

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ DIVISION

GULFSIDE CASINO PARTNERSHIP

PLAINTIFF

vs.

Case No. 60CV-19-_____

ARKANSAS DEPARTMENT OF FINANCE
AND ADMINISTRATION and
ARKANSAS RACING COMMISSION

DEFENDANTS

**VERIFIED COMPLAINT TO APPEAL AGENCY DECISION, FOR
DECLARATORY JUDGMENT TO DETERMINE VALIDITY OF RULE,
FOR DECLARATORY JUDGMENT TO HOLD ARK. CODE ANN. § 23-117-101
UNCONSTITUTIONAL, AND FOR PRELIMINARY AND PERMANENT INJUNCTION**

Comes now the Plaintiff, Gulfside Casino Partnership, by and through its undersigned counsel, and for its Complaint against the Defendants, states as follows:

PARTIES

1. Plaintiff, Gulfside Casino Partnership (“Gulfside”), is a Mississippi general partnership with its principal place of business in Gulfport, Harrison County, Mississippi.
2. Defendant, Arkansas Department of Finance and Administration (“DFA”), is an agency of the State of Arkansas.
3. Service of process may be made upon DFA by serving its director, Larry W. Walther, at 1509 West Seventh Street, Room 401, Little Rock, Arkansas, 72201, pursuant to Rule 4(f)(12), Ark. Rules Civ. Pro.
4. Defendant, Arkansas Racing Commission (“Racing Commission”), is a division of DFA.

5. Service of process may be made upon the Racing Commission by serving its director, John C. Campbell, at 1515 West Seventh Street, Suite 505, Little Rock, Arkansas, 72201, pursuant to Rule 4(f)(12), Ark. Rules Civ. Pro.

JURISDICTION AND VENUE

6. This Court has jurisdiction to review an agency adjudication, pursuant to Ark. Code Ann. § 25-15-212.

7. This Court has jurisdiction to determine the validity of an agency rule in an action for declaratory judgment, pursuant to Ark. Code Ann. § 25-15-207.

8. This Court has jurisdiction over this matter and the power to declare Ark. Code Ann. §§ 23-117-101 unconstitutional, pursuant to Rule 57, Ark. Rules Civ. Pro., and Ark. Code Ann. §§ 16-111-101, *et seq.*

9. Specifically, Ark. Code Ann. § 16-111-102 states: “Any person . . . whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder.”

10. This Court has jurisdiction over the parties to this action.

11. Venue is proper in this Court, pursuant to Ark. Code Ann. §§ 16-60-104(3)(A), 25-15-212(b)(1)(B), and 25-15-207(b).

FACTUAL AND PROCEDURAL BACKGROUND

12. On November 6, 2018, the citizens of Arkansas approved the Arkansas Casino Gaming Amendment of 2018. Ark. Const. Amend. 100.

13. The popular name of the proposed amendment was, “AN AMENDMENT TO REQUIRE FOUR LICENSES TO BE ISSUED FOR CASINO GAMING AT CASINOS, ONE EACH IN CRITTENDEN (TO SOUTHLAND RACING CORPORATION), GARLAND (TO OAKLAWN JOCKEY CLUB, INC.), POPE, AND JEFFERSON COUNTIES.” (Emphasis added.)

14. Amendment 100 went into effect on November 14, 2018, and it authorized the Racing Commission to “administer and regulate casino licenses, including their issuance and renewal . . .” and to “adopt rules necessary to carry out the purposes of [the] Amendment . . .” Ark. Const. Amend. 100, §§ 4(a) and (c).

15. Amendment 100 provides:

(i) The Arkansas Racing Commission *shall* issue four casino licenses.

. . .

(k) The Arkansas Racing Commission *shall* award a casino license to a casino applicant for a casino to be located in Pope County within two miles of the city limits of the county seat. The Arkansas Racing Commission shall also award a casino license to a casino applicant for a casino to be located in Jefferson County within two miles of the city limits of the county seat.

