

INTRODUCTION

1. Plaintiff Tennessee Action 24/7, LLC (“Action”) is a Tennessee sports wagering business headquartered in Davidson County, Tennessee, which is subject to oversight by Defendant Tennessee Education Lottery Corporation (“TEL”).

2. By statute and regulation, TEL has the authority to issue, suspend, and revoke, sports gaming operator licenses in Tennessee. However, the authority to suspend a license is limited to TEL’s board of directors (the “Board”), or the Board’s Sports Wagering Committee.

3. On March 18, 2021, the Chair of the Board, acting with TEL’s General Counsel, TEL’s CEO, and TEL’s Sports Gaming Investigator, told Action that its license was suspended, even though neither the full TEL Board, or even the Sports Wagering Committee, had been convened to vote on the matter. TEL unlawfully disabled Action’s ability to operate despite the fact its license had not been lawfully suspended.

4. Despite the fact that there was no ongoing internal control failure at the time of the suspension, the license was suspended due to supposed “exigent circumstances” which, to date, TEL cannot articulate.

5. This suspension occurred on the eve of the March Madness NCAA basketball tournament, the single largest sports wagering event of the year in the United States. Action has suffered and will continue to suffer irreparable harm to its business as a result of being unable to operate during this event. Action’s customers have been unable to place wagers with Action during the tournament, and as a consequence they have placed, and will continue to place, their wagers with Action’s competitors instead. Many of those customers, undoubtedly frustrated by being unable to use Action’s platform during this key time, will never return.

6. On March 17, 2021, Action self-reported potential suspicious transactions that predominantly occurred on its platform between March 9, 2021, and March 12, 2021 to Mr. Daniel DiRienzo, a TEL Sports Gaming Investigator. At the time Action made the report, it had already frozen the accounts in question and begun implementing additional internal control measures.

7. Notwithstanding these voluntary and robust mitigation measures, Mr. DiRienzo and other TEL employees made the decision, outside of their statutory authority without affording Action a right to be heard, to suspend Action's license.

8. Under well-settled procedural due process jurisprudence, Action must be given notice and a right to be heard. A pre-deprivation hearing is required prior to even a temporary suspension or revocation of a property interest such as a license to operate a business. The deprivation occurred on March 18, 2021, but no such hearing ever occurred.

9. On March 19, 2021, Action immediately contacted TEL's General Counsel to inform TEL that the purported suspension was not done in accordance with TEL's own governing statute and regulations. Several hours later, the Board hastily convened an emergency special meeting, at which Action requested to be heard on its claim that the suspension was unwarranted and unauthorized.

10. Inexplicably, Action was not given the opportunity to be heard despite being present and prepared to speak. Multiple Board members asked to hear from Action, but still Action was not given the opportunity to present its case. Instead, Mr. DiRienzo spoke at length. His report was conclusory and inaccurate, and resulted in the full Board ratifying the decision to suspend Action's license.

11. In making this decision, the Board ignored regulations that it promulgated less than one year ago. Sports Gaming License Rules, Regulations & Standards 15.2 and 15.3 provide robust

procedural safeguards for Licensees subject to the Board's control, including suspension and appeals procedures. Not one of these procedures were followed, and no explanation was given as to why they were ignored. Copies of TEL's Sports Gaming License Rules, Regulations & Standards 15.2 and 15.3 (the "TEL Regulations") are attached hereto as collective **Exhibit A**.

12. Action is now left unable to operate its business during the largest sports wagering event of the year in the United States. It has no recourse with the TEL given the final decision reached on March 19, 2021. As a result, Action has suffered and continues to suffer irreparable harm to its business as its customers place bets with competitors, many never to return.

13. Action now appeals this final decision of the board on the basis that its procedural due process right was violated because it was never given an opportunity to be heard. Action was denied both a pre-deprivation and post-deprivation hearing when its property rights were suspended.

14. Action also appeals on the basis that this suspension represents the final action of the Board, which is subject to judicial review under Tenn. Code Ann. § 4-51-328. The Court may overturn TEL's decision if it finds the decision to be clearly erroneous or arbitrary and capricious. Clearly, this decision is both clearly erroneous and arbitrary and capricious because, among other reasons, the Board did not adhere to its own procedures and regulations in making its final decision.

15. Action seeks declaratory and injunctive relief barring the unconstitutional suspension of its license to operate a legal wagering business.

PARTIES

16. Action is a limited liability company organized under the laws of the State of Tennessee, with its principal place of business at 209 10th Avenue South #560, Nashville, Tennessee, 37203.

17. The Tennessee Education Lottery Corporation is a corporation subject to the corporate laws of the State of Tennessee. Tenn. Code Ann. § 4-51-101(a), (b). By statute, TEL is “a body, politic and corporate, and a quasi-public instrumentality, and not a state agency or department, which shall be deemed to be acting in all respects for the benefit of the people of the state through the operation of a state lottery and in the performance of other essential public functions entrusted to it.” *Id.* § 4-51-101(c).

