

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
CIVIL DIVISION**

DORIS IVY JACKSON, LAVERNE SIMS,  
JESSELIA MAPLES, STEVEN GRAPPE,  
VERONICA MCCLANE, and  
CITIZENS FOR ARKANSAS PUBLIC  
EDUCATION AND STUDENT (CAPES),  
a Ballot Question Committee

PLAINTIFFS

v.

Case No. \_\_\_\_\_

ARKANSAS DEPARTMENT OF EDUCATION;  
JACOB OLIVA, in his official capacity as  
Arkansas Secretary of Education;  
RANDY HENDERSON, in his official capacity as a  
member of the Arkansas State Board of Education;  
JEFF WOOD, in his official capacity as a  
member of the Arkansas State Board of Education;  
ADRIENNE WOODS, in her official capacity as a  
member of the Arkansas State Board of Education;  
STEVE SUTTON, in his official capacity as a  
member of the Arkansas State Board of Education;  
O. FITZGERALD HILL, in his official capacity as a  
member of the Arkansas State Board of Education;  
OUIDA NEWTON, in her official capacity as a  
member of the Arkansas State Board of Education;  
SARAH MOORE, in her official capacity as a  
member of the Arkansas State Board of Education; and  
KATHY McFETRIDGE, in her official capacity as a  
member of the Arkansas State Board of Education;  
LISA HUNTER, in her official capacity as a  
member of the Arkansas State Board of Education;  
FRIENDSHIP EDUCATION FOUNDATION, and  
MARVELL-ELAINE SCHOOL DISTRICT

DEFENDANTS

**COMPLAINT**

Come now Plaintiffs, Jesselia Maples, Doris Ivy Jackson, Laverne Sims, Steven Grappe,  
Veronica McClane, and CAPES, by and through their attorney, Ali Brady Noland of Noland  
Law Firm, and state the following for their Complaint:

1. This Complaint seeks judicial relief pertaining to *ultra vires*, illegal, and unconstitutional actions taken by the Arkansas Department of Education (“the Department”), the State Board of Education (“the Board”), and Arkansas Secretary of Education Jacob Oliva (“the Secretary”), collectively referred to herein as Defendants.

2. On Friday, May 5, 2023, the Board voted unanimously to authorize the Secretary to enter into a “transformation contract” with charter-school management company Friendship Education Foundation to manage and operate the Marvell-Elaine School District pursuant to authority granted in Section 14 of the Arkansas LEARNS Act, Act 237 of 2023.

3. Act 237 is not law in the State of Arkansas as of the filing of this Complaint, making the Board’s actions, and any further action by the Secretary to enter into a “transformation contract” on behalf of the Marvell-Elaine School District, *ultra vires* and illegal.

4. Section 73 of Act 237, entitled “Emergency Clause,” was not passed by a separate roll-call vote garnering a two-thirds majority, as is required by Article 1, Section 5 of the Constitution of the State of Arkansas.

5. The facts articulated in Section 73(a) of Act 237 do not constitute an emergency under Article 5, Section 1 of the Constitution of the State of Arkansas and the Arkansas Supreme Court’s holding in *Safe Surgery Arkansas, A Ballot Question Committee v. Thurston*, 2019 Ark. 403 (Dec. 17, 2019).

6. Therefore, the Emergency Clause in the Arkansas LEARNS Act is invalid and ineffective, meaning that the law is not yet operable in Arkansas, and it cannot provide the Board or Secretary any legal authority to enter into a “transformation contract” regarding the Marvell-Elaine School District.

7. Plaintiffs seek a declaratory judgment ruling that the emergency clause in all available relief to stop Defendants' unlawful acts

### **PARTIES**

8. Plaintiff Jesselia Maples is an Arkansas citizen residing in Phillips County.

9. Plaintiff Doris Ivy Jackson is an Arkansas citizen residing in Phillips County.

10. Plaintiff Laverne Sims is an Arkansas citizen residing in Phillips County.

11. Plaintiff Steven Grappe is an Arkansas citizen residing in White County.

12. Plaintiff Veronica McClane is an Arkansas citizen residing in Pulaski County.

13. Citizens for Arkansas Public Education and Students is a Ballot Question Committee with its principal address in Pulaski County.

14. Each Plaintiff pays state and local taxes.

15. The Arkansas Department of Education is an administrative agency of the State of Arkansas with its principal address in Pulaski County.

