



AlaFile E-Notice

03-CV-2023-901727.00

To: WILLIAM GLASSELL SOMERVILLE III
wsomerville@bakerdonelson.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ALABAMA ALWAYS, LLC V. THE ALABAMA MEDICAL CANNABIS COMMISSION
03-CV-2023-901727.00

The following complaint was FILED on 12/8/2023 3:32:31 PM

Notice Date: 12/8/2023 3:32:31 PM

GINA J. ISHMAN
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL, 36104

334-832-1260



State of Alabama Unified Judicial System Form ARCiv-93 Rev. 9/18	COVER SHEET CIRCUIT COURT - CIVIL CASE (Not For Domestic Relations Cases)	Case: 03 Date of Filing: 12/08/2023 Judge Code:
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GENERAL INFORMATION

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
ALABAMA ALWAYS, LLC v. THE ALABAMA MEDICAL CANNABIS COMMISSION

First Plaintiff: Business Individual Government Other

First Defendant: Business Individual Government Other

NATURE OF SUIT: Select primary cause of action, by checking box (check only one) that best characterizes your action:

TORTS: PERSONAL INJURY

- WDEA - Wrongful Death
- TONG - Negligence: General
- TOMV - Negligence: Motor Vehicle
- TOWA - Wantonness
- TOPL - Product Liability/AEMLD
- TOMM - Malpractice-Medical
- TOLM - Malpractice-Legal
- TOOM - Malpractice-Other
- TBFM - Fraud/Bad Faith/Misrepresentation
- TOXX - Other: _____

TORTS: PERSONAL INJURY

- TOPE - Personal Property
- TORE - Real Property

OTHER CIVIL FILINGS

- ABAN - Abandoned Automobile
- ACCT - Account & Nonmortgage
- APAA - Administrative Agency Appeal
- ADPA - Administrative Procedure Act
- ANPS - Adults in Need of Protective Service

OTHER CIVIL FILINGS (cont'd)

- MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/Enforcement of Agency Subpoena/Petition to Preserve
- CVRT - Civil Rights
- COND - Condemnation/Eminent Domain/Right-of-Way
- CTMP - Contempt of Court
- CONT - Contract/Ejection/Writ of Seizure
- TOCN - Conversion
- EQND - Equity Non-Damages Actions/Declaratory Judgment/Injunction Election Contest/Quiet Title/Sale For Division
- CVUD - Eviction Appeal/Unlawful Detainer
- FORJ - Foreign Judgment
- FORF - Fruits of Crime Forfeiture
- MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition
- PFAB - Protection From Abuse
- EPFA - Elder Protection From Abuse
- QTLB - Quiet Title Land Bank
- FELA - Railroad/Seaman (FELA)
- RPRO - Real Property
- WTEG - Will/Trust/Estate/Guardianship/Conservatorship
- COMP - Workers' Compensation
- CVXX - Miscellaneous Circuit Civil Case

ORIGIN: F **INITIAL FILING** A **APPEAL FROM DISTRICT COURT** O **OTHER**

R **REMANDED** T **TRANSFERRED FROM OTHER CIRCUIT COURT**

HAS JURY TRIAL BEEN DEMANDED? YES NO

Note: Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P, for procedure)

RELIEF REQUESTED: **MONETARY AWARD REQUESTED** **NO MONETARY AWARD REQUESTED**

ATTORNEY CODE:

SOM005

12/8/2023 3:24:31 PM

/s/ WILLIAM GLASSELL SOMERVIL

Date

Signature of Attorney/Party filing this form

MEDIATION REQUESTED: YES NO **UNDECIDED**

Election to Proceed under the Alabama Rules for Expedited Civil Actions: YES NO



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ALABAMA ALWAYS, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. CV-2023-_____
)	
ALABAMA MEDICAL CANNABIS)	
COMMISSION,)	
)	
Defendant.)	

