

IN THE ARKANSAS SUPREME COURT

**JIM KNIGHT, in his individual capacity  
and on behalf of CITIZENS FOR LOCAL CHOICE**

**PETITIONER**

vs.

No. CV-18-\_\_\_\_\_

**MARK MARTIN, in his Official Capacity as  
Secretary of State for the State of Arkansas**

**RESPONDENT**

**ORIGINAL ACTION COMPLAINT**

COMES NOW Petitioner Jim Knight, in his individual capacity and on behalf of Citizens for Local Choice (“Petitioner”), by and through his attorneys, Blake Hoyt and Christopher Burks of Sanford Law Firm, PLLC, and for his Original Action Complaint pursuant to Article 5, §1 of the Arkansas Constitution, as amended by Amendment 7 to the Arkansas Constitution, against Defendant Mark Martin in his Official Capacity as Secretary of State for the State of Arkansas, alleges as follows:

**I. INTRODUCTION**

Petitioner brings this original action to protect honest ballot titles as guaranteed by the Arkansas Constitution. This Court has routinely denied ballot titles that mislead voters and take away voters’ rights without proper notice. Here,

the Issue #4 ballot title fails to inform voters that Issue #4 itself overturns the constitutional ban on monopolies and perpetuities by giving exclusive, perpetual licenses for casino gambling and alcohol sales over which locals lose their liberty to approve. Orderly elections with impartial ballot titles matter – this suit seeks no more.

## II. PARTIES, JURISDICTION AND VENUE

1. This action is brought by Jim Knight, a resident of Pope County and registered voter in the State of Arkansas.

2. Jim Knight is a member of Citizens for Local Choice.

3. Citizens for Local Choice is a duly-filed ballot question committee as defined in Ark. Code Ann. § 7-9-402(2). A true and accurate copy of the Ballot Question Committee Statement of Organization as filed with the Arkansas Ethics Commission is attached as “**Exhibit 1**” and incorporated by reference. Exhibit 1; Statement of Organization.

4. Respondent Mark Martin is the duly elected, qualified and acting Secretary of State of the State of Arkansas.

5. Petitioner brings this action to obtain an order enjoining Respondent Mark Martin from counting or certifying any ballots cast for Issue #4, or alternatively from including Issue #4 on the ballot.

6. This Court has original and exclusive jurisdiction over this action under Amendment 7 and Amendment 80, § 2(D)(4) of the Arkansas Constitution, to review the sufficiency of the initiative and proposed constitutional amendments as expressed in Arkansas Supreme Court Rule 6-5(a).

### III. STATEMENT OF FACTS

7. On May 23, 2018, the Attorney General of the State of Arkansas issued Opinion 2018-068, certifying the popular name and ballot title of a proposed initiated constitutional amendment with the popular name: “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.” A true and accurate copy of Opinion 2018-068 is attached as “**Exhibit 2**” and incorporated by reference. Exhibit 2; Opinion 2018-068.

8. On May 24, 2018, the Attorney General of the State of Arkansas issued Opinion 2018-072, recertifying the same popular name and ballot title of a proposed initiated constitutional amendment as certified in Opinion 2018-068, with the distinctions between the amendment in Opinions 68 and 72 being a result of “a typographical error and other scrivener's errors.” A true and accurate copy of Opinion 2018-072 is attached as “**Exhibit 3**” and incorporated by reference. Exhibit 3; Opinion 2018-072.

9. On September 5, 2018, Respondent Mark Martin declared that the petition submitted by the Driving Arkansas Forward Ballot Question Committee for the proposed initiated measure as approved in Attorney General Opinion 2018-072 met the signature requirements set forth in Article 5, Section I of the Arkansas Constitution and placed the proposed constitutional amendment on the Arkansas General Election Ballot for November 6, 2018. A true and accurate copy of the September 5, 2018, Certification is attached as “**Exhibit 4**” and incorporated by reference. Exhibit 4; Secretary of State Certification.

10. Opinion 2018-072, certified the popular name as:

“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.” Exhibit 4.

