

## While Utah decides whether to appeal the case, Brewvies is serving sexual content and alcohol to celebrate its First Amendment victory

[sltrib.com/news/2017/09/01/brewvies-celebrates-liquor-lawsuit-win-with-festival-pairing-beer-and-once-banned-movies](https://www.sltrib.com/news/2017/09/01/brewvies-celebrates-liquor-lawsuit-win-with-festival-pairing-beer-and-once-banned-movies)  
By Kathy Stephenson



Brewvies Cinema Pub is bringing back “Deadpool,” the movie that nearly brought the Salt Lake City theater/bar to extinction 16 months ago at the hands of Utah’s liquor cops.

The theater is throwing a free “FREEdom Film Series” this weekend and next to celebrate Thursday’s federal court ruling that found Utah’s Department of Alcoholic Beverage Control (DABC) could not sanction Brewvies for showing R-rated movies in an establishment that serves booze.

“This is a happy day, and we are really excited for the future of Brewvies,” Norman Chesler, a member of Brewvies’ board and its management team, told reporters Friday afternoon.

“We did not necessarily want this fight, or want to stand up to the DABC or the state of Utah,” Chesler said, “but we had no alternative.”



(Rachel Molenda | The Salt Lake Tribune) Norman Chesler, a member of Brewvies' management team and board, praises the recent ruling by a judge against the state's Department of Alcoholic Beverage Control, while attorney Rocky Anderson listens. DABC regulators threatened to fine Brewvies up to \$25,000 and take away its liquor license in 2016.

At the same news conference, the attorney for Brewvies, former Salt Lake City Mayor Rocky Anderson, said "this is an historic day, not only in Salt Lake City, but this is an important case nationwide. ... It is a major victory for the people."

Brewvies, at 667 S. 200 West in Salt Lake City, will screen "The Hangover Part II" — the 2011 comedy that earned Brewvies its first citation from the DABC — Friday at 10:30 p.m. It will screen the 2015 male-stripper drama "Magic Mike XXL" on Saturday at 10:30 p.m.

Next weekend, on Sept. 8 and 9 at 10:30 p.m., Brewvies will screen "Deadpool," the 2016 R-rated action comedy that prompted the legal battle that led to the federal ruling.

As with all of Brewvies' screenings, moviegoers must be 21 or older to enter the premises.



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On Thursday, U.S. District Judge David Nuffer ruled that a section of a state law, barring alcohol from being served during R-rated movies in which characters are shown having sex while nude, hampered free speech and was unconstitutional.

Anderson on Friday called the law "an absolute anachronism" because it "applies to images or depictions only by liquor licensees and not by anybody else." The range of depictions, he said, was "so broad that the entire statute cannot be enforced."

Anderson said the ruling would apply, for example, to the live musical "The Book of Mormon." Salt Lake City's Eccles Theatre, following the DABC's advice, barred beer in the theater during the musical's run last month, fearing the play's comical depictions of male genitalia would violate the law.

"This ruling will impact all liquor licensees to a certain point," Anderson said. The ruling would not change how strip clubs operate, he said, because they are covered by other statutes.

The Brewvies case began in early 2016, when officers from the State Bureau of Investigation cited the business for serving alcohol during screenings of “Deadpool.” Because it was not a first offense — the theater was cited in 2011 for “The Hangover Part II” — the theater faced a stiffer fine of \$25,000.

Chesler said that when the theater booked “Deadpool,” the intent was only to show a movie the management knew would be popular.

“We did not think, ‘What is the DABC going to say?’” Chesler said. “It’s a mainstream movie [that was] playing at 3,500 theaters across the United States. We did not feel there was going to be a problem. We were wrong.”

Brewvies’ legal fight made national headlines. Ryan Reynolds, the star of “Deadpool,” pledged \$5,000 to a crowdfunding campaign for the theater’s legal defense.

Reynolds tweeted at the time: “Thank god, they’ve found a way to legislate fun.”

Brewvies filed a federal lawsuit contending the film is protected by the First Amendment. While the case worked its way through the system, Brewvies has been allowed to show R-rated movies as “long as they are not obscene,” Anderson said.

In his ruling, Nuffer wrote that the state may have compelling interests to avoid “potential negative secondary effects” from mixing sexual content and alcohol. But the state’s enforcement mechanism, which it used against Brewvies, was “not the least restrictive means for accomplishing” its goals under the First Amendment.

Nuffer also noted that Brewvies was not an obscene, “sexually oriented” theater — it shows mainstream movies that play in many other American theaters.

“The state cannot argue that it has plenary power to control liquor licensing under the 21st Amendment, to the point of obliterating First Amendment rights,” Nuffer wrote in the ruling.

While Brewvies celebrates, Utah Attorney General Sean Reyes and his staff are deciding their next move, said spokesman Dan Burton.

“We are reviewing the case and considering our options,” he said. A decision to “appeal or not appeal will come out of that review” and whether “we think the judge got it right or wrong.”

When asked whether Brewvies feared extra scrutiny from alcohol enforcement officials in wake of the ruling, Chesler said he hoped the agency “would be reasonable, and understand what the judge has said about the statute they had, that it is unconstitutional. ... I hope they will let us operate our business in the community as we have in the past.”

Gov. Gary Herbert and lawyers with the attorney general’s office previously said the ban is not an infringement of free speech, but rather an attempt to preserve public decency.

Anderson criticized Herbert, the Utah Legislature and the A.G.’s office, saying “I hope they are more aware of their responsibilities, primarily to stand up for the constitutional rights of the people of this state, regardless of whether they agree or disagree with what people are watching or what they’re doing.”

DABC spokesman Terry Wood said the department has no comment on the decision and is “awaiting further guidance from the attorney general’s office.”

Anderson said he believes the state should stop spending money on the legal battle. “Utah has wasted hundreds of thousand of dollars defending these cases. What is even worse, they trample on the rights of everybody in the state and everyone who visits the state.”

Anderson said Brewvies’ next legal step is to recover attorney fees and costs from the state. That figure is still being calculated, he said, but it will tally into the hundreds of thousands of dollars.



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