16. The nine-member Arkansas State Board of Education is the policy-making body for public elementary and secondary education in Arkansas. The members of the State Board are appointed by the governor.

17. Defendant Jacob Oliva is the Secretary of the Arkansas Department of Education. He currently administers the Marvell-Elaine School District as its de facto school board following a vote by the State Board of Education to take over the district and dissolve the locally elected school board.

18. Defendant Ouida Newton is the Chair of the State Board.

19. Defendant Lisa Hunter is a State Board member.

20. Defendant Jeff Wood is a State Board member.

21. Defendant Randy Henderson is a State Board member.

22. Defendant O. Fitzgerald Hill is a State Board member.

23. Defendant Adrienne Woods is a State Board member.

24. Defendant Sarah Moore is a State Board member.

25. Defendant Kathy McFetridge is a State Board member.

26. Defendant Steve Sutton is a State Board member.

27. Defendant Friendship Education Foundation is a 501(c)(3) organization with its principal address in Washington, D.C. It is registered with the Arkansas Secretary of State's Office, and its registered agent, Joe Harris, lists an address in Little Rock, Arkansas.

28. Each of the named Defendants engaged in the acts and votes complained of herein in an effort to apply and enforce provisions of the Arkansas LEARNS Act, Act 237 of 2023, before the date when it becomes operative law. They are each therefore exercising authority outside of and beyond that currently granted to them by Arkansas law. Each defendant continues to fail or refuse to remedy their illegal and unlawful acts, failures, and abuses of power.

29. Friendship Education Foundation and Marvell-Elaine School District are included as parties to this action pursuant to Arkansas Code Annotated section 16-111-111.

#### **JURISDICTION AND VENUE**

30. The acts, failures, and decisions complained of herein occurred in Pulaski County, Arkansas.

31. Jurisdiction and venue are proper in Pulaski County pursuant to Ark. Code Ann. § 16-55-213.

32. Judicial review of state agency action, or inaction, is proper in Pulaski County under the APA, pursuant to Ark. Code Ann. § 25-15-212(b)(1)(B).

## FACTS

33. Plaintiff Jesselia Maples is a Marvell-Elaine School District parent. She is also a member of Concerned Citizens of the Marvell Area.

34. Plaintiff Laverne Sims is a resident of Marvell, Arkansas, and the Chair of Concerned Citizens of the Marvell Area.

35. Plaintiff Doris Ivy Jackson is a resident of Marvell, Arkansas, and is the Co-Chair of Concerned Citizens of the Marvell Area.

36. Plaintiffs Jesselia Maples, Doris Jackson, and Laverne Sims, along with other members of the Marvell community, have informally organized using the name Concerned Citizens of the Marvell Area. Concerned Citizens of the Marvell Area is not registered with the Secretary of State's Office and is not an officially recognized entity in the State of Arkansas. It is the name that group members use to describe and identify their collective advocacy and volunteerism aimed at bettering the Marvell community.

37. Plaintiff Veronica McClane is a Little Rock School District parent and a member of Citizens for Arkansas Public Education and Schools (CAPES), a Ballot Question Committee.

38. Plaintiff Steve Grappe is a resident of Rose Bud, Arkansas, and is the chairperson for CAPES.

39. CAPES is a legally registered Ballot Question Committee. Members of CAPES filed a Statement of Organization on April 10, 2023. CAPES is currently engaged in efforts to repeal, through a citizen-initiated referendum petition, the Arkansas LEARNS Act, Act 237 of 2023. In furtherance of that effort, CAPES has engaged legal counsel, submitted a proposed ballot title to the Arkansas Attorney General's Office, raised funds to support their referendum campaign, and started training volunteers to gather signatures.

40. The Marvell-Elaine School District is a public entity formed pursuant to the laws of the State of Arkansas.

41. In November 2022, the Arkansas State Board of Education voted to classify Marvell-Elaine School District as in need of Level 5-Intensive Support pursuant to Arkansas Code Annotated section 6-15-2915.

42. Marvell-Elaine is a small district. During the 2020-2021 and 2021-2022 school years, the State Board of Education voted to grant Marvell-Elaine School District a waiver, pursuant to Arkansas Code Annotated § 6-13-1613, regarding consolidation for districts with student enrollment less than the state-designated minimum of 350. The State Board based its vote on findings of fact that established that a waiver was warranted.

