

Case Nos. 130036, 130058 (Consol.)

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In the  
**Supreme Court of Illinois**

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Waukegan Potawatomi Casino, LLC, an Illinois limited liability company,

*Plaintiff-Appellee,*

v.

The Illinois Gaming Board, an Illinois administrative agency; Charles Schmadeke, Board Chairman, Dionne R. Hayden, Board Member, Anthony Garcia, Board Member, Marc. E. Bell, Board Member, and Marcus Fruchter, Board Member, in their official capacities; and the City of Waukegan, an Illinois municipal corporation,

*Defendants-Appellants.*

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On Appeal from the Appellate Court of Illinois,  
First Judicial District, Case No. 1-22-0883,  
There on Appeal from the Circuit Court of Cook County, Illinois,  
County Department, Chancery Division, Case No. 2021 CH 5784,  
Hon. Cecilia A. Horan, Judge Presiding.

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**BRIEF OF *AMICI CURIAE* FULL HOUSE RESORTS, INC.,  
THE CITY OF ROCKFORD, THE CITY OF PARK CITY, and  
THE CITY OF NORTH CHICAGO**

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**INTERESTS OF THE *AMICI***

Full House Resorts, Inc. (“Full House”) is a nationwide developer, owner, operator, and manager of casinos.<sup>1</sup> Full House was one of the three applicants certified to the Illinois Gaming Board (“IGB” or “Board”) by the City of Waukegan on October 17, 2019, to be considered for an owner’s license to operate a casino in Waukegan. On December 8, 2021, the IGB determined Full House was preliminarily suitable to hold an owner’s license under the Illinois Gambling Act, 230 ILCS 10/1, *et seq.* (“Gambling Act” or “Act”), and granted Full House that license on June 15, 2023. Full House has been lawfully operating a \$175 million casino in Waukegan since February 17, 2023.

Until now, Full House has been a complete stranger to these legal proceedings. Plaintiff-Appellee Waukegan Potawatomi Casino, LLC (“WPC”) did not name Full House as a party defendant in this action, even though the practical effect of granting WPC’s requested relief would deprive Full House of its already-issued owner’s license and threaten the loss of approximately \$175 million invested in its Waukegan casino. Full House thus has not participated in these proceedings to defend its license. Full House now comes as a friend to this Court to describe the real-world consequences that the appellate court’s opinion will have—and has already inflicted—if that decision is upheld.

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<sup>1</sup> Full House is the parent company of FHR-Illinois LLC, a subsidiary company that was granted the owner’s license by the Illinois Gaming Board and currently operates the casino, The Temporary by American Place, in Waukegan. This brief collectively refers to the two entities as Full House.

The City of Rockford (“Rockford”) is a municipal corporation organized under the laws of this State, which hosts one of the six casinos authorized by the General Assembly following the passage of Public Act 101-31. In accordance with the Act, Rockford underwent the initial certification process to vet and certify its preferred applicant—815 Entertainment, LLC operating its casino as Hard Rock Casino Rockford—to the IGB for consideration for an owner’s license, which the Board ultimately granted. A temporary casino facility, A Hard Rock Opening Act, was opened in Rockford on November 10, 2021, and is operating until the permanent Hard Rock Casino Rockford opens later this year in August.

The City of Park City (“Park City”) and the City of North Chicago (“North Chicago”) are municipalities located in Lake County, Illinois.<sup>2</sup> Pursuant to the Gambling Act, Park City and North Chicago receive a share of gaming taxes derived from the Waukegan casino. 230 ILCS 10/13(b). Park City and North Chicago use these monies to help fund beneficial projects and programs in their respective communities, such as funding public safety pensions.

As discussed above and below, *Amici* have valuable, real-world insights into: (1) the initial certification process involving casino applicants and the municipalities where those casinos will be located; and (2) the consequences

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<sup>2</sup> Full House, Rockford, Park City, and North Chicago are sometimes collectively referred to as the “*Amici*.”



that applicants, licensees, the State, Illinois municipalities, and their residents will suffer if the appellate court's decision is affirmed. *Amici* respectfully submit this brief to assist the Court's deliberations by presenting facts, insights, and practical realities on these points, which are largely beyond the record, and may be helpful to having a better understanding of the dispute and the stakes involved in the manner of its resolution.

### **ARGUMENT**

WPC's dissatisfaction with the City of Waukegan's deliberate choice not to certify it to the IGB does not mean it has the right to hold the \$500 million Waukegan casino hostage. The Gambling Act was meant to benefit the people of Illinois by assisting economic development, promoting Illinois tourism, and increasing government revenues to, among other things, assist and support education, capital projects, and other beneficial programs. The General Assembly's intent should be given deference. And the residents of Waukegan, Park City, and North Chicago should be given the significant economic benefits to which they are entitled. Any other outcome would not only unjustly deprive Full House of the fruits of its investment, amounting to approximately \$175 million so far, but ward off other casino operators from making similar investments in Illinois and its communities in the future. Affirming the appellate court's decision would thus undermine the legislature's clear intent.