11. Opinion 2018-072, certified the ballot title as:

“An amendment to the Arkansas Constitution to require that the Arkansas Racing Commission issue licenses for casino gaming to be conducted at four casinos in Arkansas, being subject to laws enacted by the General Assembly in accord with this amendment and regulations issued by the Arkansas Racing Commission ("Commission"); defining "casino gaming" as dealing, operating, carrying on, conducting, maintaining, or exposing for play any game played with cards, dice, equipment, or any mechanical, electromechanical, or electronic device or machine for money, property, checks, credit, or any representative value, as well as accepting wagers on sporting events; providing that individuals under 21 are prohibited from engaging in casino gaming; providing that the Commission shall issue four casino licenses, one to Southland Racing Corporation ("Southland") for casino gaming at a

casino to be located at or adjacent to Southland's greyhound track and gaming facility in Crittenden County, one to Oaklawn Jockey Club, Inc. ("Oaklawn") to require casino gaming at a casino to be located at or adjacent to Oaklawn's horse track and gaming facility in Garland County, one to an applicant to require casino gaming at a casino to be located in Pope County within two miles of Russellville, and one to an applicant to require casino gaming at a casino to be located in Jefferson County within two miles of Pine Bluff; providing that upon receiving a casino license, licensees will be required to conduct casino gaming for as long as they have a casino license providing that Southland and Oaklawn do not have to apply for a license and will automatically receive a casino license upon the Commission adopting rules and regulations to govern casino gaming; providing that the Commission shall require all applicants for the two remaining casino licensees, one in Pope County and one in Jefferson County to pay an application fee, demonstrate experience in conducting casino gaming, and submit either a letter of support from the county judge or a resolution from the county quorum court in the county where the casino would be located and, if the proposed casino is to be located within a city, a letter of support from the mayor of that city; providing that the Commission shall regulate all casino licensees; defining "net casino gaming receipts" as casino gaming receipts less amounts paid out or reserved as winnings to casino patrons; providing that for each fiscal year, a casino licensee's net casino gaming receipts are subject to a net casino gaming receipts tax of 13% on the first \$150,000,000 of net casino gaming receipts or any part thereof, and 20% on net casino gaming receipts exceeding \$150,000,001 or any part thereof; providing that no other tax, other than the net casino gaming receipts tax, may be imposed on gaming receipts or net casino gaming receipts; providing that the net casino gaming receipts tax shall be distributed 55% to the State of Arkansas General Revenue Fund, 17.5% to the Commission for deposit into the Arkansas Racing Commission Purse and Awards Fund to be used only for purses for live horse racing and greyhound racing by Oaklawn and Southland, as the case may be, 8% to the county in which the casino is located, and 19.5% to the city in which the casino is located, provided that if the casino is not located within a city, then the county in which the casino is located shall receive the 19.5%; permitting casino licensees to conduct casino gaming on any day for any portion or all of any day; permitting casino licensees to sell liquor or provide complimentary

servings of liquor during all hours in which the casino licensees conduct casino gaming only for on-premises consumption at the casinos and permitting casino licensees to sell liquor or provide complimentary servings of liquor without allowing the residents of a dry county or city to vote to approve the sale of liquor; providing that casino licensees shall purchase liquor from a licensed Arkansas wholesaler; permitting shipments of gambling devices that are duly registered, recorded, and labeled in accordance with federal law into any county in which casino gaming is authorized; declaring that all constitutional provisions, statutes, and common law of the state that conflict with this amendment are not to be applied to this Amendment.” Exhibit 4.

#### **IV. CLAIM FOR RELIEF: ISSUE #4 BALLOT TITLE MISLEADS**

12. Petitioner requests that the Court enjoin Respondent Mark Martin from counting or certifying any ballots cast for Issue #4, or from including it on the ballot, because the ballot title is materially misleading. The ballot title omits information necessary to a fair understanding of the scope and impact of the amendment.

*A) Voters not informed in ballot title that perpetual monopoly given to private corporations that locals have no control over*

13. The Issue #4 ballot title fails to inform voters that Issue #4 itself overturns the Constitutional ban of monopolies and perpetuities by giving exclusive, perpetual licenses for casino gambling and alcohol sales that locals lose their liberty to approve.

14. Article II, Section 19 of the Arkansas Constitution reads in relevant part: **“Perpetuities and monopolies are contrary to the genius of a republic, and shall not be allowed.”**

15. However, both the popular name and the ballot title of Issue #4 do not inform voters that the text of the actual constitutional amendment automatically renews only these four casino licenses such that the casinos can last into perpetuity.

