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Case 58CV-18-768

Case 58CV-18-768, James Knight v. Jim Ed Gibson¹

The case was initially filed on December 27, 2018, in an attempt to stop the Pope County Judge, Jim Ed Gibson, from providing a letter of support for a casino operator in an alleged violation of the local control ordinance (County Ordinance 2018-O-42). Knight requested a temporary restraining order and preliminary injunction. Knight's attorney was Josh Sanford.

Unknown to Knight and his associates, Gibson had already written a support letter for Gulfside Casino Partnership on December 21.

On December 28, in an attempt to stop the letter of support from being accepted, an amended complaint added the Arkansas Racing Commission as a defendant. The complaint claimed that Gibson had violated the local control ordinance by issuing a support letter without the consent of the electorate and asked the Court to declare the issuance of the letter of support unlawful and invalid.

On January 2, 2019, a second amended complaint added the new county judge, Ben Cross, as a defendant. It asked the court to declare Gibson's letter unlawful and invalid and to direct "Defendant Cross to rescind the letter of support.

A "Motion to Intervene" was made by Cliff Goodin as an individual and in his capacity representing Citizens for a Better Pope County on January 3. His attorney was Travis Story, author of Ordinance 2018-O-42.

Former County Judge Jim Ed Gibson submitted a motion to dismiss the case "for failure to state a claim upon which relief can be granted" on January 9.

On January 11, Knight submitted a motion for voluntary dismissal of the case and Goodin withdrew the motion to intervene.

¹ [58CV-18-768: JAMES KNIGHT V JIM ED GIBSON ET AL](#)

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58CV-19-439 & CV-20-145

Case 58CV-19-439, Citizens For A Better Pope County, a Local Option Ballot Question Committee and James Knight in individual capacity v. Ben Cross, in his official capacity as County Judge of Pope County; and (list of all JPs) in their official capacities...²

The case was filed on the afternoon of August 13, 2019, the same day that the Pope County Quorum Court passed a resolution of support for Cherokee Nation Businesses in the evening.

The complaint asked for an order declaring that “Pope County Ordinance 2018-0-42 can be read in harmony with Arkansas Constitutional Amendment 100” such that the Judge and Quorum Court are prohibited from expressing approval of a casino applicant with an election by the voters.

The plaintiffs also submitted a motion asking for a temporary restraining order and preliminary injunction to prevent the County Judge or Quorum Court from taking any action that could be construed as expressing approval of the County as set forth in Amendment 100 in “derogation of their obligations under Pope County Ordinance 2018-O-42.”

The attorney for the plaintiffs was Travis Story was also the primary author of Ordinance 2018-O-42.

In a response to the motion for the TRO and preliminary injunction, the defendants argue the unconstitutionality of the local ordinance.³

On August 26, CNB submitted a motion to intervene and, subsequently, a motion to dismiss. In supporting material, CNB provides additional reasoning on the constitutionality of Ordinance 2018-O-42.⁴ The motion to intervene was granted on October 1.

On September 4, in an amended petition, the plaintiffs asked for an order mandating that the County Judge or Quorum Court rescind Resolution 2019-R-14 and added to their complaints:

² [58CV-19-439: CITIZENS FOR A BETTER POPE CO V BEN CROSS ETAL](#)

³ “¶21 – Pleading affirmatively, pursuant to Ark. Code Ann. § 14-14-914(a)(Repl. 2013), no county legislation can be enacted which is contrary to the Arkansas Constitution. The Local Ordinance is in conflict with Amendment 100 which grants the Pope County Judge and the Pope County Quorum Court the authority to issue either a letter or resolution of support for a casino applicant. The Local Ordinance improperly restricts the constitutionally-granted authority of the Pope County Judge and Quorum Court.”

“Moreover, the Local Ordinance is in conflict with Art. 5, § 1 of the Arkansas Constitution in that the Local Ordinance requires a higher standard to approve a letter or resolution of support to a casino applicant. The Local Ordinance requires a “majority of the registered voters of Pope County” to approve and authorize the County Judge or Quorum Court to issue a letter/resolution of support. Article 5, § 1 of the Constitution provides that any measure submitted to the people “shall take effect and become law when approved by a majority of the votes cast upon such measure” Because the Local Ordinance is in conflict with the Arkansas Constitution, it is void and therefore repealed by effect pursuant to Art. 5, § 1 of the Arkansas Constitution.”

⁴ “Amendment 100 granted discretion to two specific offices to decide whether to issue letters or resolutions of support: the office of the county judge and the county quorum court. The voters of Pope County have sought to change Amendment 100 so neither the county judge nor the quorum court have the authority to issue letters of support. The initiated ordinance transfers the constitutionally granted authority from those two bodies to the voters of Pope County. Not only does the ordinance prohibit the county judge and quorum court from issuing a generic letter of support, but it also requires the question of which potential applicant to support to be decided by the voters of Pope County. In direct contravention of Amendment 100, it completely eviscerates the Constitution’s requirement that the county judge or the quorum court decide when, how, and who to support.”

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- alleged that Amendment 100 conflicts with Amendment 14 and, thus, should be declared unconstitutional
- alleged that the Pope County Judge and members of the Quorum Court met in secret in violation of FOIA

On September 24, in a motion to dismiss, the defendants referred to the statute prohibiting local regulation of gambling⁵ and addressed the alleged “secret meetings.”⁶

In a “Renewed Emergency Motion” for a TRO injunctive relief that was filed on October 3, the plaintiffs allege

- the Quorum Court intends to repeal Ordinance 2018-O-42 at the regular Quorum Court meeting on October 3
- ... “a vote to repeal Ordinance 2018-O-42 would result in 9 votes in favor of repeal with votes against, with one vote switching from a vote against issuance of Resolution 2019-R-01 4 to a vote in favor of repeal of Ordinance 2018-O-42.”
- “That, therefore, in the fog of allegations of FOIA violations and the potential misfeasance of office, one member of the Quorum Court has switched from a no vote on the casino issue to a yes vote.”
- “That the intent of the Quorum Court is to eliminate the Ordinance so that they can eliminate the Pope County litigation.”