This case asks whether a disappointed, unsuccessful applicant should be able to collaterally attack the entire casino application process *after* a

municipality has certified its compliance with statutory requirements, *after* the administrative agency has investigated those certified applicants and issued a finding of preliminary suitability for one of them, and *after* the same agency has issued the sole license for operating a casino in the specified municipality. The answer to that question must be a resounding no. Answering otherwise would inject chaos and discord into an already complex and highly regulated administrative regime, undermine the statutory authority afforded by the legislature to municipalities and administrative agencies alike, and deprive all Illinoisans of tax dollars needed to fund crucial programs and projects throughout the State. This is not a close call.

WPC submitted a proposal to the City of Waukegan, hoping to become one of the certified applicants to own, operate, and manage a casino in Waukegan after Public Act 101-31 became effective in June 2019. The City of Waukegan held multiple public hearings, met with WPC representatives to review its submission, and considered WPC's proposal on the merits but rejected it—twice. The City ultimately certified three other applicants for the Board's further consideration, including Full House. Dissatisfied with the result, WPC filed suit seeking declaratory and injunctive relief, alleging that the City of Waukegan failed to meet certain statutory requirements of the Gambling Act related to applicant certifications, but at a stage in the certification process when WPC was not even included because its proposal had been rejected. WPC essentially nitpicks the language used by the City in

its certifying resolutions, resolutions that do not include WPC and were accepted by the IGB. WPC sought to enjoin the City of Waukegan and the IGB from taking further action in the licensing process, even seeking emergency relief in the trial court that was rejected and which the appellate court declined to review.

The trial court then dismissed WPC's claims with prejudice after finding it lacked standing to challenge the City of Waukegan's compliance with the Act as it related to the City's certification of the three other applicants. The appellate court reversed, deciding WPC had standing to assert its supposed "right to compete in a casino certification process that is fairly and lawfully conducted" (*Waukegan Potawatomi Casino, LLC v. Ill. Gaming Bd.*, 2023 IL App (1st) 220883, ¶¶ 11, 17), regardless of whether the remedy WPC requested would actually benefit it and ignoring the fact that the remedy sought by WPC could no longer be granted. As discussed in the City's and the State's opening briefs, the appellate court got it wrong.

To be clear, this *amicus* brief is not meant to highlight the myriad ways in which the appellate court's decision is fundamentally flawed, including by stretching Illinois standing jurisprudence beyond its breaking point. This is not a merits brief. Instead, *Amici* wish to show the Court that, if left uncorrected, the appellate court's opinion will create chaos in the Illinois gaming industry, deprive the State and municipalities of much-needed tax revenues, and ultimately make Illinois an unfriendly place to conduct business,

thereby driving away commercial opportunity and hindering economic development. These fears are not speculative or conjectural. They are happening right now and will continue to occur unless this Court takes action.

**I. The General Assembly passed the Gambling Act to provide the State, municipalities, and their residents with much-needed tax revenues to fund important programs and projects throughout Illinois.**

The Gambling Act lies at the center of this dispute and, more specifically, the 2019 amendments to it that authorized six new casinos throughout Illinois. Before turning to the interests of the *Amici*, a brief discussion of the Act and what it seeks to accomplish is both necessary and enlightening.

In Illinois, there is no common law right to gamble. It is thus illegal unless expressly authorized by the General Assembly. *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 26. Originally passed in 1990, the Act (then known as the Riverboat Gambling Act) made Illinois the second state in the country to legalize riverboat casino gambling, and the fifth to legalize casino gambling of any sort. 230 ILCS 10/1, *et seq.*; *see also* Ronald Neroda, *A Winner for the Windy City: A Comment in Support of Establishing a Land-Based Casino in the City of Chicago*, 40 J. Marshall L. Rev. 1391, 1397 (2007).

The Gambling Act initially authorized the establishment of 10 riverboat casinos. In authorizing these establishments, the legislature recognized that the rise or fall of casinos would largely depend on the public's confidence that gambling in Illinois is accomplished credibly and with integrity. 230 ILCS

10/2(b). So, the Gambling Act also established the IGB and gave it plenary authority to oversee riverboat and casino gambling operations, ranging from licensing decisions, to disciplinary actions for violations of the Act, and everything in between. 230 ILCS 10/5. The Act vests the Board with jurisdiction to supervise “all gambling operations governed by” the Gambling Act, and the IGB enjoys statutory authority that grants it all powers “necessary and proper to fully and effectively execute” the Act. 230 ILCS 10/5(a)(1), (b)(2).

