

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

**VERONICA McCLANE, *ET AL***

**PLAINTIFFS**

**v.**

**60CV-21-4692**

**STATE OF ARKANSAS, *ET AL***

**DEFENDANTS**

**LITTLE ROCK SCHOOL DISTRICT, *ET AL***

**PLAINTIFFS**

**v.**

**60CV-21-4763**

**HONORABLE ASA HUTCHINSON,  
in his Official Capacity as Governor of  
the State of Arkansas, *ET AL***

**DEFENDANTS**

**FINAL ORDER FOR DECLARATORY RELIEF  
AND PERMANENT INJUNCTION**

On the 22<sup>nd</sup> day of November, 2021, came on for hearing the trial of this matter and from the pleadings filed herein, the testimony and evidence presented, and the argument of counsel, the court doth finds and orders as follows:

1. The preliminary injunction hearing in this case was conducted on August 6, 2021.
2. The court addressed several preliminary matters before testimony began. One of those matters was the blatant conflict of interest of the Attorney General in initially entering an appearance as attorney of record for all of the defendants in this matter. At the preliminary injunction hearing held on August 6, 2021, the court specifically inquired of the Assistant Attorney General, then present, whether the Attorney General's office had obtained conflict

waivers from the legislative defendants and from the Governor. The Assistant Attorney General advised the court that no conflict waivers had been obtained and, further, that the Attorney General didn't see any possible conflict of interest. The court pointed out to the Assistant Attorney General that one of the McClane plaintiffs' allegations was that the legislative defendants had violated the separation of powers doctrine by usurping authority, which belonged to the Governor.<sup>1</sup> Shortly after the August hearing, because of the clear and obvious conflict of interest between the legislative defendants and the Governor, the Governor obtained separate private counsel. The legislative defendants, because of the conflict of interest, then also obtained separate private counsel. A different Assistant Attorney General was present at the November hearing and advised the court that conflict waivers had been subsequently obtained from the legislative defendants and the Governor. The Attorney General's failure to recognize an obvious conflict of interest wasted thousands of dollars of Arkansas taxpayers' monies.

3. The final hearing was scheduled for up to three days beginning November 22, 2021. There were a number of reasons for the court allowing for a three-and-a-half-month period of time between the two hearings. One of those reasons was to give all of the parties ample time to contact, interview, and subpoena witnesses to present testimony with respect to their various arguments.

---

<sup>1</sup> **THE COURT:** There are allegations in both the original complaint, the McClane complaint, and the School Districts' complaint, there are allegations that I just enunciated concerning usurpation of authority between the legislative branch and the executive branch. Has your office received conflict waivers from your clients?

**MS. GUEST:** No, Your Honor. We don't believe there's a conflict at this point.

**THE COURT:** You don't think there's any problem with the Court ordering that the legislature may be encroaching upon the executive branch of government, and with you arguing for both of those?

**MS. GUEST:** At this point, Your Honor, the State does not believe there is a conflict between the parties.  
(Transcript, August 16, 2021, page 16, line 25 – page 17, line 15)

## SUMMARY OF TESTIMONY

4. Testimony was taken from Dr. Gerry Jones, Veronica McClane, Michael Crump, Solomon Graves, Pulaski County Judge Barry Hyde, Pulaski County Sheriff Eric Higgins, Dr. Glen Fenter, Michael Poore, Ronnie Routh, Dr. Jose Romero, Dr. Mike Cima, and Major General Kendall Penn.<sup>2</sup>

5. Dr. Gerry Jones testified that he was previously a cardio-thoracic surgeon and that he is presently the Chief Medical Officer of CHI St. Vincent Infirmary. Prior to vaccinations becoming available, medical research and data, as well as his own experience, evidences that masks are very effective in preventing transmission of Covid-19. Dr. Jones further testified that since vaccinations have become available, masks remain an effective adjunct and it is common medical practice not to rely on a single strategy alone. He believes it is health care providers' responsibility to provide options for both treatment and for preventative measures. Masks are one preventative measure, as the purpose of wearing a mask is to reduce the expression of droplets and that any mask can reduce the transmissibility of the disease. He also testified that children have been admitted to the hospital because of Covid-19 infections, that children have been placed on ventilators because of such infections, and that children have died from Covid-19 infections. He also testified that the delta variant was just beginning at the time the Governor signed Act 1002 of 2021 and that there are other variants besides delta as the natural history of a virus is to evolve and as long as there is a risk of new cases there are risks of new variants.