18. Defendant Susan Lanigan is the Chair of the Board.

19. Defendant William Carver is a member of the Board.

20. Defendant Pearl Shaw is a member of the Board.

21. Defendant Eleanor Yoakum is a member of the Board.

22. Defendant John Crosslin is a member of the Board.

23. Defendant Chris Patterson is a member of the Board.

24. Defendant Rebecca Hargrove is the President and Chief Executive Officer of TEL.

JURISDICTION & VENUE

25. This Court has jurisdiction over this action pursuant to Tenn. Code Ann § 16-11-101 as this is an action seeking equitable relief. Further, this Court also has jurisdiction under Tenn. Code Ann. § 4-51-328 because this is an appeal of a final action by the Board.

26. Venue is proper in this judicial district pursuant to Tenn. Code Ann. § 20-4-104 because TEL is organized under the laws of Tennessee and maintains its principal office in Davidson County, and a substantial part of the events giving rise to Action’s causes of action occurred in Davidson County. Further, by statute the venue for TEL is designated as Davidson County. Tenn. Code Ann. § 4-51-101(f).

FACTUAL ALLEGATIONS

A. The Tennessee Sports Gaming Act and the Board's Rules

27. As of November 1, 2020, residents of Tennessee were permitted to place on-line sports wagers in Tennessee under the Tennessee Sports Gaming Act (the "Act"), Tenn. Code Ann. §§ 4-5-301 to 4-51-330.

28. The Act charges Defendant TEL with enforcing its provisions and supervising compliance with laws and rules relating to the regulation and control of wagering on sporting events in Tennessee. Tenn. Code Ann. § 4-51-306(a).

29. The Board controls the licensing of interactive sports wagering in Tennessee. Tenn. Code Ann. §§ 4-51-317(a), (c), (d); 4-51-326(b).

30. The Act authorized TEL and the Board to enforce the Act and to "promulgate rules in accordance of this part." *Id.* § 4-51-306. The Board's rules themselves acknowledge that, under Tennessee law "[i]n the event of a conflict between the Sports Gaming Act, and these rules, the Sports Gaming Act will govern." TEL Regulation 15.1.1.

31. The Board may investigate and conduct a hearing with respect to a licensee "upon information and belief that the licensee has violated this part, or upon the receipt of a credible complaint from any person that a licensee has violated this part." Tenn. Code Ann. § 4-51-326(a). Under the Act, only the Board may suspend or revoke a licensee's license, which it may do only if it "determines that a licensee has violated any provision of this part or rule of the board." *Id.* § 4-51-326(b)(1).

32. The Act does not provide any other authority pursuant to which the Board may investigate a licensee or suspend a license. Nevertheless, the Board promulgated a regulation that authorized its Sports Wagering Committee to suspend or revoke a license not only "for any of the

reasons set forth in the Sports Gaming Act or the Rules” but also any time “in the discretion of the Sports Wagering Committee, revocation, suspension or nonrenewal of any License [or] Registration ... is in the best interests of the TEL, its Board, or the public policy or welfare of the State of Tennessee... .” TEL Regulation 15.2.3(A)-(B). The Board further promulgated a regulation allowing the Sports Wagering Committee or its “designee” to suspend a license under “exigent circumstances”. TEL Regulation 15.2.3(C).

B. Action Discovers and Reports Suspicious Activity and Promptly Takes Remedial Measures

33. On October 31, 2020, Action was granted a license by TEL to operate an on-line sports betting book in Tennessee under the Act.

34. Action is one of only six licensed sports books in Tennessee. While the other licensed sports books are large, national players such as FanDuel and DraftKings, Action is based in Tennessee, is licensed only in Tennessee, and conducts sports wagering operations only in Tennessee.

35. Action’s customers maintain online accounts in which they can deposit funds to be used in sports wagering. Customers can make deposits in customer accounts by debit card, ACH, prepaid cards, and wire transfer.

36. As part of its internal controls, Action staff monitors customer accounts for suspicious activity including potential money laundering activities.

37. Action has a full-time Compliance Officer with more than three years of experience with a money service business and anti-money laundering training.

38. On the morning of March 9, 2021, Action staff discovered suspicious activity on four customer accounts involving multiple deposit attempts on multiple cards some of which failed

and some of which were successful. Action promptly geolocated all four suspicious accounts to the Memphis area.

39. The bulk of the suspicious transactions discovered on March 9 were made late at night between approximately 11:00 PM on March 8 and 1:00 AM on March 9.

40. When Action discovered the suspicious transactions on March 9, it promptly took a number of remedial measures. Within approximately an hour of discovering the activity, Action suspended account access to the four accounts so that funds could no longer be deposited or withdrawn from the accounts, and the accounts could not engage in betting activity.

41. Action also called Global Payments—the ACH payment vendor that manages withdrawals from Action’s customer accounts—and instructed Global Payment to freeze withdrawals from the four suspicious accounts.

42. Action likewise promptly attempted to contact PaySafe—the online payment gateway that customers use to deposit funds to their Action accounts—but despite multiple calls to PaySafe, Action did not receive a return call from PaySafe that day.

