



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2017-055

May 19, 2017

Barry Emigh, Sponsor
1104 West Seventh Street
Hot Springs, AR 71913-4225

Dear Mr. Emigh:

I am writing in response to your request for certification, pursuant to Ark. Code Ann. § 7-9-107 (Supp. 2015), of the popular name and ballot title for a proposed initiated measure.

At the outset, I wish to make clear to you that the decision to certify or reject a popular name and ballot title is in no way a reflection of my view of the merits of a particular proposal. I am not authorized to, and do not, consider the merits of the measure when making my determination to certify or reject a popular name and ballot title.

The Attorney General is required, pursuant to Ark. Code Ann. § 7-9-107, to certify the popular name and ballot title of all proposed initiative and referendum acts or amendments before the petitions are circulated for signature. The law provides that the Attorney General *may, if practicable*, substitute and certify a more suitable and correct popular name and ballot title. Or, if the proposed popular name and ballot title are sufficiently misleading, the Attorney General may reject the entire petition.

Section 7-9-107 neither requires nor authorizes this office to make legal determinations concerning the merits of the act or amendment, or concerning the likelihood that it will accomplish its stated objective. In addition, consistent with Arkansas Supreme Court precedent, unless the measure is “clearly contrary to

law,”¹ this office will not require that a measure’s proponents acknowledge in the ballot title any possible constitutional infirmities.² Consequently, this review has been limited primarily to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, discussed below, of whether the popular name and ballot title you have submitted accurately and impartially summarize the provisions of your proposal.

The purpose of my review and certification is to ensure that the popular name and ballot title honestly, intelligibly, and fairly set forth the purpose of the proposed amendment or act.³

REQUEST

You have requested certification, pursuant to Ark. Code Ann. § 7-9-107, of the following popular name and ballot title for a proposed constitutional amendment:

Popular Name

AN AMENDMENT TO THE ARKANSAS CONSTITUTION TO LICENSE THE FAIRPLAY HOLDINGS BALLOT QUESTION COMMITTEE MEMBERS TO OPERATE GAMBLING AS A MUNICIPAL BALLOT MEASURE

Ballot Title

An amendment to the Arkansas Constitution. Upon the effective date of this amendment any person(s) may initiate and enact local legislation as a municipal ballot measure within any number of municipalities with a population greater than twenty thousand (20,000) people, pursuant to Article 5, Section 1, to authorize any number of Fairplay Holdings BQC members and or transferees

¹ See *Kurrus v. Priest*, 342 Ark. 434, 445, 29 S.W.3d 669, 675 (2000); *Donovan v. Priest*, 326 Ark. 353, 359, 931 S.W.2d 119, 121 (1996); *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992).

² As part of my review, however, I may address constitutional concerns for consideration by the measure’s proponents.

³ See *Arkansas Women’s Political Caucus v. Riviere*, 283 Ark. 463, 466, 677 S.W.2d 846 (1984).

issued a gambling license, and or others reissued a revoked or relinquished gambling license, by the Alcoholic Beverage Control Board to lawfully operate and employ persons to lawfully operate gambling which may be operated twenty four (24) hours a day, seven (7) days a week, with the sale, service, and complimentary service of those controlled beverages for on site *[sic]* consumption which are permissable *[sic]* within that municipal jurisdiction for on site *[sic]* consumption to be sold and served within the structure used to operate gambling only during the time gambling is operated to be done within the rules and regulation of the Alcoholic Beverage Control Board. Unless otherwise provided in this amendment each person, or person not an individual, named as a director, officer, and or *[sic]* member with the Fairplay Holdings Ballot Question Committee as filed with the Arkansas Ethics Commission, pursuant to A.C.A. *[sic]* Section 7-9-404 statement of organization, prior to qualification of this amendment by the secretary of state for the general election at which this amendment appeared shall each upon application be issued one (1) gambling license by the Alcoholic Beverage Control Board, hereafter known as the ABC Board. The gambling license shall be transferable within the rules and regulations of the ABC Board. The ABC Board, pursuant to A.C.A. Section 25-15-203, 219 et seq. *[sic]* Arkansas Administrative Act *[sic]*, shall be required to facilitate the application, issue, renewal, transfer and establish the cost of an application to issue, renew, and transfer a gambling license. Unless otherwise provided in this amendment the ABC Board, pursuant to A.C.A. Section 25-15-203, 219 et seq. *[sic]* Arkansas Administrative Act *[sic]*, shall be required to regulate gambling and the sale, service, and complimentary service of controlled beverages sold by a gambling operator during the time gambling is operated. Only those controlled beverages for on site *[sic]* consumption permissable *[sic]* within that jurisdiction shall be sold and served by a gambling operator within that jurisdiction. The ABC Board shall not be authorized to limit the hours of gambling, nor the hours controlled beverages can be sold on site *[sic]* other than by the hours gambling is operated, nor amount of any wager, nor the number of slot machines and or *[sic]* game tables other than for safety purposes. The Department of Finance and Administration shall be required, pursuant to A.C.A. Section 25-15-203, 219 et seq. *[sic]* Arkansas Administrative Act *[sic]*, to establish the rules, regulations, time schedules and procedures to collect the gambling tax, income tax with holdings *[sic]*, and gambling license

