Dershowitz steps into South Florida's Internet cafe case

Miami law firm gets help in suit to overturn state law

By Nick Sortal and Kathleen Haughney, Staff Writers

The fight by South Florida's Internet cafes and senior arcades to re-open their gaming parlors apparently isn't over, and those wanting to keep those low-stakes games have brought in a high-stakes lawyer.

Alan Dershowitz, the author/TV commentator/Harvard law professor, is among the attorneys representing a Homestead Internet cafe challenging the constitutionality of a state law banning Internet cafes.

The Internet cafes operated under what backers considered a legal loophole: That patrons in fact were buying Internet time and – rather than playing a slot machine-like game for prizes – were really playing a sweepstakes, much like people who buy fast-food and receive a promotional chance for a prize. The ban adopted by lawmakers, besides outlawing "games of chance" and restricting the amount of money that could be played in a machine, also rewrote the sweepstakes law.

Dershowitz, along with the Miami law firm of Kluger Kaplan, argue that the amended sweepstakes statute allows only nationally advertised sweepstakes – cutting into the freedom of all local businesses, not just Internet cafes, to offer prizes for purchases. That, they say, violates the First Amendment.

Last spring, a federal and state probe into an Internet cafe company that was masquerading as a charity resulted in 57 indictments and the resignation of Lt. Gov. Jennifer Carroll, who had previously worked as a consultant for the company, Allied Veterans.

The news spurred the Florida Legislature to quickly outlaw the roughly 1,000 cafes in the state as well as limit the popular senior arcades found throughout South Florida that offered low-stakes bets and paid off in things like Publix gift cards. Arcade owners protested that they should not be lumped in with Internet cafes, but lawmakers said both were an illegal expansion of gambling.

The Kluger Kaplan firm contacted Dershowitz immediately after the state passed the law, and sifted through potential clients to represent.

They had previously worked with Dershowitz on other constitutional cases, and together they read through the law. Dershowitz, 74, has been a Harvard law professor since he was 28, has represented Jim Bakker, Mike Tyson and authored such books as "The Case For Moral Clarity: Israel, Hamas and Gaza."

"He's the man," said Justin Kaplan, who filed the suit Friday.
Kaplan says the law "prevents local businesses from using sweepstakes as a promotional tool simply because they advertise their promotions locally rather than nationally." He uses the example of a Florida restaurant chain.

"While McDonald's can have a Monopoly promotion sweepstakes, the local guy can't," he said.

They also argue that the amended Florida gambling statute improperly expanded the definition of a slot machine to now include not just what you see in casinos, but any device or network that can be accessed by any means.

"Essentially every cell phone or PC is now a gambling device," Kaplan argues. He cites a Bud Light ad (Google "Bud Light 2013 Anytown") that asks patrons to scan a QR code with their smart phone for a chance to win one of 500,000 music prizes.

"That makes your phone a slot machine under the new law," he says. The fact that you can enter a March Madness contest on your computer – whether you actually do or not – makes it an illegal device, too, under the new law, he said.

Senior partner Alan Kluger called it a "hastily-enacted law, and the Florida Legislature acted without any care for the individuals and small businesses it affected, violating the constitutional rights of Floridians in the process."

A spokeswoman for the Florida Senate said they had not yet reviewed the lawsuit and therefore had no comment at this time. But House Speaker Will Weatherford, R-Wesley Chapel, defended the law, which pari-mutuels and the Seminole Tribe of Florida also support.

"I am proud that we shut down the illegal Internet cafes in Florida," Weatherford said in a written statement. "It's good policy, and I'm only disappointed it took this long to do it."

Meanwhile, the lawyer for the Florida Arcade and Bingo Association filed an injunction against Dave & Buster's, arguing that the restaurant/arcade violates the rules that crippled the senior arcades. Michael Wolf, of Fort Lauderdale, says Dave & Buster's operates games of chance, not of skill; pay out prizes greater than the 75 cents the law requires; and operate not by insertion of a coin, but of a smart card. Wolf also filed a suit against Boomers in Palm Beach County and said he will file one in every county with a restaurant/arcade.