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GEORGE STEEL, JR.

January 5, 2018

VIA U.S. MAIL and EMAIL

The Honorable Leslie Rutledge, Arkansas Attorney General
c/o Opinions Department
c/o Ms. Cheryl Hall, Opinions Department Paralegal
323 Center Street, Suite 200
Little Rock, Arkansas 72201
oag@arkansasag.gov
cheryl.hall@arkansasag.gov

Re: Submission of Proposed Constitutional Amendment for Certification Pursuant to
Ark. Code Ann. § 7-9-107

Dear General Rutledge,

This law firm represents Driving Arkansas Forward, a ballot question committee filed with the Arkansas Ethics Commission. On behalf of Driving Arkansas Forward, I am submitting the enclosed proposed constitutional amendment for certification pursuant to Ark. Code Ann. § 7-9-107. I am also sending this to you via email.

Please let me know if you have any questions.

Sincerely,

STEEL, WRIGHT, GRAY & HUTCHINSON, PLLC

By 
Alex T. Gray

Popular Name

THE ARKANSAS CASINO GAMING AND HIGHWAY FUNDING AMENDMENT OF 2018

Ballot Title

An amendment to the Arkansas Constitution authorizing up to three casinos to operate in Arkansas, all being subject to the laws enacted by the General Assembly in accord with this amendment and regulations promulgated by the Arkansas Lottery Division of the Department of Finance and Administration (“Arkansas Lottery Division”) in accord with laws enacted by the General Assembly; 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, including, without limitation, any game, device, or type of wagering permitted at a casino operated within any one or more of the States of Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, or Texas as of November 13, 2018; providing that the Arkansas Lottery Division must license and regulate casinos in accordance with regulations it establishes; providing that the Arkansas Lottery Division shall award at least two but not more than three casino licenses; providing that the Arkansas Lottery Division shall set the initial maximum application fees for casino licenses; the Arkansas Lottery Division shall award no more than one license per county; requiring that the first casino license be awarded to an applicant for a casino to be located in a county that has been identified by the Arkansas Economic Development Commission pursuant to the Consolidated Incentive Act of 2003 as a tier 4 county as of December 31, 2017, and requiring that the casino be located in a county with a population of at least 50,000 according to the 2010 United States Census (to-wit: Jefferson County), and if the requirements for the first casino license are not met, then the Arkansas Lottery Division shall issue the first casino license to an applicant for a casino to be located in a county that has been identified by the Arkansas Economic Development Commission pursuant to the Consolidated Incentive Act of 2003 as a tier 2, 3, or 4 county as of December 31, 2017, and requiring that the casino be located in a county with a population of at least 40,000 according to the 2010 United States Census (to-wit: Crawford County, Crittenden County, Jefferson County, Miller County, Mississippi County, Pope County, Union County, or White County); requiring that the second casino license be awarded to an applicant for a casino to be located in a county that has been identified by the Arkansas Economic Development Commission pursuant to the Consolidated Incentive Act of 2003 as a tier 3 or 4 county as of December 31, 2017, and requiring that the casino be located in a county with a population of at least 50,000 according to the 2010 United States Census (to-wit: Crittenden County or Jefferson County), and if the requirements for the second casino license are not met, then the Arkansas Lottery Division shall issue the second casino license to an applicant for a casino to be located in a county that has been identified by the Arkansas Economic Development Commission pursuant to the Consolidated Incentive Act of 2003 as a tier 2, 3, or 4 county as of December 31, 2017, and requiring that the casino be located in a county with a population of at least 40,000 according to the 2010 United States Census (to-wit: Crawford County, Crittenden County, Jefferson County, Miller County, Mississippi County, Pope County, Union County, or White County); requiring that if the Lottery Division awards a third casino license, the third casino license be awarded to an applicant for a casino to be located in a county that has been identified by the Arkansas Economic Development