After failed attempts to conduct a conference call, Judge William Pearson denied the injunctive relief.

Judge Pearson also denied a “Renewed Motion for Temporary Restraining Order” on October 28. The TRO request was an attempt to stop the Quorum Court from repealing Ordinance 2018-O-42, which was repealed later that same day.

Judge Pearson held a hearing on October 29 on the motions to dismiss by the defendants and the intervenor. Pearson ruled that Ordinance 2018-O-42 was unconstitutional and dismissed FOIA complaints against the County Judge and Quorum Court members.

On November 1, an attorney for the plaintiffs, Travis Story, submitted, by fax, a motion requesting Judge Pearson disqualify himself because of a social media post by re-election campaign volunteers that

⁵ “Arkansas Code Annotated § 14-14-806(4) prohibits counties from exercising ‘legislative power to regulate any form of gambling, lotteries, or gift enterprises’ unless such power is delegated to them by the Arkansas General Assembly. The Subject Ordinance requires an election of the voters of Pope County before the Pope County Judge or Quorum Court can issue a letter or resolution in support of the casino applicant.”

“It should be without dispute that the Subject Ordinance’s requirement of an election before the issuance of a letter or resolution of support of a casino applicant is a form of ‘regulation’ which is prohibited pursuant to Ark. Code Ann. § 14-14-806.”

⁶ The “allegations wholly fail to state a claim under the pleading standards required by the Arkansas Rules of Civil Procedure. Plaintiffs fail to allege when such meetings occurred, who was present, what was discussed, how such meetings were illegal, what action, if any, occurred at such meetings and other pertinent facts related thereto. The allegations fail to state a claim for a violation of the FOIA. Dismissal by the Court is appropriate.”

“Even assuming “secret meetings” did occur as alleged by Plaintiffs, that does not necessarily mean the Defendants violated the FOIA. The Arkansas Supreme Court has held that pre-meeting information sharing between members of a governing body, even when conducted without notice to the public, does not violate the open-meeting requirement of the FOIA.”

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appeared to show County Judge Ben Cross endorsing Pearson.⁷ In an affidavit, Cross stated that the material in the post was obtained from online sources, that he had no knowledge of it, and would not endorse any candidate for the judiciary.⁸

The order dismissing the case was filed on November 4.⁹

The plaintiffs filed a notice on December 3 that they would be appealing the case.

On December 10, Judge Pearson denied the plaintiff's motion that he disqualify himself.

The appeal was lodged with the Supreme Court on March 3, 2020.

Case No. CV-20-145, Citizens For A Better Pope County et al. v. Ben Cross et al.

On September 17, 2020. The Arkansas Supreme Court found that, with all issues had been previously remedied any consideration of the case by the Court would be advisory in nature. Since the Court does not make advisory rulings, the case was dismissed as moot.

The appellants filed for reconsideration, but the motion was denied on November 5, 2020.

⁷ [Motion Requesting Disqualification of Judge William Pearson sent by Travis Story for Knight and CFABPC](#); CFABPC & Knight v. Cross et al., 58CV-19-439

⁸ [Affidavit from Ben Cross](#), November 12, 2019, concerning a social media post for Judge William Pearson's reelection campaign quoting Cross and using his image.

⁹ CFABPC & Knight v. Cross et. al., 58CV-19-439, [Order](#), dismissed with prejudice. (Pope County Circuit Court, Hearing and decision October 29, 2019; order and filing November 4, 2019)

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Cases 60CV-19-5832, 58CV-19-462, CV-20-428, CV-20-211, & CV-21-289

Case 60CV-19-5832, Gulfside Casino Partnership v. Arkansas Department of Finance and Administration and Arkansas Racing Commission¹⁰

Filed on August 15, 2019, this case is a judicial review of an action taken by the Racing Commission. Gulfside claims its letter of support from Jim Ed Gibson is valid and that the rule and statute requiring support documents from officials holding office at the time of application are unconstitutional.

Only a week after the case was filed, it was transferred by Judge Timothy Fox, on his own, without conferring to either party in the case, to Pope County, where it was filed as Case No. 58CV-19-462. Casey Castleberry, attorney for Gulfside, filed a motion for reconsideration of the transfer.

Case 58CV-19-462, Gulfside Casino Partnership v. Arkansas Department of Finance and Administration and Arkansas Racing Commission¹¹

- The day after the case was filed in Pope County, Casey Castleberry, attorney for Gulfside, filed a motion to transfer venue back to Pulaski County.
- The same day, Cherokee Nation Businesses submitted a motion to intervene in the case. This is important because, had it been granted, the trajectory of this case would have been far different. CNB also filed a motion to dismiss the case.
- On September 25, Judge William Pearson found that the proper venue for the case was Pulaski County and ordered the case returned to be filed there.¹²

In subsequent weeks and months, a series of motions and countermotions were filed by the parties.¹³

On January 2, 2020, Judge Tim Fox denied Cherokee Nation Businesses' Motion to Intervene.

CNB filed a Notice of Appeal of Judge Fox's denial of their Motion to Intervene on January 7, 2020.

Judge Tim Fox, on March 24, 2020, issued orders finding that both Rule 2.13(b)(5) of the Casino Gaming Rules and Ark. Code Ann. 27-117-101(b) are unconstitutional.

These were the provisions that provided that letters of support must be from the county judge, quorum court, or mayor holding office at the time of submitting an application for a casino license. In another order, Fox denied Gulfside's request that he remand the matter to the Racing Commission with instructions that the Racing Commission issue a casino license to Gulfside. Instead, Fox remanded the matter "to the Racing Commission to apply the provisions of Amendment 100 and the Racing Commission in considering Gulfside Casino Partnership's casino application on its merits.

¹⁰ [60CV-19-5832: GULFSIDE CASINO PARTNERSHIP V ARK DEPT OF FINANCE](#)

¹¹ [58CV-19-462: GULFSIDE CASINO PARTNERSHIP V AR DEPT OF FIN & ADM](#)

¹² ["Order transferring case back to Pulaski County"](#), September 25, 2019, Judge William Pearson, Case 58CV-19-462, "Gulfside Casino Partnership v. Arkansas Department of Finance and Administration and Arkansas Racing Commission"

¹³ Through all of the motions and rulings, the final result would be a product of CNB's right to intervene and the plain text of the amendment, the rule and the legislative act.

