

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
SIXTH DIVISION

GULFSIDE CASINO PARTNERSHIP

APPELLANT

VS.

CASE NO. 60CV-19-5832

ARKANSAS RACING COMMISSION

APPELLEE

CHEROKEE NATION BUSINESSES, LLC

INTERVENOR (PURSUANT  
TO MANDATE OF THE  
ARKANSAS SUPREME COURT)

**ORDER**

On the 7th day of May, 2021 came on for hearing all pending motions in this matter, and from the pleadings filed herein, the *Stipulations* originally agreed to between appellant and appellee and now agreed to by all parties, and the argument of counsel, the court doth find as follows:

1. Appellee Arkansas Racing Commission's *Motion to Dismiss*<sup>1</sup>, filed on September 18, 2019, which the court advised at the hearing would be treated as a motion for summary judgment<sup>2</sup>, is denied.

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<sup>1</sup> There has been considerable legal activity during the pendency of the interlocutory appeal in this matter, which would not have been in the record before the high court. At the hearing, counsel advised the court there are now five separate legal actions pending related to issuance of the Pope County gaming license. The appellee Racing Commission elected not to appeal or to seek a stay of this court's original decision. Instead, appellee Racing Commission elected to proceed with merit based hearings concerning issuance of the Pope County gaming license. In the course of such hearings, appellee Racing Commission apparently voted, not just once but twice, that appellant Gulfside was the superior applicant with respect to the best interests of Arkansas citizens and taxpayers. One of the other four pending lawsuits is intervenor CNB's appeal of the merit-based decision by appellee Racing Commission to award the Pope County gaming license to appellant Gulfside. As both applicants have now had the opportunity to have their applications fully heard by the appellee Racing Commission and the losing applicant, intervenor CNB, has appealed such decision to the high court, it seems this procedural issue matter should yield to that appeal. The current pendency of both pieces of litigation places the Racing Commission in a legally contradictory position. In the other appeal, which challenges the merit-based award of the license, the Racing Commission has a legal duty to defend its decision that it was in the best interests of Arkansas citizens and taxpayers to award the license to

2. Gulfside's *Motion for Summary Judgment*, filed on February 4, 2020 is granted in part and denied in part. The court grants the declaratory judgment requested in Count I of the *First Amended Verified Complaint* that a portion of Rule 2.13(5)(b) of the *Casino Gaming Rules* is unconstitutional for imposing an additional requirement on applicants not contained in Amendment 100.<sup>3</sup> The unconstitutional portion of Rule 2.13(5)(b) which is ordered stricken is

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appellant Gulfside. In this appeal, appellee Racing Commission, inexplicably, is still attempting to invalidate the applicant whom it has now twice decided is the superior applicant for Arkansas citizens and taxpayers.

<sup>2</sup> The parties were presented the opportunity to present additional matters to support or oppose the motion to dismiss and counsel for all parties declined.

<sup>3</sup> Arkansas Racing Commission Casino Gaming Rule 2.13(5)(b) states that:

**2.13. License Required**

**5. Minimum Qualifications for Non-Franchisor Applicant**

(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. 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.**

The portion of the Rule alleged to be facially unconstitutional is the portion highlighted and underlined in the preceding paragraph.

Section 4(n) of Amendment 100 to the Arkansas Constitution, known and cited as "The Arkansas Casino Gaming Amendment of 2018," specifically addresses letters of support from local elected officials. Section 4(n) states:

(n) The Arkansas Racing Commission shall require all 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.

The court has determined the highlighted and underlined portion of Casino Gaming Rule 2.13(5)(b) imposes an additional qualification, sometimes referred to as a "negative" qualification, beyond the plain and unambiguous language of Amendment 100. It doesn't matter what reason is given, neither the General Assembly nor any executive administrative body has the constitutional authority to either enlarge or restrict the clear and unambiguous language of a constitutional amendment. The highlighted language of Rule 2.13(5)(b) attempts to place a limiting temporal restriction on the constitutional authority given by Amendment 100 to duly elected county judges, mayors, and quorum court officials during the terms of office awarded them by Arkansas voters. Elections happen. Officials are voted in or out of office. Unforeseen events and tragedies occur, so officials change. Sometimes officeholders resign, so officials change. After Amendment 100 became effective, by its clear and unambiguous language, it invested the then duly elected and acting county judge, mayors, and quorum court members with constitutional authority concerning the issuance of letters of support. When new office holders took office in January of 2020 the new office holders were then invested with the authority to issue letters of support pursuant to the clear and unambiguous language of Amendment 100. The plain and unambiguous language of Amendment 100 gives such office holders the authority while they are in office to themselves issue letters of support. Such plain and unambiguous language does not grant any of such officials the authority to retroactively undo the constitutional authority of one or more of their predecessors.

