IN THE SUPREME COURT OF MISSISSIPPI

NO. 2024-SA-01021-SCT

MISSISSIPPI ALCOHOLIC BEVERAGE CONTROL AND MISSISSIPPI DEPARTMENT OF REVENUE

v.

GREEN CROSS OF MS, LLC, AND KAREN CRUMPLER

DATE OF JUDGMENT:	07/26/2024
TRIAL JUDGE:	HON. SMITH MURPHEY
TRIAL COURT ATTORNEYS:	JOHN THOMAS LAMAR, III TAYLOR ALLISON HECK MATTHEW TIMMONS HENRY DAVID J. CALDWELL JESSICA LEIGH LONG
COURT FROM WHICH APPEALED:	PANOLA COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	JESSICA LEIGH LONG MATTHEW TIMMONS HENRY DREW DOUGLAS GUYTON
ATTORNEYS FOR APPELLEE:	JOHN THOMAS LAMAR, III TAYLOR ALLISON HECK
NATURE OF THE CASE:	CIVIL - STATE BOARDS AND AGENCIES
DISPOSITION:	ON DIRECT APPEAL: REVERSED; ON CROSS-APPEAL: AFFIRMED - 10/29/2026
MOTION FOR REHEARING FILED:	

EN BANC.

BRANNING, JUSTICE, FOR THE COURT:

¶1. As a case of first impression, we are called upon to interpret provisions of the Mississippi Medical Cannabis Act (the Act) regarding the location of medical-cannabis dispensaries in proximity to churches and refundability of certain fees. The Alcoholic

Beverage Control (ABC), a division of the Mississippi Department of Revenue (MDOR), denied Green Cross of MS LLC's application for a medical-cannabis-dispensary license based on its proximity to a church. While MDOR refunded the $25,000 annual license fee, it did not refund Green Cross's $15,000 application fee. On appeal, the circuit court affirmed the denial of the license application but ordered ABC to refund the $15,000 application fee. ABC now appeals, and Green Cross cross-appeals.

¶2. Based on the plain language of the Act, we affirm the circuit court's decision to uphold ABC's denial of the medical-cannabis-dispensary license. But we reverse the circuit court's decision ordering ABC to refund the $15,000 application fee.

FACTS AND PROCEDURAL HISTORY

¶3. Enacted in 2022, the Act authorizes MDOR to oversee and license medical-cannabis dispensaries doing business in the state of Mississippi. Specific to today's case, the Act provides that dispensaries are not authorized to locate within one thousand feet of schools, churches, or childcare facilities, with waivers available only for those locating more than five hundred feet of a school, church, or childcare facility. Miss. Code Ann. § 41-137-35(16) (Rev. 2023). In addition, the Act provides that the application and license fees are nonrefundable except when a dispensary applies for a location within fifteen hundred feet of another dispensary. Miss. Code Ann. § 41-137-37(5) (Supp. 2026).

¶4. On July 30, 2022, Green Cross submitted an application for a medical-cannabis dispensary to be located at 311 Heritage Drive, Oxford, Mississippi. As part of its due

diligence, Green Cross obtained a survey to verify that the proposed dispensary location would not run afoul of the Act's prohibition against being:

> within one thousand (1,000) feet of the nearest property boundary line of a school, church or child care facility which exists or has acquired necessary real property for the operation of such facility before the date of the medical cannabis establishment application unless the entity has received approval from the school, church or child care facility and received the applicable waiver from their licensing agency, provided that the main point of entry of the cannabis establishment is not located within five hundred (500) feet of the nearest property boundary line of any school, church or child care facility

Miss. Code Ann. § 41-137-35(16)(a)(ii) (Rev. 2023).

¶5. The July 18, 2022, survey depicted the proposed dispensary as being within one thousand feet, but not less than five hundred feet, of a childcare facility. Green Cross, therefore, obtained a waiver from the affected childcare facility as allowed by the Act. At that same time, the surveyor certified that no properties owned by a church fell within the boundaries of the prohibited area. Additionally, Green Cross's investigation included a search of the Mississippi secretary of state's website, which indicated that Next Gear Solutions LLC/Next Gear Solutions Inc. was the occupier of 304 Heritage Drive, Suite 2. Next Gear was not an entity with distance restrictions under the Act.

¶6. Through its investigation, however, ABC discovered that a church was operating within one thousand feet of the proposed dispensary address. More specifically, on July 15, 2022, Wellspring Church began holding church services within a strip mall located at 304 Heritage Drive. It is undisputed that Wellspring Church did not own this property.

¶7. On August 5, 2022, ABC formally denied Green Cross's application due to the proposed dispensary's being less than one thousand feet from Wellspring Church. As a

result, ABC refunded Green Cross's $25,000 annual license fee but did not refund the $15,000 application fee.