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The Racing Commission decided NOT to appeal Judge Fox’s ruling.¹⁴

In a post-judgment motion, CNB stated, “Had CNB been allowed to intervene, it would have submitted additional arguments and appealed this Court’s decision to protect its interests in this matter.” Clearly, CNB’s interests were not adequately represented by other parties.

The Racing Commission voted unanimously not to appeal the ruling based on a recommendation of Attorney Butch Reeves from the attorney general’s office.^{15 16}

After Fox’s orders of March 24, CNB continued its efforts to gain intervenor status through post-judgment motions.

On July 2, 2020, Judge Tim Fox denied Cherokee Nation Businesses Post-Judgement Motion to Intervene because Legends “has no experience conducting casino gaming” and Cherokee Nation Businesses “is not a casino applicant.” He also determined that Arkansas Department of Finance and Administration should not be a party to the case.¹⁷

On July 6, 2020, Judge Fox dismissed “Separate Appellee Arkansas Department of Finance and Administration” from the case.

CNB and Legends filed an emergency petition with the Arkansas Supreme Court on July 8, 2020, asking that the Court find Pulaski County Circuit Judge Tim Fox’s July 2, 2020, order was unlawful and that the circuit lacked jurisdiction to rule on whether or not CNB was an applicant for a casino license. The filing also stated that Fox issued the order “with no evidence, no agency record, and no motion asking it to take this extraordinary step” and “prohibited CNB’s extensive casino gaming experience from being taken into account in determining the experience of CNB’s wholly owned subsidiary, Legends.”

¹⁴ Brantly, Max (April 15, 2020). “Racing Commission to consider competing casino applications for Pope County”. *The Arkansas Times*. Little Rock, Arkansas: Alan Leveritt. “Butch Reeves, attorney for the commission, recommended against an appeal. He said it would take 18 months with an uncertain outcome and the Commission would also have to forfeit the currently contracted services of a consultant hired to evaluate a casino permit application.”

¹⁵ sonix (July 21, 2020). ["April 15, 2020 Arkansas Racing Commission Meeting"](#) (PDF) (transcript). Little Rock, Arkansas

[00:19:56] – “This is Butch Reeves from the attorney general's office. I think the first thing we need to take is the appeal of Judge Fox. His order has found Gulfside to have a valid letter. In order to...mainly because the consultant that's the commission to try to help them score the applicants once we get to that part, his contract expires at the end of the fiscal year. If we appeal Judge Fox's order, they could take 18 months or longer and we would not...the commission would not have the benefit of consultants to help them score licensees. And each time you appeal. You may think you have a good argument. You don't know that. But we need to proceed with the consultant while we've got it. So I think it's in the best interests of the commission to decide not to appeal Judge Fox's order that finds that Gulfside has a valid letter and then would proceed today to the good cause for the Cherokee Nation Businesses and their application, perhaps. I think it's important for a motion that the commission, not appeal Judge Fox's order on the Gulfside case and let that stand as a valid order regarding their letter.”

¹⁶ It’s ironic that the decision not to appeal Judge Fox’s ruling was based on the expiration of the contract with the Commission’s consultant and the loss of “the benefit of consultants to help them score licensees” during the selection process when the Commission didn’t utilize the consultant during the subsequent scoring process.

¹⁷ *Gulfside v Arkansas Dept of Finance and Administration and Arkansas Racing Commission*, [60CV-19-5832 Motion Hearing \(transcript\)](#) (Judge Tim Fox, Circuit Court of Pulaski County, Sixth Division, July 2, 2020).

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July 14, 2020 – The Arkansas Supreme Court (CV-20-438) granted CNB & Legends motion for expedited consideration and vacated Judge Fox’s July 2 decision on denying Cherokee Nation Businesses Post-Judgement Motion to Intervene.¹⁸

February 4, 2021 – The Arkansas Supreme Court (CV-20-211) reversed Judge Fox’s January 2, 2020, order denying CNB’s Motion to Intervene and remanded it back to Judge Fox.¹⁹

February 24, 2021 – the mandate was issued on the Supreme Court’s February 4 decision, finalizing the decision.

This effectively reverts the case back 14 months to its status as of the beginning of 2020. However, during the interim multiple actions and decisions have been made.

May 21, 2021 – After having his previous orders reversed and remanded because CNB had not been granted intervention status, Judge Tim Fox issued an order, again finding that both Rule 2.13(b)(5) of the Casino Gaming Rules and Ark. Code Ann. 27-117-101(b) are unconstitutional.

Fox denied Gulfside’s request that he remand the matter to the Racing Commission with instructions that the Racing Commission issue a casino license to Gulfside.

May 24, 2021 – CNB filed a Notice of Appeal of Judge Fox’s May 21 ruling.

The Arkansas Racing Commission filed a Notice of Appeal of Judge Fox’s May 21 ruling on June 17, 2021.

In CV-21-289, the Supreme Court of Arkansas reversed and dismissed Judge Fox’s ruling on October 21, 2021, with the mandate finalizing the decision issued on November 9, 2021, and filed in the Case No. 60CV-19-5832 docket.²⁰

¹⁸ [CV-20-438: CHEROKEE NATION BUSINESSES V AR DEPT FIN AND ADMIN](#)

¹⁹ [CV-20-211: CHEROKEE NATION BUSINESSES V GULFSIDE CASINO ET AL](#)

²⁰ [CV-21-289: CHEROKEE NATION BUSINESSES ET AL V GULFSIDE CASINO](#)

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Case 60CV-19-5858

60CV-19-5858, Citizens For A Better Pope County, a Local Option Ballot Question Committee and James Knight in individual capacity v. The Arkansas Racing Commission and all of the commissioners in their official capacities²¹

Filed on August 16, 2019, the plaintiffs in this case asked for a court order declaring

- the Quorum Court's resolution of support for CNB/Legends void,
- that the Racing Commission be ordered not to issue a license based on the resolution and
- the reopening of the application period be stayed.