Commission pursuant to the Consolidated Incentive Act of 2003 as a tier 2, 3, or 4 county as of December 31, 2017, and requiring that the casino be located in a county with a population of at least 40,000 according to the 2010 United States Census (to-wit: Crawford County, Crittenden County, Jefferson County, Miller County, Mississippi County, Pope County, Union County, or White County); the Arkansas Lottery Division shall require all applicants to demonstrate operational experience in an existing casino that provides casino gaming; providing that the Arkansas Lottery Division shall require that any application for a license be accompanied by either a letter of support from the County Judge or a Resolution from the County Quorum Court in the county where the applicant is proposing the casino be located and, if the proposed casino is to be located within a city or town, a letter of support from the Mayor in the city or town where the applicant is proposing the casino to be located; providing that all applicants demonstrate a minimum investment of at least \$100,000,000 for the development of each casino facility with credit given for existing real estate value as determined by the Arkansas Lottery Division; defining "annual net casino gaming receipts" as gross receipts for a twelve-month period from casino gaming less amounts paid out or reserved as winnings to casino patrons for that twelve-month period; defining "annual net casino gaming receipts tax" as a tax on gross receipts for a twelve-month period from casino gaming less amounts paid out or reserved as winnings to casino patrons for that twelve-month period; providing that the annual net casino gaming receipts are subject to a 12% annual net casino gaming receipts tax; subjecting each casino to the same income, property, sales, use, employment, and other taxation as any for-profit business located in the county and city or town in which the casino is located, except that the Arkansas Gross Receipts Act of 1941 and local gross receipts taxes shall not apply to annual net casino gaming receipts; providing that the net casino gaming receipts tax shall be distributed 65% to the State Highway and Transportation Department Fund as identified in Ark. Code Ann. § 19-6-405 or its successor fund, 2.5% to the Arkansas Lottery Division, 10% to the county in which the casino is located, and 22.5% to the city or town in which the casino is located and, in the event the casino is not located within a city or town, then the county in which the casino is located shall receive the 22.5% that would have been dedicated to the city herein; allowing a casino to operate on any day for any portion or all of any day; allowing the selling or complimentary serving of alcoholic beverages in casinos during all hours the casino operates but otherwise subjecting casinos to all applicable Arkansas laws involving the distribution and sale of alcohol; permitting the shipment into the Arkansas counties where the casinos are located of gambling devices shipped and delivered in accordance with applicable federal law; declaring inapplicable all constitutional provisions and laws to the extent they conflict with this amendment, but not otherwise amending, repealing, or otherwise affecting Amendment 84 (bingo or raffles) or Amendment 87 (state lottery) to the Arkansas Constitution, or Arkansas Act 1151 of 2005 (Electronic Games of Skill); restricting the General Assembly from amending the sections legalizing casinos, the definition of "casino gaming," the number of casinos allowed, and the locations of the casinos.

SECTION 1. The following is added as an amendment to the Arkansas Constitution:

§ 1. Short title.

This amendment shall be known and cited as “The Arkansas Casino Gaming and Highway Funding Amendment of 2018.”

§ 2. Definitions.

(a) “Annual net casino gaming receipts” is defined as gross receipts for a twelve-month period from casino gaming less amounts paid out or reserved as winnings to casino patrons for that twelve-month period.

(b) “Annual net casino gaming receipts tax” is defined as a tax on gross receipts for a twelve-month period from casino gaming less amounts paid out or reserved as winnings to casino patrons for that twelve-month period.

(c) “Casino” is defined as a facility where casino gaming is conducted as authorized by this Amendment.

(d) “Casino gaming” is defined 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, including, without limitation, any game, device, or type of wagering permitted at a casino operated within any one or more of the States of Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, or Texas as of November 13, 2018.

§ 3. Authorizing Casinos and Casino Gaming.

(a) Casinos and casino gaming are hereby authorized in the State of Arkansas as provided in this amendment.

(b) The Arkansas General Assembly shall from time to time enact laws, and appropriate monies to or for the use of the Lottery Division of the Department of Finance and Administration (“Arkansas Lottery Division”) to fulfill the purpose of this amendment. Initial laws and appropriations enacted by the General Assembly pursuant hereto shall be in full force and effect no later than June 30, 2019.

§ 4. Licensing of Casinos and Casino Gaming.

(a) Casinos shall be licensed by the Arkansas Lottery Division.

(b) The Arkansas Lottery Division shall administer and regulate the licensing of casinos, including the issuance of a license to operate a casino, and shall administer and enforce the provisions of this amendment.

(c) The Arkansas Lottery Division shall adopt rules necessary to carry out the purposes of this amendment; and perform its duties under this amendment.

