

# CV-21-319

## IN THE SUPREME COURT OF ARKANSAS

ARKANSAS DEPARTMENT OF HEALTH;  
JOSE' R. ROMERO, MD. in his Official  
Capacity as Secretary of Health/ARKANSAS  
DEPARTMENT OF HEALTH; ARKANSAS  
BOARD OF HEARING INSTRUMENT  
DISPENSERS; AND STEPHANIE PRATT, in  
her Official Capacity as Executive Director/  
ARKANSAS BOARD OF HEARING  
INSTRUMENT DISPENSERS

APPELLANTS

v.

No. CV-21-319

SAMUEL SOLOMON

APPELLEE

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ON APPEAL FROM THE CIRCUIT COURT  
OF PULASKI COUNTY, ARKANSAS  
THE HONORABLE MACKIE PIERCE

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BRIEF OF APPELLANTS ARKANSAS DEPARTMENT OF HEALTH,  
JOSE ROMERO, ARKANSAS BOARD OF HEARING INSTRUMENT  
DISPENSERS, AND STEPHANIE PRATT

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## Points on Appeal

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## **Jurisdictional Statement**

Appellee, Samuel Solomon (“Solomon”), filed this lawsuit on June 21, 2021, in the Circuit Court of Pulaski County, Arkansas. (RP 3). Solomon brought his lawsuit against Appellants, the Arkansas Department of Health (“DOH”), Jose Romero, the Secretary of Health, the Board of Hearing Instrument Dispensers (the “Board”), and Stephanie Pratt, the Executive Director of the Board. (RP 3). Solomon’s lawsuit sought judicial review under the Arkansas Administrative Procedures Act (the “APA”) of his attempt to untimely renew his license as a hearing instrument dispenser, which the Board did not permit under its promulgated rules. (RP 3). Solomon challenged the Board’s action, alleging it violated his Due Process and Equal Protection rights, citing Sections 207, 211, 212, and 214 of the APA as the jurisdictional bases for his lawsuit. (RP 4, 9). Solomon sought a judgment declaring that the Board’s refusal to provide notice and a hearing violated the law, that its interpretation of the law violated the Due Process and Equal Protection clauses of the Arkansas Constitution, and that the Board’s refusal to provide notice and a hearing was arbitrary and capricious and an abuse of its powers. (RP 9-10). Solomon also



requested that the Board be enjoined from denying him licensure status and to be restored to full licensure status to provide services. (RP 9).

The circuit court scheduled a hearing for Solomon's request for a preliminary injunction on July 7, 2021. (RP 40-41) (RT 1). At the hearing, the circuit court noted that the parties were present for Solomon's Complaint for injunctive and declaratory relief. (RT 4). The DOH and the Board, with its officials, moved to dismiss the matter in its entirety on the basis that it was barred by sovereign immunity and because the circuit court lacked subject-matter jurisdiction under the APA. (RT 10). The circuit court denied the motion orally from the bench at the hearing (RT 22). Later that day, the circuit court entered a written order denying the motion to dismiss in full. (RP 63). The order also granted Solomon's request for a preliminary injunction and ordered and directed Pratt to issue a license to Solomon. (RP 63). The order stated that the circuit court had jurisdiction over the parties and the subject matter and stated that Solomon had demonstrated he would suffer irreparable harm and a likelihood of success on the merits. (RP 63). On July 9, 2021, the Appellants timely filed a notice of appeal. (RP 64-66).

The issue on appeal is whether the circuit court erred in granting Solomon a preliminary injunction and whether it erred in denying the motion to dismiss based on the defense of sovereign immunity. The issue is ripe for review because the circuit court's order granting the preliminary injunction and denying the motion to dismiss on sovereign immunity grounds may be challenged through an interlocutory appeal.

Jurisdiction lies in the Supreme Court pursuant to Rule 1-2(a)(1) of the Rules of the Supreme Court because the appeal presents a question involving the interpretation of the Constitution of Arkansas. Further, jurisdiction lies in the Supreme Court pursuant to Rule 1-2(b)(4) because the appeal is of substantial public interest due to questions involving a state agency's implementation of its properly promulgated rules.

For these reasons and pursuant to Arkansas Supreme Court Rules 1-2 , the Arkansas Supreme Court should hear and decide this case.

