

IN THE SUPREME COURT OF ARKANSAS

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STATE OF ARKANSAS, *ex rel.*  
LESLIE RUTLEDGE, ATTORNEY GENERAL

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v. Case No. CV-18-296

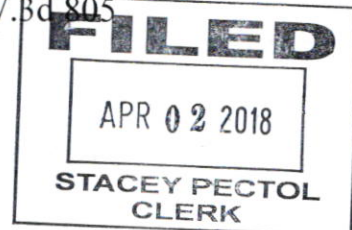
SCOTT ELLINGTON

RESPONDENT

EMERGENCY PETITION FOR WRIT OF MANDAMUS

Pursuant to Arkansas Supreme Court Rule 6-1(a)(1), the State of Arkansas hereby petitions for an emergency writ of mandamus ordering Scott Ellington, the Prosecuting Attorney for the Second Judicial District of Arkansas, to immediately nonsuit the claims that he purported to bring on the State's behalf in *State of Arkansas, ex rel. Scott Ellington, et al. v. Purdue Pharma, L.P., et al.*, Crittenden County Circuit Court, No. 18CV-18-268 ("Crittenden Litigation").

1. This case is about who represents the people and State of Arkansas. Our Constitution makes the Attorney General the State's "chief law officer" and entrusts her with responsibility for managing the State's civil legal affairs. *State ex rel. Williams v. Karston*, 208 Ark. 703, 708, 187 S.W.2d 327, 329 (1945); *see* Ark. Const. art. VI, sec. 22; *see also Holloway v. Ark. St. Bd. of Architects*, 79 Ark. App. 202, 214, 86 S.W.3d 391, 399-400 (2002) ("As a constitutional officer, the Attorney General has been entrusted with broad duties as the State's chief civil law officer and is expected to discharge these public duties to the best of his or her abilities."), *overruled in part on other grounds*, 325 Ark. 427, 101 S.W.3d 805



(2003). Foremost among those responsibilities is her exclusive duty to “be the attorney for all state officials, departments, institutions, and agencies” and “prosecute any suit brought on behalf of the state.” Ark. Code Ann. 25-16-702(a), (b)(2).

2. By vesting that authority exclusively in the Attorney General, the General Assembly sought to avoid intragovernmental conflict and to ensure that the State speaks with one voice. Indeed, the very fact that the State has been compelled to seek relief from this Court to resolve a wholly unnecessary conflict aptly illustrates the wisdom of that considered judgment.

3. Despite that clear judgment, on March 15, 2018, Ellington filed a civil lawsuit in the State’s name in Crittenden County Circuit Court. Add. 1-143. That lawsuit seeks millions of dollars in damages that the State has incurred as a result of the national opioid epidemic. But lacking the resources to successfully prosecute that action, Ellington associated with private, out-of-state attorneys who are not accountable to the Governor, the Attorney General, the General Assembly, or the people of Arkansas. Violating principles of good government and public policy, as a result of Ellington’s actions, those same private attorneys also stand to claim *significant* damages (in excess of the contingency fee caps set forth in Arkansas law) that would otherwise go to the State to address the opioid epidemic. Yet without this Court’s immediate intervention, the actions of those private attorneys and Ellington will decisively prejudice the State’s ability to pursue its own case against

opioid manufacturers. That case, filed in Pulaski County Circuit Court, is *State v. Purdue Pharma L.P., et al.*, No. 60CV-18-2018 (“State’s Opioid Litigation”).

4. While that alone justifies emergency relief, this Court’s intervention is also required because Ellington’s unlawful actions have impaired the State’s sovereignty and threaten to hamstring our statewide, constitutional officers’ ability to carry out the will of the people. Indeed, permitting a single prosecutor—who is accountable to only *some* Arkansans—to direct the entire State’s actions would set a dangerous precedent that is inconsistent with principles of representative government.

5. To end that harm, the State brings this emergency petition for a writ of mandamus ordering Ellington to immediately nonsuit the claims that he purported to bring on the State’s behalf in the Crittenden Litigation.

### **Background**

6. On January 24, 2018, the Attorney General publicly announced an investigation of the manufacturers of prescription opioids for suspected violations of Arkansas law, including among other things, the Medicaid Fraud False Claims Act, Ark. Code Ann. 20-77-901, *et seq.*, and the Deceptive Trade Practices Act, Ark. Code Ann. 4-88-101, *et seq.*, which she enforces.

7. Despite the Attorney General’s announced investigation, on March 15, 2018, Ellington filed the Crittenden Litigation as relator for the State. Add. 1-143. In that litigation, Ellington, several cities and counties, and their private, out-of-