

JEFF FINE
Clerk of the Superior Court
By Christopher O'Neill, Deputy
Date 08/26/2021 Time 15:27:36

Description	Amount
----- CASE# LC2021-000237-001 ----- PLAINTIFF/APPELLANT	318.00
TOTAL AMOUNT	318.00

Receipt# 28410417

1 Craig L. Keller (SBN 007425)
GUST ROSENFELD, PLC
2 One E. Washington Blvd., #1600
Phoenix, Arizona 85004
3 Telephone No. (602) 257-7422
E-Mail: ckeller@gustlaw.com
4

5 Conly J. Schulte (*pro hac vice pending*)
Peebles Kidder Bergin and Robinson, LLP
1985 Balsam Dr.
6 Boulder, CO 80304
Office: (916) 441-2700
7 Cell: (402) 541-4590
E-Mail: cschulte@ndnlaw.com
8

9 *Attorneys for Plaintiff T.P. Racing, L.L.L.P.*

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

11 **IN AND FOR THE COUNTY OF MARICOPA**

12 T.P. RACING, L.L.L.P.,

13 Plaintiff,

14 v.

15 ARIZONA DEPARTMENT OF
GAMING; and TED VOGT, in his
16 official capacity as the Director of the
Arizona Department of Gaming,

17 Defendants.
18

No. LC 2021-000237-001

VERIFIED COMPLAINT

(Judicial Review of Agency Action
A.R.S. §12-904; *Ultra Vires* Licensing
Division A.R.S. § 41-1030; Declaratory
Relief; Injunctive Relief)

TIER 3

19
20 Plaintiff T.P. RACING, L.L.L.P. alleges and complains as follows:

21 **NATURE OF ACTION**

22 1. Plaintiff T.P. Racing, L.L.L.P. ("TP Racing") brings this action
23 under the Administrative Review Act for judicial review of the Arizona
24 Department of Gaming's denial of TP Racing's application for an "event
25 wagering operator" license, on the grounds that the denial was arbitrary and
26

1 capricious, not supported by substantial evidence, and/or an abuse of
2 discretion.

3 2. Although TP Racing has not exhausted its administrative
4 remedies before seeking judicial review, the exhaustion doctrine does not
5 apply here because, as detailed herein, taking the time to complete a lengthy
6 administrative appeal will cause irreparable harm to TP Racing and would
7 be futile or useless. *See Zeigler v. Kirschner*, 162 Ariz. 77, 85-86 (App. 1989).

8 3. Additionally, and in the alternative, if the Court holds
9 administrative exhaustion is required, TP Racing seeks a temporary
10 restraining order and preliminary injunction, enjoining the Defendants'
11 unlawful and arbitrary implementation of the "event wagering operator"
12 licensing regime in excess of statutory authority, including the impending
13 rollout of the activities permitted to newly licensed event wagering operators,
14 during the pendency of TP Racing's judicial and/or administrative licensing
15 appeal.

16 PARTIES

17 4. TP Racing is an Arizona limited liability limited partnership
18 based in Phoenix, Arizona, and does business as "Turf Paradise Race Course,"
19 located in Phoenix, Arizona.

20 5. Defendant ARIZONA DEPARTMENT OF GAMING
21 ("Department") is a state agency of the State of Arizona, with its primary
22 office in Phoenix.

23 6. Defendant TED VOGT is the Director of the Department. Vogt is
24 sued in his official capacity.

25 7. The Department is empowered to enforce the State's Event
26 Wagering Act. A.R.S. § 5-1302.

1 8. As the Director of the Arizona Department of Gaming, Vogt is
2 responsible for the State of Arizona's implementation of licensed Event
3 Wagering in the state pursuant to the Event Wagering Act, A.R.S. §§ 5-1301
4 through 5-1321, and the Department of Gaming's Event Wagering
5 Regulations, A.A.C. §§ R19-4-101 through R19-4-153.