/s/ Amanda D. Land  
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Assistant Attorney General  
*Attorney for Appellants*

## **Statement of the Case and the Facts**

**The parties.** Solomon is an Arkansas resident who had been licensed by the Board as a hearing instrument dispenser for approximately 13 years. (RP 4). The Board is a licensing board under the umbrella of the DOH. (RP 4-5). Stephanie Pratt is the executive director of the Board. (RP 5). Jose Romero is the Secretary of Health. (RP 4).

**Hearing instrument dispenser licenses and annual renewal requirements.** Pursuant to the authority granted the Board in Ark. Code Ann. § 17-84-203, the Board promulgated Rules and Regulations (the “Rules”) regarding its official actions in the regulation of the practice of fitting and dispensing hearing instruments in the State of Arkansas. (RP 4, 7, 18, 29), (RT 11, 66-67). All license holders are issued a “pocket card” that they are required to carry, and each pocket card has an expiration date on the pocket card. (RT 44).

Article VIII of the Rules governs how each license holder is to submit the required information and fee to the Board before the expiration date of his current license or renewal. (RT 66-67). The required information includes mailing a completed application,

obtaining 12 hours of continuing education, certifying equipment is calibrated, and submitting the proper fee. (RP 14), (RT 42, 67). All hearing instrument dispenser licenses expire on June 30 of each year and must be renewed annually. (RT 66). The responsibility for the renewal of a license rests with the license holder. (RT 66). If a reminder of a renewal is sent by the Executive Director of the Board, it is a courtesy only and not to be deemed a responsibility of the Board. (RT 66). If a licensee does not renew his license, he is not reissued a pocket card. (RT 44). An individual who, because of illness or other unavoidable circumstance, is unable to comply with license renewal requirements may make application to the Board explaining his circumstances. (RT 67). The Board has the discretion to relieve the application from complying. (RT 67). There is no hearing process or procedure in the Rules for a licensee who has failed to renew his license.

**The Annual License Renewal Application.** Sometime prior to June 30, 2020, Pratt mailed out a courtesy copy of the Application form to hearing instrument dispenser licensees. (RT 40-41). Solomon received a copy of the notice in May 2020. (RT 5, 37). The Application form for the 2020-2021 renewal period consisted of four pages. (RP 11-14). The

first page of the form stated that a completed application to renew a license must be postmarked by June 30, 2021. (RP 11). The fourth page of the form stated that a completed application must be postmarked by June 30, 2020. (RP 14). Pratt made a retraction of the form approximately one week after she had sent it by emailing a corrected form to each licensee and posting it on the Board's website. (RT 40).

The last time Solomon timely submitted a license renewal was in June 2019. (RT 43). Solomon did not attempt to submit a Renewal Application to the Board until nearly two years later, in May 2021. (RP 6). Due to the untimeliness of Solomon's renewal, his Application was returned to him. (RP6), (RT 43-44).

**Correspondence between Solomon and the Board.** Solomon, through his representative, wrote a letter to the Board on May 14, 2021. (RP 16-17), (RT 60-61). The letter stated that Solomon was appealing the denial of his license renewal and requested an expedited hearing on the matter. (RP 16). On June 1, 2021, the Board responded and stated that it would not be scheduling a hearing for Solomon because his situation was not appropriate for a hearing under the APA. (RP 18). The letter stated that, as a point of clarification, the Board did not deny

renewal of Solomon's license, but that Solomon did not renew his license in a timely manner for the 2020-21 renewal period. (RP 18). The letter stated that pursuant to the Rules, the Board's action was a purely administrative decision that was not subject to review under the APA. (RP 18). The letter further directed Solomon on how he could renew his license. (RP 18).

**The lawsuit.** Solomon filed a lawsuit on June 21, 2021, in the Circuit Court of Pulaski County, Arkansas, pursuant to Sections 207, 211, 212, and 214 of the APA. (RP 3-4). Solomon sought injunctive and declaratory relief. On June 29, 2021, Solomon filed Affidavits of Service indicating that a hearing on his request for a preliminary injunction had been set for July 7, 2021. (RP 40-41). The circuit court held a hearing, where Appellants orally moved to dismiss the case on the basis of sovereign immunity and lack of subject-matter jurisdiction. The circuit court entered an order later that day granting Solomon's request for a preliminary injunction, directing that Pratt issue Solomon a license, and denying the motion to dismiss based on sovereign immunity. (RP 63). Appellants timely filed a notice of interlocutory appeal of the

order granting the preliminary injunction and denying their motion to dismiss on the basis of sovereign immunity. (RP 64-66).