(d) Rules adopted under this section are rules as defined in the Arkansas Administrative Procedures Act, Ark. Code Ann. § 25-15-201 *et seq.*

(e) Not later than 120 days after the effective date of this amendment, the Arkansas Lottery Division shall adopt rules governing:

- (1) The manner in which the Arkansas Lottery Division considers applications for and renewals of licenses for casinos and casino gaming;
- (2) The form and content of registration and renewal of applications for casinos;
- (3) Oversight requirements for casinos and casino gaming;
- (4) Recordkeeping requirements for casinos;
- (5) Personnel requirements for casinos and casino gaming;

(6) Procedures for suspending or terminating the licenses of casinos that violate the provisions of this amendment or the rules adopted under this amendment;

(7) A schedule of penalties and procedures for appealing penalties;

(8) Procedures for inspection and investigations of casinos and casino gaming;

and

(9) Any other matters necessary for the Arkansas Lottery Division's fair, impartial, stringent, and comprehensive administration of its duties under this amendment.

(f) Not later than 120 days after the effective date of this amendment, the Arkansas Lottery Division shall adopt rules establishing license-application fees and license-renewal fees for casinos and casino gaming.

(g) The initial casino application fee shall be a maximum of \$250,000.

(h) Not later than June 1, 2019, the Arkansas Lottery Division shall begin accepting applications for licenses to operate a casino and engage in casino gaming.

(i) The application to operate a casino and engage in casino gaming shall include without limitation the following:

(1) The application fee;

(2) The legal name of the casino;

(3) The physical address of the casino;

(4) The name, address, and date of birth of each casino agent; and

(5) If the city, town, or county in which the casino would be located has enacted zoning restrictions, a sworn statement certifying that the casino will operate in compliance with the restrictions;

(j) None of the owners, board members, or officers of the casino:

(1) Shall have been convicted of a disqualifying felony offense as defined by the Arkansas Lottery Division;

(2) Shall have previously been an owner of a casino and had his or her license revoked; and

(3) Shall be under twenty-one years of age.

(k) The Arkansas Lottery Division shall issue at least two but no more than three casino licenses.

(l) The Arkansas Lottery Division shall award no more than one casino license per county.

(m) The Arkansas Lottery Division shall award the first casino license to an applicant for a casino to be located in a county that has been identified by the Arkansas Economic Development Commission pursuant to the Consolidated Incentive Act of 2003 as a tier 4 county as of December 31, 2017, and requiring that the casino be located in a county with a population of at least 50,000 according to the 2010 United States Census (to-wit: Jefferson County). If the requirements in this amendment for the first casino license are not met, then the Arkansas Lottery Division shall issue the first casino license to an applicant for a casino to be located in a county that has been identified by the Arkansas Economic Development Commission pursuant to the Consolidated Incentive Act of 2003 as a tier 2, 3, or 4 county as of December 31, 2017, and requiring that the casino be located in a county with a population of at least 40,000 according to the 2010 United States Census (to-wit: Crawford County, Crittenden County, Jefferson County, Miller County, Mississippi County, Pope County, Union County, or White County).

(n) The Arkansas Lottery Division shall award the second casino license to an applicant for a casino to be located in a county that has been identified by the Arkansas Economic

Development Commission pursuant to the Consolidated Incentive Act of 2003 as a tier 3 or 4 county as of December 31, 2017, and requiring that the casino be located in a county with a population of at least 50,000 according to the 2010 United States Census (to wit: Crittenden County or Jefferson County). If the requirements in this amendment for the second casino license are not met, then the Arkansas Lottery Division shall issue the second casino license to an applicant for a casino to be located in a county that has been identified by the Arkansas Economic Development Commission pursuant to the Consolidated Incentive Act of 2003 as a tier 2, 3, or 4 county as of December 31, 2017, and requiring that the casino be located in a county with a population of at least 40,000 according to the 2010 United States Census (to-wit: Crawford County, Crittenden County, Jefferson County, Miller County, Mississippi County, Pope County, Union County, or White County).