¶8. On August 8, 2022, Green Cross appealed this decision to the Panola County Circuit Court,[1] arguing that because the church "had no property interest in the property," it was not a "church" under the Act. The circuit court affirmed the license denial but ordered ABC to refund the $15,000 application fee "in this unique set of facts" as being "arbitrary." ABC appealed the order requiring the refund, and Green Cross cross-appealed the order affirming the denial of the license.

STANDARD OF REVIEW

¶9. We acknowledge the standard of review for decisions from administrative agencies requires a determination of whether the decision "(1) [w]as supported by substantial evidence; or (2) [w]as arbitrary or capricious; or (3) [w]as beyond the power of the lower authority to make; or (4) [v]iolated some statutory or constitutional right of the complaining party. " ***Hill Bros. Constr. & Eng'g Co., Inc. v. Miss. Transp. Comm'n***, 909 So. 2d 58, 64 (Miss. 2005) (alterations in original) (internal quotation marks omitted) (quoting ***Landmark Structures, Inc. v. City Council for Meridian***, 826 So. 2d 746, 749 (Miss. 2002)). Because the parties only raise questions of law, however, we will review this matter *de novo*. ***Miss. Ethics Comm'n v. Grisham***, 957 So. 2d 997, 1000 (Miss. 2007) (quoting ***32 Pit Bulldogs v. Cnty. of Prentiss***, 808 So. 2d 971, 973 (Miss. 2002)).

[1]Even though the dispensary was to be located in Lafayette County, Mississippi Code Section 41-137-59(2)(a) (Rev. 2023) conveys jurisdiction on the circuit court of the county in which the appellant resides, which is Panola County.

DISCUSSION

¶10. Green Cross's sole issue on cross-appeal is whether ABC had the authority to deny the application based on the plain language of the statute. Likewise, ABC's sole issue on appeal is whether the circuit court correctly interpreted the Act in ordering the refund of the application fee. And on direct appeal, Green Cross argues that it would be "den[ied] substantial justice" if this Court chose to reverse the circuit court's decision to require ABC to refund the application fee.

¶11. Chief Justice Randolph writes that Green Cross "was never offered constitutional due process." Randolph Diss. Op. ¶ 35. While it should be noted that Green Cross raises no procedural or due-process concerns, the record reflects that the parties followed the statutory procedure for appeals under the Act that was in place at that time.

¶12. This Court has held that "[a] complainant must exhaust the administrative remedies *available* to him before resorting to the courts for resolution of his dispute." ***State v. Beebe***, 687 So. 2d 702, 704 (Miss. 1996) (emphasis added) (citing ***NCAA v. Gillard***, 352 So. 2d 1072, 1082-83 (Miss 1977); ***Everitt v. Lovitt***, 192 So. 2d 422, 426 (Miss. 1966); ***Davis v. Barr***, 250 Miss. 54, 157 So. 2d 505 (1963)). But "where no adequate remedy is provided, the exhaustion doctrine is not applicable." ***Miss. Dep't of Corr. v. McClure***, 386 So. 3d 372, 377 (Miss. 2024) (internal quotation marks omitted) (citing ***Tiger Prod. Co., LLC v. Pace*** 353 So. 3d 429, 433 (Miss. 2022)).

¶13. Green Cross appealed the decision of MDOR in August 2022. At that time, Mississippi Code Section 41-137-47 (Supp. 2022) only provided an administrative appeal

process for fines, suspensions, and revocations of licenses. It was not until March 2023 that House Bill 1158 became effective, thereby creating an administrative appeal for denials of license applications. H.B. 1158, Reg. Sess., 2023 Miss. Laws ch. 436, § 6. Therefore, it is undisputed that at the time Green Cross filed its appeal to the circuit court, no other administrative remedies were available under the Act.

¶14. Justice Sullivan writes that "ABC's decision to deny Green Cross's license application is not based on substantial evidence and thus constitutes an arbitrary and capricious decision." Sullivan Diss. Op. ¶ 41. But Green Cross clearly states in its brief:

> As stated above, the circuit [court] found that ABC's denial was supported by substantial evidence. . . . Respectfully, though, *that was not and is not Green Cross's argument.* Rather, Green Cross argued below and argues here that ABC *did not have the authority* to deny its application, *based on the plain language of the relevant statutes*.

¶15. On appeal, Green Cross does not identify assignments of error related to due process, the sufficiency of evidence presented by ABC, or the appellate process with the circuit court. In fact, in their joint supplemental brief filed with this Court, the parties acknowledge that "Green Cross properly appealed the denial of its application to the Panola County Circuit Court in August of 2022." Therefore, because the issues on appeal relate solely to the interpretation of the Act, we limit our review to these specific questions of law.

I. Denial of the Medical-Cannabis License Based on Proximity to a Church

¶16. When applicants seek to open medical-cannabis dispensaries in Mississippi, the Act requires certain criteria to be met in order to receive approval to operate. With regard to the physical-location requirements, the Act provides that such dispensaries:

> shall not be within one thousand (1,000) feet of the nearest property boundary line of a school, church or child care facility which exists or has acquired necessary real property for the operation of such facility before the date of the medical cannabis establishment application unless the entity has received approval from the school, church or child care facility and received the applicable waiver from their licensing agency, provided that the main point of entry of the cannabis establishment is not located within five hundred (500) feet of the nearest property boundary line of any school, church or child care facility[.]