Ark. Const. Amend. 100, §§ 4(i) and (k). (Emphasis added).

16. Amendment 100 further requires:

[A]ll casino applicants for a casino license in Pope County and Jefferson County to submit either a letter of support from the county judge or a resolution from the quorum court in the county where the proposed casino is to be located and, if the proposed casino is to be located within a city or town, shall also require all casino applicants to include a letter of support from the mayor in the city or town where the applicant is proposing the casino to be located.

Ark. Const. Amend. 100, § 4(n).

17. On November 19, 2018, five days after the effective date of Amendment 100, Booker T. Clemons, the County Judge of Jefferson County, wrote a letter of support in favor of Downstream Development Authority (“Downstream”) as an applicant for a casino gaming license in Jefferson County.

18. Judge Clemons had been appointed by the Jefferson County Quorum Court to fill out the term of his predecessor, and, therefore, Judge Clemons was not eligible to run for the office after his term ended on December 31, 2018.

19. Jim Ed Gibson was elected as County Judge of Pope County in 1998, and he was re-elected to consecutive two-year terms until his retirement on December 31, 2018.

20. On December 21, 2018, when Jim Ed Gibson was the duly elected and acting County Judge of Pope County, he wrote a letter of support in favor of Gulfside as an applicant for a casino gaming license in Pope County.

21. Judge Gibson did not seek reelection, and like Judge Clemons, his last day in office was December 31, 2018.

22. Randall Horton was elected as Mayor of Russellville in 2014, and he served in that position through December 31, 2018.

23. On December 26, 2018, Mayor Horton also wrote a letter in support of Gulfside as an applicant for a casino gaming license in Russellville.

24. On December 26, 2018, the Racing Commission held a meeting in Little Rock at 10:00 a.m. At 9:26 a.m., before the meeting began, Downstream submitted Judge Clemons’s letter of support to the Racing Commission.

25. After Judge Clemons's letter of support was submitted, the Racing Commission met to consider Rules 2 and 3 of the Casino Gaming Rules.

26. During the December 26, 2018, meeting, counsel for the Racing Commission directed the Commissioners' attention to paragraph 4(b) of Rule 2.13 on page 11 of the Casino Gaming Rules and explained:

All the non-franchise-holder applicants have to have a letter of support from either the county judge, the quorum court, or the mayor, or a combination thereof, depending on the circumstances. And we added some language after the comments: "Letters of support and resolutions by the Quorum Court required by these Rules and the Amendment shall be dated after the deadline of the effective date of the Amendment." The effective date of the amendment was November. So any letter that you get from the quorum court or the mayor or a combination of, as long as it's dated after the effective date of Amendment 100, which was in November of 2018, would be considered effective.

Counsel further explained:

There has been some question about what happens if somebody gets a letter after January 1 with the new administration. Under the rules, a letter dated after the effective date is valid as far as the Racing Commission is concerned.

27. There was no discussion at the December 26, 2018, meeting as to what comments counsel was referring to, which led to the additional requirement, or who made the comments.

28. After counsel provided this explanation to the Commissioners at the December 26, 2018, meeting, a motion was made to adopt Rules 2 and 3 for publication. The motion was seconded and unanimously approved by the Commissioners present, and the Chairman declared, "the motion passes."

29. The text of paragraph 4(b) of Rule 2.13, as adopted for publication at the December 26, 2018, meeting, was as follows:

- (b) All casino applicants for a casino license in Pope County and Jefferson County are required to submit either a letter of support from the county judge or a resolution from the quorum court in the county where the proposed casino is to be located and, if the proposed casino is to be located within a city or town, are also required to submit a letter of support from the mayor in the city or town where the casino applicant is proposing the casino to be located. Letters of support and resolutions by the Quorum Court, required by these Rules and the Amendment, shall be dated after the effective date of the Amendment. (Emphasis in original.)