6 **JURISDICTION AND VENUE**

7 9. This Court has jurisdiction over the defendants and this action
8 pursuant to the Arizona State Constitution, art. 6 § 14; and A.R.S. §§ 12-123,
9 12-124, and 12-905; and the Arizona Rules of Procedure for Special Actions,
10 Rule 1.

11 10. Venue is proper in this Court pursuant to A.R.S. § 12-401(16), as
12 defendant Vogt is a public officer who holds office in Phoenix, Maricopa
13 County, Arizona, and pursuant to A.R.S. § 12-905(B), as Maricopa County
14 was the site of the Department's decision and the site of the subject matter
15 involved.

16 11. Plaintiff seeks non-monetary relief, but the number of witness
17 and the complexity of issues qualify this case as a Tier 3 Matter.

18 **GENERAL ALLEGATIONS**

19 12. TP Racing owns and operates the Turf Paradise Race Course, a
20 thoroughbred and quarter horse racetrack in Phoenix, Arizona.

21 13. According to the Arizona Department of Gaming, "Opened in
22 1956, Turf Paradise was one of the first organized professional sports
23 franchises in Arizona." Ariz. Dept. of Gaming, Racing History,
24 <https://gaming.az.gov/racing/history#history>.

1 14. TP Racing holds a franchise right granted by the State of Arizona,
2 via a permit issued by the Arizona Gaming Commission, to conduct
3 professional horse racing.

4 15. Turf Paradise also holds a private commercial horseracing
5 franchise from the National Thoroughbred Racing Association ("NTRA").

6 **The Event Wagering Act**

7 16. The Event Wagering Act ("Act"), passed by the legislature on
8 April 15, 2021 and codified at A.R.S. §§ 5-1301 through 5-1321, permits
9 online, mobile and in-person retail sports betting, or "event wagering," to be
10 offered to persons located throughout the State (except on Indian lands).

11 17. To offer both in-person and mobile event wagering, a person must
12 have a non-tribal "event wagering operator" license issued by the
13 Department. A.R.S. § 5-1304(A)(1), (D).

14 18. The Act authorizes up to ten commercial licenses for non-tribal
15 event wagering operators. A.R.S. § 5-1304(A).

16 19. The Act provides at A.R.S. § 5-1304(A)(1) that the Department
17 shall issue non-tribal event wagering operator licenses only to applicants that
18 meet the following description:

19 [i] An owner of an Arizona professional sports team or
20 franchise, [ii] operator of a sports facility that hosts an annual
21 tournament on the PGA tour, [iii] promotor of a national
22 association for stock car auto racing national touring race
23 conducted in this state or [iv] the owner's, operator's or
24 promoter's designee....

25 20. Similarly, the Act at A.R.S. § 5-1301(7)(a) defines the non-tribal
26 variety of event wagering operator as:

1 [i] An owner or operator of an Arizona professional sports
2 team or franchise, [ii] an operator of a sports facility in this
3 state that holds an annual tournament on the PGA tour or
4 [iii] a promoter of a national association for stock car auto
5 racing national touring race in this state, or [iv] the designee
6 of such an owner, operator or promoter, who is licensed to
7 offer event wagering under this chapter.

8 21. Thus, both the definition of “event wagering operator” in § 5-1301
9 and the directive to the Department in § 5-1304 describe the entities qualified
10 to receive an event wagering operator license, and both would allow the owner
11 of either (1) an Arizona professional sports team or (2) an Arizona professional
12 sports franchise to apply for and receive a license under the Act.

13 22. The Act defines “professional sport” as “a sport conducted at the
14 highest level league or organizational play for its respective sport *and*
15 *includes* baseball, basketball, football, golf, hockey, soccer and motorsports.”
16 ARS § 5-1301(14) (emphasis added).

17 23. The Act does not define “team” or “franchise.”

18 The Department’s Regulations

19 24. The Act authorizes the Department to adopt rules for
20 implementing the Act. ARS § 5-1302(A).