43. On March 10, Action was able to speak to PaySafe and instructed PaySafe to block all cards that had been used by the suspicious account holders. As an additional safety measure from these incidents, Action also asked PaySafe to limit consecutive deposits on the same credit card to two per hour, such that a third attempt on the same card would inactivate the card for 60 minutes or until Action notified PaySafe to clear the card. This additional safety measure was implemented by PaySafe on March 12.

44. Also on March 10, Action noted 12 additional accounts created with similar geolocation registration patterns or attempted behavior to the original four suspicious accounts.

Action promptly suspended these twelve new accounts such that they could not deposit or withdraw funds or engage in betting activities.

45. On March 11, Action spoke to PaySafe again and requested that PaySafe limit all deposit attempts to a single customer account to two per hour, even if different cards were used in the attempts. In other words, if a single account attempted to make three deposits from two different credit cards, the third deposit would be rejected. PaySafe is in the process of implementing this additional safety measure.

46. On March 11, Action noted three more accounts created with similar geolocation registration patterns or attempted behavior, and promptly suspended these accounts as well such that they could not deposit or withdraw funds or engage in betting activities.

47. No additional suspicious activity occurred between March 12 and March 15.

48. The only attempted activity occurring from March 12 until Action's license was improperly suspended occurred on March 16. Action noted one additional account created with similar geolocation registration patterns as the March 9 to 11 activity. As the result of Action's monitoring and internal controls, the account was suspended before the occurrence of any deposits, withdrawals or betting activities.

49. Action's analysis of these events has determined that, in total, 23 individuals created accounts which Action deemed suspicious, either from unusual consecutive same card activity, multiple card use in a short period of time, or by being similarly geolocated to those with suspicious card activity. 61% of these suspicious individuals attempted transactions during normal business hours, and the average time to identify and suspend suspicious player accounts during normal business hours was approximately one hour. The total dollar amount that was actually withdrawn was \$22,661.00.

50. The remaining 39% of the transactions were made overnight. No such activity had occurred overnight prior to March 8, 2021. But as a result of the overnight activities. Action has implemented 24/7 monitoring where previously monitoring was conducted during business hours. While the overnight activity was still being detected by the business hour monitoring, the 24/7 live monitoring will detect these type of activities even faster.

51. On March 17, Action self-reported the activity that had occurred the week before by providing TEL representative Danny DiRienzo a zip file containing the 23 incident reports related to the suspicious activities. Action remitted the incident reports with the intent of asking Mr. DiRienzo for advice on whether it would be appropriate for Action to go directly to the Tennessee Bureau of Investigations with this information, or whether TEL would do it instead.

52. According to statements subsequently made by Mr. DiRienzo at a special emergency meeting of the Board on March 19, 2021, as discussed further below, he did not open any of the incident reports that Action sent until the morning of the following day, March 18 because March 17 was his day off and he could not view the zip files on his mobile phone.

53. On March 18, Mr. DiRienzo reviewed only “three or four” of the twenty-three accounts that Action had sent him. Action understands that this was a preliminary review and Mr. DiRienzo has not yet undertaken a thorough review of the records that Action sent.

54. Nonetheless, based on reviewing only a tiny fraction of the documentation that Action provided, Mr. DiRienzo reported to the Board that the 23 incidents involved potentially hundreds of thousands of dollars in losses.

55. Mr. DiRienzo’s statement was wildly inaccurate as documented in the 23 incident reports he had been provided by Action. In fact, as documented in the incident reports, the total amount of fraudulent deposits was approximately \$37,362. Of that amount, Action currently has

recovered and is in possession of \$14,701, meaning that only \$22,661 in fraudulent withdrawals were successfully made by seven individuals to four bank accounts.

56. Mr. DiRienzo jumped to conclusions as to the severity of the level of suspected debit card fraud, and caused unwarranted alarm among his superiors at TEL and to the Board at the special emergency meeting. Had he taken the time to fully review and analyze the incident reports, and subsequently spoken with Action representatives regarding the matter and its corrective and preventative steps, one can only assume that he would have reported the actual facts of the matter and the Board and his superiors at TEL would not have been misled as to the magnitude of the incidents on March 9-12.

C. The Chair of TEL’s Board Illegally Purports to Suspend Action’s License Without Following the Proper Procedures on the Eve of the March Madness Basketball Tournament

57. After Mr. DiRienzo reviewed three or four of the 23 incident reports on the morning of March 18, he reported his erroneous conclusions about them to TEL’s CEO, Chair of the Board, and General Counsel, and they considered whether to suspend Action’s license.

58. Under the Act, only *the Board* may suspend a licensee’s license. Tenn. Code Ann. § 4-51-326(b)(1) (“If *the board* determines that a licensee has violated any provision of this part or rule of the board, *the board* may . . . [s]uspend, revoke, or refuse to renew a license”) (emphasis added).

59. The Board has delegated this authority by regulation to the Board’s Sports Wagering Committee. Specifically, “[*t]he Sports Wagering Committee*, upon recommendation by the CEO, may suspend, revoke, or refuse to renew a License, Registration, or finding of suitability or impose a fine thereon for any of the reasons set forth in the Sports Gaming Act or the Rules.” Regulation 15.2.3(A) (emphasis added).