The General Assembly’s intent for passing the Gambling Act is unmistakable: “This Act is intended to benefit the people of the State of Illinois by assisting economic development, promoting Illinois tourism, and increasing the amount of revenues available to the State to assist and support education, and to defray State expenses.” 230 ILCS 10/2(a). To that end, the legislature directed that certain percentages of casino gambling receipts be distributed to the Capital Projects Fund (230 ILCS 10/12), the Common School Fund (230 ILCS 10/13), the Rebuild Illinois Projects Fund (230 ILCS 10/7), and the Education Assistance Fund (230 ILCS 10/13). Each of these State funds awards monetary grants to aid projects and programs throughout Illinois, such as:

- assisting public education in primary, secondary, and higher-learning institutions;
- funding teachers’ retirement benefits through pensions;

- repairing critical infrastructure throughout the State including roads, bridges, and sewage systems;
- revitalizing community centers like libraries, public parks, theatres, civic centers, and museums; and
- modernizing technology, including by providing universal broadband access throughout the State to achieve digital equity and inclusion, among many others.

This is not cheap. It requires money, and lots of it. Direct gaming taxes derived from casino gambling have contributed more than \$400 million to these endeavors within the last year alone. *See* Ill. Gaming Bd. Monthly Report (Jan. 2023 – Dec. 2023), <https://tinyurl.com/5dvsv3er>.<sup>3</sup> In addition to gaming taxes, casinos pay millions of dollars to the State and local governments in other taxes such as real estate, income, and sales taxes, along with fees and various other benefits including employment for thousands of Illinois residents. Casinos are thus major contributors to the public welfare.

Casino gambling in Illinois has evolved significantly over the course of the last three decades. Most recently, and relevant for purposes of this case, the General Assembly amended section 7 of the Act in 2019 to authorize the

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<sup>3</sup> This Court may take judicial notice of the information cited throughout this brief that was not included in the record below, and *Amici* respectfully request that the Court do so. *See, e.g., In re Pension Reform Litig.*, 2015 IL 118585, ¶ 4 (citing *May Dep't Stores Co. v. Teamsters Union Local No. 743*, 64 Ill. 2d 153, 159 (1976)) (materials filed with the U.S. Securities & Exchange Commission); *Leach v. Dep't of Emp. Sec.*, 2020 IL App (1st) 190299, ¶ 44 (information on official governmental websites); *Kopnick v. JL Wood Mgmt. Co., LLC*, 2017 IL App (1st) 152054, ¶ 26 (mainstream internet websites); *People v. Ayala*, 2022 IL App (1st) 192484, ¶ 84 n.6 (article published in the Chicago Tribune); *People v. Peterson*, 2022 IL App (3d) 220206, ¶ 14 n.2 (statements in news television interview and subsequent written article).

issuance of six new owner's licenses to conduct casino gambling in new locations, including Waukegan and Rockford. *See* Pub. Act. 101-31 (codified at 230 ILCS 10/7(e-5)). Section 7(e-5) established a two-phase process for determining to whom new owner's licenses would be issued. In the first phase, the host municipality is responsible for soliciting submissions from interested applicants and, after choosing its preferred applicant(s), the municipality certifies them to the IGB for further consideration. 230 ILCS 10/7(e-5). In the second phase, the IGB conducts a rigorous investigation of the applicant(s), chooses one final applicant whom it deems "preliminarily suitable" to hold an owner's license, and may then choose to grant the full, unencumbered owner's license should the applicant satisfy a host of other statutory and administrative requirements. *Id.*; *see also* 230 ILCS 10/7.5, 7.12 (setting forth considerations for the IGB's assessment when determining to whom an owner's license will be granted); 86 Ill. Admin. Code 3000.230 (setting forth the steps to be taken by the IGB for issuance of an owner's license).

