

IN THE ARKANSAS SUPREME COURT

CHEROKEE NATION ENTERTAINMENT, LLC;
JENNIFER MCGILL, individually and on behalf of the
ARKANSAS CANVASSING COMPLIANCE COMMITTEE;
AND CHEROKEE NATION ENTERTAINMENT, LLC

PETITIONERS

v.

CV-24-492

JOHN THURSTON, in his official capacity
as ARKANSAS SECRETARY OF STATE

RESPONDENT

LOCAL VOTERS IN CHARGE, A
BALLOT QUESTION COMMITTEE; and
JIM KNIGHT, individually and on behalf of
LOCAL VOTERS IN CHARGE

INTERVENOR

PETITIONERS' RESPONSE TO INTERVENOR'S MOTION TO DISMISS

Come now the Petitioners, through their attorneys of record, for their
Response to Intervenor's Motion to Dismiss, state:

1. LVC and the Choctaw Nation ask the Court to muzzle the target of their
proposed constitutional amendment. The Court should decline the request.

2. Not only do LVC and the Choctaw Nation want to hide from voters that
their proposed amendment revokes CNE's license, now they contend that CNE
should not be heard in the attack on its license. That assertion is incorrect.

3. CNE is the current holder of the Pope County casino license; is
registered with the Arkansas Secretary of State to do business in Arkansas; conducts
business in Arkansas; owns property in Arkansas; operates an office in Russellville,

AR; and is currently developing a casino resort in Pope County pursuant to its casino license. *See* Secretary of State registration attached as Exhibit A.

4. Since 2019, CNE, along with its sole owner Cherokee Nation Businesses, LLC (“CNB”), has entered an Economic Development Agreement (“EDA”) with Pope County evidencing Pope County’s decision to support only CNB and its affiliates for the Pope County casino license. The EDA, like the license, stands in the cross-hairs of LVC and the Choctaw Nation’s proposed amendment.

5. CNE challenges the ballot title and popular name for being misleading in multiple ways, including, but not limited to, failing to inform voters that a license has been issued and that the proposed amendment would nullify the license, the EDA, and tax revenue CNE will generate for the State of Arkansas. Thus, Intervenor’s assertion that CNE is only trying to litigate constitutional claims is facially incorrect.

6. It is also incorrect because CNE is not attempting to litigate the substance of the constitutional claims. Instead, CNE presents those claims as serious, direct consequences of LVC’s proposed amendment that LVC fails to disclose to voters.

7. The question is simple: Does a license holder have standing to challenge a ballot title that attempts to (poorly) inform the electorate of a proposed

amendment that would destroy that license? Of course. The ballot title itself harms CNE, thus giving it standing.

8. As for LVC's case law, this is the rare ballot initiative that does not bring forward a broad question of law. Instead, it targets a specific entity: CNE as the holder of the Pope County casino license. In this way, this case is the inverse of *Arkansas Hotels and Entertainment, Inc. v. Martin*, 2012 Ark. 335, 423 S.W.3d 49. There Arkansas Hotels and Entertainment, Inc., ("AHE") was the sponsor of an initiated act to allow casino gambling in Arkansas. Here, CNE is the target of an initiated act to eliminate one of four casino licenses in the State. AHE as the proponent of the ballot measure there was required to register as a ballot question committee. CNB has joined with two Pope County residents to form the Ballot question committee Arkansas Canvassing Compliance Committee (also a Petitioner here). Exhibit B, BQC Statement of Organization.

9. Indeed, CNE is the opposite of the Committee to Establish Sherwood Fire Department. *Committee to Establish Sherwood Fire Department v. Hillman*, 353 Ark. 501, 109 S.W.3d 641 (2003). That Committee had no corporate existence, no known members, no affiliated ballot question committee, no apparent property or business interests in the locality, and was not the target of the proposed legislation. *Id.*

10. Here, as the license holder; an entity subject to the jurisdiction of the Arkansas Racing Commission; a party with obligations under an Arkansas contract targeted by this measure; an entity registered to do business in the State of Arkansas; an entity actually doing business in Arkansas; and a Pope County landowner; CNE has more standing than the Choctaw Nation (and Gulfside for that matter) possessed in *Cherokee Nation Businesses, LLC v. Gulfside Casino Partnership*, 2023 Ark. 153, 676 S.W.3d 368. CNE thus not only has a “connection to the voters,” but also a connection to the very things the proposed amendment seeks to eliminate.

11. It should also be noted that LVC was allowed intervention in Case No. CV-24-455 despite not having any direct interest in the proposed amendment in that matter. Rather, LVC argued that the ruling in that case could impact LVC in this matter. LVC was granted intervention although the point it raised ultimately was not addressed. Conversely, resolution of this matter will directly impact CNE, and, as such, standing is absolute.

12. “The failure of the court to protect those not before it may amount to a violation of due process should the judgment in the action have the effect of destroying their rights.” 7 Wright and Miller, *Federal Practice and Procedure* § 1602 (3d ed. 2024). It may also have the effect (suggested by LVC here) of causing piecemeal litigation. This Court has steadfastly followed a policy of avoiding

piecemeal litigation. *Scott v. State*, 2019 Ark. 269, 5, 584 S.W.3d 669 (noting the Court’s “policy of avoiding piecemeal litigation”).

13. For the foregoing reasons, CNE should be allowed a say in whether a proposed constitutional amendment wiping out the years of effort and resources it has spent pursuing the Pope County casino license should proceed to the ballot.

For the reasons stated above, Petitioners pray that this Court deny Intervenor’s Motion to Dismiss and for all other appropriate relief.

Respectfully Submitted,

PETITIONERS

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CERTIFICATE OF SERVICE

I, Bart Calhoun, hereby certify that I have filed the foregoing on August 28, 2024, via ecf which will send notice to all case participants.

/s Bart Calhoun
Bart Calhoun