60. TEL's regulations go on to define the procedures by which the Sports Wagering Committee may revoke a license: "...*the Sports Wagering Committee*[]" may revoke, suspend or not renew [a] License, Registration, or finding of suitability or impose a fine, after notice and a right to a hearing, in accordance with the provisions of the Sports Gaming Act and these Rules. Notwithstanding the foregoing, a License, Registration, or finding of suitability may be temporarily suspended by *the Sports Wagering Committee, or such Committee's designee*, upon exigent circumstances without prior notice pending any prosecution, hearing, or investigation, whether by a third party or by the CEO, or such officer's designee." Regulation 15.2.3.(B) (emphasis added).

61. Despite these clear requirements, on the afternoon of March 18—the same day Mr. DiRienzo had reviewed only three or four of the 23 incident reports that Action voluntarily provided—the Chair of the Board elected to attempt to suspend Action's license without convening the full Board or even the Sports Wagering Committee.

62. Instead, some combination of the Chair of the Board, TEL's CEO, its General Counsel, and Mr. DiRienzo made the determination to suspend TEL's license on their own on the afternoon of March 18.

63. Action was not provided with notice or opportunity for a hearing before its license was suspended and forced to suspend operations.

64. TEL's General Counsel then called Action to inform it that its operator license was suspended effective immediately. Mr. DiRienzo also sent an email to Action at 4:45 PM on March 18 stating that Action's license was suspended and that the suspension "will remain in effect until such time as Action 24/7 has provided documentation to the TEL sufficient to demonstrate that

the minimum internal control standards have been met.” A copy of the email is attached hereto as **Exhibit B.**

65. Even though the suspension was void *ab initio*, Action is not able to simply turn its system back on and begin accepting wagers again. Action’s vendors will not make Action’s online platform operational until the TEL notifies the vendors that Action’s license is reinstated. Action has been unable to accept wagers for the first three days of the largest sports gambling event of the year in the United States.

66. The illegal suspension of Action’s license came on the afternoon immediately before first day of the NCAA’s annual March Madness basketball tournament—the event that draws the largest amount of sports betting activity of the year. March Madness is the largest wagering event of the year in the United States. Action has suffered, and will continue to suffer, irreparable harm because the suspension of its license and the associated inoperability of its platform prevents customers and potential customers from accepting wagers on the Tournament. The sports wagering industry has been in existence in Tennessee only since November 2020. Action’s inability to accept wagers during one the biggest sporting events of the year means that its customers and potential customers are forced to use one of the other five licensed platforms in Tennessee to place wagers online and will continue to do so. Once those customers have become accustomed to wagering through other companies, they are unlikely to return to Action when its license is reinstated. The purported suspension of Action’s license thus has already had, and will continue to have, catastrophic effects on Action’s ability to continue as a business.

D. Action Informs TEL of the Illegality of the Suspension, and the Board Holds a Haphazard Meeting to “Ratify” and Continue its Illegal Action

67. On the evening of March 18, 2021, Action’s outside counsel sent TEL two emails informing TEL that the purported license suspension was illegal and unwarranted and requesting

a phone call to discuss the suspension, and the immediate lifting of the suspension. These emails are attached hereto as collective **Exhibit C**. Action did not receive a response until the morning of March 19, 2021

68. On the morning of March 19, 2021, Action's outside counsel spoke with TEL's General Counsel and had constructive preliminary conversations. However, shortly after the call at 12:40 PM Central Time, Action received notice that a special meeting of the Sports Wagering Committee of TEL's Board had been scheduled for 2:00 PM Central Time that day—just over an hour later.

69. Despite this incredibly short notice, Action was able to submit to TEL's legal counsel materials in support of its position in advance of the meeting—namely, a two-page timeline of the incidents suggestive of player debit card fraud and subsequent corrective and preventative measures taken by Action, and a two-page Declaration of Tina Hodges, Action's President, verifying the timeline and establishing further preventative measures taken by Action. The timeline is attached hereto as **Exhibit D** and the Declaration of Tina Hodges is attached hereto as **Exhibit E**.

70. At 1:28 PM Central Time on March 19, 2021, Action's outside counsel, who intended to dial into the special meeting, sent a request to TEL's General Counsel providing their cell numbers and asking for the opportunity address the Board on Action's behalf. TEL's General Counsel responded that the Board was not required to provide “an opportunity to address the Board without their request,” and that “[t]he Board's practice has been to not allow public comment unless they have questions.” A copy of this email thread is attached hereto as **Exhibit F**.

71. The special meeting commenced at 2:00 PM Central Time, with TEL's full Board participating. Several Board members stated that they were driving in their cars during the meeting.