6. Veronica McClane is a plaintiff in this matter. She and her husband live in Little Rock, and they have an eight-year-old and a three-year-old. Her eight-year old son was making

---

<sup>2</sup> As enumerated, the court heard testimony from twelve witnesses. All of the parties except the State of Arkansas called witnesses and introduced evidence in this matter. The Attorney General's office failed to call any witnesses or attempt to introduce any admissible exhibits to defend the constitutionality of Act 1002 of 2021.

straight "A"s when he was in school with face-to-face learning, but he has had anxiety issues since school went virtual and he lost the face-to-face support of his teachers.

7. Michael Crump testified that he is the Director of Youth Services at the Department of Human Services. His division is responsible for rehabilitating youth offenders, from age ten through age twenty-one, through programs such as a boot camp at Camp Robinson and a substance abuse program at Lewisville. The Division of Youth Services has six facilities throughout the state, including the boot camp. Their juveniles are generally in close quarters. Some have individual rooms, and others have open-style dorms that may have up to ten beds in the dorm. They have regular classes during the day, therapy sessions, and lots of group activities. The juveniles do not have control over where they move during the day, and they are told where they will sleep. Education services are provided. Some of the juveniles are catching up on high school work, others are on a GED track, while some are doing vocational work, and a few are doing college courses. All who are at the high school level are attending virtual courses in one room together with teachers in the room. The Division of Youth Services implemented a number of Covid-19 precaution procedures including weekly rapid testing for staff, temperature scanners, offering vaccinations, and mask mandates at all facilities. Mr. Crump further testified that, acting on advice from its private contractor, the Division of Youth Services still has a standing order for masks in its facilities. There are situations where the same offense may land some juveniles in a local facility versus a Division of Youth Services facility. He also testified that the Division of Youth Services operates its own Arkansas consolidated school district that has between one hundred fifty and two hundred students. It has its own superintendent, a principal, a teacher with special education training, other teachers and coaches. The students attend school every day and follow the same schedule as the school districts throughout the state.

8. Solomon Graves testified that he is the Secretary of the Arkansas Department of Corrections ("ADC"). The department generally has custody of all adult individuals who have been sentenced to felonies. The ADC has twenty-six facilities between correction and community work, which contain a mix of barrack-style housing and single and double cells. It also has thirteen probation supervision areas with five administrative support offices throughout the state. Individuals that violate parole are sometimes taken to county correctional facilities, and some actually serve their terms in the county correctional facilities. The ADC does have individuals who are serving their sentence in the Pulaski County jail facility. Mr. Graves further testified that the ADC has a mask policy in facilities that is reviewed monthly. The policy applies to both inmates and staff at all of those locations. The ADC operates a correctional school district. The census floats right around one thousand inmates, including those in high school diploma programs, GED programs, and career technical programs. Each of their twenty-six facilities has space allocated for the ADC school district. There is a superintendent, and the school district's entire staffing is right at one hundred twenty individuals. The ADC school district has classes four days a week, with the same number of total instructional days as other school districts in the state.

9. Pulaski County Judge Barry Hyde is the currently elected Pulaski County Judge. The Pulaski County jail is owned and operated by Pulaski County. Judge Hyde testified that the operation of the jail has been delegated to the Pulaski County Sheriff but the care and maintenance of the facility and the inmates remains his responsibility.

