

IN THE CIRCUIT COURT OF POPE COUNTY, ARKANSAS,
AT RUSSELLVILLE

CITIZENS FOR A BETTER POPE COUNTY,
a Local Option Ballot Question Committee,
JAMES KNIGHT, in his individual capacity

PLAINTIFFS

v.

Case No. 58CV-19- 439

BEN CROSS, in his official capacity
as County Judge of Pope County, Arkansas; and
PHILLIP HANEY, CALEB MOORE,
TIM WHITTENBURG, REUBEN BROWN,
JACKIE HEFLIN, JAMIE JACKSON,
BLAKE TARPLEY, DOUG SKELTON,
BILL SPARKS, JAMES KUSTURIN,
RAY BLACK, JOSEPH PEARSON and
ERNIE ENCHELMAYER, in their
official capacities as members of the
Quorum Court of Pope County, Arkansas ,

FILED
POPE COUNTY CLERK
2019 AUG 13 PM 1:53
SARAH L. GERRARD
POPE COUNTY CIRCUIT CLERK

DEFENDANTS

VERIFIED PETITION FOR DECLARATORY JUDGMENT

COMES NOW, the Plaintiffs, by and through undersigned counsel, pursuant to A.C.A. § 16-111-101 et seq. and Rule 57 of the Arkansas Rules of Civil Procedure, and in support of their Petition for Declaratory Judgment, state and allege as follows:

INTRODUCTION

1. That Plaintiff, Citizens for a Better Pope County, is a registered Local Option Ballot Question Committee consisting of residents of Pope County, Arkansas who was the Sponsor of the local initiated act which is now codified as Pope County Ordinance 2018-O-42.
2. That Plaintiff James Knight is a tax payer and resident of Pope County, Arkansas.
3. That Defendant BEN CROSS is the duly elected County Judge of Pope County, Arkansas and is a resident of Pope County, Arkansas.
4. That Defendant PHILLIP HANEY is a duly elected Justice of the Peace, a member of the Quorum Court, and a resident of Pope County, Arkansas.

5. That Defendant CALEB MOORE is a duly elected Justice of the Peace, a member of the Quorum Court, and a resident of Pope County, Arkansas.

6. That Defendant TIM WHITTENBURG is a duly elected Justice of the Peace, a member of the Quorum Court, and a resident of Pope County, Arkansas.

7. That Defendant REUBEN BROWN is a duly elected Justice of the Peace, a member of the Quorum Court, and a resident of Pope County, Arkansas.

8. That Defendant JACKIE HEFLIN is a duly elected Justice of the Peace, a member of the Quorum Court, and a resident of Pope County, Arkansas.

9. That Defendant JAMIE JACKSON is a duly elected Justice of the Peace, a member of the Quorum Court, and a resident of Pope County, Arkansas.

10. That Defendant BLAKE TARPLEY is a duly elected Justice of the Peace, a member of the Quorum Court, and a resident of Pope County, Arkansas.

11. That Defendant DOUG SKELTON is a duly elected Justice of the Peace, a member of the Quorum Court, and a resident of Pope County, Arkansas.

12. That Defendant BILL SPARKS is a duly elected Justice of the Peace, a member of the Quorum Court, and a resident of Pope County, Arkansas.

13. That Defendant JAMES KUSTURIN is a duly elected Justice of the Peace, a member of the Quorum Court, and a resident of Pope County, Arkansas.

14. That Defendant RAY BLACK is a duly elected Justice of the Peace, a member of the Quorum Court, and a resident of Pope County, Arkansas.

15. That Defendant JOSEPH PEARSON is a duly elected Justice of the Peace, a member of the Quorum Court, and a resident of Pope County, Arkansas.

16. That Defendant ERNIE ENCHELMAYER is a duly elected Justice of the Peace, a member of the Quorum Court, and a resident of Pope County, Arkansas.

17. That jurisdiction and venue are proper in Pope County, Arkansas.

FACTUAL BACKGROUND

18. That in the November, 2018 general elections, the citizens of Arkansas passed Arkansas Constitutional Amendment 100 that authorized casinos and casino gaming in the State of Arkansas.