43. In December 2022, the State Board of Education reversed its previous votes and denied Marvell-Elaine School District's request for a minimum school size waiver pursuant to Arkansas Code Annotated § 6-13-1613.

44. On Thursday, April 13, 2023, the State Board of Education voted to take over the Marvell-Elaine School District, pursuant to its classification as in need of Level 5-Intensive Support, stripping its elected school board of the authority to govern the district and directing the Secretary of Education, Jacob Oliva, to act as the district's school board.

45. On Thursday, April 13, 2023, the State Board of Education also again reversed itself and voted to allow the Marvell-Elaine School District to remain open without consolidating with another nearby district.

46. At the April 13, 2023, meeting, the State Board of Education directed the Secretary to explore the option of entering into a "transformation contract," pursuant to the Arkansas

LEARNS Act, Act 237 of 2023, with a charter-school management company, to assume management of the Marvell-Elaine School District.

47. On Thursday, May 4, 2023, the Arkansas Department of Education provided public notice that the State Board of Education planned to hold a special meeting on Friday, May 5, 2023, at the Arch Ford Education Building in Little Rock, at which they would vote on an action item to authorize and direct the Secretary to enter into a “transformation contract” with Friendship Education Foundation, a charter-school management company), to operate the Marvell-Elaine School District.

48. The State Board of Education did not publicly release the draft contract or the basic terms of the contract prior to the meeting.

49. Due to the short notice provided for the meeting, the fact that it was held in Little Rock (roughly one-hundred miles from the Marvell-Elaine School District), and the fact that the meeting was held during the work day, the Plaintiffs and other concerned Marvell-Elaine residents were unable to attend the meeting.

50. Prior to the meeting, Plaintiffs Maples, Sims, and Jackson, retained legal counsel to represent them at the meeting.

51. On May 5, prior to the State Board meeting, Plaintiff’s counsel emailed the members of the State Board and the Secretary of Education a four-page letter advising them that they lacked legal authority to vote on the action item before them because a “transformation contract” is an option created by Section 14 of the Arkansas LEARNS Act, Act 237 of 2023, and Section 14 of the Arkansas LEARNS Act is not yet operative law in the State of Arkansas because the emergency clause in Act 237 is defective and invalid in multiple ways.

52. Counsel also appeared at the State Board meeting on May 5, 2023, and verbally advised the State Board and the Secretary of Education the vote they planned to take was not authorized by law.

53. On May 5, 2023, the Arkansas State Board of Education voted unanimously to authorize and direct the Secretary to execute a contract with Friendship Education Foundation, a charter-management company, to oversee management of the Marvell-Elaine School District.

54. CAPES is a Ballot Question Committee currently working to repeal the Arkansas LEARNS Act, Act 237 of 2023, through a citizen-initiated referendum election pursuant to Article 1, Section 5 of the Arkansas Constitution.

55. CAPES and the individual Plaintiffs who are members of CAPES, Steven Grappe and Veronica McClane, have an interest in determining the effective date of the LEARNS Act, as it will impact the timeline and practical effect of their efforts to gather petition signatures. If the emergency clause is invalid, a referendum petition would cause the law to be held in abeyance until after a November 2023 election.

56. The Arkansas LEARNS Act, Act 237 of 2023, contains an emergency clause, Section 73, which is divided into multiple subsections, each of which applies only to specified parts of the 145-page omnibus law. Section 73(a) is the only portion of the emergency clause that purports to cover Section 14, which is the section of the LEARNS Act that creates the concept of a “transformation contract.”

57. The emergency clause contained in the Arkansas LEARNS Act, Act 237 of 2023, is invalid and ineffective.

58. On Thursday, February 23, 2023, at approximately 1:47 p.m., the Arkansas Senate voted to pass the LEARNS Act, then Senate Bill 294, with twenty-five senators voting in favor of



the bill, seven voting against it, and three not voting, Only one roll-call vote was taken. There was not a separate roll-call vote as to the bill’s emergency clause.