(o) The Arkansas Lottery Division may award a third casino license to an applicant for a casino to be located in a county that has been identified by the Arkansas Economic Development Commission pursuant to the Consolidated Incentive Act of 2003 as a tier 2, 3, or 4 county as of December 31, 2017, and requiring that the casino be located in a county with a population of at least 40,000 according to the 2010 United States Census (to-wit: Crawford County, Crittenden County, Jefferson County, Miller County, Mississippi County, Pope County, Union County, or White County).

(p) The Arkansas Lottery Division shall require all applicants to demonstrate operational experience in an existing casino that provides casino gaming.

(q) The Arkansas Lottery Division shall require all applicants to demonstrate a minimum investment of at least \$100,000,000 for the development of each proposed casino facility with credit given for existing real estate value as determined by the Arkansas Lottery Division.

(r) The Arkansas Lottery Division shall require all applications to include either a letter of support from the County Judge or a Resolution from the Quorum Court in the county where the proposed casino is to be located and, if the proposed casino is to be located within a city or town, a letter of support from the Mayor in the city or town where the applicant is proposing the casino to be located.

(s) The Arkansas Lottery Division may conduct a criminal background check in order to carry out this section.

(t) No individual shall own an interest in more than one casino in Arkansas.

(u) A casino may receive compensation for providing the goods and services allowed by this amendment.

(v) The Arkansas Lottery Division shall issue a renewal license within ten days to any entity that complies with the requirements contained in this amendment, including without limitation the payment of the renewal fee.

§ 5. Taxation and distribution of proceeds.

(a) A casino's annual net casino gaming receipts are subject to a 12% annual net casino gaming receipts tax.

(b) Each casino shall be subject to the same income, property, sales, use, employment and other taxation as any for-profit business located in the county and city or town in which the casino is located, except that the Arkansas Gross Receipts Act of 1941 and local gross receipts taxes shall not apply to annual net casino gaming receipts.

(c) The annual net casino gaming receipts tax shall be distributed 65% to the State Highway and Transportation Department Fund as identified in Ark. Code Ann. § 19-6-405 or its successor fund, 2.5% to the Arkansas Lottery Division, 10% to the county in which the casino is

located, and 22.5% to the city or town in which the casino is located and, in the event the casino is not located within a city or town, then the 22.5% dedicated to the city shall go to the county in which the casino is located.

§ 6. Other operational provisions.

(a) Casinos may operate on any day for any portion or all of any day.

(b) Casinos shall be permitted to sell alcoholic beverages or provide complimentary servings of alcoholic beverages during all hours in which the casino operates. Casinos shall be subject to all applicable Arkansas laws involving the distribution and sale of alcohol that do not conflict with any provision of this amendment.

§ 7. Legal shipment of gambling devices into State.

(a) All shipments of gambling devices, including slot machines, into any county of this State within which casino gaming is authorized, the registering, recording, and labeling of which have been duly performed by the manufacturer and/or dealer thereof in accordance with applicable federal law, shall be deemed legal shipments into any such county of this State within which casino gaming is authorized.

§ 8. Effect on existing law.

(a) By adoption of this amendment, there is no implied repeal of the existing Arkansas laws criminalizing gambling for purposes not specified in this amendment.

(b) This amendment does not amend, repeal, or otherwise affect Amendment 84 (authorizing bingo and raffles), Amendment 87 (creating the state scholarship lottery), or Act 1151 of 2005 (authorizing electronic games of skill), to the extent those Amendments and statute do not conflict with this amendment.

§ 9. Inconsistent provisions inapplicable.

All provisions of the Constitution of this State and statutes of this State, including without limitation laws forbidding the judicial enforcement of gambling debts and statutes declaring gambling to be a crime, to the extent inconsistent or in conflict with any provision of this amendment are expressly declared null and void as to, and do not apply to, any activities allowed under this amendment.

§ 10. Severability.

If any provision or section of this amendment or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or application of the amendment that can be given effect without the invalid provisions or applications, and to this end the provision of this amendment are declared to be severable.

§ 11. Amendment by General Assembly.

(a) Except as provided in this subsection, the General Assembly, in the same manner as required for amendment of laws initiate by the people, may amend the sections of this amendment so long as the amendments are germane to this section and consistent with its policy and purposes.

(b) The General Assembly shall not amend subsections 2, 3, and 4 of this amendment.

SECTION 2. EFFECTIVE DATE. This amendment shall be effective on and after November 13, 2018.