21 25. On July 26, 2021, the Department issued its Final Rules for
22 implementing the Act. A.A.C. §§ R19-4-101 through R19-4-153.

23 26. As set forth in the Final Rules, the Department will provide “an
24 initial application period of no less than ten (10) days in which to accept
25 license applications and supplemental allocation allocations.” A.A.C. § R19-
26 4-106(A).

1 27. The Final Rules further state, "Within five (5) days of the
2 conclusion of the initial application period, the Department will evaluate all
3 applicants under the criteria established in" subdivisions B, C, and/or D of
4 R19-4-106 "to determine who is qualified for licensure and will provide
5 written notification to the applicants that were deemed initially qualified."

6 *Id.*

7 28. The Final Rules continue, "If there are more qualified applicants
8 than licenses available, the Department shall review each supplemental
9 allocation application and shall make a determination within eight (8) days
10 of the initial licensure qualification determination and will provide written
11 notification to the applicants that were selected for allocation." *Id.*

12 29. Subdivision C of R19-4-106 establishes the Final Rule's criteria
13 "to be qualified for a [non-tribal] event wagering operator license."

14 30. By the terms of R19-4-106(C), however, the criteria apply only to
15 "a professional sports team (to include the PGA operator, the NASCAR
16 promoter, designee, or management services provider relevant to the initial
17 application)."

18 31. The Department's Final Rules, including section R19-4-106(C),
19 omit any express reference to a "franchise," despite the Legislature having
20 expressly provided that the owner of an Arizona professional sports
21 "franchise" could qualify for a non-tribal event wagering operator license.

22 **The Department's Rollout Timeline**

23 32. According to information published on the Department's public
24 website (<https://gaming.az.gov/event-wagering-fantasy-sports-contests>), the
25 Department has announced the following "Rollout Timeline" for event
26 wagering:

1	July 26, 2021	Rules Submitted to S[ecretary] O[f] S[tate] –
2		[Department] Begins accepting applications
3	August 9, 2021	Close of initial application period
4	August 10, 2021	Initial Qualification Evaluation Period[,]
5		[Department] has up to 5 days
6	August 16, 2021	Announce applicants who qualify for licensure
7	August 17, 2021	Allocation Evaluation Period (if necessary),
8		[Department] has up to 8 days
9	August 27, 2021	Allocation of licenses announced (if necessary)
10	August 28, 2021	Marketing allowed, account creation and
11		net/mobile apps available for E[vent] W[agering]
12	August 30, 2021	Additional licensing period for allocated
13		applicants (if necessary)
14	Sept. 9, 2021	Go-Live date for E[vent] W[agering]

15 33. Thus, according to the Department’s Rollout Timeline, event
16 wagering operators licensed by August 28, 2021 will be allowed on that date
17 to begin marketing to the public, making their event wagering apps and
18 websites available to the public, and creating customer wagering accounts.

19 34. According to the Department’s Rollout Timeline, members of the
20 public will be allowed to place their bets with licensed event wagering
21 operators beginning on September 9, 2021.

22 **TP Racing’s Application for an Event Wagering Operator License**

23 35. TP Racing timely submitted a complete application for an event
24 wagering operator license that included a cover letter and Item 10a
25 Description of Business documents and Item 10b Description of Facilities.
26 True and correct copies of the cover letter and Item 10a Description of

1 Business documents and Item 10b Description of Facilities are attached
2 hereto as **Exhibit A**.

3 36. The Department sent an email to TP Racing on August 10, 2021,
4 containing "additional requests" for information. A true and correct copy of
5 the August 10, 2021 email is attached hereto as **Exhibit B**.

6 37. TP Racing submitted responses to the Department's additional
7 requests on August 11, 2021 and August 13, 2021. True and correct copies of
8 these responses are attached hereto as **Exhibit C** and **Exhibit D**.

9 38. TP Racing's application materials established that TP Racing
10 owns Turf Paradise.