Miss. Code Ann. § 41-137-35(16)(a)(ii) (Rev. 2023). In the present case, ABC denied the application due to the proposed dispensary's location being merely ninety-nine feet from Wellspring Church, citing Section 41-137-35(16)(a)(ii) in its denial notice.

¶17. Throughout the appeal, Green Cross's position has been that Wellspring Church did not qualify as a "church" under the Act due to its lack of a "property interest in the property" located at 304 Heritage Drive, Suite 2. Specifically, Green Cross states in its brief:

> [T]o the extent that ABC seeks to reiterate its argument before the circuit court that Wellspring is indeed a "church," Green Cross must clarify that it does not and has never argued that Wellspring is not a "church" under the *standard definition*. . . . Rather, Green Cross's argument is that the Legislature's decision to make the decisive factor the property boundary line of a church must actually have real property interests in order to prohibit a medical cannabis dispensary within 1,000 feet.

(Emphasis added.)

¶18. But the Legislature chose only to stipulate that a church either be in "exist[ence] *or* ha[ve] acquired necessary real property for the operation of such facility[.]" § 41-137-35(16)(a)(ii). We do not find the Act's reference to the "property boundary line of a church" as a requirement of fee-simple ownership to qualify as a church. And neither party here

disputes that Wellspring Church existed within ninety-nine feet of the proposed dispensary prior to Green Cross's application.

¶19. As explained by the circuit court:

> The Record is clear that investigations were conducted by both Appellants and Appellee; however, there is substantial evidence Appellee's investigation showed that a church did exist within the boundary limitations set forth in Miss. Code Ann. § 41-137-35(16), and that the church existed before the dispensary application was submitted, albeit unknown to appellant despite their due diligence. Furthermore, as the church was within five hundred (500) feet of the proposed dispensary, a waiver was not a legal option. Miss. Code Ann. § 41-137-35(16). While Appellants urge that Wellspring Church had no legally cognizable property interest in 304 Heritage Drive, the [c]ourt finds that is not accurate. While the statute does not require a church to own land for the church to exist, Wellspring Church had paid a fee in order to occupy the property, thus it did have an interest in the property. As Wellspring Church 'sprung up' at 304 Heritage Drive, Oxford, MS, thirteen (13) days prior to [Green Cross] submitting the application, [the ABC's] denial of the application did not violate Rule 5.03 of the URCCC.

We agree.

¶20. Accordingly, we find that the circuit court correctly affirmed the decision of ABC in its denial of Green Cross's license application based on the plain language of the Act.

II. The Application and License Fees

¶21. With regard to the application and license fees, the Act clearly provides that "[a] medical-cannabis dispensary shall be subject to a one-time non-refundable license application fee for Fifteen Thousand Dollars ($15,000.00). The annual license fee shall be a non-refundable fee of Twenty-five Thousand Dollars ($25,000.00)." Miss. Code Ann. § 41-137-35(4) (Rev. 2023).

¶22. Additionally, Mississippi Code Section 41-137-37(5) goes on to explain:

> No medical cannabis dispensary may be located within a one-thousand-five-hundred-feet radius from the main point of entry of the dispensary to the main point of entry ***of another medical cannabis dispensary***. If the sole basis of denial by the licensing agency in refusing to issue the medical cannabis dispensary a license to operate is that the dispensary fails the distance requirement of this subsection (5), then the licensing agency may refund all or part of the license application fee in Section 41-137-35(5) to the applicant.

Miss. Code Ann. § 41-137-37(5) (Supp. 2026) (emphasis added).

¶23. While the Act does provide a refund exception for an applicant locating within fifteen hundred feet of another dispensary, ABC argues that the Green Cross application did not fall under this exception so it was statutorily barred from refunding the application fee based on the plain reading of the Act. We agree.

¶24. Green Cross acknowledged this specific nonrefundable language in the Act. But it argued that not refunding the application fee in this instance would be "unconscionable" based on its "due diligence investigation," that it was "not a frivolous application," and that Green Cross detrimentally relied on public information.

¶25. In its analysis, the circuit court found that Green Cross conducted a good-faith investigation in determining if their location would comply with the Act's statutory requirements. The circuit court noted Green Cross's use of an engineer/survey expert to measure the distance between property boundaries and the fact that Green Cross diligently searched public records, including the tax assessor's records and the secretary of state's records.

¶26. Additionally, the circuit court noted that Green Cross's investigation revealed that a childcare facility was the only entity within the distance restrictions contained in Section 41-

137-35(16) and that Green Cross had obtained the appropriate waiver as required by the Act. The circuit court further noted the exception for proximity to other dispensaries as found in Section 41-137-37 and reasoned the "one-time non-refundable application fee" language contained in Section 41-137-35(4) was purposed to prevent frivolous applications, although any reference to the prevention of frivolous applications is nowhere in the Act.