VERIFIED COMPLAINT

Alabama Always, LLC (Alabama Always) files this complaint pursuant to Alabama Code § 41-22-10 against the Alabama Medical Cannabis Commission (the Commission), to declare a Commission rule invalid in part, and to enjoin its enforcement. Specifically, Alabama Always seeks relief against that portion of Alabama Administrative Code r. 538-X-3-.20 and 538-X-3-.20ER (the Rule) that gives a minority of Commission members the ability to exercise what amounts to a veto over a majority of Commission members in selecting medical cannabis licensees. This veto power violates fundamental Alabama law that requires decisions by the Commission and other administrative agencies to be made by majority vote.

Parties

1. Alabama Always is an Alabama limited liability company and an applicant for an integrated medical license pursuant to the Darren Wesley “Ato” Hall Compassion Act (the Compassion Act).

2. The Commission is an agency of the State of Alabama subject to the Alabama Administrative Procedure Act. *See* Ala. Code § 20-2A-20(p).

Jurisdiction and Venue

3. Jurisdiction and venue are appropriate by virtue of Alabama Code § 41-22-10, which provides that civil actions such as this are to be prosecuted in the Circuit Court of

Montgomery County.

Facts

4. The Court will need no substantial introduction to the underlying facts of this case, the Court having presided over extensive litigation involving the Commission. The Court can certainly take judicial notice of prior and pending proceedings before it.

5. In addition, on information and belief, certain staff members have reportedly stated that Alabama Always will receive a license “over [their] dead body.”

6. Based on a staff recommendation, the Commission has adopted a voting procedure that gives a minority of Commission members the ability to effectively veto the judgment of the majority. This procedure is contained in an identical pair of rules, Alabama Administrative Code r. 538-X-3-.20 and 538-X-3-.20ER, adopted by the Commission at its October 12, 2023 meeting.¹ The procedure requires each Commissioner to rank all 36 applicants for integrated licenses in descending order. The staff will then average the rankings to obtain a single composite ranking, and the average ranking thus generated will determine the order in which the applicants are considered for licenses.

In order to determine the order in which Applicants should be considered, each Commissioner will be given an opportunity to submit, in an open meeting, *a written form providing an overall preliminary rank, in descending order, of each of the Applicants in the license category*, giving due consideration to all statutory and regulatory criteria. Such forms shall be tabulated and averaged by the Commission staff and used solely to determine the order in which individual Applicants are subsequently considered. In those instances where two or more applicants receive identical average rankings, the order shall be determined by a drawing. The Chair will call for a motion to approve or deny each application in the order established above. Following such motion, duly seconded, the Chair will provide an opportunity for further deliberations and a vote.

Ala. Admin. Code r. 538-X-3-.20 & -.20ER.

¹ The rules are identical because 538-X-3-.20ER was adopted as an emergency rule, effective for no more than 120 days, and 538-X-3-.20 is the permanent version, adopted after notice and comment as required by the AAPA.

7. There are 36 applicants for the five available integrated licenses. According to the voting procedure designed by the Commission staff that is contained in the Rule, each Commissioner will rank each integrated applicant from 1 to 36. The Commission has twelve voting members.

8. This ranking and voting system was used last week by the Commission when other license categories were considered and licenses were awarded. (Attached as **Exhibit A** is the composite of the ranking sheets for all four license categories published on the Commission's website.) While there is some rough consensus on some of the rankings for various applicants, in each "row," which captures the rankings of each Commissioner for that applicant, in almost all cases there is an outlier or two that gave the applicant a substantially higher number (which ranks them lower) than other Commissioners have done. In all cases, that higher number skews the applicant's ranking and makes the applicant less likely to get awarded a license. If there are two Commissioners who give the applicant a substantially higher number, that would usually be enough to eliminate the applicant from consideration by the Commission.