11 39. TP Racing's application materials established that the horse
12 racing that is conducted at Turf Paradise is a "Professional Sport" as defined
13 in A.R.S. § 5-1301(14).

14 40. TP Racing's application materials established that Turf Paradise
15 is an Arizona professional sports franchise.

16 41. TP Racing's application materials established that the Turf
17 Paradise facility hosts professional sports events and holds a seating capacity
18 of more than ten thousand persons.

19 42. Turf Paradise meets all statutory and all valid regulatory
20 qualifications and is otherwise qualified for an event wagering operator
21 license.

22 **Denial of TP Racing's Application for an Event Wagering Operator
License**

23 43. On August 16, 2021, the Department notified Turf Paradise that
24 its application was denied. A true and correct copy of the August 16, 2021
25 denial letter is attached as **Exhibit E**.

26

1 44. The Department's letter of August 16 stated the Department had
2 "reached a determination that [TP Racing] do[es] not meet the qualifications
3 for licensure." Ex. A.

4 45. The Department provided additional information in a letter dated
5 August 17, 2021. A true and correct copy of the August 17, 2021 letter is
6 attached as Exhibit F.

7 46. The Department's letter of August 17, 2021, contained the
8 following bulleted list of items which the Department provided to support its
9 determination that TP Racing does not meet the qualifications for licensure
10 as an event wagering operator:

- 11 • The application did not demonstrate to the Department
12 that TP Racing, LLLP met the requirements listed in
13 R19-4-106(C)(1).
- 14 • The application did not demonstrate to the Department
15 that TP Racing, LLLP met the definition of
16 "Professional Sport" (A.R.S. § 5-1301(14)).
- 17 • The application did not demonstrate to the Department
18 that TP Racing, LLLP met the requirement of a "Sports
19 Facility" (A.R.S. § 5-1301(18)).
- 20 • The application did not demonstrate to the Department
21 that TP Racing, LLLP met the threshold application
22 requirement pursuant to A.R.S. § 5-1304(A)(1) by
23 demonstrating:
 - 24 ○ Ownership of an Arizona Professional Sports
25 Team or Franchise; or
26

- 1 o Operation of a Sports Facility that hosts an
- 2 annual tournament on the PGA Tour; or
- 3 o Promotion of a national association for stock car
- 4 auto racing national touring race conducted in
- 5 this state; or
- 6 o Designee status for one of the above listed
- 7 categories.

8 Ex. F.

9 Administrative Review is Pending

10 47. On August 20, 2021, TP Racing timely appealed the denial of its

11 license application pursuant to the Act. See A.R.S. §§ 5-1306(B), 41-

12 1092.03(B). A true and correct copy of TP Racing's August 20, 2021, Notice

13 of Appeal is attached hereto as **Exhibit G**.

14 48. That administrative appeal, which is to proceed under the

15 Uniform Administrative Hearing Procedures, A.R.S. §§ 41-1092 through 41-

16 1092.12, remains pending.

17 49. Under those Procedures and other state law, if the Department

18 makes a final decision to deny TP Racing's license application, that final

19 decision will be subject to judicial review. See A.R.S. §§ 5-1302(F), 41-

20 1092.08(H), 12-901 through 12-914.

21 50. Although TP Racing's administrative appeal is not complete, TP

22 Racing seeks immediate judicial review of the denial of TP Racing's license

23 application, and related declaratory relief, because the time needed to

24 exhaust the administrative process, together with the Department's rapid

25 timeline for the rollout of event wagering activities, will cause irreparable

26

1 harm to TP Racing and will render the administrative process futile or useless
2 for TP Racing.

3 51. Whether or not immediate judicial review is permitted, an
4 injunction is necessary to maintain the status quo for event wagering while
5 TP Racing's license appeal is pending, to avoid the irreparable harm to TP
6 Racing caused by the Department's unlawful denial.