59. On Thursday, March 2, 2023, at approximately 2:50 p.m., the Arkansas House of Representatives voted to pass the LEARNS Act, with seventy-eight members voting in favor, twenty-one voting against, and one member voting present. Just prior to casting their ballots, the members were advised, “you are voting on the bill and the emergency clause.” There was only one roll-call vote taken. The Arkansas House of Representatives did not take a separate roll-call vote on the question of whether to enact the emergency clause.

60. On Tuesday, March 7, 2023, at approximately 3:37 p.m., the Arkansas Senate voted to concur in the House Amendment to SB294, the Arkansas LEARNS Act with twenty-six votes to concur in the amendment and eight votes against the amendment. Only one roll-call vote was taken. A separate roll-call vote on the emergency clause did not occur. However, upon tallying the votes, Lieutenant Governor Leslie Rutledge announced, “By a vote of 26 yay, 8 nay, senate bill 294, as amended, and the corresponding emergency clause pass, enroll it.”

61. SB294 was then transferred to the desk of Governor Sarah Huckabee Sanders, who signed the bill on March 8, 2023.

62. The content, procedural requirements, and effect of attaching an emergency clause to a piece of legislation is governed by Article 5, Section 1 of the Constitution of the State of Arkansas. The relevant section of Article 5, Section 1 states in full:

**Emergency.** If it shall be necessary for the preservation of the public peace, health and safety that a measure shall become effective without delay, such necessity shall be stated in one section, and if upon a yea and nay vote two-thirds of all the members elected to each house, or two-thirds of all the members elected to city or town councils, **shall vote upon separate roll call in favor of the measure going into immediate operation**, such emergency measure shall become effective without delay. It shall be necessary, however, to state the fact which constitutes such emergency.

Provided, however, that an emergency shall not be declared on any franchise or special privilege or act creating any vested right or interest or alienating any property of the State. If a referendum is filed against any emergency measure such measure shall be a law until it is voted upon by the people, and if it is then rejected by a majority of the electors voting thereon, it shall be thereby repealed. The provision of this sub-section shall apply to city or town councils. (Emphasis added).

63. The current Arkansas House of Representatives Legislative Procedure Manual, available at [www.ArkansasHouse.Org](http://www.ArkansasHouse.Org), states that,

“If the enactment contains an emergency clause, **it must be separately voted upon** and include enough facts to justify the emergency, and include the language that immediate effectiveness is necessary to preserve the peace, health, and safety of the public.” (Emphasis added).

64. When passing the LEARNS Act, Act 237 of 2023, the Arkansas General Assembly failed to take a separate roll-call vote to approve or reject the emergency clause.

65. When questioned about this issue since the Plaintiffs raised it at the Arkansas State Board of Education meeting on Friday, May 5, 2023, the Chief Information Officer for the Arkansas House of Representatives, Cecillea Pond-Mayo, has repeatedly provided the following response:

“Emergency clause votes are recorded separately in the House Journal. Voting in the House is a matter of process which the House has the authority to determine.”

66. No official representative of the Arkansas General Assembly, the Department of Education, the Governor’s Office, or any other government agency or office has denied that the Arkansas LEARNS Act was passed in each chamber with a single roll call vote rather than the prescribed separate votes. The court can take judicial notice of the publicly available videos of each vote, available on the Arkansas General Assembly’s website, [www.arkleg.org](http://www.arkleg.org).

67. Section 73(a) is the only part of the emergency clause in Act 237 that references Section 14, the portion of the law authorizing “transformation contracts.”

68. Section 73(a) of Act 237 reads as follows:

It is found and determined by the General Assembly of the State of Arkansas that the provision of educational services to children in the State of Arkansas impacts the public peace, health, and safety through its effect upon student learning, which is critical for the future success of the state; that the act amends substantial portions of the Arkansas Code as it pertains to prekindergarten through grade twelve (preK-12) education in the State of Arkansas; that these amendments are extensive and will require new rules and procedures to be developed to implement the changes; that many of the changes to the Arkansas Code will require that certain procedures are put in place before the beginning of the 2023-2024 school year; that this act is immediately necessary in order to give local public school districts time to update school district policies to account for changes created by this act to provide necessary educational services; and that this act is immediately necessary in order to give the Department of Education time to promulgate rules necessary to implement this act to provide necessary educational services. Therefore, an emergency is declared to exist, and Sections 1-6, 8, 11-21, 23-31, 35, 37-42, 44, 46-57, and 59 of this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

- (1) The date of its approval by the Governor;
- (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or
- (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

69. The facts articulated in Section 73(a) of Act 237 do not constitute an emergency under the standards articulated in Article 1, Section 5 of the Arkansas Constitution and in binding Arkansas Supreme Court precedent interpreting that provision.