Section 4(e) of Amendment 100 requires the Arkansas Racing Commission to adopt rules governing a lengthy, specific listing of certain matters. The authority to provide any additional limitation or terms and conditions

the phrase, “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.” Additionally, the court grants the declaratory judgment requested in Count II of the *First Amended Verified Complaint* requesting that A.C.A. 23-117-101(b) be declared unconstitutional.<sup>4</sup> The court denies the appellant Gulfside’s request in Count III of the *First Amended Verified Complaint* requesting that this court remand the matter to the Racing Commission with instructions that the Racing Commission is required to issue a casino license to appellant Gulfside.<sup>5</sup>

3. All other relief requested in appellant Gulfside’s *First Amended Verified Complaint* or in its *Motion for Summary Judgment*, not specifically granted herein, is denied.

4. Intervenor Cherokee Nation Businesses, LLC’s *Motion for Summary Judgment*, filed on February 26, 2021 is denied.<sup>6</sup>

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on the ability of duly elected county and/or local officials to execute letters of support is not included in matters specifically delegated to the Racing Commission by Amendment 100. Under the doctrine of *unius est exclusio alterius*, the lengthy enumeration of the matters that are within the rule-making authority of the Racing Commission excludes its ability to impose additional qualifications or restrictions on county and/or local elected officials.

The only authority given to the Racing Commission over county judges, mayors, and quorum court members by Amendment 100 is specifically stated in Amendment 100 § 4(h)(4), which states:

(h) Prior to the submission of an application for a casino license, the owners, shareholders, board members, or officers of the casino applicant:

4) If an individual, shall not be a county judge or mayor that provides a letter of support, or a quorum court member that votes in favor of a letter of support as identified in this Amendment.

<sup>4</sup> A.C.A. § 23-117-101(b) states:

(b) 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.

Such subsection is unconstitutional for the same reasons as Rule 2.13(5)(b) of the *Casino Gaming Rules*.

<sup>5</sup> The court is ruling on the Count III request in order to insure that a final and appealable *Order* is entered. The requested relief is moot as counsel for the parties have advised that during the pendency of the interlocutory appeal the Racing Commission has, on its own initiative, now voted on two separate occasions that appellant Gulfside was the superior applicant and that it was in the best interests of Arkansas citizens and residents that appellant Gulfside be awarded the Pope County gaming license.

<sup>6</sup> The court notes the legal arguments of both appellee Racing Commission and intervenor CNB are exactly the same in that both are premised upon the rule language and the statutory language declared unconstitutional. If the voters had wanted to limit which county judge or which mayors or which quorum court members had the legal authority to sign off on a letter of support they could have done so in plain and ordinary language. They didn’t. The same reasoning holds true with the fact that matters are apparently so polarized in Pope County that only one applicant

5. Any and all claims and defenses of the parties, if any, not specifically addressed and granted herein are denied with prejudice.

IT IS SO ORDERED AND DECREED.

  
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TIMOTHY DAVIS FOX  
CIRCUIT JUDGE

5/21/21  
DATE

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was given a letter of support. Amendment 100 clearly gives the Racing Commission the authority to decide which candidate is superior among competing applications. It was clearly not the voters' intention that Pope County officials be able to usurp the Racing Commission's discretion and authority to decide who is the most qualified applicant by refusing to award a letter of support to more than one applicant. However, as there is no plain and ordinary constitutional language requiring the award of more than one letter of support at a time, the Racing Commission and the General Assembly would be unable to enact rules or legislation adding such a requirement to the plain and ordinary language of Amendment 100.