19. That Amendment 100 states that the Arkansas Racing Commission is authorized to issue four (4) casino licenses, one of which was mandated to be to a facility to be located in Pope County, Arkansas.

20. That Amendment 100 requires, prior to the issuance of a casino license for a casino facility to be located in Pope County, a letter of support from the County Judge or a resolution of the Pope County Quorum Court.

21. That during that same November 2018 general election, the residents of Pope County approved by a vote total of 70% in favor to 30% opposed an initiated measure entitled the Pope County Local Control for Casino Gaming Amendment of 2018.

22. The Pope County Local Control for Casino Gaming Amendment of 2018 was enacted and added to the Pope County Code of Ordinances as Ordinance No. 2018-O-42. This ordinance established a condition precedent to Amendment 100, or any other state law, prior to the issuance of a letter of support by the County Judge or a resolution by the Quorum Court for a Casino or a Casino Applicant “without first referring the question as the issuance of support of a Casino or Casino Applicant to a local election, at either a general election or special election, where . . . a majority of the registered voters of Pope County must approve”

23. That there is no language in Amendment 100 by which the terms of Pope County Ordinance 2018-O-42 is not allowed.

24. That there is no language in Ordinance 2018-O-42 that conflicts with the language of Amendment 100.

25. That the language of Ordinance 2018-O-42 was drafted with the intent to be harmonious with Amendment 100, and all of Arkansas law.

26. That under the *in pari materia* doctrine of statutory interpretation, two separate provisions of law relating to the same subject should be read in a harmonious manner.

DECLARATORY JUDGMENT

27. That Plaintiffs restate and incorporate the allegations contained in Paragraphs 1-26 set forth above.

28. That the Quorum Court of Pope County, Arkansas has published an Agenda for a “Special Called Quorum Court Meeting” scheduled for August 13, 2019 at 5:00 p.m. during which items on the agenda include “Discussion of Ark. Constitutional Amendment 100 & Ordinance No. 2018-O-42;” and “Resolution Regarding Ark. Constitutional Amendment 100.” See a calendar posting of the Agenda for the Special Called Quorum Court Meeting attached as Exhibit A, and incorporated word-for-word herein.

29. That to the best information, knowledge and belief of Plaintiffs, the Quorum Court intends to vote to approve a resolution in favor of one of the casino applicants at said meeting without following Ordinance No. 2008-O-42.

30. That read harmoniously, Amendment 100 and Ordinance 2018-O-42 prevent the issuance of a letter of support or a resolution in favor of a casino applicant without a prior popular vote of the registered voters of Pope County.

31. That any act on the part of the County Judge of the Quorum Court in derogation of the Ordinance 2018-O-42 is void and illegal.

32. That an illegal act of either the County Judge or the Quorum Court is an exception to the doctrine of sovereign immunity and any member(s) acting in violation of the law can be sued in their individual capacity.

33. That Ordinance 2018-O-42 is not inappropriate or illegal.

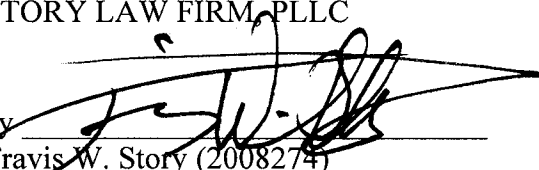
34. That Ordinance 2018-O-42 does not conflict with Amendment 100.

35. That both Amendment 100 and Ordinance 2018-O-42 can be read harmoniously.

36. That no letter of support or resolution in favor of a casino applicant may be issued by either the County Judge or Quorum Court of Pope County respectively, without presenting the issue for popular vote to the registered voters of Pope County pursuant to Ordinance 2018-O-42.

WHEREFORE, Plaintiffs pray for an Order of this Court declaring that Pope County Ordinance 2018-O-42 can be read in harmony with Arkansas Constitutional Amendment 100 such that the County Judge and Quorum Court are prohibited from taking any action in their respective official capacities in expressing their approval of a casino applicant without first presenting the issue to the registered voters of Pope County in an election according to the provisions of Pope County Ordinance 2018-O-42, and for such other and further relief the Court deems just and proper.