30. As previously stated, the effective date of Amendment 100 was November 14, 2018. As such, the adoption of this Rule confirmed the adequacy of Judge Clemons’s letter of support in favor of Downstream.

31. On December 28, 2018, Gulfside submitted Judge Gibson’s letter of support to the Racing Commission.

32. On December 31, 2018, Gulfside submitted the letter of support from Mayor Horton to the Racing Commission.

33. With knowledge that Gulfside’s letter of support from Judge Gibson complied with the Rules adopted at its December 26, 2018, meeting, at 3:55 p.m. on January 3, 2019, counsel for the Racing Commission sent an email, which stated, “Below is a proposed change to the language contained in DRAFT Rule 2 of the Casino Gaming Rules. This change is on page 11 of Rule 2.”

The changed rule is as follows:

- (b) All casino applicants for a casino license in Pope County and Jefferson County are required to submit either a letter of support from the county judge or a resolution from the quorum court in the county where the proposed casino is to be located and, if the proposed casino is to be located within a city or town, are also required to submit a letter of support from the mayor in the city or town where the casino applicant is proposing the casino to be located. ~~Letters of support and resolutions by the Quorum Court, required by these Rules and the Amendment, shall be dated after the~~

effective date of the Amendment. All letters of support or resolutions by the Quorum Court, required by these Rules and the Amendment, shall be dated and signed by the County Judge, Quorum Court members, or Mayor holding office at the time of the submission of an application for a casino gaming license.
(Emphasis in original.)

34. With knowledge that the new Rule 2.13 would eliminate the only qualified applicant for a casino gaming license in Pope County, at 4:40 p.m. on January 3, 2019, John Shelnutt, Administrator for Economic Analysis and Tax Research for the State of Arkansas Department of Finance and Administration (“DFA”), sent an email with the subject of “3-casino case” to Larry Walther, DFA’s Director, Carla Haugen, DFA’s Deputy Director and Chief of Staff, Walter Anger, DFA’s Deputy Director and Commissioner of Revenue, and Paul Gehring, DFA’s Assistant Commissioner of Revenue Policy and Legal, stating as follows:

FYI

Here is the estimate of the 3-casino operating scenario impact on General Revenue. This is the worst-case scenario summarized below and shown at the end of the detailed calculations attached.

Worst case is defined as never going beyond the three casino level of operations and topping out in the gaming industry like other states in terms of revenue growth.

Although the revenue loss is greater in FY 20 from the temporary gap prior to Pine Bluff startup, the worst case scenario assumes there is no amount of casino completion and expansion in the 3-casino case to make up for the FY 22 estimated loss as a long-run impact value.

See below and attached

| | | | | | |
|---|---|--|--|--|--|
| FY2022 Revenue Impact Resulting from Proposed Amendment | | | | | |
| (Using FY2021 Estimated Oaklawn and Southland Net Gaming Receipts for estimate) | | | | | |
| Assumes all but Pope County Casino facilities are in full operation | | | | | |
| (\$31,120,817) | Net Loss to State General Revenue | | | | |
| \$13,166,104 | Gain to the Arkansas Racing Commission Purse & Award Fund | | | | |
| \$4,004,901 | Net Gain to Counties | | | | |
| \$8,629,134 | Net Gain to Cities | | | | |
| | | | | | |
| Net Amounts to State General Revenue, Cities and Counties reflect the revenue changes from adoption of the Amendment less the current amounts distributed from Electronic Games of Skill that will be lost. | | | | | |

(emphasis in original).

35. On January 10, 2019, the Racing Commission met in Little Rock and approved the January 3, 2019, version of Rule 2.13 for publication for public comment, along with the rest of the Casino Gaming Rules.

36. On February 21, 2019, the Racing Commission met and considered all comments submitted in connection with the Casino Gaming Rules, including the written objection submitted by Gulfside, and heard argument from Gulfside’s counsel, as to why Rule 2.13(5)(b)¹ was unconstitutional. After hearing and considering the arguments advanced by Gulfside, the Racing Commission adopted the Casino Gaming Rules, as published, including the January 3, 2019, version of Rule 2.13.