72. The Chair requested that the Board “ratify” the TEL’s invalid suspension of Action’s license the day prior and continue said suspension until TEL staff were satisfied that Action’s internal controls met unspecified TEL expectations, based solely on the mistaken and unfounded allegations expressed during the Board meeting. Many Board members expressed during the meeting that they had not received the incident reports, not received the materials submitted by Action, and those who did receive had not had time to review the materials submitted by Action. There is no indication that any other evidentiary documentation was placed in the hands of the Board prior to or during the meeting. At the 9:36 point of the Board meeting, Mr. DiRienzo admitted that he had reviewed only “3 or 4” of the 23 incident reports submitted by Action on Wednesday, March 17, 2021, and, when later questioned by the Board regarding the content of the Declaration of Action’s CEO, Tina Hodges, the Board was not informed of its substance beyond just one of the corrective measures included therein. This is consistent with TEL’s and the Board’s actions throughout this process – an inadequate or sometimes complete lack of review of the evidence, an unwillingness to hear Action’s side of the story, and a rush to judgment, ultimately resulting in a destruction of Action’s business.

73. When one board member attempted to make the blanket statement that “anything [the Board does] is in contemplation of hearing [Action’s] response, another stated that she had not received either the emails that Action’s outside counsel had sent the night before or the declaration of Tina Hodges that Action had submitted before the meeting. Another Board member who was driving in his car stated that he had been unable to review Ms. Hodges’ declaration.

74. At the beginning of the meeting, Mr. DiRienzo spoke at length to the Board regarding his unfounded and unsubstantiated conclusion on the adequacy of Action’s internal controls, as based on his admitted guesswork after reviewing three or four files.

75. During the meeting, Mr. DiRienzo referred to a memorandum apparently containing his opinions and conclusions to the Board but Action has never received a copy and thus has been unable to contest the assertions in the report.

76. Mr. DiRienzo expressed negative erroneous opinions regarding Action's internal controls, and specifically the adequacy of Action's anti-money laundering program, even though he has never been to Action's office or examined the program and practices that Action has in place.

77. When Mr. DiRienzo was questioned by the Board regarding the content of the Declaration of Tina Hodges, he failed to inform the Board of all of the corrective actions implemented by Action, mentioning just one of the corrective measures included therein.

78. Multiple Board members raised the possibility of allowing Action or its counsel to speak in its defense, but this ultimately was not allowed to happen, even though TEL's General Counsel acknowledged during the meeting that Action and its attorneys were available and ready to address the Board. Despite the Board's General Counsel admitting when asked by a Board member that the normal process for appeals is a hearing with evidence from each side, the Board never allowed Action's counsel to speak.

79. Notably, the Board heard nothing of Action's implementation of increased monitoring to include 24 hour seven days a week monitoring and staffing from Investigator DiRienzo. Had TEL and the Board taken the opportunity to discuss the situation with Action, or allowed Action's legal counsel to participate during the meeting, they would have understood that there was no emergency, no continuing danger, and no "exigent circumstances" justifying taking the most extreme step of suspending Action's license without a hearing. As reported in the media

after the suspension, this is the only suspension of an online sports wagering platform that has ever occurred in the entire United States.

80. Mr. DiRienzo did not inform the Board that since the implementation of the corrective measures by Action, there had been no further successful incidence of suspected player debit card fraud.

81. Mr. DiRienzo heavily faulted Action for not identifying that debit card holders' names were different from the names on players' accounts. However Action only has the information entered by the player, *which does not include the card holder's name*. Action receives the following information from PaySafe after a successful transaction has been completed: BIN number (first 6 digits of the card number), the last 4 digits of the card number, the card expiration month/year, and the name *as entered by the player* (*i.e.*, not the name on the debit card account). The player could enter his name, the actual name (if different) that appears on the card, or any other name. Standard procedure in the financial services industry does not verify the information entered in the name field in a card transaction. Accordingly, Mr. DiRienzo's statements show that he lacks sufficient understanding of such transactions and has unreasonable expectations regarding the level of diligence expected of Action and the other licensees in combating player debit card fraud.

82. Mr. DiRienzo also improperly spoke at length regarding a separate incident involving Action that had occurred a few months before in connection with the Super Bowl, and which was not itself the subject of TEL action and was not related to the suspicious activity identified in March.

83. Based almost exclusively on Mr. DiRienzo's statements, the Board approved a motion to "ratify" the Chair's illegal, unilateral decision from the day before to suspend Action's

license. By this point, Action had already been unable to accept wagers for almost a full twenty-four hours, including the first full day of the March Madness tournament. At least one Board member stated that she was unsure of what they were voting on shortly before the vote was made.

84. The Board then considered whether to continue Action’s suspension or whether to reinstate its license pending an investigation.

85. During this discussion, another Board member asked whether the Board could hear from Action’s counsel and stated that she had not received the emails Action’s counsel sent the night before. Despite this, Action and its counsel were still denied the opportunity to speak, even though they were listening on the phone and were ready to speak if permitted.

86. At one point during this discussion, an unidentified voice can be heard on the audio recording of the meeting stating, “I think it’s time to go get drunk.”¹

87. Board member William Carver introduced a motion that, due to alleged exigent circumstances—namely, the risk of continuing fraudulent activity on Action customer accounts—the “temporary” suspension of Action’s license would be continued *indefinitely* until such time as Action was able to prove to the Board’s satisfaction that adequate internal controls were in place. The Board did not explain what specific internal controls would be considered adequate or would be required to lift the suspension. The Board also stated that the duty of determining whether Action had met the unspecified requirements would be delegated to TEL staff including Mr. DiRienzo, with a right of “appeal” to the Board if Action and the TEL staff disagreed.

