

**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**

**v. 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**

The Court, having held a hearing on this matter on January 4, 2024, considered the petition and motions presented, as well as the evidence and testimony presented, and the arguments regarding the same, makes the following findings:

1. This Court had jurisdiction over the parties and subject matter of this action.
2. On December 14, 2023, the Plaintiffs filed their Verified Complaint against the above-named Defendants seeking a declaratory judgment and injunctive relief relating to Acts 185 and 659 of 2023 (the "Challenged Legislation"), which the Plaintiffs allege violate Amendment 33 of the Arkansas Constitution.

3. Subsequently, the Parties filed various motions, including the Defendants' Motion to Disqualify and Motion to Dismiss and Plaintiffs' Motion to Disqualify and Motion for Temporary Restraining Order or Alternatively Motion for Preliminary Injunction.

4. On December 15, 2023, the Court entered a temporary restraining order enjoining the Challenged Legislation and setting a hearing for December 28, 2023, pursuant to Rule 65 of the Arkansas Rules of Civil Procedure.

5. On December 28, 2023, Plaintiffs filed an Emergency Motion for Continuance and Extension of the temporary restraining order because Plaintiffs' lead counsel's wife went into labor. Because good cause was established, the Court granted Plaintiffs' Emergency Motion for Continuance and Extension and continued the temporary restraining order until January 4, 2024.

6. The Parties, through counsel, appeared at the January 4, 2024 hearing and presented argument, evidence, and testimony. Specifically, after the Parties' counsel delivered opening statements,<sup>1</sup> Plaintiffs presented testimony from Benny Magness, Chairman of the Board; Dr. William "Dubs" Byers, Secretary of the Board; Tommy James, Senior Auditor with the Compliance Division of the Board; and Jerry Bradshaw, who served as Director of the Division of Community Corrections until his voluntary retirement on December 31, 2023. Defendants called one witness: Mark Colbert, Compliance Attorney/Administrator for the Board of Corrections. After the Parties delivered closing arguments, the Court delivered the following bench rulings on the Parties' pending Motions:

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<sup>1</sup> Defendants' counsel did not argue or address the merits of Plaintiffs' challenge during their opening statement or otherwise during closing arguments.

**Plaintiffs' Motion to Disqualify the Attorney General's Office**

7. The Plaintiffs' Motion to Disqualify Attorney General's Office is denied.

8. Even though the Court acknowledges the unique position of the Attorney General's Office as the legal representative for the State of Arkansas, its agencies, officers, and other entities, and that the testimony presented is that the Attorney General's Office has represented Plaintiffs on numerous occasions, the Court is not inclined to disqualify the Attorney General's Office solely because the Attorney General's Office represents Plaintiffs in a pending federal class action.

9. Notwithstanding, the Attorney General's unique position does not exempt that Office from the Arkansas Rules of Professional Conduct. *Holloway v. Arkansas State Bd. of Architects*, 79 Ark. App. 200, 214, 86 S.W.3d 391, 400 (2002), *aff'd in part, rev'd in part*, 352 Ark. 427, 101 S.W.3d 805 (2003); ARK. R. PROF. COND. 1.7.

10. The Arkansas Rules of Professional Conduct apply to all attorneys licensed to practice in this State, including to the Attorney General and his staff.

11. The Court is particularly concerned about the participation in this lawsuit by Christine Cryer, who recently worked for the Department of Corrections, prior to being listed as counsel on this case. Ms. Cryer and Mr. Brascher filed entry of appearances and were signatories in several pleadings filed in this matter. Although, there is no testimony that Ms. Cryer did anything improper in this case, it is the appearance of impropriety that is concerning. Therefore, Ms. Cryer -- and also as an abundance of caution -- Mr. Justin Brascher shall not be allowed to participate in any aspect of this case in any manner.

12. Accordingly, the Court orders that Justin Brascher and Christine Cryer of the Attorney General's Office shall not participate in any aspect of this case.

13. The Attorney General's Office is directed to take all necessary measures to enforce this restriction.

**Defendants' Motion to Disqualify Abtin Mehdizadegan  
and his Law Firm as Special Counsel**

14. Defendants' Motion to Disqualify Plaintiffs' counsel is denied. The Court finds Defendants' arguments in support of disqualification fail for several reasons.

15. The Board of Corrections was created by Amendment 33 of the Arkansas Constitution.

16. Section 1 of Amendment 33 specifically defines "the term of office of members of the boards or commissions charged with the management or control of all charitable, penal, or correctional institutions[.]" ARK. CONST. amend. XXXIII, § 1.

17. The Court's interpretation of Amendment 33 is quite clear: the Board of Corrections is a constitutionally created board, making the Board's members constitutional officers for purposes of section 25-16-711 of the Arkansas Code. Thus, contrary to the Defendants' arguments that section 25-16-702 applies, the Court finds that the Board of Corrections had the legal authority to hire special counsel pursuant to section 25-16-711 of the Arkansas Code because the Board is a constitutional board, its members are constitutional officers, and from the pleadings, argument, and testimony presented, it is clear that the Attorney General and the Board of Corrections disagree about the proper interpretation of Amendment 33, section 25-16-702, and section 25-16-711.

18. Therefore, Defendants' Motion to Disqualify special counsel is denied.

**Defendants' Motion to Dismiss**

19. Defendants' Motion to Dismiss is denied.

20. Defendants argued that Plaintiffs lack standing to bring this lawsuit because they are not “persons” as defined by the Declaratory Judgment Act. *See* ARK. CODE ANN. § 16-111-101 *et seq.* This argument fails.