37. At the time of the February 21, 2019, meeting, the Racing Commission was aware that Judge Cross had publicly stated on numerous occasions that he would not issue any letter of support to any casino applicant in Pope County, unless a vote is held in Pope County and the people of Pope County vote in favor of his issuing a letter of support to a casino applicant. This

¹ Rule 2.13(5)(b) is the same rule that was previously referred to as Rule 2.13(4)(b), due to changes in numbering of the paragraphs.

position is also stated in his letter of February 1, 2019, submitted during the public comment period.

38. On July 5, 2018, the Pope County Quorum Court passed Resolution 2018-R-6, which stated, “the voters of Pope County, Arkansas in the November 2018 election should determine whether or not a casino is built in Pope County, Arkansas.” During the public comment period, the Pope County Quorum Court submitted a letter stating its position that no letter of support should be issued without first calling a special election in Pope County to authorize such a letter of support.

39. The Racing Commission adopted the January 3, 2019, version of Rule 2.13 after consultation with the Governor’s office and attorneys for DFA, in order to prevent Gulfside, the only qualified applicant, from receiving a casino gaming license in Pope County.

40. In adopting the change to Rule 2.13, the Racing Commission knowingly adopted language to the rule that nullified the letters of support that Gulfside submitted, which letters complied with the text of paragraph 4(b) of Rule 2.13, as adopted for publication at the December 26, 2018, meeting.

41. On March 5, 2019, the General Assembly passed Act 371 of 2019, which provides, “A letter of support from the county judge or a resolution of support from the quorum court, and from the mayor, if appropriate, required under subsection (a) of this section shall be dated and signed by the county judge, quorum court, or mayor holding office at the time of the submission of an application for a casino license.” Ark. Code Ann. § 23-117-101. This law went into effect on March 8, 2019.

42. Gulfside argued before the Racing Commission that Ark. Code Ann. § 23-117-101 is unconstitutional for the same reasons it argued that Rule 2.13(5)(b) was unconstitutional.

43. Amendment 100 requires that “Not later than June 1, 2019, the Arkansas Racing Commission shall begin accepting applications for casino licenses.” Ark. Const. Amend. 100, § 4(f).

44. On March 26, 2019, the Racing Commission issued a public notice, which provided, in part, as follows:

The Arkansas Racing Commission shall begin accepting applications for casino gaming licenses in Pope and Jefferson counties on May 1, 2019, pursuant to the terms of Amendment 100 to the Arkansas Constitution and the Casino Gaming Rules adopted by the Commission. **All applications for casino gaming licenses must be submitted to the Commission office located at 1515 W. 7th Street, Suite 505, Little Rock, AR 72201, by 5:00 PM CDT on Thursday, May 30, 2019.** (Emphasis added.)

45. The application period opened on May 1, 2019.

46. On May 1, 2019, Downstream submitted its application for a casino gaming license in in Jefferson County and attached a letter of support from the Jefferson County Judge, Gerald Robinson, dated February 1, 2019, and a letter of support from the Mayor of Pine Bluff, Shirley Washington, dated February 19, 2019.

47. Downstream was the only applicant for a casino gaming license in Jefferson County.

48. On May 17, 2019, Gulfside submitted its application for a casino gaming license in Pope County and attached the letters of support that it previously filed with the Racing Commission from Judge Gibson and Mayor Horton.

49. There were four other applications submitted for a casino gaming license in Pope County during the application period.

50. No applicant other than Gulfside submitted any letter of support from any Pope County Judge or a resolution from the Pope County Quorum Court.