¶27. The circuit court further held that because Green Cross proceeded on the validity of public information, it should not have been penalized for doing so. The circuit court reasoned that "as this new law unfolds, there will be times when facts dictate a more conscionable resolution with further exceptions" and concluded that "not to refund the $15,000 application fee in this unique set of facts is arbitrary." We disagree.

¶28. The Mississippi Constitution is clear that each branch of government is designed to perform separate functions, pointing out that "[n]o person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others." Miss. Const. art 1, § 2. It is not the proper role of the Court to "decide what a statute *should* provide, but to determine what it *does* provide." ***Lawson v. Honeywell Int'l, Inc.***, 75 So. 3d 1024, 1027 (Miss. 2011) (emphasis added) (citing ***Russell v. State***, 231 Miss. 176, 94 So. 2d 916, 917 (1957)).

¶29. And "courts cannot restrict or enlarge the meaning of an unambiguous statute[.]" ***Green v. Cleary Water, Sewer & Fire Dist.***, 910 So. 2d 1022, 1027 (Miss. 2005) (internal quotation marks omitted) (quoting ***Marx v. Broom***, 632 So. 2d 1315, 1318 (Miss. 1994)). When a statute is not ambiguous, "the court should simply apply the statute according to its

plain meaning . . . ." ***Miss. Dep't of Transp. v. Allred***, 928 So. 2d 152, 154 (Miss. 2006) (quoting ***City of Natchez v. Sullivan***, 612 So. 2d 1087, 1089 (Miss. 1992)).

¶30. The Act is clear that the only exception to the refundability of the application fee is when an applicant chooses a location within fifteen hundred feet of an existing dispensary. Miss. Code Ann. § 41-137-37(5). The Legislature did not provide an exception for a refund when an application is denied based on proximity to a church, and it is certainly not within the constitutional powers of this Court to create one. Miss. Const. art. 1, §§ 1-2.

¶31. Further, "[i]t is not this Court's duty to change statutory language where it sees fit, but only to interpret the language provided by the Legislature." ***City of Jackson v. City of Pearl***, 358 So. 3d 621, 626 (Miss. 2023) (internal quotation marks omitted) (quoting ***Chandler v. McKee***, 202 So. 3d 1269, 1274 (Miss. 2016)). Neither the circuit court nor this Court has the authority to place such a requirement upon ABC when the statute expressly does not.

¶32. Green Cross argues that ABC's return of the license fee was the exercise of discretion when no refund exception existed in the Act. Thus, Green Cross argues that similar discretion should be exercised for the return of the application fee. ABC returned the license fee to Green Cross, however, because "no license [was] created and therefore there [was] nothing for the remitted annual license fee to be applied to." We agree. The return of the license fee based on the denial of the application does not conflict with the plain language of Act, but the return of the application fee for reasons other than those expressly permitted in Section 41-137-37(5) does. As a result, Green Cross's argument is without merit.

CONCLUSION

¶33. On direct appeal, we reverse the circuit court's judgment ordering ABC to refund Green Cross's $15,000 application fee. On cross-appeal, we affirm the circuit court's judgment affirming the denial of Green Cross's medical-cannabis-dispensary license.

¶34. **ON DIRECT APPEAL: REVERSED; ON CROSS-APPEAL: AFFIRMED.**

COLEMAN, P.J., GRIFFIS, WILSON AND TOLLISON, JJ., CONCUR. RANDOLPH, C.J., DISSENTS WITH SEPARATE WRITTEN OPINION. SULLIVAN, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KING, P.J., AND ISHEE, J.

RANDOLPH, CHIEF JUSTICE, DISSENTING:

¶35. Green Cross was never offered constitutional due process. The majority attempts to brush aside this constitutional violation by asserting "Green Cross raises no procedural or due process concerns," Maj. Op. ¶ 11, but Green Cross did brief a due process violation. In stating the standard of review to this Court, Green Cross wrote:

> "In reviewing the decisions of administrative agencies, [appellate courts] will entertain the appeal only to determine: whether or not the order of the administrative agency . . . violated some statutory or constitutional right of the complaining party." ***Shird v. Miss. State Dept. of Mental Health***, 785 So. 2d 275, 278 (Miss. 2001) (citation omitted).

Green Cross also argued that the trial court erred by excluding its evidence, which it deemed "patently unfair." Green Cross was clearly arguing that its rights were violated by not being allowed to introduce evidence.