9. In the case of the integrated license category the Commission is scheduled to consider, rank, and vote on next week, the Commissioners are being asked to rank all 36 companies that applied, even though roughly half the companies did not make live presentations to the Commission. To be clear, each Commissioner will be asked to rank all 36 companies in the order they consider them to be best qualified to perform as an integrated license holder. Each Commissioner will rank each company, giving them a number from the most qualified, which they will give a "1" ranking, to the least qualified which they will give a "36" ranking. They are asked to rank and award all 36 companies, regardless of whether they have information about some of the companies or not.

10. This ranking system allows individual Commissioners to “blackball” or eliminate some companies from further consideration if they give that company a very high ranking of 30 or more. There are only five licenses to be awarded. With the ranking system that is in place, the five companies selected will each have to have a very low score, meaning they were ranked very highly qualified by all of the Commissioners or nearly all of the Commissioners. But if a small minority of Commissioners rated any of those applicants between “30” and “36” instead of closer to “1,” then that applicant’s average rating would be increased dramatically, even if 9 of the 12 Commissioners ranked that applicant as a “1.” That company would be eliminated from consideration by a minority of the Commissioners. Empowering individual Commissioners with the authority to “blackball” or eliminate some companies from consideration violates the principal that only a majority of the Commission is allowed to make decisions and award or not award these licenses. Thus, assuming that all 12 Commissioners voted on an applicant, and nine of them awarded that applicant a first-place vote, the others could effectively veto the judgment of the majority by awarding that applicant a 36. In that event, the applicant would receive an average score of 9.75.

11. Based on the results from last week, when the Commission used this procedure to award cultivator, processor, dispensary, testing lab, and secure transport licenses, a rating of 9.75 would disqualify an applicant from being considered by the Commission for a license, even though most Commissioners voted that applicant as most qualified.

12. To illustrate, the lowest rated cultivator license awarded last week had an average score of 6.9; the lowest rated processor license awarded was 4.7273; the lowest rated dispensary license awarded was 5.5455; and the lowest rated secure transporter license awarded was 4. For the integrated category, the ability of one Commissioner to rank any applicant with a 36 effectively serves to veto that applicant.

13. This system thus has the potential to allow a minority of Commissioners, or even one Commissioner, to veto the judgment of the majority. This voting system is not exemplary of the concept of majority rule or the open deliberation intended under the Alabama Administrative Procedure Act (AAPA).

14. This is a contested case proceeding within the meaning of the AAPA, because the Commission's vote will result in both the grant and denial of licenses. *See* Ala. Code § 41-22-19(a) ("The provisions of this chapter concerning contested cases shall apply to the grant, denial, revocation, suspension, or renewal of a license.").

15. The Commission's final decision on the granting of integrated licenses will be a final agency action, and therefore must be by majority vote. *Id.* § 41-22-15 ("In a contested case, a majority of the officials of the agency who are to render the final order must be in accord for the decision of the agency to be a final decision.").

16. Alabama Always likely is the only applicant that meets all of the Compassion Act's requirements for integrated licenses. On information and belief, however, there is a small minority of Commissioners who, in conjunction with the Commission's staff and former Commissioner Stokes, intend to prevent Alabama Always from receiving a license.

17. Any vote by the Commission should be by majority rule, should consider each applicant, and should follow the clear statutory criteria.

18. The Rule therefore threatens to irreparably harm Alabama Always and its rights and privileges. Alabama Always has expended substantial sums of money in its efforts to comply with the Compassion Act and will not be able to recover those sums because the Commission enjoys sovereign immunity.

Count One
(Declaratory Judgment)

19. Alabama Always adopts and incorporates the previous paragraphs as if

specifically alleged in this paragraph.

20. The AAPA permits “[t]he validity or applicability of a rule” to “be determined in an action for a declaratory judgment.” Ala. Code § 41-22-10.

21. The AAPA requires any agency rule to be declared invalid if the rule “exceeds the statutory authority of the agency or was adopted without substantial compliance with rulemaking procedures provided for in” the AAPA. *Id.* § 41-22-10.