51. No applicant other than Gulfside submitted a letter of support from any Russellville mayor.

52. The application period closed on May 30, 2019.

53. On June 13, 2019, the Racing Commission met and granted Downstream a casino gaming license in Jefferson County.

54. At the June 13, 2019, meeting, the Racing Commission voted to deny Gulfside's application, as being incomplete, due to the failure to have a letter of support from the current County Judge of Pope County or a resolution of support from the current Pope County Quorum Court. This was the only reason for rejecting Gulfside's application.

55. Gulfside's application met all other requirements of Amendment 100 and the Casino Gaming Rules.

56. On June 17, 2019, the Racing Commission detailed the reason for its denial of Gulfside's application, writing as follows:

The Arkansas Racing Commission met on June 13, 2019, to consider the applications for a casino gaming license for Pope County, Arkansas. Based upon the contents of the applications and information submitted, the ARC rejected all five Pope County applications as being incomplete because the applications failed to meet the requirements of the ARC rules, of Amendment 100, and of Arkansas law, because the applications did not contain the proper letters of support. Act 371 of 2019 and Rule 2 of the ARC Casino Gaming Rules require that an applicant submit a letter of support from the County Judge, Quorum Court members or Mayor holding office at the time of the submission of an application for a casino gaming license. All

applications received by the ARC during the designated application period from May 1, 2019, to May 30, 2019, failed to produce or attach the required letters of support. As a result, all applications for casino gaming licenses for Pope County were rejected by the ARC as incomplete.

57. Rule 2.13(18) of the Casino Gaming Rules allows an applicant to appeal the denial of an application for a casino gaming license by filing a written request for a hearing before the Racing Commission within 15 days from the receipt of the notice of denial from the Racing Commission.

58. On June 19, 2019, Gulfside filed its written request for a hearing before the Racing Commission to appeal the Commission's decision to deny Gulfside's application for a casino gaming license in Pope County.

59. No applicant other than Gulfside appealed the Racing Commission's denial of its application.

60. Gulfside challenged the constitutionality of both Rule 2.13(5)(b) and Ark. Code Ann. § 23-117-101 before the Racing Commission and argued that its letters of support are valid and its application was complete.

61. On July 18, 2019, a hearing was held before the Racing Commission to consider Gulfside's appeal of the denial of its application.

62. During the July 18, 2019, meeting, the Chairman observed, "But everything will be on the record as far - the same thing that we required in Jefferson County in this case. . . Everybody will be treated equally."

63. On August 15, 2019, Racing Commission met again and denied Gulfside's appeal.

**COUNT I – DECLARATORY JUDGMENT TO DETERMINE
VALIDITY OF RULE 2.13(5)(b) OF THE CASINO GAMING RULES**

64. Gulfside adopts and incorporates the allegations contained in the preceding paragraphs.

65. Rule 2.13(5)(b) is unconstitutional because it imposes an additional requirement for obtaining a casino license that is not found in Amendment 100.

66. Amendment 100 details the application requirements, and nowhere does it state that the letter of support or resolution must be issued by the county judge or quorum court holding office at the time the application is submitted. That is an added requirement imposed by the Racing Commission.

67. The following comparison of section 4(n) of Amendment 100 and Rule 2.13(5)(b) clearly illustrates that the Racing Commission’s Rule added a requirement that is not part of Amendment 100:

~~The Arkansas Racing Commission shall require~~ [A]ll casino applicants for a casino license in Pope County and Jefferson County are required to submit either a letter of support from the county judge or a resolution from the quorum court in the county where the proposed casino is to be located and, if the proposed casino is to be located within a city or town, ~~shall~~ are also ~~require all casino applicants required to include~~ submit a letter of support from the mayor in the city or town where the casino applicant is proposing the casino to be located. All letters of support or resolutions by the Quorum Court, required by these Rules and the Amendment, shall be dated and signed by the County Judge, Quorum Court members, or Mayor holding office at the time of the submission of an application for a casino gaming license.

68. As is evident from the above comparison, the only substantive difference between section 4(n) of Amendment 100 and Rule 2.13(5)(b) is the Rule’s additional requirement that the letter of support or resolution be issued by the official in office at the time of the application.