16. Voters are only merely told in the ballot title that casino licensees “will be required to conduct casino gaming for as long as they have a casino license.” The complete text of the popular name, ballot title and amendment is attached hereto as “**Exhibit 5**” and incorporated by reference. Exhibit 5, Complete text.

17. Crucially, voters are not told **how long** the casino licenses last, or that the **only** condition to automatically renewing the licenses is that they be in compliance with the amendment of Issue #4.<sup>1</sup>

18. If Issue #4 passes, voters will be enshrining a perpetual, exclusive license to two specific named private corporations, as well as two other private entities, in direct contravention of Article II, Section 19’s ban on monopolies and perpetuities.

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<sup>1</sup> Section 4(q) of the amendment reads in pertinent part that “The Arkansas Racing Commission shall issue a renewal casino license within ten days to any licensed casino that complies with the requirements contained in this Amendment, including without limitation the payment of the casino license renewal fee, which shall not exceed \$10,000.”

19. Voters deserve to know this essential fact so that they can have a fair understanding and make reasoned decisions.

20. Two of the named private corporations won't even have to apply for licenses; this is problematic considering voters' deep suspicions of government granting perpetual monopolies to predetermined private corporations.<sup>2</sup>

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<sup>2</sup> The 2016 "Marijuana Legalization Amendment" in Ohio failed with 64% voting against because it would have granted a monopoly to specific private corporations. Unlike Issue #4's title, the failed Ohio Amendment title *did* inform voters about the exact locations of the facilities and the extent of the monopolies. "*Ohio Votes Against Marijuana And Monopolies:*"

<https://www.forbes.com/sites/debraborchardt/2015/11/04/ohio-votes-against-marijuana-and-monopolies/#5f71cec24da4> ;

*"Why Did Ohio's Marijuana-Legalization Push Fail? Voters may have rejected a constitutional amendment because of concerns about monopoly control, not because they oppose looser laws:"*

<https://www.theatlantic.com/politics/archive/2015/11/where-did-ohios-marijuana-legalizers-go-wrong/414061/>;

*Ohio Ballot title:*

21. For further evidence of voters’ constitutional right to a clear ballot title, contrast Issue #4 of 2018 with Issue #6 of 2016.

22. In Issue #6 of 2016, Arkansas voters were told in that ballot title that there “shall be at least 20 but not more than 40 dispensary licenses issued,” that there “shall be at least 4 but no more than 8 cultivation facilities licenses issued;” and that “certain conditions and requirements” were placed on these unnamed cultivation and dispensary licenses *all* granted by an application process.

23. Issue #6 of 2016 thus informed voters that there would be limits to the more than 20 dispensaries and more than 4 cultivation facilities, again all granted by application.

24. Issue #6 of 2016 did not need to inform voters of a perpetual monopoly because Issue #6 of 2016 did not grant a perpetual monopoly, especially to two private corporations who do not even have to apply for a license as they do not have to do under Issue #4 of 2018. The voters of Arkansas passed Issue #6 of 2016 after being able to fairly consider its scope and impact.

25. But the scope and impact of Issue #4 to give perpetual monopolies, which much more severely limits Arkansans’ rights than did Issue #6 of 2016, is

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<https://www.ohioattorneygeneral.gov/getattachment/90dcc411-0fed-4942-a817-13437c331d0c/Marijuana-Legalization-Amendment.aspx>

hidden by a ballot title that does not fairly convey what decisions are at stake. Voters will not know what they are voting upon.

26. Further, there are several other fatal deficiencies in the ballot title and popular name that, while not as egregious as the aforementioned failure to let voters know they would be writing in to the Arkansas Constitution a perpetual monopoly in favor of only four private corporations, still fail to give voters an impartial description of the actual text and impact of the amendment.

*B) Voters misled on whether licenses merely “issued” or gambling “required”*

27. First of these other infirmities is that the popular name conflicts with the ballot title. The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency. *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

28. Here, the popular name merely requires “licenses to be *issued*” while the ballot title itself actually requires the licensees to “*conduct* casino gaming.”

29. This misleads voters because the popular name conflicts with the ballot title.

30. Voters who may place more emphasis on the popular name, which will be on the ballot too, might think that they were voting only to ‘*allow*’ casino gaming

to be authorized in voting to require licenses be *issued*. Voters might be confused about whether they are voting to “*require*” instead of “*allow*” it.

