IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS CIVIL DIVISION

GOOD DAY FARM ARKANSAS, LLC;
CAPITAL CITY MEDICINALS, LLC PLAINTIFFS

v. CASE NO. 60CV-22-931

STATE OF ARKANSAS; and DEPARTMENT
OF FINANCE AND ADMINISTRATION,
ALCOHOLIC BEVERAGE CONTROL DIVISION DEFENDANTS

ORDER GRANTING PARTIAL SUMMARY JUDGMENT AND DENYING DEFENSE MOTION

BEFORE THE COURT are Plaintiffs' Complaint, and Amended Complaint, Motion and Amended Motions for Partial Summary Judgment; Defendants' Replies thereto, Defendants' Motion to Dismiss (on various grounds), and Defendants' Counter Motions for Summary Judgment; Plaintiffs' Responses and Replies; and arguments of counsel presented on June 1, 2023. The parties having agreed, at argument, to defer rulings on the Motion to Dismiss, the case is submitted this date on competing Motions for Summary Judgment, concerning which, the Court FINDS, ORDERS and ADJUDGES the following to-wit:

STATEMENT OF THE CASE

In 2016, the people of Arkansas passed Amendment 98, which legalized Medical Marijuana. The Amendment anticipated the implementation of regulations, and procedures for standards, distribution, advertising, etc. pertaining to the newly permitted substances, as well as for enforcement of the new law. This case involves whether the General Assembly may Constitutionally change Amendment 98 by directly enacting amendatory legislation, absent referral to the electorate, and, if so, under what circumstances.

Plaintiffs bring suit to have the Court grant a Declaratory Judgment that the Legislature has unconstitutionally amended Amendment 98 some 27 times[1] since its passage. Specifically, Plaintiffs ask that the Court declare:

[1] *See*: Complaint, paragraph #12, (incorporated by reference in Amended Complaint).

"(i) legislative amendments to Amendment 98 to the Arkansas Constitution are unconstitutionally null and void and that the original text of Amendment 98 as adopted by the people remains in effect; and

(ii) that the rules governing advertising for cultivation facilities and dispensaries violate the constitutional right to free speech…."

[Amd. Cmplt. p.1]

Defendants counter that Section 23 of the Amendment invokes Article 5 §1, which was, itself, amended by Amendment 7 [passed by a vote of the people], and later further amended by Amendment 93 [voted on by the people as well]. They argue that when Section 23 is read in conjunction with Amendments 5, 7, and 93, it becomes clear the General Assembly has been given authority to make changes to Amendment 98.

The Court agrees rules of statutory and constitutional construction require it to read Amendment 98, § 23, and Article 5, § 1, together. Roberson v. Phillips Co. Election Commission, 2014 Ark. 480, at 4, 449 S.W.3d 694, 696 (Statutes are construed so that, if possible, every word is given meaning and effect). *See also*: Brewer v. Fergus, 348 Ark. 577, 583, 79 S.W.3d 831, 834 (2002) (rule applied to Constitutional interpretation).

The parties agree that the text of Section 23 provides:

(a) "Except as provided in subsection (b) of this section, the General Assembly, *in the same manner as required for amendment of laws initiated by the people*, may amend the sections of this amendment *so long as the amendments are germane*[2] to this section and consistent with its policy and purposes.

(b) The General Assembly *shall not amend the following provisions* of this amendment: (1) *Subsections (a), (b), and (c) of § 3; (2) Subsection (h), (i), and (j) of § 8; and (3) Section 23*."

[*Emphasis added*]

[2] For a definition of "germane", *see*: Steele v. Thurston, 2020 Ark. 320, 5, 609 S.W.3d 357,363 […"We have interpreted the word "germane" as it appears in amendment 51 of our constitution to mean "relevant; pertinent" or "having a close relationship" *Id.* at 8, 558 S.W.3d at 376 (citing *Martin v. Haas*, 2018 Ark. 283, 556 S.W.3d 509)].

Article 5, § 1, "Initiative and Referendum" (as has been amended), provides, in part:

"…***General Provisions***

Definition. The word "measure" as used herein includes any bill, law, resolution, ordinance, charter, constitutional amendment or legislative proposal or enactment of any character…

…Amendment and Repeal. No measure approved by a vote of the people shall be amended or repealed by the General Assembly or by any city council, ***except upon a yea and nay vote on roll call of two-thirds of all the members elected to each house of the General Assembly***, or of the city council, as the case may be…."

[*Emphasis added*]

[*Legislative History added by the Court per Westlaw:* Acts of 1909, S.J.R. 1, p. 1238, approved Feb. 19, 1909; amended by Const. Amend. 7, approved at Nov. 2, 1920, election; Const. Amend. 93, § 1, proposed by Acts of 2013, S.J.R. 16, § 1, approved at Nov. 4, 2014, election.]

A fair reading of Amendment 98, reveals that in addition to the day-to-day work of regulatory bodies, Section 23 of Amendment 98 gave *permission* to the General Assembly to amend parts of Amendment 98. The question is whether that permission references to the power of the Legislature to refer amendments to the people for a vote, or grants unlimited amendment power in the case of a 'super majority' [2/3s] of the General Assembly.