88. The Board’s regulations delegate the authority to suspend a license to the Sports Wagering Committee. Regulation 15.2.3.

¹ Meeting Recording at 48:50. A recording of the hearing is available at: https://tnlottery.com/wp-content/uploads/2021/03/TNLottery_EmergencySportsWageringCommitteeMeeting_2021-03-19.mp3

89. Despite this, the Board chose to bypass its written regulations, and instead the entire TEL Board voted on Mr. Carver's motion. The Board lacked clear understanding of their statutory mandate, and admitted that they were not operating within the framework of their own established rules. They were similarly confused by what measures, if any, Action could take to have its license reinstated under this erroneous ruling. At one point for example, there was a vague reference to Action being required to submit the opinion of a "third party" as to Action's internal controls, but that third party was never named nor what exactly the third party would verify. TEL's rules do not make any mention of third-party verification of internal controls for any purpose.

90. Mr. DiRienzo expressly refused to propose a timeline for reinstatement when asked by a Board member what would be appropriate.

91. When asked about the possibility of appeal, the Board's General Counsel responded that she did not know the rules surrounding appeals of suspensions undertaken under exigent circumstances, but that she assumed there was some right of appeal. The Board found her response humorous, with TEL's CEO complimenting her by saying "that was a nice circle to dance around."

92. Before the vote, the Board's General Counsel stated that because the full Board was voting, they would be able to go right to a "final decision" of the Board. Specifically, the Board's general counsel stated: "If the board votes on this, then their [Action's] right to appeal can go directly to the part where it says um... a final decision of the board. So, even if the full board votes, they still have a right to appeal any decision of the full board." Meeting Recording at 1:08:43–1:09:17.

93. The full Board then approved Mr. Carver's motion. Although the Board ultimately stated that six members voted in favor and one abstained, there was some confusion during the meeting as to whether all members had in fact voted.

COUNT ONE: APPEAL OF FINAL ACTION BY TEL BOARD
(Against TEL only) (Tenn. Code Ann. § 4-51-328)

94. The allegations set forth above are incorporated as if fully set forth herein.

95. Under Tenn. Code Ann. 4-51-328, a licensee aggrieved by TEL's final action may appeal that decision to this Court. *Id.* § 4-51-328(a).

96. The full Board's vote to suspend Action's license indefinitely until Action is able to satisfy an unknown standard is a final action by TEL. TEL's General Counsel opined that it was a final decision during the meeting. Meeting Recording at 1:08:43–1:09:17. Further, the Board's decision does not indicate that it intends to take any further action. Action's license is suspended indefinitely until Action can make an unspecified showing regarding the adequacy of its internal controls. The Board apparently does not intend to revisit that decision unless and until Action can provide proof sufficient to satisfy TEL.

97. This Court may reverse the Board's decision if it is (1) clearly erroneous or (2) arbitrary and capricious. *Id.* § 4-51-328(b).

98. The Board's final decision to indefinitely suspend Action's license was clearly erroneous.

99. The Board's final decision was based almost exclusively on the opinion of Mr. DiRienzo, who has admitted that his opinion is nothing but a guess about the scope and magnitude of the suspicious activity, which was based on reviewing only three or four of the twenty-three accounts that Action sent. There is no indication that any other evidentiary documentation was placed in the hands of the Board prior to or during the meeting (apart from the materials that Action itself submitted shortly before the meeting).

100. As set forth above, Mr. DiRienzo's guess was wildly off base. Although he leapt to the conclusion that the suspicious activity was indicative of a wide scale fraud with potentially

hundreds of thousands of dollars in losses, in reality Action's careful investigation has shown that only about \$22,661 has been successfully withdrawn. Further, there was no evidence that Action's internal controls were insufficient. In fact it was Action that detected the activity, shut it down and self-reported it to TEL precisely because its internal controls were sufficient.

101. Other than Mr. DiRienzo's opinions, the only other information the Board had before it regarding the suspicious transactions were the 23 incident reports that Action had sent to Mr. DiRienzo and the declaration of Tina Hodges. But these documents demonstrated that in fact there were no emergency circumstances warranting the suspension or that Action's internal controls were inadequate. To the contrary, the incident reports showed that in fact the loss amount and number of victims involved was substantially less than Mr. DiRienzo's guess and that they were in fact detected and shut down. And Ms. Hodges' declaration set forth the numerous, fulsome and enhanced security measures Action had implemented since initially discovering the suspicious transactions and that are being implemented.

102. The Board's final decision to indefinitely suspend Action's license was also arbitrary and capricious.

103. The Board's final decision was premised on ratifying and continuing the illegal, unilateral decision by the Chair of the Board to suspend Action's license on March 18 without referring the matter to the full Board or even the Sports Wagering Committee, as required by the Act and the Board's regulations. After Action's counsel pointed out the illegality of this decision, the Board was forced to hastily convene a special meeting to attempt to correct its Chair's mistake—after Action's business had already been shuttered for nearly twenty-four hours.