22. Alabama Always submits that the Rule is invalid.

23. The Commission has no authority for enacting the Rule because it did not comply with the AAPA.

24. In addition, the Rule interferes with and impairs Alabama Always’s legal rights.

25. Exhaustion of administrative remedies is not a prerequisite to challenging the validity of a rule. *See State Pers. Bd. v. Cook*, 600 So. 2d 1027, 1027 (Ala. Civ. App. 1992) (“[T]he supreme court held that exhausting administrative remedies was not a prerequisite to challenging the validity of a rule under § 41–22–10, Code (1975).”). Exhaustion is also not required due to the futility of exhausting the current procedures established by the Commission.

26. In addition, Alabama Always need not exhaust any administrative remedies because this lawsuit raises questions of statutory interpretation, concerns pure questions of law (and not questions involving agency discretion or factfinding), and involves a threat of irreparable injury, as explained in this complaint.

FOR THESE REASONS, Alabama Always asks this Court for a declaration under the AAPA and the Alabama Declaratory Judgment Act that the Commission’s Rule is invalid. Alabama Always further prays that the Court award Alabama Always costs, interest, and any other equitable and/or legal relief to which it is entitled.

Count Two
(Injunctive Relief)

27. Alabama Always adopts and incorporates the previous paragraphs as if specifically alleged in this paragraph.

28. As noted, the Rule threatens Alabama Always with irreparable harm. The entry of a temporary restraining order, preliminary injunction, and permanent injunction would preserve the status quo, and would not inconvenience the Commission, particularly since no party before the Commission has the right to have its application ranked and voted on in a manner that violates Alabama law. The balance of the equities therefore favors the issuance of a temporary restraining order and an injunction.

29. The AAPA permits this Court to stay enforcement of an agency rule “by injunctive relief.” Ala. Code § 41-22-10.

30. Without the requested injunctive relief, Alabama Always will suffer immediate and irreparable injury.

31. Furthermore, the harm that Alabama Always faces is not susceptible of being compensated with money damages.

32. Alabama Always has no adequate remedy at law.

33. There is no remedy for the Commission’s failure to judge all applications fairly and in compliance with its own rules and regulations.

34. Without the requested injunctive relief, Alabama Always will suffer irreparable harm in the form of interference with its business.

35. Alabama Always is likely to succeed on the merits of its claim, for the reasons explained, including because the Commission failed to substantially comply with the AAPA.

36. Any hardship imposed on the Commission by the requested injunction does not outweigh the benefit to Alabama Always in receiving the requested injunction.

37. In addition, not issuing the injunction would severely harm the public.

38. The Act exists to help ensure that the best entities cultivate, transport, and dispense the best medical cannabis to Alabama residents suffering from medical conditions whose symptoms could be alleviated by medical cannabis.

39. The public is deprived of potentially obtaining the best integrated facility licensees when the Commission, by act or omission, violates the AAPA, as it has in this case, and causes ongoing and irreparable harm to the licensing process.

40. Immediate and irreparable injury, loss, or damage will result to Alabama Always before the Commission can be heard in opposition.

FOR THESE REASONS, Alabama Always requests that the Court enter a temporary restraining order, preliminary injunction, and permanent injunction against the use of the Rule as identified above.

Respectfully submitted,

/s/ William G. Somerville
WILLIAM G. SOMERVILLE
MICHAEL A. CATALANO
JADE E. SIPES

OF COUNSEL:

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PLEASE SERVE DEFENDANT VIA CERTIFIED MAIL AT THE FOLLOWING ADDRESS:

The Alabama Medical Cannabis Commission
c/o John McMillan, Director
P. O. Box 309585
Montgomery, Alabama 36130

VERIFICATION

In accordance with Alabama Rule of Civil Procedure 65(b), James Eaton, the representative for Alabama Always LLC, being first duly sworn in accordance with the law, being informed of and familiar with the facts set forth and the statements made in paragraphs 18, 26, 28, 30-32, 34, and 40 of the foregoing verified complaint, which set forth specific facts that immediate and irreparable injury, loss, or damage will result, make oath that the foregoing averments are true to the best of my knowledge and where stated my information and belief.