This is an extremely detailed and time-intensive process. It is also very expensive. Full House, for example, has already spent approximately \$175 million obtaining the license at issue here, planning a casino in Waukegan, constructing a temporary casino facility, and preparing to construct its permanent casino. The other five casinos authorized under section 7(e-5) have collectively spent more than **\$1.6 billion** so far obtaining their owner's

licenses, paying required fees to the State, and planning, developing, and constructing casino facilities, among other things.<sup>4</sup>

As discussed below, affirming the appellate court's opinion will thus not only injure Full House, but will also delay (or interminably deprive) the State, the Cities of Waukegan, Park City, and North Chicago, and their residents of significant tax revenues and other benefits such as lost employment opportunities that would otherwise be generated at a permanent casino facility in Waukegan—an outcome antithetical to the Gambling Act. Rockford has significant interests at stake as well. The Rockford casino license was not held hostage by an unsuccessful competitor like WPC, meaning the permanent casino facility in Rockford will not be improperly bogged down in the courts for

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<sup>4</sup> The Chicago casino has spent more than \$575 million to date. See Robert Channick, *Bally's stock surges on buyout offer from largest shareholder, hedge fund Standard General*, Chicago Tribune (Mar. 12, 2024), <https://tinyurl.com/yrmk3byk>; Bally's Corporation, U.S. Sec. & Exch. Comm'n Form 10-K at 52, 89, 112 (Mar. 15, 2024), <https://tinyurl.com/mr37t5r7>; Robert Channick, *Bally's buys Freedom Center for \$200 million, taking ownership of Tribune printing plant and future site of Chicago's Casino*, Chicago Tribune (Nov. 19, 2022), <https://tinyurl.com/2p945s4c>; Robert Channick, *Bally's pushes Medinah temporary casino opening to September*, Chicago Tribune (Aug. 4, 2023), <https://tinyurl.com/26j9rnxy>. The Rockford casino, which opens this August, will cost \$358 million. See Buck Wargo, *GLPI acquires Hard Rock Casino site in Rockford, Illinois*, CDC Gaming (Aug. 29, 2023), <https://tinyurl.com/mr4b2hud>. The casino in south Cook County entailed a \$529 million investment. See *Wind Creek Chicago Southland Casino Opens July 2024*, 500 Nations (Mar. 15, 2024), <https://tinyurl.com/28trt4e6>. The Danville casino cost \$105 million to open. See *Illinois: \$105 million Golden Nugget Danville Casino welcomes first visitors*, Yogonet (May 30, 2023), <https://tinyurl.com/4wuj5mna>. The casino in Walker's Bluff cost approximately \$150 million. See Terry Dunleavy, *Walker's Bluff Casino Resort Opens August 25th*, O'Rourke LLP (Aug. 25, 2023), <https://tinyurl.com/27wmxcyy>.



years to come. The permanent casino facility and the significant monies it generates will thus benefit all involved. But if the appellate court's decision stands, that could change for casinos and other forms of gaming that may come in the future.

**II. Full House's interests, as well as the public interest, are severely and unjustly jeopardized by the appellate court's opinion.**

Even though it is not a party to these proceedings, Full House has a great deal at stake. After all, the validity of its already-issued owner's license is in jeopardy as a result of the appellate court's decision. If that opinion is affirmed, WPC's litigation tactics will continue to tie up Full House's license and delay development and operations of the permanent casino facility in Waukegan for at least another three to four years—if not indefinitely.

The General Assembly did not intend for licensed applicants like Full House to have to roll the dice by going through both the certification and licensing processes, building temporary casino facilities while beginning planning and construction of a permanent casino, and dedicating vast amounts of time and money along the way, only to possibly have the rug pulled out from under them by an opportunistic competitor years after the sought-after license is issued. As discussed below, casino applicants like Full House devote significant time, effort, and resources during this process and must be afforded certainty in their licenses to justify those efforts. This Court has said as much in a similar context.

In *Citizens Opposing Pollution v. ExxonMobil Coal U.S.A.*, an environmental group filed suit against the Illinois Environmental Protection Agency (“IEPA”), the Department of Natural Resources (“DNR”), and a coal mining company that had been issued a permit to operate a coal mine in southern Illinois. 2012 IL 111286, ¶ 2. The plaintiff challenged the site conditions of the coal mine and various related activities taking place at that mine, all of which were previously approved by the IEPA and DNR through the permitting process. *Id.* ¶ 13. The plaintiff also sought to enjoin the mining company from continuing to conduct operations at the mine that the plaintiff claimed did not comply with federal and state law. *Id.* ¶ 14.

The trial court dismissed the plaintiff’s claims, finding the applicable laws did not imply a private right of action for alleged violations thereof. *Id.* ¶ 16. This Court agreed, and in so doing, based its decision on the recognition that the “legitimate reliance by a permittee” would be undermined if the terms of a permit could be reopened and reconsidered at any time by a lawsuit, creating “significant uncertainty” and calling “into question the finality of mining permit decisions throughout Illinois.” *Id.* ¶¶ 30-31. All of these considerations led this Court to reject the plaintiff’s claims because the legislature could not have intended such absurd results. *Id.* ¶ 31. The same considerations have particular salience here and should likewise lead this Court to reject WPC’s claims.