31. In contrast, a voter who places more emphasis on the ballot title may be confused about whether casino gaming truly is required when the popular title only reads casino *licenses* be “*issued*.” While the differing meanings may not make a large difference to a trained legal mind who is taught to frequently read clauses in conjunction with each other, this Court must look to how the text “reads” to voters, not what it might “mean” to lawyers. This Court must consider how it “reads” to voters to have conflicting words and thus impacts voter consideration of the ballot title and popular name.

32. Such confusion and material conflict within the ballot title and popular name itself is a common mistake that this Court regularly has cited in rejecting an amendment and keeping it off the ballot.

33. It would have been quite easy for the popular name to read “An Amendment to Require Casino Gaming At Four Casinos...” Such a popular name would have not misled voters. However, only requiring “four licenses to be issued” misleads.

*C) Voters misled on whether  
local elected officials can approve casinos*

34. Further, voters are misled in the ballot title into believing local elected officials can approve or disprove of casinos in their respective communities.

35. The ballot title reads that “all applicants for the two remaining casino licensees” shall be required to “submit either a letter of support from the county judge or a resolution from the county quorum court in the county where the casino would be located and, if the proposed casino is to be located within a city, a letter of support from the mayor of that city.”

36. However, the text of the Amendment reads that the Racing Commission “shall issue four casino licenses,” and “licensees are required to conduct casino gaming for as long as they have a license” in Pope and Jefferson Counties.

37. The ballot title does read that “the Commission shall regulate all casino licensees,” but voters are not told more information in the ballot title such that they are misled into believing that that the “letter of support” means the power to approve or disprove of casinos locating in their communities.

38. Instead of the “letter of support” giving local elected officials the power to approve or disprove of casinos locating in their respective communities, the “letter of support” is only over which particular “applicant” will get the guaranteed license.

39. The text of the Amendment makes clear a casino is coming to the community regardless of whether a particular applicant has a “letter of support” or not. Applicants without “letters of support” will lose out on a license in favor of applicants who gain one.

40. The ballot title’s failure to provide details on what the Racing Commission must do and also to make distinctions between a letter of support for an applicant vs. approval of a casino locating in a community misleads voters about the scope and impact of the amendment.

*D) Voters mislead on whether citizens lose oversight on corporations*

41. Another fatal infirmity in the ballot title and popular name are that voters are not informed that the protections of both Article 12 of the Arkansas Constitution to allow revocations of a corporate charter are superseded into Issue #4 and thus Issue #4 modifies the constitution to that extent.

42. For example, if the General Assembly wanted to revoke Oaklawn, Inc.’s, charter and suspend horse racing and gambling for being injurious to citizens under Article 12, section 6 of the Arkansas Constitution, it could not do so after the passage of Issue #4.

43. Voters are not informed that they are surrendering their power over private corporations they now have through their General Assembly.

*E) Voters mislead on whether locals  
lose oversight of unlimited free alcohol*

44. Lastly, the popular name of Issue #4 makes no mention of expanded alcohol sales that locals lose their liberty to approve. The ballot title reads that casinos can sell or give away free liquor servings “without allowing the residents of a dry county or city to vote to approve the sale of liquor.”

45. However, the popular name does not make any mention of alcohol, liquor or locals losing their right to oversee and approve such. It further makes no mention of Alcohol Beverage Control oversight or any other statutory scheme impacted.

46. While it may seem to some that a popular name of an amendment authorizing casino would necessarily imply unlimited liquor sales without local approval, that is classic implication and assumption that the Arkansas Supreme Court has long held can’t be made in a popular name and ballot title.

47. Instead of relying on implication and assumption, popular names and ballot titles have to be explicit and direct, so voters can understand what they are voting on.

48. This Court need not be given a primer on the primacy of local control over alcohol sales in this state, but voters need be given notice right from the top that

the structure of such sales would drastically be changing with the adoption of Issue #4.

## **V. PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that (i) this Court declare that the ballot title of the proposed initiated Amendment is insufficient, (ii) Respondent be enjoined from canvassing, counting or certifying any ballots cast for the Amendment at the November 6, 2018 General Election, or in the alternative, be enjoined from placing the initiated Amendment on the November 6, 2018 general election ballot and (iii) that Petitioner be awarded his costs and all other just and proper relief.

Respectfully submitted,

**PETITIONER JIM KNIGHT,  
Individually and on behalf of  
CITIZENS FOR LOCAL CHOICE**

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