In a separate motion, they ask for a temporary restraining order and a preliminary injunction.

Cherokee Nation Businesses filed a motion to intervene on August 22, with a motion to dismiss the case as Exhibit C and a motion to transfer the case to 58CV-19-439 (page 3) to consolidate similar cases.

The defendants, Arkansas Racing Commission et al., filed an answer to the plaintiff's petition for declaratory judgment on August 28. They state in the document, "Defendants deny that the Pope County Ordinance is constitutional

and deny that the ordinance is binding on Defendants."

Judge Wendell Griffen, the third judge assigned to the case after two previous judges had recused, granted CNB the right to intervene on August 26, 2019.

CNB filed a motion to dismiss the case on September 4.

Additional motions, amended motions, and countermotions followed.

In late September, the plaintiff's attorney, Travis Story, is replaced by Jerry Malone. Story was the author of Pope County Ordinance 2018-O-42 and the associated local ballot question initiative that placed it on the books.

60CV-19-5858 is based largely on Pope County Ordinance 2018-O-42, an ordinance requiring a vote of the electors prior to County Judge or Quorum Court documents of support could be issued. Once 2018-O-42 was repealed by the quorum court, this case and the issues raised by the plaintiff were moot.

On December 12, 2019, the Plaintiff's December 9 motion for a voluntary dismissal of the case was granted, without prejudice, by Circuit Court Judge Wendell Griffen.

²¹ [60CV-19-5858: JAMES KNIGHT ET AL V AR RACING COMMISSION ET AL](#)

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CV-19-968

CV-19-968, Gulfside Casino Partnership vs Arkansas Department of Finance and Administration; and Arkansas Racing Commission²²

On December 23, 2019, Gulfside requested help from the Arkansas Supreme Court regarding Judge Tim Fox in Case No. 60CV-19-5832. Fox had sent the case to Pope County and after it was returned to Pulaski County, he still believed that the venue was improper in his court. Fox decided that Gulfside's Complaint and its request for a preliminary injunction would be moved to the back of the line. No rulings of any kind would be issued until every other case with an older case number had been adjudicated.

Gulfside asked the Supreme Court to order Judge Fox to perform the nondiscretionary duty of fully accepting the case and to 'timely rule' on Gulfside's motion for preliminary injunction.

On December 30, 2019, granting a request from Gulfside for expedited consideration, the Arkansas Supreme Court denied Gulfside's other requests.²³

²² [CV-19-968: GULFSIDE CASINO PARTNERSHIP V ARK DEPT FIN & ADMIN](#)

²³ Petitioner's unopposed motion for expedited consideration and temporary relief. Motion for expedited consideration is granted: motion for temporary relief is denied. Petitioner's petition for writ of certiorari or alternatively, for writ of mandamus is denied.

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60CV-19-9172 and CV-23-541

60CV-19-9172, Citizens For A Better Pope County (CFABPC) and James Knight vs Arkansas Racing Commission and all of the commissioners in their official capacities²⁴

December 27, 2019 – James P. Knight and CFABPC filed a new case against the Racing Commission and all of the commissioners in their official capacities. It claimed that the Casino Gaming Rules did not “provide authority for the Commission to re-open the application period during the Second Casino Application Period because the Commission received five (5) applications during the First Casino Application Period” and that “the Rules do not provide any authority for how the Commission is to proceed where it received applications during the First Casino Application Period, but rejected them all.” It also claimed, “That the Second Casino Application Period was invalid and of no legal force or effect.”

CFABPC and Knight were seeking a declaratory judgment, temporary restraining order and permanent injunction regarding the issuance of a license to any applicant for a casino in Pope County, Arkansas

December 30, 2019 – Gulfside filed a motion to intervene.

December 31, 2019 – Cherokee Nation Businesses filed a motion to intervene

January 3, 2020 – Judge Wendell Griffen issued a Temporary Restraining Order to prevent the Racing Commission from conducting a public hearing and/or awarding a casino gaming license pursuant to the second license application process. It also “enjoined” the ARC “from considering applications or issuing a casino license for a casino to be located in Pope County based on applications invited, submitted, and/or awarded during the second casino application period. The second application period was subsequently “abandoned.”

January 6, 2020 – Gulfside’s motion to intervene was denied, and, for good cause shown, CNB’s motion to intervene was granted.

January 14, 2020 – Motions to dismiss TRO and dissolve TRO were denied. TRO was extended for 30 days.

Motions, amended motions, and countermotions continued. Plaintiffs brought matters, such as FOIA allegations, already litigated in another court (with prejudice), into their motions, claiming that applicant CNB had “unclean hands” because of alleged secret meetings with parties not connected to this litigation. They also attempted further TROs and actions to interfere with the Racing Commission’s processes associated with the selection of an operator for the Pope County casino license.

May 18, 2020 – Gulfside again filed a motion to intervene. The motion was withdrawn on February 14, 2022.

Plaintiffs turned to an effort to declare the Casino Gaming Rules “null and void.” The case was originally filed against the Racing Commission and its members. However, voiding the rules would affect all casino

²⁴ [60CV-19-9172: CITIZENS POPE CO ET AL V AR RACING COMM ET AL](#)

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60CV-19-9172 and CV-23-541

licensees, none of which had been included as necessary parties. CNB was only a party to this case because it sought and was granted intervener status.²⁵

July 30, 2020 – The plaintiffs filed an affidavit by James Knight challenging the validity and applicability of the Casino Gaming Rules.²⁶

December 12, 2022 – Judge Wendell Griffen issued an order granting motions to dismiss. Despite all of the motions, amended motions, and countermotions, the order focused on the original complaint and the abandonment of the second application period.²⁷

December 27, 2022 – The plaintiffs submitted a motion for relief pursuant to 3 Arkansas Rules of Civil Procedure, claiming “the Court’s Order of Dismissal did not make any determination whatsoever regarding a number of other substantive claims.” They requested an opportunity to be heard orally.

Interveners and defendants responded to the motion. Plaintiffs replied to the responses.

December 31, 2022 – The term of the presiding judge in this case, Wendell Griffen, ended, and he retired.