7 **TP Racing Faces Irreparable Harm**

8 52. TP Racing will suffer irreparable harm if the Department makes
9 its final event wagering operator licensing allocation on August 27, 2021, and
10 allows event wagering operators licensed by the Department to begin event
11 wagering activities, including a blitz of marketing and advertising, rolling out
12 their websites and mobile apps, signing up customers for betting accounts,
13 and accepting wagers, while TP Racing's license appeal is pending.

14 53. TP Racing has requested in its Notice of Appeal an expedited
15 administrative hearing and decision to avoid or mitigate its irreparable harm
16 under A.R.S. § 41-1092.05(E). The request for expedited hearing and decision
17 is still pending. Even if the administrative hearing and decision are
18 expedited, however, TP Racing still will suffer irreparable harm as
19 competitors gain a first-to-market advantage while TP Racing is forced to
20 wait on the sidelines.

21 54. TP Racing will also suffer irreparable economic injury if it is not
22 granted a license and permitted to begin marketing and advertising, rolling
23 out their websites and mobile apps, signing up customers for betting accounts,
24 and accepting wagers at the same time as other event wagering operators,
25 because the State of Arizona has not waived its sovereign immunity from
26 suits to recovery such economic losses.

1 **FIRST CAUSE OF ACTION**

2 **Judicial Review of Agency Action**
3 **A.R.S. § 12-904**

4 55. Plaintiff incorporates by reference all preceding paragraphs of
5 this Complaint as though fully set forth herein.

6 56. The Department denied TP Racing's application for an event
7 wagering operator license because, contrary to the Event Wagering Act, the
8 Department erroneously determined the owner of a professional sports
9 franchise is not qualified for such license under the Act.

10 57. Alternatively, the Department denied TP Racing's application for
11 an event wagering operator license because, contrary to the Event Wagering
12 Act, the Department erroneously determined TP Racing is not an owner of a
13 professional sports franchise, and is therefore not qualified for such license
14 under the Act.

15 58. The Department erroneously denied TP Racing's application for
16 an event wagering operator license because, contrary to the Event Wagering
17 Act, the Department determined that the horse racing conducted by TP
18 Racing is not a "professional sport" as defined in Event Wagering Act.

19 59. The Department erroneously denied TP Racing's application for
20 an event wagering operator license because, contrary to the Event Wagering
21 Act, the Department erroneously determined an applicant must meet a
22 "Sports Facility" requirement to qualify for licensure an as event wagering
23 operator.

24 60. The Department denied TP Racing's application for an event
25 wagering operator license because, contrary to the Event Wagering Act, the
26 Department erroneously determined TP Racing's Turf Paradise facility is not
a "Sports Facility" as defined in the Act.

1 61. To the extent the Department denied TP Racing's application for
2 an event wagering operator license on grounds that TP Racing's application
3 was incomplete or did not conform to the requirements of the Act or the form
4 prescribed by the Department, such determination was erroneous.

5 62. The Department's decision is contrary to law, is not supported by
6 substantial evidence, is arbitrary and capricious, and/or is an abuse of
7 discretion.

8 **SECOND CAUSE OF ACTION**

9 **Ultra Vires Licensing Division**
10 **Violation of A.R.S. § 41-1030**

11 63. Plaintiff incorporates by reference all preceding paragraphs of
12 this Complaint as though fully set forth herein.

13 64. The Department based its decision to deny TP Racing's
14 application for an event wagering operator's license in whole or in part on a
15 condition or requirement that is not specifically authorized by statute or rule.

16 65. The unauthorized conditions or requirements on which the
17 Department based its license decision include the requirement that
18 applicants meet a limited definition of "Professional Sport" that excludes
19 horseracing; the requirement that applicants demonstrate ownership of an
20 Arizona professional sports team, excluding applicants who demonstrate
21 ownership of an Arizona professional sports franchise; and the vague and
22 ambiguous "requirement of a 'Sports Facility'" (Aug. 17 letter, Ex. F).