70. In *Safe Surgery Arkansas, A Ballot Question Committee v. Thurston*, 2019 Ark. 403 (Dec. 17, 2019), the Arkansas Supreme Court invalidated an emergency clause because it failed to state facts sufficient to meet the constitutional threshold for establishing an emergency. The Arkansas Supreme Court explained that, “not just any alleged ‘fact’ qualifies as an ‘emergency’ under the Arkansas Constitution; emergency clauses are appropriate only ‘[i]f it shall be necessary for the preservation of the public peace, health and safety that a measure shall become effective

without delay[.]’ *Id.* In this context, “the word ‘emergency’ in its most accepted usage means some sudden or unexpected happening that creates a need for action.” *Burroughs v. Ingram*, 319 Ark. 530, 534, 893 S.W.2d 319, 321 (1995). In *Safe Surgery Arkansas*, the supreme court rejected the emergency clause because it found that “the only ‘sudden or unexpected happening’ that could have created the requisite ‘need for action’ here would be the passage of Act 376 itself.”

71. The only articulated facts in Section 73(a) of Act 237 describe purported “emergencies” of the legislature’s own making, caused by the passage of Act 237. The Arkansas Supreme Court’s binding precedent in *Safe Surgery Arkansas* hold that the passage of the bill in which the emergency clause is found cannot, itself, create the emergency.

72. Since counsel advised the State Board and the Secretary of Education on May 5, 2023, that the Arkansas LEARNS Act is not yet effective, Secretary of Education Jacob Oliva has made statements to the media implying that, should the Plaintiffs seek judicial protection against the State Board’s order that the Secretary enter into an illegal “transformation contract” with Friendship Education Foundation, the State Board may retaliate by ordering that the Marvell-Elaine School District be consolidated. Specifically, on May 6, 2023, THV11 reporter Rolly Hoyt tweeted that Secretary Oliva “question[ed] why critics would rather see the district go away rather than beginning the of getting Marvell-Elaine out from its current state by working with an established charter operator.”

73. The Plaintiffs do not want Marvell-Elaine School District to be consolidated, dissolved, or divided.

74. The Plaintiffs want the State Board and the Secretary of Education to slow down the process and include parents, community members, and local elected officials in the monumental decision of whether or not to enter into a “transformation contract” at all, and if so,

the selection of the entity with the whom the district will contract and the terms of the contract. Requiring the State Board and Secretary of Education to wait until the LEARNS Act become law before executing the contract accomplishes this goal.

75. For example, the Plaintiffs who are members of Concerned Citizens of the Marvell Area are concerned that cost of the transformation contract, which would be \$250,000 and \$200,000 per year after that, to be paid out of the Marvell-Elaine School District budget, will reduce the funds available for providing educational resources to Marvell-Elaine students. This concern is especially critical for a small district like Marvell-Elaine, which has many of the same overhead costs as larger districts but has fewer students and therefore receives less per-student foundation funding to cover those costs. Additionally, the Marvell Plaintiffs would like to provide input on the duration of the contract, the terms of its renewal or nonrenewal, and the specific services that the charter-management company will be obligated to provide pursuant to the contract. Finally, the Marvell Plaintiffs are concerned about whether the district will continue to pay a superintendent a full-time salary while also paying Friendship Education Foundation over \$200,000 per year to manage the district.

76. CAPES, Steven Grappe, and Veronica McClane have an interest in this suit because they are engaged in efforts to repeal the Arkansas LEARNS Act, and pursuant to Article 5, Section 1 of the Arkansas Constitution, the question of whether the emergency clause found in Act 237 of 2023 is valid will determine whether the goes into effect before a November 2023 referendum election.

### **CAUSES OF ACTION**

77. Plaintiffs incorporate each of the previous paragraphs by reference as part of the allegations supporting each of Plaintiffs' causes of action against Defendants.

## ARKANSAS ADMINISTRATIVE PROCEDURE ACT

78. The State Board is a state agency. Its decisions are subject to the Arkansas Administrative Procedure Act (APA), Arkansas Code Annotated § 25-15-101, et seq.