Speaking of “legitimate reliance” interests, Full House has devoted incredible amounts of time and resources during the last four-and-a-half years to the Waukegan casino project. Those efforts began when it responded to the City of Waukegan’s request for qualifications and proposals in the summer of 2019. Full House then participated in several sit-down meetings with City officials, spoke at a public comment session, and was ultimately chosen as one of the three certified applicants for a casino license. Even though the certification phase was not a competitive bidding process under the Gambling Act, Full House was deserving of the City’s certification.<sup>5</sup>

Full House then went before the Board for a thorough investigation, participated in a bidding process against another certified applicant for the Waukegan owner’s license, and was ultimately found to be preliminarily suitable to hold that license on December 8, 2021. *See* Ill. Gaming Bd. Mt’g

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<sup>5</sup> In finding WPC purportedly enjoyed a “legally cognizable interest in its right to compete in a casino certification process that is fairly and lawfully conducted,” the appellate court erroneously relied on case law involving statutorily mandated competitive bids that municipal defendants were *required* to award to the lowest, responsive, and responsible bidders. *Waukegan Potawatomi Casino, LLC*, 2023 IL App (1st) 220883, ¶¶ 11-12 (citing *Keefe-Shea Joint Venture v. City of Evanston*, 332 Ill. App. 3d 163 (1st Dist. 2002), and *Aramark Corr. Servs., LLC v. Cnty. of Cook*, No. 12 C 6148, 2012 WL 3961341 (N.D. Ill. Sept. 10, 2012)). Those cases are irrelevant here. Section 7(e-5) of the Gambling Act does not establish a competitive bidding process during the municipal certification process, unlike section 7.12(a), where newly authorized owner’s licenses may be issued to qualified applicants “pursuant to an open and competitive bidding process[.]” *Compare* 230 ILCS 10/7(e-5), *with* 230 ILCS 10/7.12(a). The General Assembly knew how to establish a competitive bidding process when it wanted to, but chose not to do so during the initial certification phase. The appellate court’s decision ignored that intentional omission.

Mins. (Dec. 8, 2021), <https://tinyurl.com/mrsy2nj8>. Construction of the temporary casino began the following summer in June 2022, another costly endeavor.

The City of Waukegan then passed Resolution No. 23-R-03 on January 3, 2023, approving a highly negotiated ground lease and a development and host community agreement with Full House for the construction, development, and operation of the temporary and permanent casino facilities. *See* Waukegan Res. No. 23-R-03 (Jan. 3, 2023), <https://tinyurl.com/5cp28f7z>. As discussed in the City of Waukegan's opening brief, the City substantially complied with the Gambling Act during the initial certification process in October 2019. But assuming for the sake of argument only that it did not, Resolution No. 23-R-03 sets forth each and every agreement upon which Full House and the City were required to and did negotiate under section 7(e-5), resulting in a formal host community agreement and ground lease. *Compare id.*, with 230 ILCS 10/7(e-5). These mutual agreements occurred before the Board issued Full House its owner's license, substantially complying with the Gambling Act.

On February 16, 2023, the IGB issued a temporary operating permit to Full House, and the temporary casino opened the following day. *See* Steve Sadin, *Waukegan's temporary casino opens*, Chicago Tribune (Feb. 17, 2023), 2023 WLNR 6018162. And on June 15, 2023, the Board issued the Waukegan

casino owner's license to Full House.<sup>6</sup> See Ill. Gaming Bd. Mt'g Mins. (Jun. 15, 2023), <https://tinyurl.com/yryjvys8>. The issuance of an owner's license is the final step in the licensing process. Contrary to the appellate court's decision (*Waukegan Potawatomi Casino, LLC*, 2023 IL App (1st) 220883, ¶¶ 21-24), the IGB cannot simply revoke Full House's owner's license unless it finds Full House engaged in prohibited and punishable misconduct warranting revocation. See 86 Ill. Admin. Code 3000.110. But Full House has not, meaning the Board lacks the authority to revoke the Waukegan owner's license for any of the reasons suggested by WPC and the appellate court below.

The appellate court also appeared to believe the IGB could rescind Full House's license because, at the time of the decision below, Full House was operating a temporary (not permanent) casino. *Waukegan Potawatomi Casino, LLC*, 2023 IL App (1st) 220883, ¶ 23. That is incorrect. Under the Gambling Act, an owner's licensee may conduct gaming at a temporary facility pending the construction of a permanent facility, subject to certain statutory time limits. 230 ILCS 10/7(l); 86 Ill. Admin. Code 3000.230(f), (g). However, there is only one owner's license issued to a casino operator. There is no such thing as a "temporary" owner's license. When a casino operator wishes to move its

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<sup>6</sup> The issuance of Full House's owner's license should have put an end to this case. It became moot right then and there. See *Marion Hosp. Corp. v. Ill. Health Facilities Plan. Bd.*, 201 Ill. 2d 465, 471-72 (2002) (case became moot when, during the appellate process, the administrative agency issued the contested operating permit to the defendant, who completed construction of a healthcare facility, thus making it "impossible for the reviewing court to render effectual relief").

casino operations from a temporary facility to a permanent one, the operator petitions the IGB for approval to do so. The Board does not issue a ‘new’ owner’s license when permanent casino operations commence. To the extent the appellate court based its decision on this misconception, that was error.