Respectfully submitted,
STORY LAW FIRM, PLLC

by 
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[Verifications to follow:]

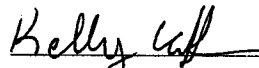
VERIFICATION OF SEPARATE PLAINTIFF
JAMES KNIGHT

State of Arkansas)
) ss.
County of Pope)

James Knight on oath states that the facts and allegations set forth in the foregoing Petition for Declaratory Judgment are true and accurate to the best of my knowledge.

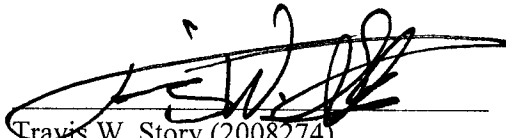
By:  _____
James Knight

Subscribed and sworn to before me, the undersigned Notary Public, this 13th day of August, 2019.

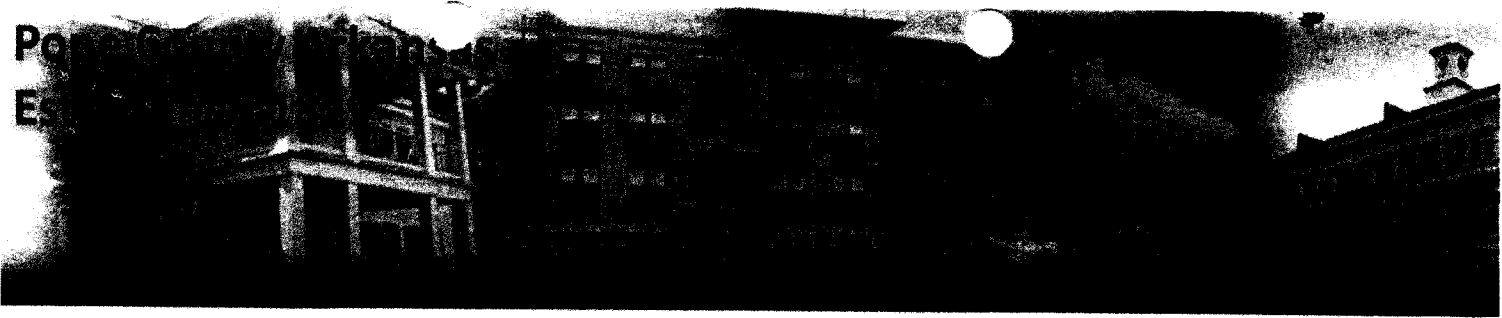
 _____
Notary Public

My Commission Expires: 8-2-27

KELLY COFFMAN
NOTARY PUBLIC - ARKANSAS
POPE COUNTY
My Commission Expires 08-02-2027
Commission No. 12702116

By:  _____
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Attorneys for Plaintiffs



< [Calendar](#)

Tuesday, August 13, 2019

05:00 PM AGENDA SPECIAL CALLED QUORUM COURT MEETING

AGENDA FOR SPECIAL CALLED QUORUM COURT MEETING
AUGUST 13, 2019

TIME: 5:00 P.M.

CALL TO ORDER:

PRAYER: JUSTICE PEARSON

ROLL CALL:

PUBLIC COMMENTS ADDRESSING AGENDA

BUSINESS:

1. DISCUSSION OF ARK. CONSTITUTIONAL AMENDMENT 100 & ORDINANCE No. 2018-O-42. JUSTICE _____
2. REVIEW OF ECONOMIC DEVELOPMENT AGREEMENT. JUSTICE _____
3. RESOLUTION REGARDING ARK. CONSTITUTIONAL AMENDMENT 100. JUSTICE _____

COMMENTS FROM THE PUBLIC:

ANNOUNCEMENTS:

ADJOURN:

05:00 PM SPECIAL CALLED QUORUM COURT MEETING 5:00 P.M.