79. The State Board Defendants violated and continue to violate the APA by voting on May 5, 2023, to authorize and direct the Secretary to enter into a “transformation contract,” pursuant to Act 237 of 2023, which is not yet operable law, by which a third-party charter-school management company, Friendship Education Foundation, would assume control of the day-to-day management of the district and would be entitled to receive hundreds of thousands of dollars in payment, taken out of the district’s operating budget.

80. This action violates Article 1, Section 5 of the Constitution of the State of Arkansas.

81. Ark. Code Ann. § 25-15-212(a) permits citizens of the State of Arkansas to initiate an action against a state agency when he or she is harmed by the agency’s actions.

82. Ark. Code Ann. § 25-15-212(c) authorizes the circuit court to stay the agency action “upon such terms as may be just.”

83. Ark. Code Ann. § 25-15-212(h) states:

The court may affirm the decision of the agency or remand the case for further proceedings. It may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the agency's statutory authority;
- (3) Made upon unlawful procedure;
- (4) Affected by other error or law;
- (5) Not supported by substantial evidence of record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion.

84. Plaintiffs contend that the Board’s decision was in violation of the constitution and in excess of the agency’s statutory authority, and request that this court stay, enjoin, prohibit, and reverse the Defendants decision to execute a “transformation contract” with Friendship Education

Foundation regarding the Marvell-Elaine School District before such time as the Arkansas LEARNS Act becomes operable law.

85. Plaintiffs further contend that, given the State Board’s recent vote not to consolidate the Marvell-Elaine School District and the Secretary’s reported statements threatening that legal action might result in the district “going away,” any vote to consolidate the Marvell-Elaine School District prior to the full adjudication and resolution of this pending litigation would retaliatory and would therefore be subject to reversal pursuant to Ark. Code Ann. § 25-15-212(h)(6) as “arbitrary, capricious, or characterized by abuse of discretion.”

#### DECLARATORY JUDGMENT

86. Ark. R. Civ. P. 57 permits declaratory judgments.

87. Ark. Code Ann. §§ 16-111-101 *et seq.* permits this Court to declare legal rights.

88. Plaintiffs are persons “whose rights, status or other legal relations are affected by a statute,” and thus may obtain a “declaration of rights, status or other legal relations thereunder” pursuant to Ark. Code Ann. § 16-111-102.

89. Plaintiffs seek a declaration regarding the following:

- a. The emergency clause, Section 73, of the Arkansas LEARNS Act, Act 237 of 2023, is invalid and inoperable because it was not passed by a separate two-thirds majority vote in either the Arkansas House or Arkansas Senate, as is required by Article 1, Section 5 of the Arkansas Constitution;
- b. Section 73(a) of Act 237, which is the only portion of the emergency clause that references Section 14, the provision creating “transformation contracts,” is invalid and inoperative because the facts articulated in Section 73(a) do not constitute an emergency and do not meet the constitutional threshold for

establishing a valid emergency under the Arkansas Supreme Court’s precedent in *Safe Surgery Arkansas, A Ballot Question Committee v. Thurston*, 2019 Ark. 403 (Dec. 17, 2019); and

- c. The emergency clause, Section 73, of Act 237 of 2023 is also invalid and inoperative because it specifies only certain sections of the Act to go into immediate effect and attempts to designate other portions to become effective at various other dates. Article 1, Section 5 of the Arkansas Constitution states that, “if it shall be necessary for the preservation of the public peace, health and safety that *a measure* shall become effective without delay . . . .” (emphasis added). The Arkansas Constitution provides for the adoption of an emergency clause as to an entire piece of legislation, which was not done in Act 237 of 2023.

90. Thus, this Court should declare Plaintiffs’ right to live, work, educate their children, and pursue the constitutionally guaranteed option of a citizen-initiated referendum petition free from the premature and illegal application of Act 237 of 2023.

#### ULTRA VIRES

91. An *ultra vires* action is one taken by a state actor in the absence of statutory or other legal power.

92. Defendants act here to create a “transformation contract” governing the Marvell-Elaine School District pursuant to specific powers created by and defined in the Arkansas LEARNS Act, Act 237 of 2023.