fee and to distribute the gambling tax as provided in this amendment. Upon issue of a gambling license the Department of Finance and Administration shall be required to: collect an eighteen (18%) percent gambling tax; collect an additional two (2%) percent gambling tax when the gross income exceeds fourteen million (\$14,000,000.) dollars within twelve months; collect an additional three (3%) percent gambling tax when the gross income exceeds twenty eight million (\$28,000,000.) dollars within twelve months; collect an additional four (4%) percent gambling tax when the gross income exceeds fifty six million (\$56,000,000.) dollars within twelve months; collect a personal income tax with holding [sic] on any winnings won by any person over twenty five hundred (\$2,500) dollars; collect an annual gambling license fee of seventy five thousand (\$75,000) dollars for each gambling license; pay the city where gambling is operated one third (1/3) of the gambling tax and the county where gambling is operated within a city within that county one third (1/3) of the gambling tax collected within those jurisdictions. Unless otherwise provided in this amendment all other taxes, permits, and fees shall apply. Upon passage of this amendment the voters are aware and acknowledge the risk of gambling and alcohol addiction. The provisions of this amendment shall not effect [sic] Oaklawn Race Track in Garland County nor [sic] Southland Race Park in Crittenden County. As used in this amendment: 'gambling' means any pay to play game of chance with a winner, and a loser, to include cards, dice, roulette and slot machines; 'gambling tax' means a tax on the total gross income earned from gambling; 'gross income' means the amount of money earned after all winnings are paid as a loss by the gambling operator; 'person not an individual' means a business entity. The provisions of this amendment are severable, and if any should be held invalid, the remainder shall stand. The provisions of this amendment are self executing, and all its provisions shall be treated as mandatory, but laws may be enacted to facilitate its operation. All laws and constitutional provisions which conflict with this amendment are repealed to the extent they conflict with this amendment. The provisions of this amendment shall take effect on January 1st, 2019.

SUMMARY RESPONSE

Your popular name again cannot be certified primarily because its wording is very confusing to the point of being nonsensical. In its current form, it could not be

viewed as a short, descriptive label that would enable voters to easily identify your proposal for discussion purposes. Your ballot title is impermissibly misleading in failing to fairly or completely *summarize* the substance of your lengthy and complex proposal in a way such that voters will be able to understand the proposal within the allotted time in the voting booth.

Based on what has been submitted, my statutory duty is to reject your proposed popular name and ballot title.

LEGAL STANDARDS

1. Popular Name

The popular name is primarily a useful legislative device.⁴ It need not contain detailed information or include exceptions that might be required of a ballot title, but it must not be misleading or give partisan coloring to the merit of the proposal.⁵ According to the Arkansas Supreme Court, “The popular name is designed to make it easy for voters to discuss the proposal prior to the election, by giving them a label to identify it.”⁶ The popular name is to be considered together with the ballot title in determining the ballot title’s sufficiency.⁷

2. Ballot Title

The ballot title must include an impartial summary of the proposed amendment or act that will give the voter a fair understanding of the issues presented.⁸ According to the Court, a ballot title will not be legally sufficient unless it “adequately inform[s]” the voters of the contents of a proposed amendment or act so that they can make a “reasoned decision in the voting booth.”⁹ A ballot title’s

⁴ *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

⁵ See, e.g., *Chaney v. Bryant*, 259 Ark. 294, 297, 532 S.W.2d 741, 743 (1976); *Moore v. Hall*, 229 Ark. 411, 316 S.W.2d 207 (1958). For a better understanding of the term “partisan coloring,” see note 17 *infra*.

⁶ *Gaines v. McCuen*, 296 Ark. 513, 516, 758 S.W.2d 403, 404 (1988).

⁷ *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

⁸ *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980) (internal citations omitted).

⁹ *Lange v. Martin*, 2016 Ark. 337, 500 S.W.3d 154, at n. 2.

failure to “honestly and accurately reflect what is contained in the proposed [act or] Amendment” may lead the Court to conclude that the “omission is significant.”¹⁰ The Court has also disapproved the use of terms that are “technical and not readily understood by voters.”¹¹ Without a definition of such terms in the ballot title, the title may be deemed insufficient.¹²

Additionally, if information omitted from the ballot title is an “essential fact which would give the voter serious ground for reflection, it must be disclosed.”¹³ At the same time, however, a ballot title must be brief and concise;¹⁴ otherwise voters could run afoul of Ark. Code Ann. § 7-5-309’s five-minute limit in voting booths when other voters are waiting in line.¹⁵ The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate every possible legal argument the proposed measure might evoke.¹⁶ The title, however, must be “free of any misleading tendency whether by amplification, omission, or fallacy, and it must not be tinged with partisan coloring.”¹⁷ The ballot title must be honest and impartial,¹⁸ and it must convey an intelligible idea of the scope and significance of a proposed change in the law.¹⁹

¹⁰ *Id.* at *9, 500 S.W.3d at 159.

¹¹ *Wilson v. Martin*, 2016 Ark. 334, *9, 500 S.W.3d 160, 167.

¹² *Id.*, 500 S.W.3d at 167.

¹³ *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

¹⁴ *See* Ark. Code Ann. § 7-9-107(b).

¹⁵ *Bailey*, 318 Ark. at 284, 884 S.W.2d at 944.

¹⁶ *Id.* at 293, 884 S.W.2d at 946-47.

¹⁷ *Id.* at 284, 884 S.W.2d at 942. Language “tinged with partisan coloring” has been identified by the Arkansas Supreme Court as language that “creates a fatally misleading tendency” (*Crochet v. Priest*, 326 Ark. 338, 347, 931 S.W.2d 128, 133 (1996)) or that “gives the voter only the impression that the proponents of the proposed amendment wish to convey of the activity represented by the words.” (*Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 249, 884 S.W.2d 605, 610 (1994)).

¹⁸ *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

¹⁹ *Christian Civic Action Committee*, 318 Ark. at 245, 884 S.W.2d at 607 (internal quotations omitted).