104. The special meeting itself was incredibly haphazard. It was held on an emergency basis, with about an hour's notice, conducted on a Friday afternoon while Board members were

driving in their cars, using the restroom, unclear what they were voting on, unable to read Action's submissions, and someone was talking about wanting to "go get drunk."

105. The Board was unclear throughout on how its own regulations worked, and departed from the procedures set forth therein by skipping straight to a full Board vote on Action's suspension.

106. The Board gave short shrift to key factors such as the extensive remedial efforts that Action had taken in the week since discovering and ultimately self-reporting the suspicious activities. The Board largely ignored Ms. Hodges' thorough declaration, even though it made clear that Action now has full-time, twenty-four-hour-a-day monitoring in place, plus numerous additional protections implemented and in the process of being implemented by its vendor PaySafe at Action's request.

107. The Board also ignored the crucial fact that the suspicious activity was almost entirely confined to March 9 and 10, 2021. From March 12, 2021 until Action's license was initially suspended on March 18, 2021, there was *only one* suspicious transaction that led to an account being suspended.

108. Even though Action and its counsel were *on the phone listening* and ready and willing to speak, the Board refused to hear their position.

109. The Board made its decision based on Mr. DiRienzo's guess after reading three or four files. It never even attempted to review the full set of information that Action had sent.

110. Compounding all these errors, the Board took this drastic step on the first full day of the March Madness tournament—one of the single most important days of the year for Action's business—during the first year the sports wagering business has existed in Tennessee.

111. To the extent TEL claims that Action has not exhausted administrative procedures, any such contention is incorrect. As TEL's General Counsel recognized at the meeting, the fact that the full Board voted made it a final action for which no further appeal is possible. TEL's administrative appeal processes are based on appeals from the Sports Wagering Committee to the final Board, but here the full Board has already spoken.

112. It would be futile to require Action to re-raise the same issue before the Board that the full Board just decided. The Board's hasty ratification of an illegal decision at a makeshift meeting shows that it had predetermined the issue before it. Further, with the March Madness tournament already underway, it would be unreasonable to require Action to use TEL's administrative remedies before seeking judicial relief from irreparable harm. Action was only informed of this suspension for the first time on March 18, and had no opportunity to pursue administrative remedies before then.

COUNT TWO: SECTION 1983 – PROCEDURAL DUE PROCESS

(Against All Defendants) (42 U.S.C. § 1983; U.S. Const. Am. XIV; Tenn. Const. Art. 1 § 8)

113. The allegations set forth above are incorporated as if fully set forth herein.

114. The Fourteenth Amendment to the U.S. Constitution provides that no State shall deprive any person of property without due process of law.

115. Tennessee's Constitution similarly provides that no person shall be deprived of property other than by the law of the land. Tenn. Const. Art. 1, § 8.

116. Defendants are state actors. By statute, TEL is established as a body, politic and corporate, and a quasi-public instrumentality. Tenn. Code Ann. § 4-51-101(c). TEL is a public entity because the General Assembly created TEL to govern private conduct in Tennessee. Moreover, by supervising licensing generally (and suspending Action's license specifically), TEL

performs a traditionally public function. The General Assembly has delegated TEL the traditionally public function of enforcing state laws and regulations, so its actions are state actions. The individual defendants, as the board of directors of TEL, are responsible for exercising TEL's licensing authority.

117. Action's license to offer interactive sports wagering is a constitutionally protected property interest.

118. By indefinitely suspending Action's license, Defendants deprived Action of that property interest without due process of law under the U.S. Constitution, and without complying with the law of the land under the Tennessee Constitution.

119. Defendants' indefinite suspension of Action's license was done under color of state law.

120. Due process entitled Action to a pre-deprivation hearing under these circumstances. A pre-deprivation hearing was eminently feasible—Action and its counsel requested an opportunity to be heard before the special meeting, and were on the line and ready to speak.

121. There is no adequate or meaningful post-deprivation remedy available to Action. The first March Madness tournament open for online sports betting in the history of Tennessee began on the day Defendants suspended Action's license. With each passing hour, Action is losing substantial revenue from bets that are being lost to Action's competitors. Action's customers are gaining familiarity with Action's competitors in the fledgling sports betting industry and may well never return even after Action's license is reinstated. This loss of goodwill and future business cannot be calculated or adequately remedied after the fact. Under these circumstances, Action's business has suffered and continues to suffer irreparable harm, and its ongoing viability is threatened. Further, Action's ability to recover post-deprivation damages is limited by TEL's

statutory immunity from tort claims. Tenn. Code Ann. § 4-51-135(a) (providing that TEL “is immune from all tort causes of action”).

122. The Board’s final decision stated that, in order to lift the suspension, Action would have to convince TEL staff that its internal controls were adequate. But the Board never specified what Action would have to show to meet this standard. This vagueness means that the option of making an unspecified showing to TEL staff—who may well move the goal posts—is not an adequate post-deprivation remedy.

123. Action’s private interest that is affected by Defendant’s erroneous decision is enormous. This license suspension is an existential threat to Action’s business from which it may never recover.