As shown above, obtaining an owner’s license was an arduous and expensive process during which Full House undertook significant efforts to meet the City of Waukegan’s requirements, as well as those of the Board. Thus far, Full House has invested approximately ***\$175 million*** in connection with the Waukegan casino project. The appellate court’s decision means this could all be for nothing, leaving Full House to hold the bag without anything to show for it. That is not what the legislature intended when passing the Gambling Act.

Full House’s sunk costs on the Waukegan casino are not all that is at stake. It will also suffer significant lost future revenues due to this litigation, as will the State and the Cities of Waukegan, Park City, and North Chicago. Waukegan residents will suffer too, as Full House expects to employ an additional 500 employees at its permanent casino facility, and many more would likely find employment with the new businesses the development would attract to the community.

As discussed above, Full House has been operating a temporary casino in Waukegan since February 2023—The Temporary by American Place. The temporary facility is a fraction of the size of the projected permanent facility

and, understandably, cannot host as many patrons. It has nonetheless been profitable. From February 2023 – February 2024, the temporary Waukegan casino generated \$92.38 million in total adjusted gross receipts, of which more than \$14 million in State gaming taxes were derived, and more than \$5 million in gaming taxes were paid to the local communities (*i.e.*, the Cities of Waukegan, Park City, and North Chicago, and Lake County). *See* Ill. Gaming Bd. Casino Monthly Report (Feb. 2023 – Feb. 2024), <https://tinyurl.com/5dvsv3er>. Additionally, Full House paid the State \$50.3 million for required gaming license fees. *See* Full House Resorts, Inc., U.S. Sec. & Exch. Comm’n Form 10-K at 73 (Mar. 15, 2024), <https://tinyurl.com/76sk6was>.

Conservative estimates of total adjusted gross receipts to be generated at the permanent facility are projected at \$243 million, nearly triple those currently generated at the temporary facility. This, in turn, means that the State would receive approximately \$34.1 million in gaming taxes, while the local governments would enjoy approximately \$17.9 million in gaming taxes. These monies could help fund much-needed capital projects and school and education programs. WPC’s lawsuit and the appellate court’s opinion has prevented that for years, if not forever.<sup>7</sup>

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<sup>7</sup> Due to this lawsuit, Full House had to ask the legislature and the IGB to approve continued operations at the temporary casino until August 17, 2027. *See* Ill. Gaming Bd. Press Release (Feb. 8, 2024), <https://tinyurl.com/yc2bpb29>.

It also cannot be understated that, regardless of the outcome of this litigation, the mere fact that it continues to drag on and delay construction of the permanent casino may jeopardize financing the project altogether. *See* Full House Resorts, Inc., U.S. Sec. & Exch. Comm'n Form 10-Q at 41 (Nov. 8, 2023), <https://tinyurl.com/25f9fmdx> (“[C]ourt rulings in these actions could negatively impact our ability to secure financing for American Place, delay the opening of American Place, or otherwise affect our licensing.”). Indeed, Full House’s financial advisors have advised that its lenders will not provide additional financing to construct the permanent casino during the pendency of this lawsuit. WPC’s lawsuit and the appellate court’s decision puts all this at risk.

And for what? All of this could be for nothing if the appellate court’s decision is affirmed, based solely on the allegations of a rejected applicant who, if its relief is ultimately granted in this case, has no right to be certified to the IGB as a potential applicant for an owner’s license. WPC conceded this point in the appellate court below. *See* WPC Appellant’s Br. 26 (Case No. 1-22-0883). Put differently, all of the lost time, effort, money, and tax dollars could be for naught because the City of Waukegan could still reject WPC’s application should the certification process begin anew if this case is not disposed of now.