Furthermore, the Court has confirmed that a proposed measure cannot be approved if the text of the proposal itself contributes to confusion and disconnect between the language in the popular name and the ballot title and the language in the proposed measure.²⁰ The Court concluded that “internal inconsistencies would inevitably lead to confusion in drafting a popular name and ballot title and to confusion in the ballot title itself.”²¹ Where the effects of a proposed measure on current law are unclear or ambiguous, it is impossible for me to perform my statutory duty to the satisfaction of the Arkansas Supreme Court without (1) clarification or removal of the ambiguities in the proposal itself, and (2) conformance of the popular name and ballot title to the newly worded proposal.

It is my opinion, based on the above precepts and precedents, that your proposed popular name and ballot title will not satisfy the Court’s standards. A number of changes to both are necessary to meet those standards and to more correctly summarize your proposal. I cannot at this time, however, determine precisely what changes to the ballot title are necessary to fully and correctly summarize your proposal. I consequently cannot attempt to substitute and certify, pursuant to Ark. Code Ann. § 7-9-107(b), a more suitable and correct popular name and ballot title. There continue to be fundamental problems with your proposed amendment; problems I have alerted you to multiple times before and have said must be addressed. In light of these unresolved problems, I have not conducted a thorough, point-by-point review of the entire text of your proposal for ambiguities, internal inconsistencies, misleading language, or other potential issues it may contain. You must address the fundamental problems before I can proceed with a more thorough review.

DISCUSSION

1. Popular Name

Your popular name, in my opinion, is too long and confusing to be considered a “useful legislative device.”²² As I have previously explained in response to your prior submissions,²³ the popular name must be a *short*, descriptive reference for

²⁰ *Cf. Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 382 (2000).

²¹ *Id.*

²² See text accompanying note 4 *supra*.

²³ Ops. Att’y Gen. 2017-042, 2016-099.

your proposed measure. As quoted above, the Court has described the popular name as something “designed to make it easy for voters to discuss the proposal prior to the election, by giving them a label to identify it.”²⁴

Your most recent proposed popular name wholly fails to meet this standard. Instead, it is a gallimaufry, a confusing jumble of certain features of your proposed measure. The literal wording is nonsensical. As worded, the popular name indicates that the Fairplay Holdings Ballot Question Committee members would “operate gambling as a municipal ballot measure.” This makes no sense, owing to clear syntactical problems. In my opinion, the Court would not view this proposed popular name as a sufficiently descriptive label that will enable voters to easily identify the measure for discussion purposes. In light of this fundamental problem, I cannot at this point substitute a more suitable and appropriate popular name.

2. Ballot Title

In my last opinion to you, I pointed out two critical, threshold problems with the text of your measure that precluded me from crafting a suitable substitute ballot title. These threshold problems have not been satisfactorily addressed.

The first problem again concerns the initiation of gambling ballot measures under your proposed constitutional amendment. You have changed your proposal to now state that “any person(s)” (*sic*) (within certain jurisdictions) may initiate a municipal ballot measure “pursuant to Article Five Section 1” (*sic*) to authorize only a “Fairplay Holdings Ballot Question Committee” member or members to be issued a gambling license. I presume you intend to reference Article 5, section 1 of the Arkansas Constitution, but this is not clear from your proposal. Additionally, as I mentioned to you in my previous opinion, such a mere reference, without more, would not be sufficient clarification to tell the voters how this “initiation” process takes place.

The second threshold problem again concerns your reference to the “Fairplay Holdings Ballot Question Committee” and its members. As I mentioned in my previous opinion, your proposal (and thus its ballot title) lacks any specifics about who comprises, or would comprise, the membership of this “Fairplay Holdings Ballot Question Committee,” how this committee is formed, and who has the authority to form it or amend its organizing documents. Nor does your proposal or

²⁴ See note 6, *supra*.

ballot title give any hint as to how, or even if, the voters would be able to ascertain who those “members” are prior to casting their votes on a constitutional amendment that would grant those “members” an enormous and exclusive privilege. I believe the Court would see this as a serious omission that, if included, would give voters “serious ground for reflection.”

In *Page v. McCuen*,²⁵ the Arkansas Supreme Court looked at a proposed gambling amendment that would have permitted a casino on a specific piece of property owned by unknown individuals. The Court stated that even though the legal description of the property to be granted exclusive casino rights was in the proposed amendment, “[a]ny voter reading the ballot title ... would unwittingly be led to believe that ‘a designated site’ is yet to be selected. Not so.”²⁶ The Court held that that this was a serious omission from the ballot title:

Before casting their ballots, voters no doubt would pause for reflection if they were aware “the” designated site had already been established in the proposed constitutional measure itself, *thereby guaranteeing the site’s owner whatever benefits that would result from the measure’s passage.*²⁷

In my opinion, the exclusive gambling privileges guaranteed under your proposed measure are analogous to those in *Page*. In fact, the privileges are more specific than the rights that would have been guaranteed in that case. I believe the Court would undoubtedly, in the event of a ballot title challenge, require your ballot title to identify, or at the very least inform the voters how they could identify, the membership of this “Fairplay Holdings Ballot Question Committee.”

I also note, as with your two most recent submissions,²⁸ that your ballot title again appears overly long and complicated. As I have previously explained, despite the Court’s willingness to give Amendment 7²⁹ a liberal construction when

²⁵ 318 Ark. 342, 884 S.W.2d 951 (1994).

²⁶ *Page*, 318 Ark. at 345, 884 S.W.2d at 953.

²⁷ *Id.* (emphasis added).

²⁸ Ops. Att’y Gen. 2017-029 and 2017-016.