23 66. The Department's decision, therefore, violates A.R.S. § 41-
24 1030(B).

25 67. For the same reasons, the Department's decision violates Turf
26 Paradise's rights under the Arizona Regulatory Bill of Rights, A.R.S. § 41-
1001.01(A)(7).

1 68. Plaintiff is entitled to an award of its attorneys' fees pursuant to
2 A.R.S. § 41-1030E.

3 **THIRD CAUSE OF ACTION**

4 **Declaratory Relief**

5 69. Plaintiff incorporates by reference all preceding paragraphs of
6 this Complaint as though fully set forth herein.

7 70. TP Racing's rights, status or other legal relations are affected by
8 the Event Wagering Act and the Department's construction of the Act and its
9 decision thereunder.

10 71. TP Racing, therefore, seeks a judicial declaration pursuant to
11 A.R.S. § 12-1832, determining questions of construction arising under the
12 Event Wagering Act and declaring the rights, status, or other legal relations
13 of TP Racing thereunder.

14 **FOURTH CAUSE OF ACTION**

15 **Injunctive Relief**

16 72. Plaintiff incorporates by reference all preceding paragraphs of
17 this Complaint as though fully set forth herein.

18 73. While TP Racing's appeal of the Department's action is pending,
19 including any administrative appeal as well as judicial review of the
20 Department's final decision, the Department is committed to allowing newly
21 licensed event wagering operators to begin marketing to the public, offering
22 event wagering apps for download, and signing up customers for wagering
23 accounts on Saturday, August 28, 2021, and to begin taking event wagers
24 from the public on Thursday, September 9, 2021.

25
26

1 74. TP Racing will suffer irreparable injury if the Department's
2 timeline for rolling out event wagering activities proceeds as scheduled and
3 TP Racing later succeeds in its license appeal.

4 75. The Department will not suffer significant hardship from
5 delaying the commencement of event wagering activities until the conclusion
6 of TP Racing's license appeal.

7 76. There is a strong public interest in ensuring that all applicants
8 for an event wagering license who are qualified under the statute enacted by
9 the legislature and valid regulations consistent with the Act are allowed to
10 compete with one another on equal footing and are not unjustly
11 disadvantaged by an erroneous and unlawful licensure decision.

PRAYER FOR RELIEF

12 WHEREFORE, Plaintiff respectfully requests the following relief:

13 A. A temporary restraining order and/or preliminary injunction
14 restraining and enjoining the defendants, until TP Racing's license appeal,
15 including any administrative appeal and judicial review, is finally concluded,
16 from (a) allocating all event wagering operator licenses and (b) authorizing
17 newly licensed event wagering operators to engage in event wagering
18 activities, including marketing, making apps available to the public, signing
19 up customers for wagering accounts, and accepting wagers;

20 B. A judgment reversing the Department's decision to deny TP
21 Racing's event wagering operator license application, and declaring that
22 under the Event Wagering Act, an owner of an Arizona professional sports
23 franchise is eligible to apply for and receive an event wagering operator
24 license, that TP Racing is an owner of an Arizona professional sports
25 franchise eligible to apply for and receive an event wagering operator license,
26

1 and remanding to the Department with instructions to deem TP Racing
2 qualified for licensure;

3 C. For the violation of A.R.S. § 41-1030E, an award of attorney fees,
4 damages, and all fees associated with the license application, and

5 D. Such other relief as justice requires.

6 Dated: August 26 2021

Respectfully submitted,

7
8 
9 Craig L. Keller
Gust Rosenfeld, PLC

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

VERIFICATION

I, Jerry Simms, declare as follows:

1. I am the majority owner of T.P. Racing, L.L.L.P., plaintiff in this matter.

2. I have read the foregoing complaint, know the contents thereof, and it is true of my own knowledge, except the matters stated therein on information and belief, and as to those matters, I believe the complaint to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 25, 2021.



Jerry Simms