In the meantime, WPC has and will continue to benefit from protracted litigation as Full House, the State, and the Cities of Waukegan, Park City, and North Chicago continue to suffer. WPC operates a casino in nearby Milwaukee, Wisconsin (a mere 50 miles from Waukegan). As WPC is well aware, a new



casino in Waukegan would attract patrons from northern Illinois and southern Wisconsin who may otherwise choose to travel to Milwaukee in the absence of a closer option. *See Waukegan Potawatomi Casino, LLC v. City of Waukegan*, No. 20-cv-00750, Dkt. 171 Mem. Op. at \*5-6 (N.D. Ill. Mar. 29, 2024) (Kness, J.). A Waukegan casino would thus affect WPC’s bottom line and it will stop at nothing to prevent that. This was likely—if not certainly—WPC’s intent all along.<sup>8</sup>

Had the appellate court’s decision issued before Full House sought the Waukegan casino license, it would think twice about doing business in Illinois—as would other reputable casino owners. For many of the same reasons discussed above, Full House could not with a good business sense apply for certification, go through the rigorous licensing process, and devote the time, effort, and resources it has devoted thus far if the finality of its license could not be determined until the statute of limitations ran on any disappointed challenger’s claim, or only until after a claim has made its way through the judicial process years later. Too much is at stake.

This scenario is not farfetched. The General Assembly could just as easily amend the Gambling Act to authorize additional owner’s licenses or

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<sup>8</sup> During a 2022 interview, the Chief Executive Officer of the Potawatomi Tribe’s Milwaukee casino said it needed to prepare for the “regional competition coming on the Illinois border, most notably [from] Waukegan” and to be ready “to keep the money here in Wisconsin.” Margaret Naczek, *How Competition is Influencing Potawatomi and When Sports Betting Might Arrive*, MILWAUKEE BUS. JOURNAL (May 9, 2022), 2022 WLNR 14622749.

licenses for other forms of gambling subject to the same municipal certification process. If that were to occur, and the appellate court's decision below stands, any and all unsuccessful applicants will have been handed a road map to hold the licensing process hostage through time-consuming and costly litigation. This not only injures the applicant, but the State, municipalities, and all Illinoisans, who would not benefit from significant contributions to the nine-figure tax revenues casinos currently generate.

Full House thus asks this Court to put an end to the disruption caused by the appellate court's ruling now so that the General Assembly's intent in enacting the Gambling Act can be fulfilled: "benefit[ing] the people of the State of Illinois by assisting economic development, promoting Illinois tourism, and increasing the amount of revenues available to the State to assist and support education, and to defray State expenses." 230 ILCS 10/2(a).

**III. Rockford's certified applicant will be able to timely open its permanent casino and contribute to the public welfare, all because Rockford's decision was not second-guessed by an unsuccessful applicant.**

Like the City of Waukegan, Rockford received authorization from the General Assembly to select a gaming company to open a casino via Public Act 101-31. And like the City of Waukegan, Rockford issued its own request for proposals and welcomed qualified applicants to vie for Rockford's certification. Unlike the City of Waukegan, however, the Rockford casino owner's license is not being held hostage by a competitor and the permanent Hard Rock Casino Rockford is expected to open later this summer. The tax revenues, jobs for local

residents, and economic growth that accompany the opening of the new casino will benefit all concerned. This is what the legislature intended.

As previously mentioned, Rockford certified its preferred applicant—815 Entertainment, LLC operating its casino as Hard Rock Casino Rockford—to the IGB in 2019, whom the Board found preliminarily suitable in February 2021, and was issued an owner’s license on January 27, 2022. *See* Ill. Gaming Bd. Mt’g Mins. (Jan. 27, 2022), <https://tinyurl.com/ye28znjb>. The temporary casino opened in Rockford on November 10, 2021, and has been successfully operating ever since. *See* Michele Rave, *Rockford temporary casino opens to the public*, WTVO (Nov. 10, 2021), <https://tinyurl.com/3u7sd5z6>.

The temporary casino has benefited the State and local government, in addition to those living in Rockford. It has generated more than \$140 million in total adjusted gross receipts, contributing more than \$23 million to the State in taxes and nearly \$8.5 million to Rockford and surrounding local governments.<sup>9</sup> *See* Ill. Gaming Bd. Monthly Report (Nov. 2021 – Mar. 2024), <https://tinyurl.com/5dvsv3er>. The temporary casino has also led to employment for more than 300 Rockford residents. These numbers are dwarfed by the projections for the permanent casino.

The total adjusted gross receipts of the permanent Rockford casino are estimated to exceed \$200 million. *See* 815 Entertainment, LLC IGB Disclosure

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<sup>9</sup> The local taxes generated by the casino are distributed among Rockford, Loves Park, the Village of Machesney Park, and Winnebago County.