²⁹ Codified at Ark. Const. art. 5, § 1 (Supp. 2015) (permitting citizen-initiated acts and constitutional amendments).

determining the sufficiency of a ballot title,³⁰ “that does not mean that liberality knows no bounds or [that] common sense has no place in the matter.”³¹ Again, as the Court explained:

While neither the length nor complexity of the ballot title should be a controlling factor, it is a consideration. The great majority of Arkansas voters are limited, as a practical matter, in the amount of time that can be spent considering such a proposal. Furthermore, common sense requires that we ask whether the average voter can make an intelligent considerate decision based on the ballot title.³²

I take note that you have shortened your ballot title—833 words this time, down from the 845 words and 990 words in your previous two submissions. But it remains my opinion that the ballot title you have submitted would not meet the Court’s standards for intelligent consideration by the voters in the allotted time. This continues to be a consequence of the confusing nature of your proposal’s text.

Page v. McCuen, discussed above, serves as an example of just the kind of dilemma faced by the sponsors of lengthy and complex measures. In *Page*, the Court pointed out that the casino measure at issue there was so all-encompassing that to include every important factor of the measure in the ballot title would render the title “so complex, detailed and lengthy that the Arkansas voter could not intelligently make a choice on the title within the five minutes allowed in the voting booth.”³³ The Court went on to note:

Although Amendment 7 to the Arkansas Constitution does not specify a limit on the length of a proposal, the proposed measure must be of a size capable of having a ballot title which will not only convey the scope and import of the measure, but also impart a description of the proposal so voters can cast their votes intelligently and with a fair understanding on the issue.³⁴

³⁰ See *Becker*, note 7 *supra*, 270 Ark. at 225, 604 S.W.2d at 558.

³¹ *Dust v. Riviere*, 277 Ark. 1, 6, 638 S.W.2d 663, 666 (1982).

³² *Id.* (holding that the ballot title in that case, which was 706-words long, was “so complex, detailed, lengthy, misleading and confusing that the Arkansas voter cannot intelligently make a choice based on the title.”).

³³ *Page*, 318 Ark. at 347, 884 S.W.2d at 954.

³⁴ *Id.*

The Court concluded that the proposed measure in that case was “so expansive that it preclude[d] the writing of an acceptable ballot title.”³⁵

Accordingly, should you choose to revise and resubmit your measure and ballot title to address the above concerns, your ballot title must thoroughly *but judiciously* recite the proposed amendment’s important features in an effort to avoid the problem that the sponsors in *Page* faced. The ballot title for any measure of such length and complexity as yours must avoid *both* being too lengthy and omitting important matters. In other words, the title cannot be so long that it causes voters to violate the voting booth time limitations, yet it must not omit any of the proposed measure’s important features.³⁶

These fundamental, threshold issues must be significantly clarified and set out in your proposal with specificity so that they may be adequately summarized in a ballot title that will meet the Court’s standards. Until these matters are addressed, I cannot proceed with a more thorough review of your proposed amendment.

I must once again reiterate that any revision of your proposal must be seriously undertaken with a studied effort to thoroughly clarify, and ideally simplify, your proposed amendment so that a legally sufficient ballot title may be crafted. Amending the Arkansas Constitution is a very serious matter, and the Supreme Court holds popular names and ballot titles of proposed constitutional amendments to a standard that is commensurate with this seriousness.³⁷

CONCLUSION

The problems noted above are not necessarily all that are contained in your proposal, but they are sufficiently serious to require me to reject your popular name and ballot title. They render me unable to substitute language in a ballot title for your measure. Further, additional issues may come to light on review of any revisions of your proposal.

³⁵ *Id.*

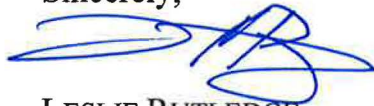
³⁶ Indeed, the sponsor of a lengthy and complex constitutional amendment—such as yours—always runs the risk that the Court will find a ballot title unacceptable, either because it is too “complex, detailed, and lengthy,” or because it has “serious omissions.” *See, e.g.,* Op. Att’y Gen. 2017-050 (citing *Walker v. Priest*, 342 Ark. 410, 29 S.W.3d 657 (2000); *Page v. McCuen*, note 25 *supra*). *Accord* Op. Att’y Gen. 2011-038 (citing Ops. Att’y Gen. 2007-160, 2005-212).

³⁷ Op. Att’y Gen. 2016-099.

My office, in the certification of ballot titles and popular names, does not address the merits, philosophy, or ideology of proposed measures. I have no constitutional role in the shaping or drafting of such measures. My statutory mandate is embodied only in Ark. Code Ann. § 7-9-107, and my duty is to the electorate.

Based on what has been submitted, my statutory duty is to reject your proposed popular name and ballot title for the foregoing reasons.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Leslie Rutledge', with a stylized, overlapping loop at the end.

LESLIE RUTLEDGE
Attorney General

Enclosure

Popular Name

AN AMENDMENT TO THE ARKANSAS CONSTITUTION TO LICENSE THE FAIRPLAY HOLDINGS BALLOT QUESTION COMMITTEE MEMBERS TO OPERATE GAMBLING AS A MUNICIPAL BALLOT MEASURE.