Given under my hand and official seal this 8th day of December 2020.

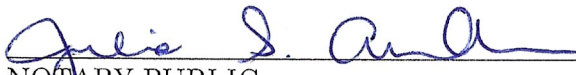

James Eaton, CEO

STATE OF FLORIDA

COUNTY OF LEO

I, the undersigned authority, a Notary Public in and for said State and County, do hereby certify that James Eaton, who is known to me, acknowledged before me, on this day, that, being informed of the contents of the instrument, he has signed, sealed, and delivered the same voluntarily, and with full authority for said entity.

Given under my hand and official seal this the 8th day of December 2023.


NOTARY PUBLIC

My Commission Expires: 12/3/26

[SEAL]

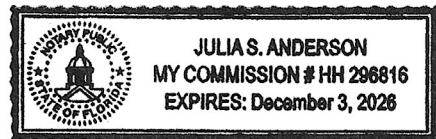


EXHIBIT A

**Alabama Medical Cannabis Commission
Compiled Application Rankings
License Type: Cultivator**

Applicant ID	Applicant Name	Average Score Rank	Blakemore	Gamble	Harvey	Harwell	Hatchett	Jensen	Martin	Price	Saliski	Skelton	Szaflarski	Vaughn
1628	CRC of Alabama, LLC	2.3000	1	2		4	2	2		2	2	2	3	3
1638	Greenway Botanicals LLC	2.3000	2	1		1	1	3		6	1	4	2	2
1618	Gulf Shore Remedies, LLC	2.5000	4	4		6	3	1		1	3	1	1	1
1613	Native Black Cultivation (M)	5.0000	6	3		2	5	6		3	8	3	6	8
1691	Creek Leaf Wellness, Inc.	5.2000	5	6		3	4	5		4	4	5	7	9
1639	Twisted Herb Cultivation, LLC	5.5000	3	5		5	6	4		8	5	7	8	4
1682	I AM FARMS (M)	6.9000	7	7		8	8	9		5	9	6	4	6
1699	Blackberry Farms LLC	8.4000	8	8		11	7	11		9	7	9	9	5
1697	Pure by Sirmon Farms LLC	8.5000	10	11		9	9	10		10	6	8	5	7
1671	Sanitus LLC (M)	9.2000	9	9		7	11	8		7	10	10	11	10
1665	James Gang Dispensary LLC (M)	10.2000	11	10		10	10	7		11	11	11	10	11
(M) - denotes minority applicant														

DOCUMENT 2

**Alabama Medical Cannabis Commission
Compiled Application Rankings
License Type: Processor**

Applicant ID	Applicant Name	Average Score Rank	Blakemore	Gamble	Harvey	Harwell	Hatchett	Jensen	Martin	Price	Saliski	Skelton	Szaflarski	Vaughn
1632	Organic Harvest Lab LLC	1.7273	1	1	1	1	1	1		3	2	1	5	2
1617	Coosa Medical Manufacturing	4.0000	3	2	5	2	2	6		1	5	4	8	6
1694	1819 Labs LLC (M)	4.0909	4	4	1	5	3	2		8	4	7	2	5
1648	Enchanted Green LLC (M)	4.7273	5	6	2	4	9	5		5	1	10	4	1
1653	Jasper Development Group Inc.	4.7273	2	3	4	3	5	4		11	3	11	3	3
1629	LyonsWeb Processing LLC	5.3636	7	5	3	7	6	9		2	6	3	7	4
1681	Green Acres Organic Pharms Inc.	5.7273	6	7	10	11	4	3		4	7	2	1	8
1655	Guaranteed Investments AL LLC	7.2727	8	8	6	10	7	7		7	8	6	6	7
1680	Green Phoenix Holdings LLC	8.9091	11	10	11	6	10	8		9	9	5	10	9
1646	Longleaf Extracts LLC	9.2727	9	11	8	8	11	10		6	10	8	11	10
1654	Arbor Vita Care, Inc.	9.4545	10	9	7	9	8	11		10	11	9	9	11
(M) - denotes minority applicant														