## Argument

Solomon's failure to renew his license for almost two years, and subsequent blame upon a state agency for the lapse of his license, is not grounds for a lawsuit. Solomon did not state any valid legal claim in his Complaint. This Court should reverse the circuit court's order directing the Board to issue Solomon a license and denying the State's motion to dismiss, and dismiss this case with prejudice for lack of subject-matter jurisdiction.

### I. STANDARD OF REVIEW.

#### A. Motion to Dismiss.

Rule 2(a)(10) of the Arkansas Rules of Appellate Procedure—Civil permits an interlocutory appeal of an order denying a motion to dismiss based on the defense of sovereign immunity. This Court, on appellate review, looks to the pleadings, treating the facts alleged in the complaint as true and viewing them in the light most favorable to the party who filed the complaint. *Ark. Lottery Comm'n v. Alpha Mktg.*, 2013 Ark. 232, at 6, 428 S.W.3d 415, 419. Arkansas has a fact-pleading requirement. Ark. R. Civ. P. 8(a)(1).



In order to survive a motion to dismiss, a complaint must allege facts which, if proven, would demonstrate the pleader is entitled to the relief he seeks. *Johnson v. Butler*, 2016 Ark. 253, at 5-6. For purposes of a motion to dismiss, a court treats only the facts alleged in a complaint as true. *Dockery v. Morgan*, 2011 Ark. 94, at 6, 380 S.W.3d 377, 382. Courts do not treat a plaintiff's theories, speculation, or statutory interpretation as true. *Dockery*, 2011 Ark. 94, at 6. A complaint alleging illegal and unconstitutional acts by the State, as an exception to the State's sovereign immunity doctrine, is not exempt from complying with Arkansas's fact-pleading requirement. *Ark. State Claims Comm'n v. Duit Constr. Co.*, 2014 Ark. 432, at 8, 445 S.W.3d 496, 503.

This Court reviews issues of law *de novo*, including a circuit court's substantive interpretations of law. *Hobbs v. Jones*, 2012 Ark. 293, at 8, 412 S.W.3d 844, 850. The standard of review of a circuit's factual findings that underpin its legal conclusions, including whether the plaintiff pled sufficient facts to establish an exception to sovereign immunity, is whether it was an abuse of discretion. *Alpha Mktg.*, 2013 Ark. 232, at 6, 428 S.W.3d at 419. Abuse of discretion occurs when a

circuit court erroneously interprets the law. *Seeco, Inc. v. Hales*, 334 Ark. 134, 137, 969 S.W.2d 193, 195 (1998).

## **B. Preliminary Injunctions.**

Rule 2(a)(6) of the Arkansas Rules of Appellate Procedure—Civil permits an interlocutory appeal of an order granting an injunction. Trial courts must consider two things in determining whether to issue a preliminary injunction: (1) whether irreparable harm will result in the absence of an injunction or restraining order; and (2) whether the moving party has demonstrated a likelihood of success on the merits. *Three Sisters Petroleum, Inc. v. Langley*, 348 Ark. 167, 175, 72 S.W.3d 95, 100 (2002).

A circuit court's granting of a preliminary injunction, including its conclusions on irreparable harm and likelihood of success on the merits, is subject to review by this Court under an abuse of discretion standard. *Baptist Health v. Murphy*, 365 Ark. 115, 121, 226 S.W.3d 800, 806 (2006); *AJ & K Operating Co. v. Smith*, 355 Ark. 510, 518, 140 S.W.3d 475, 480-81 (2004). Abuse of discretion occurs when a circuit court erroneously interprets the law. *Seeco, Inc. v. Hales*, 334 Ark. 134, 137, 969 S.W.2d 193, 195 (1998). A circuit court's factual findings regarding

irreparable harm and likelihood of success on the merits will be set aside if they are clearly erroneous. *See Baptist Health*, 365 Ark. at 121, 226 S.W.3d at 806 (citing *Amalgamated Clothing & Textile Workers Int’l Union v. Earle Indus., Inc.*, 318 Ark. 524, 886 S.W.2d 594 (1994)).

## **II. THERE IS NO SUBJECT-MATTER JURISDICTION UNDER THE APA.**

Solomon cited the APA as the sole basis for the circuit court’s jurisdiction. (RP 4). Specifically, he cited Sections 25-15-207, 25-15-211, 25-15-212, and 25-15-214 of the Arkansas Code, but the APA does not apply because there was no adjudication before the DOH and the validity or applicability of a rule is not being challenged. As a result, this Court should reverse and dismiss this case for lack of subject-matter jurisdiction.