¶36. "This Court has held that 'an administrative [agency] must afford minimum procedural due process under the Fourteenth Amendment to the United States Constitution and under Art. 3, § 14 of the Mississippi Constitution consisting of (1) notice and (2)

opportunity to be heard.'" ***Molden v. Miss. State Dep't of Health***, 730 So. 2d 29, 35 (Miss. 1998) (alteration in original) (quoting ***Booth v. Miss. Emp. Sec. Comm'n***, 588 So. 2d 422, 428 (Miss. 1991)). This requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their" case. ***Miss. Bd. of Veterinary Med. v. Geotes***, 770 So. 2d 940, 943 (Miss. 2000) (internal quotation mark omitted) (quoting ***City of Tupelo v. Miss. Emp. Sec. Comm'n***, 748 So. 2d 151, 153 (Miss. 1999)). "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." ***Tippah Cnty. v. LeRose***, 283 So. 3d 149, 151 (Miss. 2019) (internal quotation mark omitted) (quoting ***Daricek Living Tr. v. Hancock Cnty. ex rel. Bd. of Supervisors***, 34 So. 3d 587, 597 (Miss. 2010)).

¶37. This Court has also held that

> even in the absence of a statutory provision therefor, notice and hearing may often be necessary to comply with the constitutional requirement [of due process]; but the necessity must depend somewhat on the nature of the right affected by the . . . action, the nature of the power exercised, the existence of factors other than the requisite of a hearing which operate to safeguard the rights of individuals and to prevent arbitrary action on the part of officials, and the urgency of public need requiring prompt action without the delay necessitated by notice and hearing.

Id. (alterations in original) (quoting ***Oliphant v. Carthage Bank***, 224 Miss. 386, 411, 80 So. 2d 63, 73 (1955)).

¶38. When the legislature initially passed the Mississippi Medical Cannabis Act on February 2, 2022, the legislature required direct appeal of license application denials to circuit courts rather than requiring an administrative appeal. Miss. Code Ann. § 41-137-35(21) (Supp. 2022); Miss. Code Ann. § 41-137-59 (Supp. 2022). The Alcoholic Beverage

Control ("ABC") denied Green Cross's license application without a hearing on August 5, 2022, and instructed the then-pro se Green Cross to appeal to a circuit court. Green Cross did so on August 8, 2022. On March 27, 2023, the legislature amended the statute to provide for an administrative appeals process. Miss. Code Ann. § 41-137-47(1) (Rev. 2023); Miss. Code Ann. § 41-137-59 (Rev. 2023). On May 15, 2023 the parties had already begun briefing the appellate court, but Green Cross was in the appellate court absent ever having a hearing before the agency or having an opportunity to submit evidence for an appellate record. In the appellate record, however, an email was included although it was dated a month and a half after the agency had denied the application. Green Cross was denied an "opportunity to be heard," a violation of due process under the United States and Mississippi Constitutions. ***Molden***, 730 So. 2d at 35; ***Geotes***, 770 So. 2d at 943.

¶39. Preventing a party from presenting *any* evidence is a violation of due process that amounts to plain error. Because Green Cross was offered no fair opportunity to be heard, I would reverse the judgment of the Circuit Court of Panola County and would remand this case with instructions for the circuit court to enter an order remanding this case to ABC for a full and complete administrative appeal.

SULLIVAN, JUSTICE, DISSENTING:

¶40. Respectfully, I dissent. I agree with the circuit court's ruling that Green Cross's application fee should be refunded but for different reasons than those cited by the circuit court.

¶41. Mississippi Alcoholic Beverage Control (ABC) prosecutes this appeal from the circuit court's order that ABC refund Green Cross's $15,000 application fee.[2] But as the record submitted by ABC to the circuit court clearly illustrates, ABC's decision to deny Green Cross's license application is not based on substantial evidence and thus constitutes an arbitrary and capricious decision. ***Pub. Emps.' Ret. Sys. v. Marquez***, 774 So. 2d 421, 430 (Miss. 2000) ("If an administrative agency's decision is not based on substantial evidence, it necessarily follows that the decision is arbitrary and capricious." (citing ***Miss. State Dep't of Health v. Natchez Cmty. Hosp.***, 743 So. 2d 973, 976 (Miss. 1999)). ABC's determination that a distance restriction existed under the Mississippi Medical Cannabis Act (the Act) is supported by nothing other than uncorroborated hearsay within hearsay. While hearsay may be admissible in an administrative proceeding, "uncorroborated hearsay [by itself] is not substantial evidence[.]" ***Williams v. Miss. Emp. Sec. Comm'n***, 395 So. 2d 964, 966 (Miss. 1981); *see* ***Noxubee Cnty. Bd. of Educ. v. Givens***, 481 So. 2d 816, 820 (Miss. 1985).

¶42. Further, when Green Cross sought to supplement the record on appeal to the circuit court with documentation necessary for a determination as to whether an actual-distance restriction existed under the Act, ABC successfully moved to quash it. Now on appeal to this Court, ABC renews its objection to these documents and asks that they be excluded from consideration by this Court, while reminding us that a court exceeds its authority if it allows evidence to be entered that is outside the record. ***Bd. of Law Enf't Officers Standards & Training v. Butler***, 672 So. 2d 1196, 1199 (Miss. 1996).