Ballot Title

AN AMENDMENT TO THE ARKANSAS CONSTITUTION. UPON THE EFFECTIVE DATE OF THIS AMENDMENT ANY PERSON(S) MAY INITIATE AND ENACT LOCAL LEGISLATION AS A MUNICIPAL BALLOT MEASURE WITHIN ANY NUMBER OF MUNICIPALITIES WITH A POPULATION GREATER THAN TWENTY THOUSAND (20,000) PEOPLE, PURSUANT TO ARTICLE FIVE SECTION 1, TO AUTHORIZE ANY NUMBER OF FAIRPLAY HOLDINGS BQC MEMBERS AND OR TRANSFEREES ISSUED A GAMBLING LICENSE, AND OR OTHERS REISSUED A REVOKED OR RELINQUISHED GAMBLING LICENSE, BY THE ALCOHOLIC BEVERAGE CONTROL BOARD TO LAWFULLY OPERATE AND EMPLOY PERSONS TO LAWFULLY OPERATE GAMBLING WHICH MAY BE OPERATED TWENTY FOUR (24) HOURS A DAY, SEVEN (7) DAYS A WEEK, WITH THE SALE, SERVICE, AND COMPLIMENTARY SERVICE OF THOSE CONTROLLED BEVERAGES FOR ON SITE CONSUMPTION WHICH ARE PERMISSABLE WITHIN THAT MUNICIPAL JURISDICTION FOR ON SITE CONSUMPTION TO BE SOLD AND SERVED WITHIN THE STRUCTURE USED TO OPERATE GAMBLING ONLY DURING THE TIME GAMBLING IS OPERATED TO BE DONE WITHIN THE RULES AND REGULATION OF THE ALCOHOLIC BEVERAGE CONTROL BOARD. UNLESS OTHERWISE PROVIDED IN THIS AMENDMENT EACH PERSON, OR PERSON NOT AN INDIVIDUAL, NAMED AS A DIRECTOR, OFFICER, AND OR MEMBER WITH THE FAIRPLAY HOLDINGS BALLOT QUESTION COMMITTEE AS FILED WITH THE ARKANSAS ETHICS COMMISSION, PURSUANT TO A.C.A. SECTION 7-9-404 STATEMENT OF ORGANIZATION, PRIOR TO QUALIFICATION OF THIS AMENDMENT BY THE SECRETARY OF STATE FOR THE GENERAL ELECTION AT WHICH THIS AMENDMENT APPEARED SHALL EACH UPON APPLICATION BE ISSUED ONE (1) GAMBLING LICENSE BY THE ALCOHOLIC BEVERAGE CONTROL BOARD, HEREAFTER KNOWN AS THE ABC BOARD. THE GAMBLING LICENSE SHALL BE TRANSFERABLE WITHIN THE RULES AND REGULATIONS OF THE ABC BOARD. THE ABC BOARD, PURSUANT TO A.C.A. SECTION 25-15-203, 219 ET SEQ. ARKANSAS ADMINISTRATIVE ACT, SHALL BE REQUIRED TO FACILITATE THE APPLICATION, ISSUE, RENEWAL, TRANSFER AND ESTABLISH THE COST OF AN APPLICATION TO ISSUE, RENEW, AND TRANSFER A GAMBLING LICENSE. UNLESS OTHERWISE PROVIDED IN THIS AMENDMENT THE ABC BOARD, PURSUANT TO A.C.A. SECTION 25-15-203, 219 ET SEQ. ARKANSAS ADMINISTRATIVE ACT, SHALL BE REQUIRED TO REGULATE GAMBLING AND THE SALE, SERVICE, AND COMPLIMENTARY SERVICE OF CONTROLLED BEVERAGES SOLD BY A GAMBLING OPERATOR DURING THE TIME GAMBLING IS OPERATED. ONLY THOSE CONTROLLED BEVERAGES FOR ON SITE CONSUMPTION PERMISSABLE WITHIN THAT JURISDICTION SHALL BE SOLD AND SERVED BY A GAMBLING OPERATOR WITHIN THAT JURISDICTION. THE ABC BOARD SHALL NOT BE AUTHORIZED TO LIMIT THE HOURS OF GAMBLING, NOR THE HOURS CONTROLLED BEVERAGES CAN BE SOLD ON SITE OTHER THAN BY THE HOURS GAMBLING IS OPERATED, NOR AMOUNT OF ANY WAGER, NOR THE NUMBER OF SLOT MACHINES AND OR GAME TABLES OTHER THAN FOR SAFETY PURPOSES. THE DEPARTMENT OF FINANCE AND ADMINISTRATION SHALL BE REQUIRED, PURSUANT TO A.C.A. SECTION 25-15-203, 219 ET SEQ. ARKANSAS ADMINISTRATIVE ACT, TO ESTABLISH THE RULES, REGULATIONS, TIME SCHEDULES AND PROCEDURES TO COLLECT THE GAMBLING TAX, INCOME TAX WITH HOLDINGS, AND GAMBLING LICENSE FEE AND TO DISTRIBUTE THE GAMBLING TAX AS PROVIDED IN THIS AMENDMENT. UPON ISSUE OF A GAMBLING LICENSE THE DEPARTMENT OF FINANCE AND ADMINISTRATION SHALL BE REQUIRED TO: COLLECT AN EIGHTEEN (18%) PERCENT GAMBLING TAX; COLLECT AN ADDITIONAL TWO (2%) PERCENT GAMBLING TAX WHEN THE GROSS INCOME EXCEEDS FOURTEEN MILLION (\$14,000,000.) DOLLARS WITHIN TWELVE MONTHS; COLLECT AN ADDITIONAL THREE (3%) PERCENT GAMBLING TAX WHEN THE GROSS INCOME EXCEEDS TWENTY EIGHT MILLION (\$28,000,000.) DOLLARS WITHIN TWELVE MONTHS; COLLECT AN ADDITIONAL FOUR (4%) PERCENT GAMBLING TAX WHEN THE GROSS INCOME EXCEEDS FIFTY SIX MILLION (\$56,000,000.) DOLLARS WITHIN TWELVE MONTHS; COLLECT A PERSONAL INCOME TAX WITH HOLDING ON ANY WINNINGS WON BY ANY PERSON OVER TWENTY FIVE HUNDRED (\$2,500) DOLLARS; COLLECT AN ANNUAL GAMBLING LICENSE FEE OF SEVENTY FIVE THOUSAND (\$75,000) DOLLARS FOR EACH