DOCUMENT 2

Alabama Medical Cannabis Commission
Compiled Application Rankings
License Type: Dispensary

Applicant ID	Applicant Name	Average Score Rank	Blakemore	Gamble	Harvey	Harwell	Hatchett	Jensen	Martin	Price	Saliski	Skelton	Szaflarski	Vaughn
1611	CCS of Alabama LLC	2.3636	3	4	3	4	5	1		1	2	1	1	1
1635	GP6 Wellness, LLC (M)	3.5455	2	1	11	1	2	4		3	4	4	4	3
1631	Capitol Medical LLC	4.3636	7	5	4	3	1	3		2	5	2	7	9
1643	RJK Holdings AL, LLC	5.5455	1	2	1	2	3	8		17	1	17	5	4
1616	Yellowhammer Medical Dispensaries, LLC	5.8182	4	3	2	7	4	2		16	6	16	2	2
1673	Emerald Standard, LLC	6.2727	5	6	15	5	8	5		4	3	3	8	7
1678	Fleur De Vie Wellness Inc.	9.2727	9	9	6	8	9	14		11	9	10	6	11
1641	Alabama Sexual Medicine Specialists, LLC	9.7273	13	17	10	6	6	7		7	11	7	9	14
1683	Statewide Property Holdings AL, LLC (M)	10.0909	8	7	17	10	11	15		8	8	18	3	6
1658	Shangri-La AL LLC (M)	10.3636	12	14	12	9	13	6		9	10	9	12	8
1705	MedShop Dispensary, LLC	10.7273	6	8	18	11	7	17		18	7	11	10	5
1666	LeBleu Fields (M)	10.9091	10	10	16	14	10	13		5	14	5	13	10
1652	Guaranteed Dispensary AL LLC	11.9091	11	13	13	13	12	10		12	12	8	11	16
1610	GreenWellness, LLC	13.2727	17	11	9	16	15	18		6	15	6	16	17
1701	CS Alabama Investments	13.7273	15	16	7	12	18	16		10	18	12	15	12
1645	Kush Medicinal LLC (M)	14.0000	18	12	8	18	17	12		13	13	13	17	13
1661	All Green Alabama Medical, LLC	14.5455	16	18	5	17	16	9		15	16	15	18	15
1670	Mark Daniel Jennings	14.5455	14	15	14	15	14	11		14	17	14	14	18
(M) - denotes minority applicant														

DOCUMENT 2

**Alabama Medical Cannabis Commission
Compiled Application Rankings
License Type: Secure Transporter**

Applicant ID	Applicant Name	Average Score Rank	Blakemore	Gamble	Harvey	Harwell	Hatchett	Jensen	Martin	Price	Saliski	Skelton	Szaflarski	Vaughn
1689	Alabama Secure Transport, LLC	1.5455	1	2	1	1	2	2		2	1	1	1	3
1676	Tyler Van Lines LLC	2.0000	3	1	2	2	1	1		3	2	3	3	1
1622	Pick Up My Things (M)	3.3636	4	3	5	4	4	5		1	3	2	2	4
1688	International Communication LLC (M)	4.0000	2	6	3	7	3	3		4	4	4	6	2
1633	Soraya Schultz	5.2727	5	4	6	3	5	6		6	6	7	4	6
1637	XLCR, Inc. (M)	5.3636	6	5	7	5	6	4		5	5	6	5	5
1674	Harvell Motor Company Inc. (M)	6.4545	7	7	4	6	7	7		7	7	5	7	7
(M) - denotes minority applicant														

DOCUMENT 2