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[2] ABC and the Mississippi Department of Revenue (the DOR), not Green Cross, filed the notice of appeal challenging the circuit court's order that the application fee be refunded.

¶43. Both the United States and Mississippi Constitutions guarantee due process of law before an administrative agency. ***McFadden v. Miss. State Bd. of Med. Licensure***, 735 So. 2d 145, 158 (Miss. 1999) (citing U.S. Const. amend. XIV; Miss. Const. art. 3, § 14). Administrative actions must be "conducted in a fair and impartial manner, free from any just suspicion of prejudice, unfairness, fraud or oppression." ***Miss. State Bd. of Health v. Johnson***, 197 Miss. 417, 19 So. 2d 445, 447 (1944) (internal quotation mark omitted) (quoting ***State ex rel.Williams v. Whitman***, 156 So. 705, 710 (Fla. 1934)). "Due process always stands as a constitutionally grounded procedural safety net in administrative proceedings." ***McGowan v. Miss. State Oil & Gas Bd.***, 604 So. 2d 312, 318 (Miss. 1992), *cert. denied*, 506 U.S. 1052, 113 S. Ct. 976, 122 L. Ed. 2d 130 (1993). Notwithstanding this Court's "policy of according great weight and deference" to agencies discharging their responsibilities, agencies "do not have carte blanche authority to do as they please," and they "no less than others are subject to the rule of law the ultimate guardian of which in this state is this Court." ***Givens***, 481 So. 2d at 819. When an agency "has acted in a manner which is arbitrary and capricious and where its actions are not supported by substantial evidence, [our courts] and ultimately this Court have the responsibility to intervene." ***Id.*** at 820 (citing ***Madison Cnty. Bd. of Educ. v. Miles***, 252 Miss. 711, 173 So. 2d 425 (1965)).

¶44. When ABC denied Green Cross's license application on August 5, 2022, no administrative-hearing process was available for license applicants under the Act, which had just been enacted earlier that year. The Act's administrative-hearing process was available only to licensees aggrieved by a licensing agency's decision. For aggrieved applicants such

as Green Cross, their only recourse was judicial review in the circuit court sitting as an appellate court. *Cf.* Miss. Ann. Code § 67-1-72 (Rev. 2026) (providing an administrative-hearing process for applicants denied an alcohol permit under Mississippi's Local Option Alcoholic Beverage Control Law).

¶45. The Legislature changed this in its 2023 session by amending Mississippi Code Section 41-137-47 (Rev. 2023) to make the hearing process available to license applicants as well.

¶46. The Legislature also amended Mississippi Code Section 41-137-59 to provide that judicial review "by the circuit court shall be based on the record made before the agency." Miss. Code Ann. § 41-137-59(2)(b) (Rev. 2023). No such provision was contained in the original 2022 Act.

¶47. Yet ABC relied on the amended provision in its briefing to the circuit court when objecting to Green Cross's request to supplement the record with documents favorable to Green Cross's case. ABC contended that it did not use these documents when determining whether Green Cross was eligible for a medical-cannabis-dispensary license. The circuit court agreed with ABC and rejected Green Cross's request.

¶48. The record ABC submitted to the circuit court in support of its decision consisted of three emails sent by ABC Enforcement Agent Jacob Abel to ABC Chief Enforcement Agent Pat Daily and an affidavit by Agent Daily attesting that he had "reviewed the attached printouts of electronic mail[.]" The circuit court based its decision on what was contained in these emails—two generated on August 2, 2022, and one generated on September 21,

2022, after Green Cross had already filed its petition in the circuit court on August 8, 2022. ABC submitted no other documentation.

¶49. In the first August 2 email, Agent Abel said he recalled a conversation he had with the planning commissioner for the city of Oxford who told him about a possible conflict with a proposed cannabis dispensary and a church operating in a strip mall located next to the dispensary's proposed location.[3] Agent Abel said he then spoke by telephone with an employee for the owner of the strip mall who said a church was using a building in the strip mall to hold church services, but she did not know the church's name. The employee called Agent Abel back and told him the church's name is Wellspring Church, and it currently has a contract to purchase the entire building. Agent Abel said he attempted to contact the church but was unsuccessful and would "attempt to get further conformation on the possible real estate contract and compare it to Green Cross's . . . application date."

¶50. In the second August 2 email, Agent Abel said he drove by the location and saw a realtor's sign in front of the strip mall. He contacted the realtor who told him the strip mall was under contract with a church and was scheduled to close in ninety days. The realtor said the church could begin holding church services before closing for a fee, which had been paid. The realtor said the church had been occupying the building since July 15.

¶51. Based on these two emails, ABC informed Green Cross in an email on August 5, 2022, that its license application had been denied based on a distance restriction under the Act. The email did not inform Green Cross why there was a distance restriction; it simply

[3] The proposed dispensary location was not a part of the strip mall.

told Green Cross that if it wished to appeal the denial it must file a petition in the circuit court within twenty days of this decision. ABC refunded Green Cross the $25,000 nonrefundable annual license fee, but it did not refund the $15,000 application fee.