GAMBLING LICENSE; PAY THE CITY WHERE GAMBLING IS OPERATED ONE THIRD (1/3), OF THE GAMBLING TAX AND THE COUNTY WHERE GAMBLING IS OPERATED WITHIN A CITY WITHIN THAT COUNTY ONE THIRD (1/3) OF THE GAMBLING TAX COLLECTED WITHIN THOSE JURISDICTIONS. UNLESS OTHERWISE PROVIDED IN THIS AMENDMENT ALL OTHER TAXES, PERMITS, AND FEES SHALL APPLY. UPON PASSAGE OF THIS AMENDMENT THE VOTERS ARE AWARE AND ACKNOWLEDGE THE RISK OF GAMBLING AND ALCOHOL ADDICTION. THE PROVISIONS OF THIS AMENDMENT SHALL NOT EFFECT OAKLAWN RACE TRACK IN GARLAND COUNTY NOR SOUTHLAND RACE PARK IN CRITTENDEN COUNTY. AS USED IN THIS AMENDMENT: 'GAMBLING' MEANS ANY PAY TO PLAY GAME OF CHANCE WITH A WINNER, AND A LOSER, TO INCLUDE CARDS, DICE, ROULETTE AND SLOT MACHINES; 'GAMBLING TAX' MEANS A TAX ON THE TOTAL GROSS INCOME EARNED FROM GAMBLING; 'GROSS INCOME' MEANS THE AMOUNT OF MONEY EARNED AFTER ALL WINNINGS ARE PAID AS A LOSS BY THE GAMBLING OPERATOR; 'PERSON NOT AN INDIVIDUAL' MEANS A BUSINESS ENTITY. THE PROVISIONS OF THIS AMENDMENT ARE SEVERABLE, AND IF ANY SHOULD BE HELD INVALID, THE REMAINDER SHALL STAND. THE PROVISIONS OF THIS AMENDMENT ARE SELF EXECUTING, AND ALL ITS PROVISIONS SHALL BE TREATED AS MANDATORY, BUT LAWS MAY BE ENACTED TO FACILITATE ITS OPERATION. ALL LAWS AND CONSTITUTIONAL PROVISIONS WHICH CONFLICT WITH THIS AMENDMENT ARE REPEALED TO THE EXTENT THEY CONFLICT WITH THIS AMENDMENT. THE PROVISIONS OF THIS AMENDMENT SHALL TAKE EFFECT ON JANUARY 1ST, 2019.

An Amendment to the Arkansas Constitution.

Section 1: Gambling as a Local Ballot Measure.

1. Upon the effective date of this Amendment any person(s) may initiate a municipal ballot measure to enact local legislation within any number of municipalities with a population greater than twenty thousand (20,000) people, pursuant to Article Five Section 1, to authorize any number of Fairdeal Holdings BQC Members and or transferees issued a gambling license, and or others reissued a revoked gambling license, by the Alcoholic Beverage Control Board to lawfully operate and employ persons to lawfully operate gambling which may be operated twenty four (24) hours a day, seven (7) days a week, with the sale, service, and complimentary service of those controlled beverages for on site consumption which are permissible for on site consumption within that municipal jurisdiction to be sold and served within the structure used to operate gambling only during the time gambling is operated to be done within the rules and regulations of the Alcoholic Beverage Control Board.
2. The provisions of this Amendment shall not effect in any manner any other person, or person not an individual, licensed by the Alcoholic Beverage Control Board to sell and serve alcoholic beverages for on site consumption within the jurisdiction of a municipality.

Section 2: Fairplay Holdings Ballot Question Committee (BQC) Members.

1. Within thirty (30) days after the effective date of this Amendment before the dissolution of the Ballot Question Committee named Fairplay Holdings as filed with the Arkansas Ethics Commission, pursuant to A.C.A Section 7-9-404 Statement of Organization, the Arkansas Ethics Commission shall be required to provide the Alcoholic Beverage Control Board, hereafter to be known as the ABC Board, with a full list of those persons, and persons not an individual, named as a director, officer, and or member on the statement of organization, or amended statement of organization, for the qualification and passage of this Amendment with the Ballot Question Committee named Fairplay Holdings as last filed with the Arkansas Ethics Commission prior to the date of qualification of this Amendment by the Arkansas Secretary of State for the general election at which this Amendment appeared.
2. For the purpose of this Amendment those persons, or persons not an individual, named as a director, officer, and or member on the statement of organization, and or amended statement of organization, with the Ballot Question Committee named Fairplay Holdings as filed with the Arkansas Ethics Commission, as provided in part 1 of this Section, shall hereafter be called a Fairplay Holdings BQC Member.
3. The ABC Board shall be required to file and register the names of those persons, or persons not an individual, named as a Fairplay Holdings BQC Member, as provided in part 3(a) of Section of this Amendment.
4. Prior to issue of a gambling license, as provided in part 1 of Section 3 of this Amendment, the name of each person, or person not an individual, named as a Fairplay Holdings BQC Member shall be

transferable, as provided in part 3(a) of Section 4 of this Amendment, with or without sale to the name of another person, or person not an individual, and from them, and so on without cost, fee, and restriction.

5. For the purpose of this Amendment any name transferred from a Fairplay BQC Member, as provided in part 4 of this Section, to the name of another person, or person not an individual, and from them, and so on shall still be called a Fairplay Holdings BQC Member.

Section 3: Issue and transfer of a Gambling License.

1. Unless otherwise provided in this Amendment, as provided in parts 3(b)(e)(f)(g) of Section 4 of this Amendment, upon application by a Fairplay Holdings BQC Member the ABC Board shall be required to issue one (1) gambling license, and only one (1) gambling license, to that person, or person not an individual, named as a Fairplay Holdings BQC Member.