January 1, 2023 – Judge LaTonya Honorable entered office.

January 11, 2023 – The plaintiffs filed a notice of appeal of the December 12 order dismissing the case.

January 26, 2023 – Judge Honorable issued an order suspending “the effectiveness of the Order of Dismissal pending the Court’s further consideration and determination of various claims not addressed in the December 12, 2022 Order.”

March 24, 2023 – Judge Honorable issued a memorandum order subsequent to a February 24 hearing. She, point by point, addressed the claims raised in the December 28 motion of the plaintiffs and dismissed all of the plaintiff’s claims.

March 29, 2023 – The plaintiffs filed a motion requesting an extension of time to lodge the case records for their appeal.

Obtaining the case records of this case turned into a real fiasco and delayed lodging the appeal. The assigned court reporter had issues with this and other cases where she was unable to

²⁵ *CFABPC v Arkansas Racing Commission, Intervenor Cherokee Nation Businesses*, 60CV-19-9172 Brief Explaining Plaintiffs’ Failure to Include Indispensable Parties (Pulaski County Circuit Court Judge Wendell Griffen, September 30, 2022) “...declaring the Rules “null and void” would affect every single casino license holder, every contract between casino licensees and third-parties, and hundreds (if not thousands) of employees whose employment depends on the authority of the Casino Gaming Rules.”

²⁶ *CFABPC v Arkansas Racing Commission, Intervenor Cherokee Nation Businesses*, [60CV-19-9172 Affidavit by James Knight challenging the validity and applicability of the Casino Gaming Rules](#) (Pulaski County Circuit Court Judge Wendell Griffen, July 30, 2020) (“...the Casino Gaming Rules of the Racing Commission must be declared null and void...”).

²⁷ “Accordingly, the Court dismisses this matter as moot and lacking a justiciable controversy because any judgment in this case would have no practical legal effect upon any existing controversy.

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60CV-19-9172 and CV-23-541

produce court records needed for appeals. The Arkansas Court of Appeals found her in willful contempt. She voluntarily surrendered her license and retired.²⁸

April 6, 2023 – Judge LaTonya Honorable issues an order extending the plaintiffs' time for lodging the record of the case on appeal through June 9, 2023.

April 24, 2023 – The plaintiffs filed an amended notice of appeal to include the case dismissal order of December 12, 2022, and the dismissal order of March 24, 2023.

May 18, 2023 – The plaintiffs filed another request for an extension of time to lodge the case records for their appeal.²⁹

- Transcript records of hearings held on January 14, 2020, and September 16, 2022 could not be located.³⁰

June 9, 2023 – Judge LaTonya Honorable issued an order extending the plaintiffs' time for lodging the record of the case on appeal through August 11, 2023

August 11, 2023 – Judge LaTonya Honorable approved statements for hearings where no records were made or transcripts are unavailable.

- Hearing Held on January 14, 2020³¹
- Hearing Held on September 16, 2022³²

²⁸ *CFABPC v Arkansas Racing Commission, Intervenor Cherokee Nation Businesses*, 60CV-19-9172. Plaintiffs' Motion for Extension of Time to Lodge Record on Appeal (Pulaski County Circuit Court Judge LaTonya Honorable, March 29, 2023) "An extension of time is necessary for the court reporter to include the stenographically reported material in the record on appeal. Plaintiffs have not been able to obtain the transcript from the court reporter, as the court reporter who handled most of the hearings in this case was recently removed by the Court of Appeals and surrendered her license."

²⁹ *CFABPC v Arkansas Racing Commission, Intervenor Cherokee Nation Businesses*, 60CV-19-9172 Plaintiffs' Motion for Extension of Time... (Pulaski County Circuit Court Judge LaTonya Honorable, May 18, 2023) ."The substitute court reporter found the former official court reporter's stenographer's notes which noted the dates for the two hearings referenced herein above. However, after the substitute court reporter made a search of the hard drive in the courtroom of this Court as well as the hard drive that had been turned over to this Court by the former official court reporter (as required by the Arkansas Court of Appeals in its opinion discussing the surrender of the former official court reporter's license), the substitute court reporter found no audible recordings or court reporter's stenographic notes for either of the requested hearing dates."

³⁰ *CFABPC v Arkansas Racing Commission, Intervenor Cherokee Nation Businesses*, 60CV-19-9172. Affidavit of Mary Lou Ambrose, CCR. (Pulaski County Circuit Court Judge LaTonya Honorable, May 18, 2023) "A search was made by me of the hard drive in the 5th Division Circuit Court courtroom as well as the hard drive containing Ms. Warford's work product. I found no audible recordings or court reporter's stenographic notes for either of these hearing dates."

³¹ *CFABPC v Arkansas Racing Commission, Intervenor Cherokee Nation Businesses*, [60CV-19-9172. Statement For Hearing Held on January 14, 2020...](#) (Pulaski County Circuit Court Judge LaTonya Honorable, August 8, 2023). "On January 14, 2020, a hearing was held in the 5th Division, Pulaski County Circuit Court, Honorable Wendell Griffen presiding. The Hearing began around 9:22am. Ms. Neva Wafford, served as Court Reporter."

³² *CFABPC v Arkansas Racing Commission, Intervenor Cherokee Nation Businesses*, [60CV-19-9172. Statement For Hearing Held on September 16, 2022 ...](#) (Pulaski County Circuit Court Judge LaTonya Honorable, August 8, 2023)

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60CV-19-9172 and CV-23-541

CV-23-541, James Knight et al. vs Arkansas Racing Commission et al.

August 11, 2023 – Plaintiffs in 60 CV-19-9172 lodged their appeal with the Arkansas Supreme Court, where it was assigned Case No. CV-23-541

September 25, 2023 – Appellants (CFABPC and Knight) submitted a motion for an additional brief time, a 7-day extension having already been granted, their reasoning being that it is a complex case and the record is lengthy, comprised of 1,666 pages of pleadings and orders and 66 pages of transcript and that other litigation and travel requirements have limited available time.

September 25, 2023 – The time allowed for filing the appellants' briefs was extended to November 11, 2023.