¶52. Karen Crumpler, on behalf of Green Cross and proceeding pro se, filed a petition in the circuit court on August 8, 2022. Counsel for Green Cross entered an appearance in the case on September 21, 2022. That same day, after ABC already had issued its final decision on August 8, Agent Abel sent a third email to Agent Daily of the DOR legal division saying he had spoken with the pastor for Wellspring Church, who had said the church was still planning on "closing/buying" the building. Agent Abel said he accessed the church's Facebook page and observed a church service recorded on July 17 in which the pastor said the service was the Church's first service in the building. Agent Abel concluded the email by saying he would provide further documentation once he received another email from the church's pastor.

¶53. That ABC was able to have the September 21 email included in the record submitted to the circuit court, while having documentation submitted by Green Cross excluded, shows just how unfair the process was for Green Cross.

¶54. Our review of this case should end here. These emails and an affidavit attesting to them is all that comprises the record ABC submitted to the circuit court in support of its decision to deny Green Cross's license application. This is not substantial evidence, and ABC knew or should have known that further documentation was necessary for review in the circuit court—particularly in this instance when no administrative-hearing process was

available to license applicants such as Green Cross. But ABC hastily made its decision without any supporting documentation and later (through the DOR's legal division) told the circuit court that such documentation was immaterial or unnecessary for its decision. I think not.

¶55. Even though the Act did not provide an administrative-hearing process for license applicants when ABC denied Green Cross's license application, it did provide for judicial review of ABC's decision. Thus, Rule 5.03 of the Uniform Civil Rules of Circuit and County Court Practice, which governs the scope of appeals from administrative agencies, applies. The rule provides:

> On appeals from administrative agencies the court will only entertain an appeal to determine if the order or judgment of the lower authority:
>
> 1. Was supported by substantial evidence; or
>
> 2. Was arbitrary or capricious; or
>
> 3. Was beyond the power of the lower authority to make; or
>
> 4. Violated some statutory or constitutional right of the complaining party.

UCRCCC 5.03. The Act provided the same standards requirement for the administrative-hearing process available only to aggrieved licensees when ABC made its decision in this case. S.B. 2095, Reg. Sess., 2022 Miss. Laws, ch. 303, § 24.

¶56. This Court has been clear: an administrative decision that is not supported by substantial evidence constitutes an arbitrary and capricious decision and will not stand on appeal. ***Givens***, 481 So. 2d at 820 (affirming chancery court's order requiring a school board

to reinstate a teacher because board's decision to discharge the teacher was based on uncorroborated hearsay and not substantial evidence); ***Marquez***, 774 So. 2d at 430 (affirming circuit court's order to reverse agency's decision and grant state-employee-disability benefits because the agency's decision to deny benefits was not supported by substantial evidence); ***Natchez Cmty. Hosp.***, 743 So. 2d at 976 (affirming chancery court's order to vacate and set aside Mississippi Department of Health's grant of a certificate of need for lack of substantial evidence); ***Freeman v. Pub. Emps.' Ret. Sys.***, 822 So. 2d 274, 282 (Miss. 2002) (reversing circuit court's ruling to affirm agency decision to terminate employee's disability benefits when the decision was not supported by substantial evidence and remanding to circuit court with instructions to remand to the agency for reinstatement of employee's disability status along with back pay); ***Pub. Emps.' Ret. Sys. v. Shurden***, 822 So. 2d 258, 264 (Miss. 2002) (affirming circuit court's reversal of agency decision to deny disability benefits because decision was not supported by substantial evidence and was thus arbitrary and capricious); ***Miles***, 173 So. 2d at 427 (affirming chancery court's order that principal be reinstated when his removal by the board was not based on substantial evidence).

¶57. That counsel for Green Cross says in its brief on appeal that the "substantial evidence" standard is not their argument is of no moment. This comment strikes merely as inadvertent given Green Cross's claim throughout that "there is no proof at all that Wellspring ever had any legally cognizable interest whatsoever in the property prior to Green Cross's application on July 30, 2022." The comment runs counter to Green Cross's claim that ABC duplicitously told the circuit court that there was an "uncontroverted contractual relationship," then asked

the court to exclude that contract from the record. And it runs completely counter to Green Cross's attempt to supplement the record with necessary documentation.

¶58. Moreover, it was ABC, not Green Cross, that filed a notice of appeal claiming the circuit court erred by ordering a refund. ABC tells this Court that "[t]he Department does not have the authority to refund the application fee and to do so would violate the plain language of the statutes."[4] ABC instructs us that the Legislature's reason for making the application fee nonrefundable "makes logical sense, as the Department of Revenue and Department of Health expend considerable time and resources investigating the applicants, the documents, and the proposed property locations as part of the process."

¶59. That does make logical sense. But as the scant record before us impresses, that was not done in this case—illustrated further by ABC's disclosure to the circuit court that any information other than what Agent Abel was told by third parties was immaterial to its decision.

