

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
ELEVENTH DIVISION

ARKANSAS BOARD OF CORRECTIONS; and
BENNY MAGNESS, in his official capacity as
CHAIRMAN OF THE ARKANSAS
BOARD OF CORRECTIONS

PLAINTIFFS

CASE NO. 60CV-23-9598

SARAH SANDERS, in her official capacity as
GOVERNOR OF ARKANSAS;
JOE PROFIRI, in his official capacity as
SECRETARY OF THE ARKANSAS
DEPARTMENT OF CORRECTIONS; and the
ARKANSAS DEPARTMENT OF CORRECTIONS

DEFENDANTS

ORDER GRANTING TEMPORARY RESTRAINING ORDER

Before the Court is Plaintiffs' Motion for Temporary Restraining Order or Alternative Motion for Preliminary Injunction. The Court, being well-advised, considered the allegations contained in the Verified Complaint, including its exhibits; and the arguments advanced in Plaintiffs' Brief in Support of their Motion for Temporary Restraining Order or Alternative Motion for Preliminary Injunction. Based on the evidence, arguments, evidence, and authorities contained therein, the Court GRANTS Plaintiffs' Motion for Temporary Restraining Order and finds and orders as follows:

1. Plaintiffs filed their Verified Complaint on December 14, 2023 seeking a declaratory judgment and injunctive relief relating to recent legislation that purports to diminish the power of the Board of Corrections, which Plaintiffs allege violates Amendment 33 of the Arkansas Constitution.

2. Plaintiffs specifically allege that sections 25-43-403(a)(2)(A), 12-27-107(c), and 12-27-126(c) of the Arkansas Code, as amended by Acts 185 and 659 of 2023 (the "Challenged Legislation"), are unconstitutional pursuant to Amendment 33 of the Arkansas Constitution.

3. This Court has subject matter jurisdiction pursuant to sections 16-13-201, 16-111-102, and 16-113-301 of the Arkansas Code.

4. Plaintiffs allege that the Challenged Legislation is illegal, unconstitutional, or ultra vires. *Cherokee Nation Businesses, LLC v. Gulfside Casino P'ship*, 2023 Ark. 153, at 5, 676 S.W.3d 368, 372 (2023).

5. Venue is proper in this Court pursuant to section 16-60-104 of the Arkansas Code because this is "[a] civil action brought by a state board."

6. Plaintiffs provided the Attorney General of Arkansas with notice of this action pursuant to section 16-111-111(a) of the Arkansas Code.

7. A justiciable controversy exists among the Parties because Plaintiffs plausibly allege that the Challenged Legislation unlawfully transferred Plaintiffs' power to manage and oversee the Department of Corrections—including the Secretary of Corrections and the Directors of the Division of Correction and the Division of Community Correction—to the Governor and Secretary of Corrections.

8. Rule 65 of the Arkansas Rules of Civil Procedure empowers this Court to issue a temporary restraining order or preliminary injunction where (1) the moving party has demonstrated a likelihood of success on the merits; and (2) irreparable harm will result in the absence of an injunction or restraining order. *Arkansas Dep't of Educ. v. Jackson*, 2023 Ark. 105, 7, 669 S.W.3d 1, 6 (2023). The issuance of injunctive relief is a matter addressed to the sound discretion of the circuit court. *Arkansas Dep 't of Hum. Servs. v. Ledgerwood*, 2017 Ark. 308, 9, 530 S.W.3d 336, 343 (2017). The prospect of irreparable harm or lack of an otherwise adequate remedy is the foundation of the power to issue injunctive relief." *Id.* Harm is considered

irreparable "when it cannot be adequately compensated by money damages or redressed in a court of law." *Id.*

9. The test for determining the likelihood of success is whether there is a reasonable probability of success in the litigation. *Ledgerwood*, 2017 Ark. 308, 11, 530 S.W.3d 336, 344 (2017). Such a showing "is a benchmark for issuing a preliminary injunction." *Id.* (citations omitted).

10. Plaintiffs satisfied their burden for a temporary restraining order.

11. Plaintiffs' Complaint is verified by Benny Magness.

12. Plaintiffs' counsel certified that he provided informal notice of this action to Defendants and to the Attorney General.

13. Plaintiffs' counsel also certified that notice should not be required due to the immediate harm caused by Defendants' decision to place inmates in overcrowded prisons.

14. Accordingly, the Court orders as follows:

(a) This Order was issued on 12/15/23 at 3:45 a.m. (p.m.)

(b) The injury alleged is substantial and relates to the Board's constitutional authority to supervise the Department of Corrections and the Secretary of Corrections. Absent relief, Plaintiffs will suffer immediate and irreparable harm because Defendants caused additional beds to be added to inadequate prison facilities, and because sections 25-43-403(a)(2)(A), 12-27-107(c), and 12-27-126(c) of the Arkansas Code usurped the Board's powers.

(c) This Order was issued without formal notice to Defendants because (i) Plaintiffs articulated an immediate injury flowing from the Secretary of Corrections' disobedience of the Board's December 8, 2023 decision; and (ii) section 25-43-403(a)(2)(A) of the Arkansas Code is already effective, making it impossible for Plaintiffs to perform their constitutional duties. Plaintiffs' counsel, however, provided some notice to Defendants, and the balance of equities demonstrates that a temporary restraining order should be issued in the absence of formal notice.

(d) The Clerk of the Court is directed to promptly file this Order in the record.

(e) Pending further order of this Court, Governor Sanders and the

Department of Corrections are barred from enforcing Act 185 of 2023. The Secretary of Corrections shall serve at the pleasure of the Board of Corrections.

(f) Pending further order of this Court, Secretary Profiri and the Department of Corrections are barred from enforcing sections 12-27-107(c) and 12-27-126(c) of the Arkansas Code, as amended by Sections 79 and 89 of Act 659. The Directors of the Divisions of Correction and Community Correction shall continue serving at the pleasure of the Board of Corrections.

(g) This restraining order applies to Defendants, their officers, agents, servants, employees, and attorneys, and anyone else acting in their interest.

(h) Pending further order of this Court, this temporary restraining order expires on December 28, 2023. The Court will not extend this order except for good cause unless Defendants consent to a lengthier extension.

(i) The Parties are ordered to attend a hearing on December 28, 2023 at 9:30 a.m./p.m. for purposes of determining whether this Order should be converted to a preliminary injunction.

(j) Pending further order, the Board of Corrections has the authority under Amendment 33 to supervise and manage the Secretary of Corrections and Directors of the Division of Correction and Division of Community Correction, who serve at the Board's pleasure.

IT IS SO ORDERED.



THE HONORABLE PATRICIA A. JAMES

DATE: DECEMBER 15, 2023