69. Statutes and regulations may not impose requirements in addition to those found in the Constitution. *See, e.g., Daniels v. Dennis*, 365 Ark. 338, 229 S.W.3d 880 (2006); *Martin v. Kohls*, 2014 Ark. 427, 444 S.W.3d 844 (2014); *Mississippi County v. Green* 200 Ark. 204, 138 S.W.2d 377 (1940); *Rison v. Farr*, 24 Ark. 161 (1865).

70. The Racing Commission does not have the authority to define the minimum qualifications for a casino gaming license – Amendment 100 provides those. Rather, the Racing Commission’s role is to ensure that an applicant has met the qualifications set out in Amendment 100 and, if there is more than one applicant who meets all of the minimum qualifications, choose the strongest applicant based upon merit criteria.

71. Rule 2.13(5)(b) is unconstitutional, as it imposes requirements in addition to those found in Amendment 100.

72. Additionally, Rule 2.13 conflicts with the purpose of the Amendment is, therefore, unconstitutional.

73. Amendment 100 authorizes the Racing Commission to “adopt rules necessary to carry out the purposes of [the] Amendment,” and the Amendment leaves no room for doubt as to what those purposes are – the Racing Commission “**shall** issue four casino licenses” and “**shall** award a casino license to a casino applicant for a casino to be located in Pope County within two miles of the city limits of the county seat.” Ark. Const. Amend. 100, §§ 4(c), (i), and (k). (Emphasis added.)

74. Rule 2.13(5)(b) resulted in the issuance of less than four casino licenses, and it prevented the Racing Commission from awarding a casino license to an applicant for a casino in Pope County during the application period.

75. Rule 2.13(5)(b) is in direct conflict with Amendment 100 and is, therefore, unconstitutional.

76. “[T]he law is elementary that an agency has no right to promulgate a rule or regulation contrary to a statute.” *Arkansas State Bd. of Election Comm'rs v. Pulaski Cty. Election Comm'n*, 2014 Ark. 236, 15, 437 S.W.3d 80, 89 (2014).

77. It is axiomatic that the General Assembly cannot grant a state agency the authority to promulgate regulations contrary to the Arkansas Constitution. *Arkansas Health Servs. Comm'n v. Reg'l Care Facilities, Inc.*, 351 Ark. 331, 338, 93 S.W.3d 672, 676 (2002).

78. “In reviewing the adoption of regulations by an agency under its informal rule-making procedures, a court is limited to considering whether the administrative action was arbitrary, capricious, an abuse of discretion or *otherwise not in accordance with the law.*” *Dep't of Human Servs. & Child Welfare Agency Review Bd. v. Howard*, 367 Ark. 55, 62, 238 S.W.3d 1, 6 (2006) (Emphasis in original.).

79. Here, the Racing Commission changed Rule 2.13 knowing it would nullify the letters of support that Gulfside previously submitted, which letters complied with the text of Rule 2.13 as adopted for publication at the December 26, 2018. The effect of adopting the rule change was to prevent Gulfside, the only qualified applicant, from receiving a casino gaming license for Pope County during the application period.

80. The adoption of the January 3, 2019, change to Rule 2.13(5)(b) is not consistent with the purposes of Amendment 100, and therefore, Rule 2.13(5)(b) is unconstitutional.

**COUNT II – DECLARATORY JUDGMENT TO HOLD
ARK. CODE ANN. § 23-117-101 UNCONSTITUTIONAL**

81. Gulfside adopts and incorporates the allegations contained in the preceding paragraphs.

82. Ark. Code Ann. § 23-117-101 is unconstitutional because it is inconsistent with Amendment 100, it does not fulfill the purpose of Amendment 100, and it adds requirements not found in Amendment 100.