2. For the purpose of this Amendment any person, or person not an individual, upon issue of a gambling license shall thereafter be known as the gambling operator.

3. Unless otherwise provided in this Amendment the gambling license, as provided in part 1 of this Section, upon issue by the ABC Board shall authorize the gambling operator and their employees to lawfully operate gambling which may be operated twenty four (24) hours a day, seven (7) days a week, with the sale, service, and complimentary service of those controlled beverages for on site consumption which are permissible for on site consumption within that municipal jurisdiction to be sold and served within the structure used to operate gambling only during the time gambling is operated to be done within the rules and regulations of the ABC Board.

4. Unless otherwise provided in this Amendment, as provided in parts 3(d)(g) et seq. of Section 4 of this Amendment, the gambling license issued to the name of a Fairplay Holdings BQC Member by the ABC Board shall be transferable to any person, or person not an individual, and from them, and so on.

Section 4: Gambling and Controlled Beverage Regulations.

1. Unless otherwise provided in this Amendment, as provided in parts 4(a)(b)(d) of this Section, upon issue of a gambling license the gambling operator shall be authorized to do as follows:

(a). Locate the gambling operation within the jurisdiction of a municipality where gambling has been lawfully enacted as local legislation within that municipality by a municipal ballot measure.

(b). Relocate the gambling operation within the same jurisdiction of that municipality where gambling has been lawfully enacted as local legislation by a municipal ballot measure.

(c). Relocate the gambling operation to the jurisdiction of another municipality where gambling has been lawfully enacted as local legislation within that jurisdiction by a municipal ballot measure.

2. Only those kinds of controlled beverages which are permissible for on site consumption by businesses within the jurisdiction of a municipality shall be sold and served for on site consumption by a gambling operator, and or those employed by a gambling operator, within the structure used to operate gambling during the time gambling is operated.

3. Unless otherwise provided in this Amendment the ABC Board, pursuant to A.C.A. Section 25-15-203, 219 et seq. Arkansas Administrative Act, shall be required within two hundred and forty (240) days immediately after the effective date of this Amendment to establish the rules, regulations, procedures and fees necessary to facilitate the application, issue, renewal and transfer of a gambling license to include, but not limited to:

(a). Registration and transfer of a Fairplay Holdings BQC Member name, as provided in parts 3, 4 of Section 2 of this Amendment.

(b). Application and issue of a gambling license to a Fairplay Holdings BQC Member, as provided in part 1 of Section 3 of this Amendment.

(c). Annual application and renewal of a gambling license.

(d). Application and transfer of a gambling license from a Fairplay Holdings BQC Member to another person(s), or person not an individual, and from them, and so on, as provided in part 4 of Section 3 of this Amendment.

(e). Back ground checks.

(f). Prohibit any person convicted of certain crimes to be determined by the ABC Board from being issued or transferred a gambling license.

(g). Determine the amount to cover the cost of any, and all, application fees to include, but not limited to, criminal back ground checks to be paid by the gambling operator.

4. Unless otherwise provided in this Amendment the ABC Board, pursuant to A.C.A. Section 25-15-203, 219 et seq. Arkansas Administrative Act, shall be required within two hundred and forty (240) days

immediately after the effective date of this Amendment to establish the rules, regulations, and procedures necessary to regulate gambling and the sale, service, and complimentary service of controlled beverages sold and served by a gambling operator to include, but not limited to:

- (a). Zoning of a gambling operation with the sale, service, and complimentary service of alcoholic beverages.
 - (b). Application and registration for the use of gambling equipment to include, but not limited to, slot machines and game tables.
 - (c). Prohibit the sale and service of those kinds of controlled beverages for on site consumption by a gambling operator, and or their employees, which are not permissible for on site consumption within the jurisdiction of a municipality where gambling is legally operated, as provided in part 2 of this Section.
 - (d). Application and approval to locate and relocate a gambling operation within, or to another, jurisdiction, as provided in part 1(a)(b)(c) of this Section.
 - (e). Criminal back ground checks of employees.
 - (f). Prohibit employment of any person for certain criminal acts to be determined by the ABC Board
 - (g). Revoke a gambling license for certain criminal acts by a person licensed to operate gambling to be determined by the ABC Board.
 - (h). Application and reissue of a revoked gambling license to the public, as provided in part 5 of this Section.
 - (i). Prohibit a monopoly on gambling.
 - (j). Determine the amount to cover the cost of any, and all, application fees to include, but not limited to, the registration of gambling equipment, location and relocation of a gambling operation, and criminal back ground checks to be paid by the gambling operator.
5. The ABC Board shall be required to reissue and to establish the rules, regulations, and procedures, pursuant to A.C.A. Section 25-15-203, 219 et seq. Arkansas Administrative Act, to reissue to any person, or person not an individual, any gambling license that has been revoked for any reason to include the voluntary relinquishment of a gambling license by a gambling operator.
6. The ABC Board shall not be authorized to do as follows:
- (a). Limit the hours gambling can be operated.
 - (b). Limit the hours any controlled beverage can be sold and served other than by the hours gambling is operated.
 - (c). Limit the amount of any wager, or bet.
 - (d). Limit the number of slot machines and or game tables operated by a gambling operator within the structure used to operate gambling except by room size, aisle width, and access to emergency exits for safety purposes.

Section 5: Gambling Taxes, Fines, and Fees.