¶60. Furthermore, ABC claims that by ordering a refund of the application fee, the circuit court erred as a matter of law. But whether an agency's decision is supported by substantial evidence also concerns a matter of law. ***Miss. Div. of Medicaid v. All. Health Ctr.***, 174 So. 3d 254, 261 (Miss. 2015) ("reviewing an agency's decision for the support of substantial evidence is an inquiry into the sufficiency of the evidence, which presents a question of law, ***Rogers v. State***, 599 So. 2d 930, 932 (Miss. 1992)[.]"). Even in cases in which judicial review is limited by a writ of certiorari, and courts are confined to the examination of

[4] Yet ABC found discretion to refund the nonrefundable license fee—for which the Act also makes no express provision.

questions of law arising or appearing on the face of the record, a decision not supported by substantial evidence runs contrary to the law and will not stand. *See, e.g.*, ***Gill v. Miss. Dep't of Wildlife Conservation***, 574 So. 2d 586, 591 (Miss. 1990) (addressing Mississippi Code Section 11-51-95 (Rev. 2019), which provides certiorari review of decisions by inferior tribunals).

¶61. Although Agent Abel alluded to the necessity of supporting documentation in the first August 2 email, ABC simply went with what Agent Abel said he was told by others and issued a final decision denying Green Cross's license application on August 5. Then, after Green Cross filed an appeal in circuit court, ABC buttressed its August 5 final decision with yet another email from Agent Abel reporting what he was told by a third party and mentioning once again that further documentation would be forthcoming.

¶62. ABC's course of action in this particular case evinces arbitrary and capricious conduct. This Court has said that "[a]n administrative act is 'arbitrary' when it is not done according to reason or judgment, but depending on the will alone." ***Bay St. Louis Cmty. Ass'n v. Comm'n on Marine Res.***, 808 So. 2d 885, 890 (Miss. 2001) (citing ***Burks v. Amite Cnty. Sch. Dist.***, 708 So. 2d 1366, 1370 (Miss. 1998)). "An administrative act is capricious when done without reason, in a whimsical manner, implying either lack of understanding or a disregard for the surrounding facts and settled controlling principles." ***Id.*** (citing ***Burks***, 708 So. 2d at 1370).

¶63. By mere happenstance, ABC heard that a church might be operating near Green Cross's proposed location. ABC then summarily concluded that a distance restriction existed

under the Act based solely on what ABC was told by third persons. While slight inquiry by an investigative body charged with such duties may suffice in circumstances in which the existence of an entity listed by Section 41-137-35(16) is factually obvious and indisputable so that no reasonable person could contest, that was not the case here.

¶64. These circumstances presented a factual question as to whether a church "exists or has acquired necessary real property for the operation of such facility" as contemplated by Section 41-137-35(16) so as to preclude Green Cross from receiving a license to operate at its proposed location. ABC thus had the duty and responsibility to shore up its investigation into this matter with documentation necessary for adequate appellate review of its final decision. ABC, however, doubled down on its course of action with the contention that supporting documentation was unnecessary for its decision and that such documentation was outside the record, thus precluding any consideration of it by a reviewing court.

¶65. Karen Crumpler, on behalf of Green Cross, did everything that reasonably could be expected of her to do under the circumstances to comply with the Act. ABC, by its own admission, did not. ABC then utilized to its end the lack of adequate process available to Crumpler at the time. And rather than leave well enough alone with the circuit court's order that ABC issue Green Cross a refund, ABC now comes to this Court claiming that its decision to deny the license application was based on substantial evidence and that we must reverse the circuit court's order.

¶66. As shown, ABC's decision was not based on substantial evidence, and it should have been reversed as a matter of law. ***Givens***, 481 So. 2d at 820. The majority, however, accedes

to ABC, finding as fact from unsubstantiated hearsay that a church was in "existence" prior to Green Cross's submitting its application.

¶67. First, this Court should not be determining the scope and applicablity of Section 41-137-35(16) on the evidence of this case, which is no evidence at all under this Court's precedent. ***Williams***, 395 So. 2d at 966; ***Givens***, 481 So. 2d at 820. Second, as matter of common sense, the term *exists* means more than mere existence as evinced by the conjunction "or" before the language "has acquired necessary real property for the operation of such facility." Were it not to, then any entity (no matter its temporary status) conducting church services would fall within the purview of Section 41-137-35(16), leaving its applicability to the whims of a licensing agency interpreting the section as it sees fit.

¶68. While I disagree with the circuit court's holding that ABC's August 5 final decision was based on substantial evidence, I agree with the court's order that ABC refund Green Cross's $15,000 application fee. Given the length of time that has passed since this case began, as well as the procedural posture of it, refund of the application fee is the proper remedy.

¶69. Thus, I would reverse the circuit court's order affirming ABC's denial of Green Cross's application, and I would affirm the circuit court's order that ABC refund Green Cross's application fee.

KING, P.J., AND ISHEE, J., JOIN THIS OPINION.