November 7, 2023 – Appellants request an additional thirty-day time extension. The justification for the extension was the recent dismissal by the Supreme Court of the Gulfside vs. ARC case as well as the reasoning for the previous time extension.

November 7, 2023 – The time allowed for filing the appellants' briefs was extended to December 11, 2023.

December 11, 2023 – The appellants filed a motion to dismiss the appeal.

January 11, 2024 – The Arkansas Supreme Court granted the motion to dismiss the appeal.

January 19, 2024 – The formal order from the Supreme Court in case CV-23-541 dismissing CFABPC and Jim Knight's appeal I was filed in 60CV-19-9172.

("On September 16, 2022, a hearing was held in the 5th Division, Pulaski County Circuit Court, Honorable Wendell Griffen presiding. The Hearing began around 12:40pm. Ms. Neva Wafford, served as Court Reporter.").

Appendix **xxx**– Court Cases

58CV-20-429

58CV-20-429, Ben Cross, in his official capacity as County Judge and on behalf of Pope County Arkansas v. Arkansas Racing Commission, each of the commissioners in their official capacities, and Gulfside Casino Partnership

On October 13, 2020, Pope County Judge Ben Cross and Legends Resort and Casino, LLC filed a lawsuit against the Racing Commission. The plaintiffs asked for a judgment that a temporary annex proposed by Gulfside “is not authorized by Amendment 100 or the Casino Gaming Rules and is in fact prohibited by the Casino Gaming Rules...” and that Gulfside does not meet the requirements of local support required by Amendment 100.

Gulfside, which had been awarded the Pope County license on July 31, 2020, was in the process of planning for and eventually building a temporary annex casino that was not provided for in the application that had been submitted for the license. Gulfside’s gaming license expressly identified the property boundaries within which casino gaming was authorized. The planned temporary annex was not within those licensed bounds.³³

On October 27, 2020, Retired Judge Randy Wright was assigned the case by the Chief Justice of the Arkansas Supreme Court.

In late February and early March 2021, all parties filed motions to stay this case after the Arkansas Supreme Court reversed Pulaski County Judge Tim Fox’s decision in Gulfside v. ARC, Case No. 60CV-19-5832. Judge Wright issued a stay on March 23 that was to expire on June 10, with a status conference set on June 8, 2021, to determine the status and the need for future litigation.³⁴

There is no documentation in the case record of a status conference. On November 12, 2021, the plaintiffs filed a motion to dismiss this case after the Arkansas Supreme Court, in CV-21-289, the Supreme Court of Arkansas reversed and dismissed 60CV-19-5832 and after the ARC issued the Pope County license to CNB and Legends.

No further activity has occurred in this case, and as of February 19, 2024, the status of this case in the record remains “open” though it should have been dismissed.

³³ On August 11, 2020, in a [presentation](#) Gulfside provided to Quorum Court members, Terry Green had talked about their intent to build a temporary casino annex on property outside of Russellville. He also talked about annexation. The transcript of the presentation is Exhibit M for the initial filing for 58CV-20-429. In the filing on page 9, the plaintiffs say, “On August 11, 2020, Gulfside presented to the Russellville City Council that...” However, at the end of the transcript, there is a statement, “Thank you for coming in and introducing yourself to the County Quorum.”

³⁴ February 4, 2021 – The Arkansas Supreme Court (CV-20-211) reversed Judge Fox’s January 2, 2020, order denying CNB’s Motion to Intervene and remanded the case back to Judge Fox. Every order subsequent to January 2, 2020, had been vacated by this decision, reinstating the validity of the ARC’s casino gaming rule 2.13.5(b) and Arkansas Code Annotated § 23-117-101.

Appendix ~~xxx~~– Court Cases

60CV-23-7266

60CV-23-7266, John Clifton Goodin & Rick Thone vs. Arkansas Racing Commission & all of the Commissioners in their official capacities, Legends Resort & Casino, LLC and Cherokee Nation Businesses, LLC

September 25, 2023 – John Goodin and Cliff Thone filed a lawsuit for “declaratory judgment and injunction.” The case was assigned to Judge LaTonya Honorable. The plaintiffs called for the court to:

1. issue an order declaring it to be an unconstitutional decision in violation of Amendment 100 for the Arkansas Racing Commission to find that Legends Resort & Casino, LLC, was a qualified casino applicant, as Legends failed to demonstrate experience conducting casino gaming,
2. declare it to be an unconstitutional decision in violation of Amendment 100 for the Arkansas Racing Commission to award the Pope County casino license to a non-applicant entity (“Cherokee Nations Businesses, LLC/Legends Resort and Casino, LLC” or to Legends with “Cherokee Nations Businesses, LLC” as a co-applicant),
3. declare that the Arkansas (sic)³⁵ either did not have the authority to adopt a “good cause shown” exception or that the Arkansas Racing Commission acted in excess of (or in violation of) any such authority by accepting the application from Legends over seven (7) months after the end of the May 2019 Application Period,
4. issue an injunction to require the Arkansas Racing Commission to rescind the award of the Pope County casino license to “Cherokee Nations Businesses, LLC/Legends Resort and Casino, LLC,” and,
5. to enjoin the Arkansas Racing Commission from awarding or re-awarding the Pope County casino license to either Legends Resort & Casino, LLC a/k/a Legends Resort and Casino, LLC, Cherokee Nation Businesses, L.L.C. a/k/a Cherokee Nation Businesses, LLC, or both.

November 29, 2023 – After spending over \$2,500 in court-related costs (filing fees, subpoenas, etc.), the plaintiffs filed for voluntary dismissal.

December 6, 2023 – Judge Honorable issued an order granting voluntary dismissal.

³⁵ Arkansas Racing Commission

Appendix xxx– Court Cases

60CV-21-1217

60CV-21-1217, Legends Resort and Casino, LLC vs. Arkansas Racing Commission & all of the Commissioners in their official capacities and Gulfside Casino Partnership.

