. OLCC*, 170 Ohio St. 233, 163 N.E.2d 678 (1959).
>
> Having found violations, the commission had the authority to revoke appellant's permit. Had the commission found appellant's arguments compelling, it could have imposed a lighter penalty; however, it did not do so. Whether the trial court or this court would have found a lighter penalty appropriate is irrelevant when a revocation is in accordance with law and supported by reliable, probative and substantial evidence.

Here, the Commission considered not only the evidence for the latest specific incident, but WCI's violation history and the sanctions they previously imposed. As their record indicates, on multiple occasions WCI had previously received sanctions for improper conduct, one that included revocation or a $10,000.00 forfeiture, and a second that was for a 100 day suspension or a $10,000.00 forfeiture.

On August 14, 2013, a little more than six months prior to when this incident occurred, WCI was found in violation by the Commission for similar Improper Conduct offenses and ordered that WCI's permit be revoked, or a $10,000.00 financial forfeiture. WCI paid the $10,000.00 fine on September 24, 2013.

WCI's claim that the order imposing a revocation or a $25,000.00 forfeiture reflects a discriminatory animus which is content based is wholly inaccurate and without a basis. There are adult clubs with similar infractions who have received lesser penalties, probably due to the fact that they have less egregious facts and/or

less of a history of similar repeated conduct. Similarly, there are non-adult themed liquor permit holders who have double the forfeiture amount for repeated violations of sales to minors. The point being that the Commission considers not only the facts, but the record of the permit holder in accessing their penalty. WCI asserts that they will be threatened with continued unbridled sanctions for matters brought before the Commission for alleged violations of Rule 52 and that they have no adequate remedy at law. Their remedy is simply to comply with the liquor laws or risk losing the privilege of having a permit. Alternatively, they can forego the privilege of having a liquor permit and not have to be concerned with complying with the Commission's rules. At the end of the day, it is the privilege of possessing the liquor permit that WCI may forfeit by their actions.

D. WCI's Federal Constitutional arguments are inapplicable to the facts in this case.

WCI asserts that the evidence did not establish a violation of Rule 52 because they deem the improper conduct a "dance" performance that cannot be sanctioned without violating the First and Fourteenth Amendments to the Constitution. Such arguments are without merit, as the facts clearly indicate the employee/agent/space leaser dancer's public conduct in a liquor establishment violated the administrative rules, and as applied to the facts in this case did not violate anyone's constitutional rights.

WCI's argument that Rule 52 is unconstitutional under the First and Fourteenth Amendments as applied to a dance performance is totally misplaced. It was a dancer at WCI's liquor permit premise that committed the violation that WCI failed to prevent. Her improper *conduct* in a public liquor establishment, violated the law and the liquor control commission rules and was not constitutionally protected speech.

The constitutionality of the applicable provision of Rule 52 as it relates to nudity in a liquor permit establishment is indisputable. The District Court in the Northern District of Ohio upheld the constitutionality of Rule 52 in *J.L. Spoons, Inc. v. Ohio Dep't of Pub. Safety*, 31 F.Supp.3d 933(N.D. Ohio 2014). Gentlemen's Clubs and their associations brought a constitutional challenge to Rule 52 as it pertained to the display of nudity and sexual behavior at Ohio establishments operating with a liquor license. The court held that Rule 52 is a content-neutral regulation aimed at ameliorating the adverse secondary effects associated with nude dancing in an environment that sells liquor and upheld the rule. The Sixth Circuit Court of Appeals had previously found that "Rule 52 is a constitutional, content-neutral regulation of the undesirable secondary effects, including prostitution, drug trafficking, and assault, associated with nude dancing in an environment serving alcohol." *Id.*

The back room activity on WCI's liquor premise that resulted in the liquor citation and subsequent sanction was not speech protected by the First Amendment. Despite trying to shift the blame to dancers and absolve themselves of liability by "papering" up the rules and attempting to show they are doing their due diligence, the simple uncontroverted facts in the investigative report clearly showed that WCI failed in their responsibility to follow the law and rules that go with the privilege of possessing a liquor license. This is not a case where WCI did not know what the law required, as their establishment in particular has had past problems with improper conduct involving their dancers and private rooms. As WCI is responsible for the acts committed on their liquor permit premises, due diligence may require making the private rooms less private, and/or imposing a higher level of scrutiny, especially in light of the camera system not functioning properly.