A person may seek judicial review under the APA in cases of an administrative “adjudication” in which the person considers himself injured in his person, business, or property. Ark. Code Ann. § 25-15-212. Similarly, Section 211 confers jurisdiction on a circuit court when the grant, denial, or renewal of a license is *required by law to be preceded by notice and an opportunity for a hearing*. Ark. Code Ann. § 25-15-211

(emphasis added). The APA defines “adjudication” as “an agency process for the formulation of an order.” Ark. Code Ann. § 25-15-202(1)(A). An “order” is the “final disposition of an agency in any matter other than rulemaking, including licensing and rate making, in which the agency is required by law to make its determination after notice and hearing.” *Id.* § 25-15-202(6).

The Board’s rules do not require notice or a hearing when a person has failed to satisfy the requirements to have his license renewed. Therefore, the decision to not allow Solomon to untimely renew his license is not an “adjudication” subject to review under Section 212 of the APA, nor is its decision subject to review under Section 211.

There was also no subject-matter jurisdiction for the circuit court to review the DOH’s decision under Section 207 because Solomon did not challenge the validity or applicability of an agency rule. Section 207 is limited to actions seeking a declaratory judgment that an agency’s rule is invalid, null, void, or inapplicable to a particular person or situation. *Ark. Dep’t of Fin. And Admin. v. Naturalis Health, LLC*, 2018 Ark. 224, 9, 549 S.W.3d 901, 907. It does not apply to cases in which a person is merely arguing that an agency inaccurately applied one of its

rules to that individual. *Naturalis Health, LLC*, 2018 Ark. 224 at 8, 549 S.W.3d at 907. Solomon is merely challenging the lapse of his license and not actually making an attack on any rule of the Board. To the extent he makes any challenge to a rule, he is not challenging its validity or applicability, as this Court has required in order to invoke Section 207. Rather, Solomon is seeking a declaration that the Board's actions were improper *as to him*. *See id.* at 8 (finding that appellees' complaints did not challenge the "applicability" of any rule because instead they were seeking a declaration that the agency's rules were improper, unfair, and arbitrary as to them). As a result, Section 207 does not apply to this case. Because Sections 212 and 207 do not apply, it follows that Section 214 cannot serve as a jurisdictional basis for judicial review. Ark. Code Ann. § 25-15-214 (providing for actions by injured parties only in cases of "rule making" or "adjudication"). As a result, there was no basis upon which the circuit court could exercise its jurisdiction in this case.

Even if this Court were to find that an "adjudication" occurred, or that any provision of the APA otherwise applied, there was no basis for the circuit court to determine that Solomon was actually entitled to

receive a license — the proper decision would have been to remand to the agency for further proceedings to make any further determinations. Ark. Code Ann. § 25-15-212(h) (“The court may affirm the decision of the agency or remand the case for further proceedings”). This is because, to the extent the APA applies, the Court’s review is limited to considering whether, in reviewing the record, the administrative action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *McLane Co. v. Davis*, 353 Ark. 539, 545, 110 S.W.3d 251, 255 (2003). The Court cannot substitute its own judgment for that of the administrative agencies. *Id.* To the extent the circuit court found any impropriety by the Board, a remand, as opposed to a decision on the substance of licensure entitlement, would enable the Board to attempt to remedy this.

In other words, the circuit court should have remanded to the agency to determine whether, timeliness issues aside, Solomon met the licensure requirements. Not only must the Board now issue Solomon a license, but the circuit court’s order effectively amended the agency’s properly promulgated rules. Any communication the agency now sends out to licensees could overwrite agency rules that do not otherwise

require the Board to act. The circuit court's determination that it had jurisdiction was therefore error and an abuse of discretion.

### **III. THE CIRCUIT COURT ERRED WHEN IT ENTERED A PRELIMINARY INJUNCTION.**

Assuming jurisdiction was properly before the circuit court, this Court should reverse the granting of the preliminary injunction because the scope of the order exceeded the scope of the relief available under Rule 65 of the Arkansas Rules of Civil Procedure. Additionally, the order did not make the requisite findings of fact required by Rule 65(d) of the Rules.