124. Defendants’ procedures created an extremely high risk of an erroneous deprivation of Action’s property interest. Defendants’ decision was based on exceptionally flimsy evidence and was made at the eleventh hour in extreme haste. Defendants’ decision making would have greatly benefited from holding a hearing at which Action was permitted to present its side of the story, as Action requested. Action could have rebutted Mr. DiRienzo’s guesswork regarding the extent and magnitude of the suspicious activity based on his review of only a small fraction of the information that Action submitted. Action also could have explained to Defendants all of its extensive remedial efforts, and the fact that the suspicious activity had largely stopped already.

125. The Government function involved (licensing) is of exceptional importance in regulating the economy and would have benefited from Action having a chance to be heard.

126. The burden on Defendants of granting Action the right to be heard was incredibly small. Action and its counsel were on the phone during the meeting and had asked to speak. All Defendants had to do was give them an unmuted line.

127. Action seeks declaratory and injunctive relief as set forth below for Defendants' violation of its due process rights.

COUNT THREE: TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

128. The allegations set forth above are incorporated as if fully set forth herein.

129. Pursuant to Rule 65 of the Tennessee Rules of Civil Procedure, Action is entitled to a temporary and permanent injunction requiring Defendants to immediately reinstate Action's gaming operator license, and requiring Defendants to notify any and all third-party vendors whose services are required for Action's operation that Action's license is reinstated.

130. There is a strong likelihood that Action will succeed on the merits of its claims under Tenn. Code Ann. § 4-51-328 and for violations of its due process rights as set forth above.

131. Action will suffer irreparable harm without immediate relief from this Court. The first March Madness tournament in the history of legalized Tennessee sports betting is currently underway. The second round of the tournament concludes today, and the tournament will continue for only the next two weeks, with the championship game scheduled for April 5. The next round of games will begin in five days on Saturday March 27. Action's customers are at this moment placing bets on those upcoming games and taking their business to Action's competitors for good. They will continue to do so for the remaining two weeks of the tournament unless Defendants are expeditiously enjoined from suspending Action's license. Those customers will not come back. Without immediate relief, Defendants' suspension of Action's license threatens the very viability of Action's business.

132. This Court's issuance of an injunction enjoining Defendants from suspending Action's license will result in minimal prejudice to Defendants during the short time it takes them to gather more information and/or hold a hearing. Further, Action has already provided Defendants

with substantial evidence and assurances of its compliance and remediation efforts, and there is no exigency as the suspicious activities have already ceased.

133. An injunction is in the public interest. The General Assembly enacted the Tennessee Sports Gaming Act to fund public education in Tennessee. The public benefits from the continued existence and operation of Action, which helps to fund the state's educational programs. Further, Action is the only locally-owned licensee under the Act, and the public also benefits from being able to choose a locally-owned and operated sports betting book.

134. Action hereby requests an expedited hearing on its application for a Temporary Injunction. An expedited hearing is necessary to ensure that Action is able to promptly accept wagers for the remainder of the March Madness tournament, which only runs until April 5.

WHEREFORE, Plaintiff prays as follows:

1. That the Court issue a temporary injunction requiring Defendants to immediately reinstate Action's gaming operator license, and requiring Defendants to notify any and all third-party vendors whose services are required for Action's operation that Action's license is reinstated;
2. That the Court issue a permanent injunction requiring Defendants to immediately reinstate Action's gaming operator license, and requiring Defendants to notify any and all third-party vendors whose services are required for Action's operation that Action's license is reinstated;
3. That the Court issue a declaratory judgment, declaring that TEL's suspension of Action's license was unlawful because it was the result of final action that was clearly erroneous and arbitrary and capricious, and because it deprived Action of a property interest without due process of law;
4. That the Court award Action its costs;
5. That costs of this action be taxed against Defendants;

6. That the Court award Action its attorneys' fees under 42 U.S.C. § 1988; and
7. That the Court grant such other and further relief as it deems appropriate.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF.

Pursuant to Tenn. Code Ann. § 29-1-107, Plaintiff states that this is the first application for extraordinary relief in this matter.

Filed this 22nd day of March, 2021.

Respectfully submitted,

/s/ E. Steele Clayton IV

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Counsel for Plaintiff Tennessee Action 24/7, LLC

VERIFICATION

San Juan)
COMMONWEALTH OF)
PUERTO RICO)

I, Tina Hodges, being first duly sworn, hereby state and certify that the facts and allegations in the foregoing Complaint are true and correct.

Tennessee Action 24/7, LLC

By: TINA King Hodges *Att'dge*
Its: President
Date: 22 March 2021

San Juan)
COMMONWEALTH OF)
PUERTO RICO)

Before me, the undersigned authority of the Commonwealth aforesaid, personally appeared Tina Hodges, with whom I am personally acquainted (or proved to me upon the basis of satisfactory evidence), and who made oath to the truth of all the foregoing statements and who acknowledged herself to be the President of Tennessee Action 24/7, LLC, and that, as such authorized officer, executed the within instrument for the purposes therein contained, by signing the name of the limited liability company herself as the said authorized officer.

Witness my hand and seal, this 22 day of March, 2021.

[Signature]
Notary Public

My commission expires: Never

Affidavit 6/19

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