10. Pulaski County Sheriff Eric Higgins is the duly elected Sheriff of Pulaski County. County Judge Barry Hyde has delegated operation of the Pulaski County Detention Center to him. The center is certified to house one thousand two hundred ten inmates. Everyone coming

into the facility has to wear a mask and have their temperature and pulse oxygen tested. The jail has established an isolation unit for Covid-19 infected inmates, and the jail has increased the frequency and duration of cleaning in the jail. The facility follows CDC guidelines in requiring masks, not only for detainees but for staff who work there as well. Most of the units are two-bed units in a pod with a total of eight people in a pod, although some open pods are different. The PUCO jail is the fourth or fifth largest jail in comparison with all of the ADC facilities. Last year, about eleven thousand individuals were processed through the facility. The longest an individual has been housed at the jail is five years. Sheriff Higgins testified if the facility is not allowed to require masks, he believes it will create a health risk for the employees and the inmates. There are about two hundred employees at the jail. There have been instances where the ADC has refused to accept transfers from the jail because the inmates had Covid-19. Inmates in his custody receive medical treatment, and he is responsible for their health and well-being. Sheriff Higgins also testified that masks are an indispensable component of their policy.

11. Dr. Glenn Fenter testified that he is the Superintendent of the Marion School District. He has been in that position for five years, and he has been in education for forty years. The Marion School District encompasses one of the largest geographic footprints in the state, serving between three thousand nine hundred to four thousand students, depending on the day of the week. Approximately one-third of the district's students are living in situations where they have zero access to quality internet. Virtual education may be a reasonable option for about ten to fifteen percent of their students but not for the overwhelming majority. The district has a high rate of poverty. About seventy percent of the students qualify for free or reduced lunch, and the school district provides tens of thousands of meals each year. When many of their students are not in school, they are not getting the two meals a day that are provided at school. The school

district transports about two thousand eight hundred of the students by bus every day in about forty buses. Many of the buses are filled to capacity. The school district makes masks available for students. Clear masks and specialty masks are also available. Dr. Fenter testified that at the end of the first week of school, when Act 1002 of 2021 was in effect, the district had one hundred seventy-nine students in quarantine and, therefore, not in school. There were over one thousand students in quarantine by the end of the second week. They put masks on students as quickly as possible after the temporary injunction went into place. The number of positive cases was reduced by seventy percent within a few weeks of the mask requirement. Dr. Fenter further testified that the ability to put masks on their students helped save lives and kept the children in school.

12. Mike Poore testified that he is in his sixth year as Superintendent of the Little Rock School District. The district has a student enrollment of just over twenty thousand students with a combined work force of around three thousand three hundred employees, both certified and uncertified. Counting campuses and central offices, the district has fifty-five buildings. During the last school year, the district experienced just under one hundred eighty different transitions going from "in person" to "virtual." Partially because of the ability to require masks, this school year the district has only had to transition one time. The Little Rock School District is the second largest school district in the state, but they are not even in the top ten on "in person" to "virtual" movements. Mr. Poore further testified the district had seen very little problems or challenges with mask compliance. He feels like the kids are good with it because they are glad to have in-person schooling, and the parents are pleased because they don't have to go back and forth between virtual and in-person. The families who have less economically have been more challenged during the pandemic. Mr. Poore testified the Little Rock School District was not able

to run an efficient school system for the period of time Act 1002 was in effect prior to the issuance of the preliminary injunction in this case.

13. Ronnie Routh testified that he is the Director of the Pulaski County Juvenile Detention Center. The PUCO JDC houses detained juveniles awaiting court as well as juveniles who have already been adjudicated delinquent. It has a maximum occupancy of thirty-seven and an average census of thirteen to fifteen children. The Little Rock School District is their school. They get up, get dressed in their school uniforms, and have school within the four walls of the detention center. There is no way they could maintain six feet of distance between the children as the center is not designed or capable to do that. Mr. Routh further testified that the JDC established new policies and procedures in response to Covid-19. Initially, from the time juveniles are brought into the intake area, if they do not already have a mask, that is the first thing they give them. Then, throughout the entirety of the stay, they will be wearing a mask. The JDC routinely change the masks, and it is one of the most important things they do. There is also hand sanitizer provided, and the children are provided with fresh clothes and fresh bedding every day. The juveniles and the staff are all in very close quarters. There is one ventilation system, so all of the air runs together.