First and foremost, the relief afforded by the circuit court's order effectively awarded final and conclusive relief to Solomon. Rule 65 does not contemplate a trial on the merits at the time of a temporary hearing unless the trial court orders that the proceedings be consolidated. Ark. R. Civ. P. 65(a)(2) ("Even when consolidation is not ordered . . . the court must preserve any party's right to a jury trial"); *see also Jacksonville Christian Academy v. Ark. Social Servs.*, 277 Ark. 339, 340, 641 S.W.2d 716, 716 (1982).

Significantly, Solomon did not file any formal motion requesting a preliminary injunction. *See* Ark. R. Civ. P. 65(a)(2) (referring to a

hearing taking place on an actual “motion for a preliminary injunction”). The only request for temporary relief came in the form of the brief Solomon filed two days before the hearing, which indicated that the relief he sought was for an injunction “allowing him to practice until the full merits of his case can be heard.” (RP 31). Despite the preliminary injunction stage of the case, the circuit court’s order did not grant mere temporary relief and then later set the matter for a final hearing. Instead, it entered a final ruling on the merits, directing the Board, through Pratt, to issue a license to Solomon. In reality, because there was no formal motion, the circuit court set a hearing on the Complaint less than two weeks after Solomon purported to serve the lawsuit. (RP 40). The circuit court then made a ruling on the ultimate merits of the case the same day as the preliminary-injunction hearing. (RP 63).

The Board had no notice that the circuit court would make such a final determination, and at no point throughout the proceedings did the Court indicate that a final decision on the merits would be issued on the same day of the hearing. At the time of the order, no answer had been filed, no discovery had been conducted, and no other pretrial activity had taken place. Essentially, the DOH had one week to prepare for the



hearing on the merits of the case. (RP 33-63). Accordingly, the procedural posture of this case shows that Rule 65 was not followed.

Rule 65 also requires that a circuit court make specific factual findings on the issue of likelihood of success on the merits as well as irreparable harm. Ark. R. Civ. P. 65(d); *Baptist Health v. Murphy*, 362 Ark. 506, 209 S.W.3d 360, 363 (2005). The circuit court below was required, at a minimum, to state the reasons and terms for why the preliminary injunction was specifically issued. Ark. R. Civ. P. 65(d)(1)(A)-(B). The circuit court failed to make *any* factual findings. Therefore, this Court should reverse the order on this basis alone.

The order did not state the specific reasons why it was issued, it did not contain any findings of fact as to the likelihood that Solomon would succeed on the merits, and it did not contain any findings of fact as to what irreparable harm Solomon would suffer. Further, the order did not make any reference to the APA, despite the entire jurisdictional hook in this case resting upon the APA statutory provisions cited in the Complaint.

As a result, even if Solomon's lack of a formal motion was contemplated by Rule 65, the circuit court's order issuing the

preliminary injunction exceeded the scope of any temporary relief. The order ultimately decided the case on the merits by issuing final and complete relief to Solomon. The order was clearly error, too broad in the scope of the relief sought by Solomon, and thus an abuse of the circuit court's discretion. Accordingly, the decision should be reversed.

#### **IV. THE CIRCUIT COURT ERRED IN DENYING THE MOTION TO DISMISS ON SOVEREIGN IMMUNITY GROUNDS.**

The circuit court also erred in denying the motion to dismiss based on sovereign immunity because Solomon failed to plead any unconstitutional, illegal, or ultra vires acts by the DOH. The Arkansas Constitution provides that the "State of Arkansas shall never be made defendant in any of her courts." Ark. Const. art. 5, § 20. This Court has held that sovereign immunity is "jurisdictional immunity from suit." *Ark. Dep't of Human Servs. v. Fort Smith Sch. Dist.*, 2015 Ark. 81, at 6, 455 S.W.3d 294, 299. The doctrine of sovereign immunity extends to state agencies. *Ark. Game and Fish Comm'n v. Eddings*, 2011 Ark. 47, at 4, 378 S.W.3d 694, 697. Where a suit is brought against an agency of the State such that a judgment for plaintiff would subject the state to monetary liability or operate to control the lawful action of the State, the lawsuit is, in effect, one against the State and prohibited by the

doctrine of sovereign immunity. *Eddings*, 2011 Ark. 47, at 4, 378 S.W.3d at 697 (citing *Fireman's Inc. Co. v. Ark. State Claims Comm'n*, 301 Ark. 451, 455, 784 S.W.2d 771, 773 (1990)). If a plaintiff's request for injunctive relief would operate to control the actions of the State, his suit is barred by sovereign immunity, unless a narrow exception applies. *Ark. Dep't of Env. Quality v. Al-Madhoun*, 374 Ark. 28, 32-33, 285 S.W.3d 654, 658-59 (2008).