WCI now admits that Rule 52 is constitutional and the citation was a violation of Rule 52. Their claim now is that that the continued exercise of unbridled discretion in the imposition of penalties on "Gentlemen's Clubs," brought before the Commission for alleged violations of Rule 52 violated the rights guaranteed WCI by the United States Constitution, on its face and as applied in that it abridges and restrains WCI's rights to free expression, in violation of the First Amendment, is without merit. WCI has acknowledged that Rule 52

restricting nudity in liquor permit establishments is constitutional and that this action does not challenge the restrictions imposed by Rule 52 (Complaint, Paragraph 54, Doc# 1 Page ID# 14). Dancers in a gentlemen's club that possesses a liquor permit can express themselves as much as they want as long as they follow the rules including the restriction on nudity. WCI has failed to state any facts in their complaint that support a potential violation of the First Amendment.

WCI asserts in Paragraph 46 of their Complaint, "To be specific, this action involves the scope of administrative punishment allowable under the enforcement of 4301:1-1-52 ("Rule 52") a regulation applicable to alcoholic beverage facilities." (Doc# 1 Page ID# 10) Notably, WCI does not object to the Commission's decision/ability to revoke their permit. Instead, WCI attacks the Commission's authority because it disagrees with the amount of the financial sanction that the Commission provided to avoid revocation. However, it is well established that when an agency's order is supported by reliable, probative and substantial evidence and in accordance with law, then a reviewing court lacks the ability to disturb that decision on appeal. *Consun Food Industries, Inc. v Liquor Control Comm.*, 2003-Ohio-4683, ¶ 12 (10th Dist.). WCI just does not like the penalty imposed for their recurring misconduct and despite their repeated claims of "unbridled discretion", the Commission's authority is very limited. The most that the Commission may do is revoke the liquor permit privileges of a permit holder.

Alternatively, they may suspend the permit, or offer up the opportunity for a financial forfeiture.

Moreover, the Commission has the discretion to allow for a forfeiture option under R.C. 4301.252 only if the Commission first issues a sanction under R.C. 4301.25. In other words, the Commission must first suspend or revoke a liquor permit before it can elect to give a fine option. Here, the Commission would have been well within its legal authority to simply revoke WCI's permit. However, the Commission chose to provide WCI yet another chance to keep its privilege to sell alcohol provided they remit a fine. In essence, WCI can either pay the fine to retain the privilege to sell alcohol with the understanding that it will follow the applicable rules or WCI can give up its liquor permit and no longer be obligated to follow Rule 52. It is WCI's choice.

A court reviewing an administrative decision has the authority to reverse, modify, or vacate that decision when the penalty imposed violates the Due Process or Equal Protection Clauses of the United States or Ohio Constitutions. See *Henry's Café, Inc. v. OLCC*, distinguished.

Henry's Café is well settled law, and it gives clear guidance as to how Ohio courts must review administrative penalties. A penalty imposed by the Liquor Control Commission must be upheld as long as it is within the Commission's legally authorized discretion, and as long as the underlying determination is in

accordance with law and supported by reliable, probative, and substantial evidence. The Federal Court is a poor vehicle to review Ohio's standard, in that WCI's penalty was objectively reasonable in light of its egregious, repeated violations of Ohio liquor laws.

When reviewing the record the Commission's sanction was more than reasonable. WCI concedes that on multiple occasion it has violated Rule 52 and been sanctioned. It is fundamental administrative law that so long as the determination of the Commission is supported by reliable, probative and substantial evidence, and the penalty imposed by the Commission is within its discretion,

WCI claims that the Liquor Commission punishes its conduct not due to actual misconduct, but solely due to the type of business that WCI operates. This argument fails for several reasons. Lower penalty cases involve factually different liquor permit holders with different violation histories. The Commission has, over its history, issued fines that have been higher or less monetarily depending on the case and/or decided to straight revoke the permit with no option to pay a fine when appropriate. Countless Ohio liquor permits have been revoked based on the misconduct of the licensee committed on the premises. Contrary to WCI's assertions, they are not limited to "Gentlemen's Clubs", but include gambling offenses, electronic benefits transfer (EBT) fraud, sale of alcohol to intoxicated

persons, alcohol sales to minors, drug offenses and stolen property cases. Examples include:

> -Permit revoked for gambling, *Shelby Aerie 0763 Fraternal Eagles v. Ohio Liquor Control Comm'n*, 2003-Ohio-823;
>
> -Permit revoked for receiving stolen property and EBT fraud, *Sammor v. Ohio Liquor Control Comm'n*, 2009-Ohio-3439;
>
> -Permit revoked for selling alcohol to an intoxicated person, *Trotters, Inc. v. Ohio State Liquor Control Comm'n*, 2006-Ohio-2448;
>
> -Permit revoked for underage sale of alcohol and hindering, *Enitnel, Inc. v. Ohio Liquor Control Comm'n*, 2002-Ohio 7034;
>
> -Permit revoked for selling drugs, *Digrat,Inc. v. Ohio Liquor Control Comm'n*, 2001 Ohio App. LEXIS 5903;
>
> -Permit revoked for receiving stolen property, *Gehad & Mandi, Inc. v. Ohio Liquor Control Comm'n*, 2006 Ohio Misc. LEXIS 391.

Most importantly, each case and the resulting sanction are judged on its own merits and the resulting need for future deterrence. In the end, this argument is simply not relevant and certainly does not demonstrate a constitutional violation.

E. WCI's claim that the Liquor Commission's sanction violates their Fifth and Eighth Amendment rights is without merit.

WCI's Fifth Amendment claim also fails. Although WCI has had this issue addressed in 2008 in the Ohio Supreme Court, it is well settled that a liquor permit does not create a property right subject to traditional due process. *WCI, Inc. v. Ohio Liquor Control Comm* 116 Ohio St.3d 547, 2008-Ohio-88, citing *O'Brien*, 130 Ohio St. 23, 27. The holdings are uniformly to the effect that such a license

does not create a property right within the constitutional meaning of that term, nor even a contract, and that it constitutes a mere permission to engage in the liquor business, which may be revoked in the prescribed legislative manner. WCI's cites *Brookpark Entertainment, Inc. v. Taft*, 951 F.2d 710 (6th Cir. 1991) for the proposition that a liquor permit holder has a property interest in its permit. Nonetheless, unlike the Plaintiff's in *Brookpark*, WCI has been afforded adequate procedural due process.

WCI's claim that the Commission's order amounts to a clear violation of the Eighth Amendment to the United States Constitution is without merit. Ohio courts have previously addressed this issue. In *Four Horsemen, Inc. v. Ohio Liquor Commission* (Sept. 16, 1997), Franklin App. No. 97APE05-612 the court found "[s]suspension and revocation of state-issued permits generally are remedial measures and not 'punishment' subject to the protections of the Eighth Amendment. In that case, the Commission revoked the license of the permit holder for allowing illegal gaming on the premises in violation of Ohio liquor law. In *Ruthie B. Inc. v. Ohio Liquor Control Comm.* (May 6, 2004), Franklin App. No. 03AP-964, the court came to the same conclusion in the revocation of another liquor permit holder. In *Auchi v. Ohio Liquor Control Comm.* (Nov. 14, 2006), Franklin App. No. 06AP-493, the court noted that the constitutional claims under the Eighth Amendment are related to criminal proceedings, not civil proceedings,

and therefore inapplicable and citing *Four Horsemen*, held that suspension and revocation of state-issued permits are generally remedial measures and not "punishment" subject to the protections of the Eighth Amendment. Nothing presented by WCI changes that conclusion. Despite their repeated misconduct, they can continue to operate their "Gentlemen's Club." They only forfeit their privilege to sell alcohol.

C**ONCLUSION**

This court should affirm the District Court's ruling because WCI's complaint failed to state a claim upon which relief can be granted. There were absolutely no claims asserted against Public Safety in WCI's Complaint, and the claims asserted against the Liquor Commission are merely rehashed attempts to relitigate a liquor regulation the strip club industry despises.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing Brief of Defendants-Appellees Ohio Department of Public Safety and the Ohio Liquor Control Commission was electronically filed with the U.S. Court of Appeals for the Sixth Circuit on the 21st day of December 2018 through the Court's e-filing system and a copy was provided to WCI-Appellee WCI's counsel by electronic mail at tonycicero@gocicero.com.

/s/ *Charles E. Febus*
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DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

The following filings from the District Court's record are relevant documents:

Document Description	Document Number	Beginning PageID#
Complaint	1	1
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Response to Motion to Dismiss	8	76
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