Following the Arkansas Racing Commission’s February 2, 2021, denial of an appeal by Legends of the ARC denial of Legends license application, Legends filed an Administrative Procedures Act appeal in Pulaski County Circuit Court on February 16.³⁶

The initial filing laid out multiple causes for the reversal of ARC adjudication and request for declaratory judgment:

- The ARC failed to make sufficient findings of fact and violated the Freedom Of Information Act (“FOIA”)
- Gulfside fails to meet the minimum qualifications as prescribed by Amendment 100.
- The ARC improperly revoked and removed Chairman Lieblong’s scores
- The ARC failed to follow its own rules regarding publishing criteria and scoring applications.
- The ARC improperly delayed revoking Commissioner Rice’s score to Legends’ Detriment; bias prevented Legends from receiving fair process
- The ARC erred in considering Gulfside’s unlawful oral amendments to its application on June 18, 2020
- The ARC erred in issuing a casino gaming license to an entity owned by persons who have had their eligibility revoked
- The ARC erred in not disqualifying Gulfside for blatant misrepresentations
- The ARC erred in refusing to consider its own consultant’s evaluation of the applicants
- The ARC erred in failing to consider information directly relevant to its own scoring criteria
- ARC’s scoring of applications was otherwise arbitrary, capricious, and ultra vires in evaluating applications pursuant to Casino Gaming Rule 2.13.9(b) and its findings and conclusions are not based upon substantial evidence.

Legends filed an unopposed motion to stay this case on February 25, 2021, after the Arkansas Supreme Court, on February 4,³⁷ reversed Pulaski County Judge Tim Fox’s decision in Gulfside v. ARC, Case No. 60CV-19-5832. Other respondents in the case didn’t oppose a stay.

³⁶ From the Petition’s Introduction:

“This is an APA appeal and Declaratory Judgment action from the Arkansas Racing Commission’s (“ARC”) adjudication denying Legends the Pope County casino license. The ARC had a choice between two applicants. It denied Legends the license even though Legends had the exclusive support of the Pope County Judge and the Pope County Quorum Court; possessed substantially greater experience conducting casino gaming; proposed a shorter timeline for opening the casino; affirmed that it could pay for the entire \$250+ million project from available cash reserves (instead of financing the project); and otherwise proposed an objectively superior casino project. The APA provides six grounds on which to reverse agency action. Ark. Code Ann. 25-15-212(h). The ARC’s illegal and flawed decisional process to award the license satisfies all six grounds for reversal.

³⁷ “The Pulaski County Matter, and the issue of whether Gulfside is a qualified applicant, was remanded back to the Pulaski County Circuit Court, Judge Timothy Fox, on February 23, 2021.

Appendix xxx– Court Cases

60CV-21-1217

On March 1, 2021, Tvshka Gaming, LLC, Tvshka Enterprises, LLC, and Choctaw Nation of Oklahoma, a federally recognized Indian tribe (“Choctaw Nation”) filed a motion to intervene.³⁸

Judge Wendell Griffen issued an order on March 26 to stay the proceedings “pending a future order to vacate” the stay.

On November 12, 2021, the plaintiff filed a motion to dismiss this case after the Arkansas Supreme Court, in CV-21-289, the Supreme Court of Arkansas reversed and dismissed 60CV-19-5832 and after the ARC issued the Pope County license to CNB and Legends.

Judge Griffen issued an order of dismissal without prejudice later on November 12.

³⁸ Among other issues, proposed interveners state “the ARC Casino Gaming Rules at issue in this case will allow construction of a competing casino in the same geographic market where Choctaw operate and, thus, the Choctaw would suffer economic damage if a license is awarded to either Petitioner or Respondent.

Appendix **xxx**– Court Cases

60CV-21-1653

60CV-21-1653, Gulfside Casino Partnership vs Arkansas Racing Commission and Legends Resort & Casino, LLC³⁹

On March 9, 2021, Gulfside Casino Partnership filed a judicial appeal for review of an Arkansas Racing Commission finding that Legends demonstrated experience conducting casino gaming, claiming “Gulfside was injured by the Racing Commission’s decision, as Legends seeks to take away Gulfside’s casino gaming license, even though Legends fails to meet a minimum requirement imposed by Amendment 100.”⁴⁰

The case was assigned to Judge Tim Fox.

In subsequent weeks and months, the parties filed a series of motions and countermotions.

In April and June, the Arkansas Racing Commission submitted motions for a stay in the case because of other related cases in progress (or already stayed) and, in June, while a related matter was on appeal to the Arkansas Supreme Court. Later in June, Gulfside filed a response saying that it did not oppose the motion to stay.

Judge Fox denied the April and June motions to stay on June 30.

After Gulfside lost the license to operate a casino in Pope County when the Supreme Court of Arkansas, in CV-21-289, on October 21, 2021, reversed and dismissed Judge Fox’s ruling in Case No. 60CV-19-5832, the plaintiffs filed a new motion on November 8, claiming that the Racing Commission’s finding that Legends was a qualified applicant violated the constitutional requirement of casino gaming experience.

On November 12, Legends filed a motion to dismiss since Gulfside was no longer a casino applicant and it was now “a Mississippi partnership that was once interested in the license process, but is no more.”

Legends and Gulfside submitted a joint motion on November 24, 2021, to extend deadlines for responses to motions that each party had made. The Racing Commission was included. The deadline request was “to and through December 16.”

Judge Fox issued an order on November 30 extending the deadlines, as requested, to December 16.

Choctaw Nation of Oklahoma filed a motion to intervene on November 30, 2021, challenging the qualifications of Legends to hold the license.⁴¹

³⁹ [60CV-21-1653: GULFSIDE CASINO PTR V ARKANSAS RACING COMM ET AL](#)

⁴⁰ Arkansas Racing Commission, February 2, 2021, [Findings of Fact, Conclusions of Law, and Order](#) in the matter of Gulfside Casino Partnership’s request for determination regarding Legends Resort and Casino LLC’s qualified applicant status under Amendment 100

⁴¹ *Gulfside v Arkansas Racing Commission and Legends Resort and Casino, LLC*, 60CV-21-1653 Motion to Intervene. p 4. (Judge Tim Fox, Circuit Court of Pulaski County, Sixth Division November 30, 2021, 1:45 PM) (“Choctaw Nation owns and operates Choctaw Casino & Resort located in Pocola, Oklahoma, which is less than 100 miles from Pope County. The Pocola casino and a Pope County casino would be in the same geographic market. Choctaw Nation invested millions of dollars in its Pocola location. Choctaw Nation expects that, should Legends operate a casino in Pope County (in violation of Amendment 100), Choctaw Nation will lose at least \$12 million annually in casino gaming revenue. A Pope County casino will be in direct competition with Choctaw Nation’s Pocola casino and the operation of a Pope County casino will cause Choctaw Nation to suffer injury to its business and property interests.”)