A plaintiff may only avoid the defense of sovereign immunity if he brings a suit for injunctive relief and sufficiently pleads facts alleging that a state agency or official is acting illegally, unconstitutionally, or *ultra vires*. *Ark. Dep't of Finance and Admin. v. Carpenter Farms Medical Group, LLC*, 2020 Ark. 213, at 8, 601 S.W.3d 111, 117. Whether an exception to sovereign immunity applies is tested on the sufficiency of the facts in the complaint. *Travelers Cas. & Sur. Co. of America v. Ark. State Highway Comm'n*, 353 Ark. 721, 726, 120 S.W.3d 50, 52 (2003).

Solomon seeks to control the administrative functions of the DOH, the Board, and its officials, thus his Complaint is barred by sovereign immunity. Solomon sought, and obtained, a court order directing the

Board to issue him a license. (RP 63). He may attempt to label his Complaint as one for declaratory and injunctive relief, but, as demonstrated by the circuit court's order, the judgment in his favor has the effect of compelling the Board to do something, thus controlling its administrative actions.

Solomon did not allege facts that, if proven, would establish the State acted illegally, unconstitutionally, outside its legal authority, or in an arbitrary and capricious manner. Instead, he made the conclusory allegation that the Board violated his due process rights by sending out a defective notice. (RP 8). He also alleged that the Board "took his license" without a hearing. (RP 8).

Significantly, Solomon's entire Complaint rests upon the posture that the Board engaged in the act of taking his license. The record shows that there was no requirement or process for the Board to provide a hearing under its promulgated Rules. (RT 66-67). There was also no requirement for the Board to send out any notices to individuals — in fact, the Board's Rules explicitly stated that it was the responsibility of licensees to ensure they complied with the Board's annual licensure renewal requirements. (RT 66). The Complaint's

allegations show that it was Solomon who failed to act for two years and let his license lapse.

Solomon's own conclusions about the Board's duties and obligations are legal conclusions couched as factual allegations because they rest upon the unreasonable inference that the Board engaged in some act. But Solomon may not rely upon these personal theories, speculation, and legal interpretations. Nor may he present legal conclusions couched as factual allegations in order to sustain his claim. *Dockery*, 2011 Ark. 94, at 6. Without more, there is simply no allegation that any conduct the Board engaged in was unconstitutional, illegal, or ultra vires. Rather, the conduct alleged in the Complaint is consistent with lawful conduct in accordance with the Board's own Rules. Therefore, this Court should reverse the circuit court's decision and dismiss Solomon's Complaint in its entirety with prejudice.

### **Request for Relief**

Based on the foregoing, Appellants, the Arkansas Department of Health, Jose Romero, the Arkansas Board of Hearing Instrument Dispensers, and Stephanie Pratt, all in their official capacities respectfully request that this Court reverse the circuit court's order

granting the preliminary injunction and denying their motion to dismiss on the basis of sovereign immunity and dismiss the lawsuit in its entirety for lack of subject-matter jurisdiction.

Respectfully submitted,

LESLIE RUTLEDGE  
Arkansas Attorney General

By: /s/ Amanda D. Land

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## Certificate of Service

I hereby certify that on this 27th day of August, 2021, I electronically filed the foregoing via the eFlex electronic filing system, which shall send notification of the filing to any participants. I also certify that I will serve a paper copy of the brief within five calendar days upon the following:

Honorable Mackie Pierce  
Circuit Judge, Sixth Judicial Circuit, Division 17  
401 West Markham, Rm. 360  
Little Rock, AR 72201

Darren O'Quinn, Esq.  
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*/s/ Amanda D. Land*  
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**Certificate of Compliance with Administrative Order  
No. 19, Administrative Order No. 21, and With Word-  
Count Limitations**

I hereby certify that the foregoing Brief complies with Administrative Order No. 19 in that that all “confidential information” has been excluded from the “case record” by (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal, as applicable.

I hereby certify that the foregoing Brief does not contain hyperlinks to external papers or websites.

Further, the undersigned states that the foregoing Brief conforms to the word-count limitation identified in Rule 4-2(d) and said Brief contains 4,374 words.

**Identification of paper documents not in PDF format:** The following original paper documents are not in PDF format and are not included in the PDF document(s) file with the Court: None.

*/s/ Amanda D. Land*  
Amanda D. Land