83. Section 3(c) of Amendment 100 provides:

To fulfill the purposes of this Amendment, the Arkansas General Assembly shall from time to time enact laws, and appropriate monies to or for the use of the Arkansas Racing Commission. Initial laws and appropriations enacted by the General Assembly pursuant hereto shall be in full force and effect no later than June 30, 2019. (Emphasis added.)

84. The purposes of Amendment 100 are to issue four casino gaming licenses, including one to an applicant in Pope County. Ark. Const. Amend. 100, §§ 4(i) and (k).

85. Further, Amendment 100 provides that “All provisions of the Constitution, statutes, and common law of this state . . . to the extent inconsistent or in conflict with any provision of this Amendment are expressly declared null and void as to, and do not apply to, any activities allowed under this Amendment.” Ark. Const. Amend. 100, §§ 10.

86. Ark. Code Ann. § 23-117-101 is inconsistent with Amendment 100, as it adds a requirement not found in the Amendment.

87. Ark. Code Ann. § 23-117-101 does nothing to fulfill the purposes of Amendment 100; to the contrary, it works directly against the purposes of Amendment 100 by excluding the

only applicant who met all of the requirements imposed by Amendment 100 during the application period.

88. Additionally, as referenced above, statutes may not impose requirements in addition to those found in the Constitution.

89. Amendment 100 details the application requirements, and nowhere does it state that the letter of support or resolution must be issued by the county judge or quorum court holding office at the time the application is submitted. That is an added requirement imposed by the General Assembly.

90. Ark. Code Ann. § 23-117-101 unconstitutional because it imposes requirements not found in Amendment 100.

91. Because this action seeks to declare Ark. Code Ann. § 23-117-101 unconstitutional, the Attorney General for the State of Arkansas is being served with a copy of this Complaint, pursuant to Ark. Code Ann. § 16-111-111(a).

COUNT III – JUDICIAL REVIEW OF ADMINISTRATIVE ADJUDICATION

92. Gulfside adopts and incorporates the allegations contained in the preceding paragraphs.

93. Because Rule 2.13(5)(b) and Ark. Code Ann. § 23-117-101 are unconstitutional, Gulfside's letters of support are valid, its application is complete, Gulfside is entitled to a license to operate a casino in Pope County, and the Racing Commission's denial of Gulfside's application should be reversed.

94. As the Chairman observed at the July 18, 2019, meeting, Gulfside's application should be evaluated in the same way Downstream's application was evaluated.

95. Downstream was awarded a license on June 13, 2019, because it was the only applicant for a casino gaming license in Jefferson County who submitted an application that complied with all requirements of Amendment 100 and the Casino Gaming Rules within the application period.

96. Gulfside met every requirement of Amendment 100 and the Casino Gaming Rules, and it was the only applicant for a casino gaming license in Pope County to submit an application that complied with all requirements of Amendment 100 and the Casino Gaming Rules within the application period.

97. When the Racing Commission is presented with only one application, which satisfies all of the requirements of Amendment 100 during the application period, the Racing Commission's duties are purely ministerial, and the Racing Commission is required to award that applicant a license.

98. No applicant other than Gulfside submitted a letter of support from any Pope County Judge or a resolution from the Pope County Quorum Court.

99. But for the Racing Commission's adoption of an unconstitutional rule and reliance upon an unconstitutional statute, Gulfside would have received a casino gaming license for a casino in Pope County, just as Downstream received a casino gaming license for a casino in Jefferson County.

100. As such, this matter should be remanded to the Racing Commission, with instructions to issue to Gulfside the casino gaming license for a casino in Pope County to which it was entitled.

STANDARD FOR PRELIMINARY INJUNCTION

101. Gulfside adopts and incorporates the allegations contained in the preceding paragraphs.

102. Arkansas Rule of Civil Procedure 65(a)(1) states that a preliminary injunction may be granted where it appears that irreparable harm may result to the plaintiff if the preliminary injunction is not granted.

103. Concurrent with the filing of this Complaint, copies have been provided to the Arkansas Attorney General and representatives for the Defendants, pursuant to Ark. R. Civ. P. 65(b)(1)(B).