Chief Justice Griffin Smith addressed this very question in 1951, in the case of Arkansas Game and Fish Commission v. Edgmon, 218 Ark. 207, 235 S.W.2d 554 (1951), writing:

"…Power of the Legislature to change an initiated constitutional amendment is presented by the plea that Act 183 received two-thirds of the votes of each branch of the lawmaking body. The Act, by § 4, appropriates from the Game Protection Fund $6,000 for each year of the biennium ending June 30, 1951, to pay bounties as set out in § 2…

…This brings us to a consideration of the legislative right to amend, repeal, or otherwise change an initiated constitutional amendment. Under 'General Provisions', Amendment No. 7, 'measure' is defined as including any bill, law, resolution, ordinance, charter, constitutional amendment, or legislative proposal or enactment of any character. Neither the Governor nor any Mayor shall have power to veto measures initiated by or referred to the people.

The following paragraph then appears: 'No measure approved by a vote of the people shall be amended or repealed by the General Assembly or by any City Council, except upon a yea and nay vote on roll call of two-thirds of all members elected to each house of the General Assembly, or of the City Council, as the case may be'. Another provision prohibits the General Assembly from submitting 'measures' to the people 'except a proposed constitutional amendment or amendments as provided for in this Constitution'….

> ***It is inconceivable that in defining constitutional amendment as a measure the purpose was to invest the General Assembly with power (a) to repeal a constitutional amendment, or (b) with authority to amend an amendment—a power that could be exercized to such an extent that the entire meaning of a constitutional provision achieved through amendment could be changed by legislative action.***
>
> The clear intent of the Initiative an[d] Referendum Amendment was to give the people enlarged legislative and constitutional powers. Certainly if the purpose had been to take away fundamental security then enjoyed or to be acquired under the Amendment, ***the right of two-thirds*** of those elected to the General Assembly to treat amendments as though they had been referred to ***it would have been expressed in more emphatic terms***…."
>
> [235 S.W.2d @ pp. 556-7; *emphasis added*]

Edgmon is still the law on this issue 72 years later. The Court is bound to it under the doctrine of *stare decisis.* The Defendants argue that Amendment 98 gives 'emphatic' permission to the General Assembly to make multiple amendments to the Constitution without referral to the voters, but there is no 'emphatic' declaration sufficient to specifically declare the abrogation of a time-honored right, reserved to the people, or that it is being dispensed within favor of the Legislative Branch.

SUMMARY JUDGMENT

Rule 56 is well known, and a long recitation is not required. Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law on the issues specifically set forth in the motion." Ark. R. Civ. P. 56 (c)(2). Summary judgment should be granted only when it is clear that there are no genuine issues of material fact to be litigated, and the moving party is entitled to summary judgment as a matter of law. Wilcox v. Wooley, 2015 Ark. App. 56, 454 S.W. 3d 792 (quoting Harvest Rice, Inc. v. Fritz & Mertice Lehman Elevator & Dryer, Inc., 365 Ark. 573, 575—76, 231 S.W. 3d 720 (2006)).

The Court agrees with Plaintiffs that Amendment 7 does not allow the General Assembly to amend the Constitution unilaterally. It requires the General Assembly to submit proposed amendments

of amendments to the people under Article 19, § 22 of the Constitution. By referring to Amendment 7, Amendment 98, § 23 incorporates those same limitations and requirements recognized in Edgmon.

The axiom that Arkansas courts resolve any doubtful interpretation in favor of the popular will obtains here, because the purpose of Amendment 7 is to ensure that power over state law remains in the hands of the people. Thompson v. Younts, 282 Ark. 524, 530, 669 S.W.2d 471, 475 (1984). That principle requires the Court to reject any "strict or technical construction" that might "thwart" the people's power over state law. Warfield v. Chotard, 202 Ark. 837, 153 S.W.2d 168, 169 (1941).

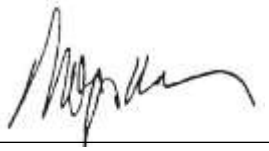
After reading the relevant amendments in conjunction with one another, and while presuming the general Constitutionality of Acts of the General Assembly, and working, as this Court must, to reconcile any conflicting language, the Court FINDS that Section 23 authorizes Amendment to some, but not all, provisions of Amendment 98, but ONLY by REFERRING ANY SUCH AMENDMENTS TO THE PEOPLE, and that no 'emphatic', nor any express, permission to do otherwise was granted.

The Court FINDS the Purported Amendments are NOT GERMANE to Section 23. Amendment 98, § 23's requirement was specifically that any amendments be "***germane to this section*** and consistent with its policy and purposes." The Amendments do NOT address Section 23. The Court, therefore, FURTHER FINDS AND DECLARES the 27 subsequent Acts of the General Assembly to be UNCONSTITUTIONAL and VOID, and that the ORIGINAL TEXT OF AMENDMENT 98 as adopted by the people REMAINS IN EFFECT.

The Parties Deferred a Ruling on the Motion to Dismiss on Free Speech and Sovereign Immunity. Counsel are instructed to schedule those issues with the Court posthaste.

IT IS, THEREFORE, CONSIDERED, ORDERED and ADJUDGED that Plaintiffs' Motion for Partial Summary Judgment is GRANTED, and Defendants' Counter Motion for Summary Judgment is DENIED. The Court hereby issues its DECLARATORY JUDGMENT in Conformity with this Ruling STRIKING the Acts of the Legislature aforementioned and INCORPORATES the list of such Acts into this Order.

IT IS SO ORDERED.



Morgan “Chip” Welch
Circuit Judge

June 14, 2023
Date