Appendix xxx– Court Cases

60CV-21-1653

The Arkansas Racing Commission, through the AG’s office, its counsel in the case, submitted an unopposed motion on January 13, 2022, for an extension of time for responding to Gulfside’s First Amended Complaint.⁴²

In subsequent weeks and months, the parties filed a series of motions and countermotions as well as sent letters to Judge Fox, submitting that the time was “ripe” for a decision.

On October 27, 2022, Legends and CNB filed a “Prayer for Determination on All Motions Ripe for Determination,” writing, “This matter is ripe for determination, and CNB and Legends respectfully pray for a ruling on all pending motions in this case. The last dispositive motion to ripen did so on April 1, 2022. A ruling is necessary so that this case may advance to its next stage.” It also pointed out that the case should be given precedence since the state was one of the parties to the case.⁴³

Judge Tim Fox, on November 21, 2022, scheduled a hearing for January 3, 2023.

Judge Fox granted Choctaw Nation of Oklahoma’s Motion to Intervene on January 3, 2023, and Choctaw immediately filed a motion to join the pending litigation.

On January 12, 2023, after hearings on January 3 and 4, Judge Fox issued findings and orders on the multiple motions and countermotions, one of which was 1 year, 9 months, and 3 days old. Gulfside’s March 1, 2022, motion for summary judgment was granted with the order saying:

- Legends Resort and Casino, LLC, had no prior “experience conducting casino gaming,” and the ARC’s determination that it did was *ultra vires* (beyond the ARC’s legal power or authority), and the ARC’s decision was reversed.
- At the time the ARC jointly issued the Pope County casino license jointly to Legends and Cherokee Nation Businesses, CNB had no casino license application pending. The ARC’s action in in issuing a joint license to Legends and CNB was *ultra vires* as CNB was not a “qualified casino applicant.”
- The ARC’s decision to jointly award the Pope County casino license to Legends and CNB violated Amendment 100 which specifically requires a single casino license applicant.
- The ARC’s decision awarding the Pope County casino license jointly to CNB and to Legends was reversed.
- The Pope County casino license issued jointly to Legends and CNB on November 12, 2021, was declared null and void and of no effect.

Legends and CNB filed a notice of appeal in the case on January 13, 2023.

The Arkansas Racing Commission filed its notice of appeal on January 23, 2023.

For this reason, Choctaw Nation seeks judicial review of the Racing Commission’s determination that Legends is a qualified casino applicant under Arkansas Constitutional Amendment 100.”).

⁴² From the motion: “Counsel has conferred with counsel for Gulfside and Legends/CNB and neither has an objection to an extension of time, up to and including Friday, February 4, 2022.”

⁴³ Pursuant to Ark. Code Ann. § 16-106-101(c), “[p]recedence shall be given, in all courts, to actions or other proceedings in which the state is a party, over any other business of the court.” The State is a party to this matter.

Appendix xxx– Court Cases

CV-23-50 and 60CV-21-1653

CV-23-50, Legends Resort & Casino, LLC; Cherokee Nation Businesses, LLC; and the Arkansas Racing Commission vs. Gulfside Casino Partnership; and Choctaw Nation

The first filing in the appeal of 60CV-21-6653 was a joint motion by CNB, Legends, and the ARC on January 26, 2023, to expedite the appeal.⁴⁴

Gulfside responded to the joint motion to expedite the appeal on January 30, saying that it did not oppose expedited consideration.⁴⁵

The Arkansas Supreme Court granted expedited consideration of the appeal but denied the motion to expedite the appeal on January 31, 2023.

The record was electronically filed with the Supreme Court on February 24, 2023. The appellant's brief was then due on April 5.

Cherokee Nation Businesses and Legends (appellants) filed their brief on February 24, as did the Arkansas Racing Commission.

CNB's and Legends' points in the brief were:

- The Circuit Court lacked subject matter jurisdiction because no adjudication occurred
- Standing does not arise based on the Appellees' hope to one day qualify for a license or fear of competition from a casino
- Multiple errors infected the circuit court's order
- Amendment 100 and the Casino Gaming Rules authorize the CNB/Legends licensing structure
- Legends demonstrated experience in casino gaming

⁴⁴ From the motion: "Legends has held the Pope County Casino Gaming License for more than a year now while this case has been pending. In that time, it has taken substantial steps towards building a casino, including spending millions purchasing the property for the casino, and spending substantial sums on architects, engineers, and contractors."

"The Circuit Court's Order potentially requires a restart of the application process for the Pope County casino license. Should that come to pass it would potentially require the ARC to promulgate new rules regarding a new application period, accept applications (despite no entity having required County support other than CNB and Legends and Pope County having pledged to never support another entity), and face additional legal issues and potential litigation."

"The outcome of this appeal will either allow construction to begin or cause a reevaluation of the application process and another round of lengthy litigation over the application process when Pope County pledged to support only one applicant: Legends. Either way, this appeal is of exceptional importance to the people of Pope County and the State of Arkansas. Expedited resolution of this matter is well supported, and an order expediting this appeal will not materially prejudice the Appellees.

⁴⁵ From Gulfside's response: "If the Circuit Court's Orders are affirmed, the Racing Commission will have to adopt new rules to allow for another application period, as the current rules do not provide for a subsequent application period. Potential applicants will be able to seek a letter of support from the County Judge of Pope County and a resolution of support from the Pope County Quorum Court. Despite the Economic Development Agreement between CNB and Pope County, there is nothing to prevent the County Judge or Quorum Court from issuing additional letters of support or resolutions of support if they deem it appropriate."