104. It is within the Court's discretion whether to grant a preliminary injunction. *Custom Microsystems, Inc. v. Blake*, 344 Ark. 536, 540, 42 S.W.3d 453, 456 (2001); *Smith v. American Trucking Association, Inc.*, 300 Ark. 594, 781 S.W.2d 3 (1989).

105. The Eighth Circuit's standard for issuance of a preliminary injunction consists of four elements that must be considered: (1) the probability of the movant's success on the merits; (2) the threat of irreparable harm to the movant in the absence of relief; (3) the balance between that harm and the harm that the relief would cause to the other litigants; and (4) the public interest. *Dataphase Systems, Inc. v. CL Systems, Inc.*, 640 F. 2d 109, 112-114 (8th Cir. 1981).

106. Arkansas courts, though, hold that the two critical factors are whether the plaintiff demonstrates a likelihood of success on the merits and whether the plaintiff demonstrates a likelihood that, absent the granting of preliminary relief, irreparable harm will occur. *Custom Microsystems*, 344 Ark. at 542, 42 S.W.3d at 456-57. The phrase "likelihood of success on the

merits” has been interpreted by the Arkansas Supreme Court to mean a reasonable probability of success in the litigation on appeal. *Id.* at 542, 42 S.W.3d at 457.

107. As detailed above, Gulfside was entitled to a casino gaming license for a casino in Pope County, but for the Racing Commission’s adoption of Rule 2.13(5)(b).

108. Because Amendment 100 provides that there may only be one casino gaming licensed issued in Pope County, Gulfside would be irreparably harmed if the Racing Commission were to issue a gaming license to another applicant before its case has been fully adjudicated.

109. Therefore, this Court should issue a preliminary injunction to enjoin the Racing Commission from accepting any other applications for a casino gaming license in Pope County and from issuing a casino gaming license during the pendency of this case.

WHEREFORE, Gulfside Casino Partnership respectfully prays for a declaration from this Court that Rule 2.13(5)(b) of the Casino Gaming Rules and Ark. Code Ann. § 23-117-101 are unconstitutional, for an order from this Court that, but for the unconstitutional rule and statute, Gulfside Casino Partnership’s application for a casino gaming license should have been granted, for an order from this Court reversing the Arkansas Racing Commission’s decision to deny Gulfside Casino Partnership’s application for a casino gaming license and remanding the matter to the Arkansas Racing Commission with instructions to award a casino gaming license in Pope County, Arkansas, to Gulfside Casino Partnership, for an order enjoining the Racing Commission from accepting or considering any other applications for a casino gaming license in Pope County, Arkansas, and from issuing a casino gaming license until further order of the Court, and for all other relief to which it may be entitled.

Respectfully submitted,
Gulfside Casino Partnership

By:

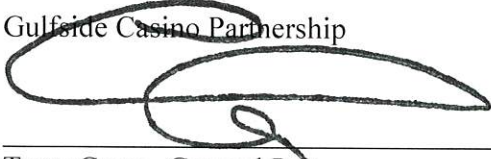


Kenneth P. "Casey" Castleberry, ABA #2003109
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VERIFICATION

I, Terry Green, do hereby certify that the above information is true and correct to the best of my knowledge and belief.

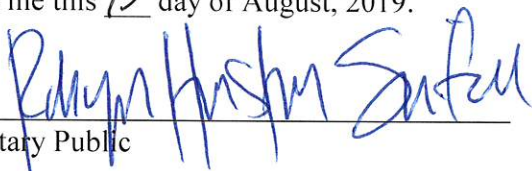
Gulfside Casino Partnership



By: _____
Terry Green, General Partner

STATE OF Mississippi)
COUNTY OF Jackson)

SUBSCRIBED AND SWORN to before me this 15th day of August, 2019.



Notary Public

My Commission expires: (SEAL)