Form (Oct. 28, 2019), <https://tinyurl.com/3h49kbku>. For frame of reference, in 2023, the temporary casino produced adjusted gross receipts totaling \$69.1 million. See Ill. Gaming Bd. Monthly Report (Jan. 2023 – Dec. 2023), <https://tinyurl.com/5dvsb3er>. Permanent casino operations will lead to adjusted gross receipts *three times greater*. The State and Rockford will accordingly benefit from higher gaming tax revenues. And the permanent casino will have at least 1,000 employees, roughly 700 more than are currently employed at the temporary location. See Host Community Agreement by and between City of Rockford and 815 Entertainment LLC §4.4(h) (Oct. 24, 2019), <https://tinyurl.com/yxfzhfdt>.

Opening the permanent casino will also have substantial indirect benefits too. The casino is expected to attract patrons from other cities and states, driving Rockford tourism. This means more people will visit other Rockford businesses and help promote a more vibrant local economy. New businesses may decide to set up shop in Rockford for this very reason, leading to additional employment opportunities. All in all, a permanent casino is expected to have overwhelmingly positive outcomes for Rockford and those who live there.

The Cities of Waukegan, Park City, and North Chicago should be enjoying many of these same benefits in short order. Those benefits are instead being delayed indefinitely, and will possibly be entirely denied, due to WPC's lawsuit and the appellate court's decision. This is not what the legislature

intended.

As discussed above, the Gambling Act empowered host municipalities to make the initial decision of whom to certify to the IGB for casino licensure. 230 ILCS 10/7(e-5). This makes sense. The proposed casino would be located within that municipality, meaning the local government should be able to determine with whom it conducts business and, as importantly, whom it does not. It therefore follows that municipalities like Rockford and the City of Waukegan should not be second-guessed when they follow and substantially comply with the law and the IGB's process, and deliberately choose to vote against a certain applicant for certification—like WPC. *See Citizens Opposing Pollution*, 2012 IL 111286, ¶ 30 (rejecting the plaintiff's challenge to a coal mining permit because it would undermine the agency's authority that was specifically delegated to it by the legislature).

Accepting WPC's and the appellate court's flawed logic would hamstring municipalities' ability to proceed with casino projects. If municipalities are to enjoy the benefits the legislature plainly intended to confer through the Gambling Act, this cannot occur.

### **CONCLUSION**

WPC's disappointment with the City of Waukegan's decision not to certify it to the IGB does not mean it has the right to hold the casino project hostage. As discussed in the merits briefing, the law here is clear. The legislature's intent and the IGB's lawful exercise of its exclusive jurisdiction

over licensing decisions should be given deference. And the residents of Waukegan, Park City, and North Chicago should be given the significant economic benefits to which they are entitled. Any other outcome would not only unjustly deprive Full House of the fruits of its investment, but ward off other casino operators from making similar investments in Illinois' communities in the future.

WHEREFORE, and for the reasons stated above, *Amici* respectfully request that the Court reverse the decision of the appellate court, and grant any other relief the Court deems appropriate.

Dated: April 3, 2024

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 5,997 words.

Dated: April 3, 2024

*/s/ J. Timothy Eaton*  
\_\_\_\_\_  
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Case Nos. 130036, 130058 (Consol.)

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In the  
**Supreme Court of Illinois**

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Waukegan Potawatomi Casino, LLC, an Illinois limited liability company,

*Plaintiff-Appellee,*

v.

The Illinois Gaming Board, an Illinois administrative agency; Charles Schmadeke, Board Chairman, Dionne R. Hayden, Board Member, Anthony Garcia, Board Member, Marc. E. Bell, Board Member, and Marcus Fruchter, Board Member, in their official capacities; and the City of Waukegan, an Illinois municipal corporation,

*Defendants-Appellants.*

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On Appeal from the Appellate Court of Illinois,  
First Judicial District, Case No. 1-22-0883,  
There on Appeal from the Circuit Court of Cook County, Illinois,  
County Department, Chancery Division, Case No. 2021 CH 5784,  
Hon. Cecilia A. Horan, Judge Presiding.

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**NOTICE OF FILING**

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TO: *See Certificate of Service*

**PLEASE TAKE NOTICE THAT** on the **3rd day of April, 2024**, we caused to be filed (electronically submitted), with the Supreme Court of Illinois, ***Brief of Amici Curiae Full House Resorts, Inc., the City of Rockford, the City of Park City, and the City of North Chicago***, a copy of which is hereby served upon you.



Dated: April 3, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned, pursuant to the provisions of section 1-109 of the Illinois Code of Civil Procedure, and Ill. S. Ct. R. 12, hereby certifies and affirms that the statements set forth in this instrument are true and correct, and that he caused the foregoing ***Brief of Amici Curiae Full House Resorts, Inc., the City of Rockford, the City of Park City, and the City of North Chicago*** to be sent to the parties listed below on this 3rd day of April, 2024, by electronic mail:

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