21. Based on the previous rulings by the Arkansas Supreme Court considering whether other government entities or officers are “persons,” the Court finds that Plaintiffs have standing as “persons” under the Declaratory Judgment Act as defined by Act 274 of 1953. *See Brown v. State*, 2017 Ark. 232, 522 S.W.3d 791; *Valley v. Bogard*, 342 Ark. 336, 342–43, 28 S.W.3d 269, 272–73 (2000) (abrogated in part by *State v. Jernigan*, 2011 Ark. 487, 385 S.W.3d 776); *Vibo Corp. v. State ex rel. McDaniel*, 2011 Ark. 124, 380 S.W.3d 411.

22. Plaintiffs have standing to pursue a declaratory judgment finding that the Challenged Legislation is unconstitutional.

23. Consequently, Defendants' Motion to Dismiss is denied.

### **Plaintiffs' Motion for Preliminary Injunction**

24. Having determined that Plaintiffs have the legal authority to hire outside counsel and that they have standing under the Declaratory Judgment Act, the Court considered Plaintiffs' Motion for a Preliminary Injunction.

25. Pursuant to Rule 65 of the Arkansas Rules of Civil Procedure, the Court finds that Plaintiffs satisfied their burden of proving irreparable harm if the preliminary injunction is not granted and the likelihood of success on the merits. *See Ark. Dep't of Educ. v. Jackson*, 2023 Ark. 105, 7, 669 S.W.3d 1, 6; *Ark. Dep't of Hum Servs. v. Ledgerwood*, 2017 Ark. 308, 9, 530 S.W.3d 336, 343.

26. Plaintiffs identified irreparable harm in the absence of an injunction for several reasons.

27. First, the evidence and testimony presented established that the Secretary of Corrections exhibited insubordination towards the Board of Corrections by, among other things, opening prison beds without the Board's approval. Further, even after the Board voted to place him on leave with pay status on December 14, 2023, Secretary Profiri refused to recognize the Board's authority and announced his intention to remain working. Secretary Profiri even refused to take physical possession of the letter notifying him that he was placed on leave with pay. The irreparable harm is directly attributable to Act 185 of 2023, which purportedly required the Secretary of Corrections to serve at the pleasure of the Governor.

28. Second, irreparable harm was also demonstrated by the Governor's multiple statements indicating that Secretary Profiri would continue serving in that capacity even after he was placed on leave. Placing Secretary Profiri on leave with pay did not resolve the irreparable harm Plaintiffs articulated. The evidence presented was that an inmate took his own life on December 15, 2023 and that, due to inadequate staffing, he was not found for at least one hour. At the time of death, there were three corrections officers performing the work of five corrections officers.

29. Third, irreparable harm was also demonstrated by Plaintiffs' witnesses who identified the uncertainty presented by the Challenged Legislation as it relates to the performance of their constitutional and statutory duties to manage the Department of Corrections and its Divisions. Fundamentally, Plaintiffs established that the Challenged Legislation interferes with the exercise of their constitutional rights to manage and control the Department of Corrections, and that showing supports a finding of clear and present need for equitable relief to prevent irreparable constitutional injury under

Amendment 33. Sections 12-27-107(c) and 12-27-126(c), for instance, as amended, were to become effective as of January 1, 2024.

30. Plaintiffs likewise demonstrated a likelihood of success on the merits because the Challenged Legislation diminished the powers vested in the Board of Corrections by Amendment 33. The Board has historically supervised the Secretary of Corrections and the Directors of the Divisions of Corrections and Community Corrections. Those Department leaders implement the Board's substantive policy decisions. If the Board is statutorily precluded from directly supervising those positions, then—as demonstrated by this litigation—the Board cannot effectively perform its constitutional mandate to independently manage the affairs of the Department of Corrections.

31. The balance of equities weighs heavily in favor of enjoining the Challenged Legislation so that the Board can regain and retain control over the Department for which it has general superintending responsibility, as the potential harm to inmates, staff, and the community at large far outweighs any interest in the continued enforcement of allegedly unconstitutional legislation like Acts 185 and Sections 79 and 89 of Act 659. This harm cannot be adequately compensated by money damages or redressed in a court of law. It is clear to this Court that this dispute will be ongoing until this matter is fully determined. Therefore, this Court deems it appropriate to keep the injunction in place until such time this matter is resolved.

32. The Court grants Plaintiffs' Motion for Preliminary Injunction. Therefore, the Challenged Legislation—sections 25-43-403(a)(2)(a), 12-27-107(c), and 12-27-126(c) of the Arkansas Code—shall remain enjoined.

33. The Secretary of Corrections and the Directors of the Divisions of Corrections and Community Corrections shall continue serving at the pleasure of and reporting directly to the Board of Corrections.

34. This preliminary injunction applies to Defendants, their officers, agents, servants, employees, attorneys, and other persons who are in active concert or participation with Defendants and Defendants' officers, agents, servants, employees, and attorneys, until the final hearing.

35. No security is required for this preliminary injunction pursuant to Rule 65(c) of the Arkansas Rules of Civil Procedure.

IT IS SO ORDERED.



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THE HONORABLE PATRICIA A. JAMES

DATE: \_\_\_\_\_ 1/19/24 \_\_\_\_\_