93. Act 237 of 2023 is not yet effective or operative law in the State of Arkansas because the emergency clause contained therein:



- a. was not passed with a separate two-thirds majority roll-call vote in both the House and Senate as required by Article 5, Section 1 of the Arkansas Constitution;
- b. does not contain a recitation of facts sufficient to establish an emergency pursuant to Article 5, Section 1 of the Arkansas Constitution and the Arkansas Supreme Court’s holding in *Safe Surgery Arkansas, A Ballot Question Committee v. Thurston*, 2019 Ark. 403 (Dec. 17, 2019); and
- c. attempts to declare an emergency as to only certain parts of Act 237, which violates Article 5, Section 1 of the Arkansas Constitution, which allows the legislature to declare an emergency as to a “measure.”

94. Aside from Act 237 of 2023, which is not yet law, the Defendants have no legal basis for the creation of a “transformation contract,” or for paying a third-party charter-school management company hundreds of thousands of dollars out of a public school district’s operating budget and granting the charter-school management company any authority to manage, govern, or run a public school district.

#### ILLEGAL EXACTION

95. Should the Secretary direct or authorize any money to be paid from the Marvell-Elaine School District budget to Friendship Education Foundation pursuant to the “transformation contract,” such payment would constitute an illegal exaction because it would be an expenditure of public funds not authorized by and contrary to state law.

96. An illegal exaction is the imposition of a tax or the expenditure of public funds that is not authorized or which is contrary to law. *Buonaiuto v. Gibson*, 2020 Ark. 352; *Hartwick v. Thorne*, 300 Ark. 502, 780 S.W.2d 531 (1989).

97. Article 16, section 13 of the Arkansas Constitution confers the right upon any citizen to institute suits in his or her own behalf and on behalf of all other interested citizens to protect against any illegal exaction. *Id.* Pursuant to this cause of action, citizens may enjoin the misapplication of public funds. *Id.*

98. This Court must therefore enjoin, stay, prohibit, or otherwise prevent the illegal actions taken by Defendants in the absence of legal authority.

### **RELIEF REQUESTED**

99. Plaintiffs request a declaratory judgment pursuant to Ark. Code Ann. §§ 16-111-101 *et seq.*:

- a. declaring that the emergency clause in Act 237 of 2023 is invalid and ineffective because it was not passed by a separate roll-call vote as required by Article 1, Section 5 of the Arkansas Constitution,
- b. declaring the that Section 73(a), the portion of the emergency clause that relates to the creation of “transformation contracts,” is invalid and ineffective because it fails to state facts sufficient to establish an emergency pursuant to Article 1, Section 5 of the Arkansas Constitution and Arkansas Supreme Court precedent,
- c. declaring that the emergency clause in Act 237 of 2023 is invalid and ineffective because it attempts to declare an emergency as to only some provisions in the act, in contradiction of Article 5, Section 1 of the Arkansas Constitution, which allows the legislature to declare an emergency as to the “measure” as a whole,
- d. declaring that the State Board and Secretary lack any legal authority to execute a “transformation contract” between the Marvell-Elaine School District and Friendship Education Foundation until such time as Act 237 shall become law,

- e. declaring that the State Board’s vote to authorize and direct the Secretary to enter into a “transformation contract” between Marvell-Elaine School District and Friendship Education Foundation violated the Arkansas Administrative Procedure Act, and
- f. declaring that any public money expended in relation to a “transformation contract” under Act 237 prior to the date that Act 237 becomes operative law constitutes an illegal exaction.

100. Plaintiffs request a temporary restraining order or, alternatively, a preliminary injunction, providing prohibitory injunctive relief against the execution of a “transformation contract” governing Marvell-Elaine School District prior to such time as the Arkansas LEARNS Act, Act 237 of 2023, becomes operative law.

101. Plaintiffs further request a temporary restraining order, or alternatively, a preliminary injunction, barring the State Board and the Secretary from retaliating against the Plaintiffs by dividing, dissolving, or consolidating the Marvell-Elaine School District.

102. Should the court deny the Plaintiff’s request for a temporary restraining order, the Plaintiffs alternatively request a preliminary injunction, with a hearing to be set at the earliest possible date.

WHEREFORE, Plaintiffs request the Court grant their Motion for Temporary Restraining Order or, Alternatively, Motion for Preliminary Injunction, grant their request for declaratory relief, and grant all other relief to which they are entitled.

Respectfully submitted,

By: /s/ Ali Noland  
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