1. The Department of Finance and Administration, pursuant to A.C.A. Section 25-15-203, 219 et seq. Arkansas Administrative Act, shall be required within two hundred and forty (240) days from the effective date of this Amendment to do as follows:

- (a). Establish the rules, regulations, time schedules and procedures for the collection of the gambling tax, personal income tax with holding and gambling license fee, as provided in parts 2(a)(f) et seq. of this Section.
- (b). Establish the rules, regulations, time schedule and procedures for the distribution and payment of the gambling tax to a municipality and or county, as provided in parts 2(g)(h) of this Section.
- (c). Establish the rules, regulations and procedures to fine and penalize a gambling operator to include revoking a gambling license for late payment and or non payment of the gambling tax, personal income tax with holding, and gambling license fee, as provided in parts 1(a)(f) et seq. of this Section.
- (d). Unless otherwise provided in this Amendment, as provided in part 4(b), 6(d) of Section 4 of this Amendment, to establish the rules, regulations, and procedures, upon payment in full to immediately issue the gambling operator the slot machine and or game table permit(s) to operate gambling.

2. The Department of Finance and Administration shall be required upon issue of a gambling license by the ABC Board in accordance with the rules, regulations, and procedures established by, and governing, the Department of Finance and Administration to do as follows:

- (a). Collect an eighteen (18%) percent gambling tax from each licensed gambling operation.
- (b). Collect an additional two (2%) percent gambling tax when the gross income earned by a gambling operation exceeds fourteen million (\$14,000,000.) dollars within any twelve month period of

time.

(c). Collect an additional three (3%) percent gambling tax when the gross income earned by a gambling operation exceeds twenty eight million (\$28,000,000.) dollars within any twelve month period of time.

(d). Collect an additional four (4%) percent gambling tax when the gross income earned by a gambling operation exceeds fifty six million (\$56,000,000.) dollars within any twelve month period of time.

(e). Collect an income tax withholding on any winnings won by any person over the amount of twenty five hundred (\$2,500) dollars as personal income.

(f). Collect an annual gambling license fee of seventy five thousand (\$75,000.) dollars for each gambling license issued.

(g). Pay the municipality where gambling is operated one third (1/3) of the gambling tax collected within that jurisdiction.

(h). Pay the county where gambling is operated in a municipality within that county one third (1/3) of the gambling tax collected from that jurisdiction.

3. Unless otherwise provided in this Amendment any, and all, other taxes, fees, and permits that apply to all businesses selling and serving controlled beverages shall apply.

Section 6: The General Assembly.

1. The General Assembly shall be required to fund the Alcoholic Beverage Control Board, the Department of Finance and Administration, and the Arkansas Ethics Commission as is necessary to facilitate the operation of this Amendment.

2. Unless otherwise provide in this Amendment the General Assembly shall be required to make any, and all, other laws necessary to facilitate the operation of this Amendment.

Section 7: Exempting Oaklawn and Southland.

The provisions of this Amendment shall in no manner effect Oaklawn Race Track in Garland County nor Southland Race Park in Crittenden County.

Section 8: Legalized Gambling.

Any, and all, criminal offenses relating to gambling shall be waived for the purpose of this Amendment to include, but not limited to, 5-66-103, 108 et seq. 5-66-110, 55-66-112 on gambling houses, gambling devices, financing, betting, search warrants, buildings and vessels, and card games.

Section 9: Acknowledgement of Risk.

Upon passage of this amendment the qualified electors are aware, acknowledge, and have consider the risk of addiction to both gambling and alcohol associated with the operation of gambling as provided in this Amendment.

Section 10: Definitions.

1. As used in this Amendment:

(a). 'ABC Board' means the Alcoholic Beverage Control Board.

(b). 'ballot measure' means the specific issue of gambling with the sale, service, and complimentary service of controlled beverages for on site consumption requiring consent by the qualified electors within a specified jurisdiction at the general election

(c). 'controlled beverages' means any alcoholic beverage of any kind, by any name, like beer, wine, mixed beverages, whiskey and other spiritious beverages which are controlled by the Alcoholic Beverage Control Board.

(d). 'gambling' means any pay to play game of chance with a winner, and a loser, to include, but not limited to, the use of cards, dice, roulette wheels used in any way and slot machines of any kind, by any name, legally permitted under federal laws, rules, and regulations.

(e). 'gambling tax' means a tax on the total gross income earned from gambling by each licensed gambling operation.

(f). 'gambling operator' and or 'gambling operation' means any person(s), or person not an individual, issued a gambling license by the Alcoholic Beverage Control Board.

(g). 'gambling license' means the authorization from the Alcoholic Beverage Control Board for a

person(s), or person not an individual, and their employees to legally operate gambling twenty four (24) hours a day, seven (7) days a week, at the discretion of the gambling operator with the sale, service, and complimentary service of controlled beverages for on site consumption consistent with the types, or kind, of controlled beverages lawfully sold within that jurisdiction to be sold only during the time gambling is operated within the structure used to operate gambling to be done within the rules and regulations of the ABC Board.

(h). 'game table' means one dealer or game operator with numerous players to include, but not limited to, cards, dice, and roulette.

(i). 'gross income' means the total amount of money earned from gambling by each gambling operation after any, and all, winnings are paid as a loss by the gambling operator.

(j). 'person not an individual' means a business, partnership, company, corporation, or other business entity.

(k). 'structure' means any building of any kind, of any size, with any number of floors, and or additions to that building, to include any building, or structure, of any kind on water with enclosed passage ways attached to a building to be considered a single structure.

Section 11: Severability.

The provisions of this Amendment are severable, and if any should be held invalid, the remainder shall stand.

Section 12: Self-Executing.

The provisions of this Amendment shall be self executing, and all its provisions shall be treated as mandatory, but laws may be enacted to facilitate its operation.

Section 13: Application.

1. All laws, and constitutional provisions, which conflict with this Amendment are repealed to the extent they conflict with this amendment.

(a). The provisions of this Amendment should be interpreted liberally with broad scope.

(b). The provisions of this Amendment shall take effect on January 1st, 2019.