14. Dr. Jose Romero testified that he is the Secretary of Health for the State of Arkansas. He is also a practicing pediatric infectious disease specialist. Dr. Romero is responsible for advising the Governor regarding health policy issues and for overseeing the health and wellbeing of all Arkansans. Dr. Romero further testified that there have been more than six million pediatric COVID patients diagnosed nationwide, with seven hundred children dying from the disease. Children age five through eleven comprise about a third of the Covid-19 pediatric patients which is now among the top ten causes of death for pediatric patients. At the



end of October, more than one hundred thousand children per week were being diagnosed. In school settings, statistical data compiled by the Arkansas Department of Health shows that there is a twenty percent reduction of infection in children wearing masks and a twenty-five percent reduction in infection between schools wearing masks and not wearing masks for both adults and children. Dr. Romero testified that there is no doubt that not allowing schools to have a mask policy is putting children at excessive risk and that it is particularly important that masks be used in schools. Additionally, there are negative consequences for children in a virtual learning environment. Not being in a school environment, especially in early years, and being out of the classroom is a disadvantage. Dr. Romero concluded his testimony with his expert medical opinion that the statements in the Act 1002 emergency clause concerning public health, safety, and welfare are false.

15. Dr. Michael Cima is the Chief Epidemiologist of the Arkansas Department of Health. The state gathered information from all school districts in the state from the beginning of school through October 16, 2021 concerning schools with no mask requirements, schools with partial mask requirements, and schools with complete mask requirements. The data shows there was a twenty-five percent overall reduction in children missing school, whether for infection or quarantine, for school districts with full masking requirements versus schools with no masking requirement.

16. Major General Kendall Penn testified he is the current Adjutant General of the Arkansas National Guard, and that he is responsible for approximately six thousand seven hundred soldiers in fifty-four locations, plus two air wings. General Penn further testified that his ability to order his soldiers to wear masks on a mission-to-mission factual basis was critical for

both the health and safety of his soldiers and for any civilians that they might interact with if called out by the Governor.

17. At the close of the hearing on November 22, 2021, the court gave the parties a deadline of 12:00 p.m. on Friday, December 10<sup>th</sup>, 2021, to submit post-trial briefs to argue their respective positions.<sup>3</sup>

18. There are no allegations that the language of Act 1002 is ambiguous or reasonably susceptible to more than one interpretation. In cases challenging the constitutionality of “plain language” legislative enactments, it is the obligation of the courts to give the wording of such enactments their “usual and customary meaning.”

19. In cases challenging the constitutionality of legislative enactments, if there is offending language or punctuation that can be stricken and leave a constitutional remainder, it is the obligation of the courts to strike through the offending language or punctuation and salvage the remainder of the legislative enactment. The courts are, however, prohibited from rewriting or adding language to legislative enactments to make such legislative enactments constitutional.

20. Article 4, §2 of the Arkansas Constitution provides for the constitutional separation of powers doctrine on state-related causes of action.

21. Each of the state’s seventy-five counties is a “political subdivision of the state,” which are included within the language of Act 1002 of 2021.

22. Amendment 55, §3 to the Arkansas Constitution, states:

The County Judge, in addition to other powers and duties provided for by the Constitution and by law, shall preside over the Quorum Court without a vote but with the power of veto; authorize and approve disbursement of appropriated county funds; operate the system of county roads; administer ordinances enacted by the Quorum Court; **have custody of county property**; hire county

---

<sup>3</sup> All of the parties timely submitted post-trial briefs except the State of Arkansas. The Attorney General failed to comply with the court’s instruction and submitted its brief more than three hours after the noon deadline.

employees, except those persons employed by other elected officials of the county. (emphasis added)

23. A.C.A. §14-14-1102(b)(3)(A) states:

(3)(A) CUSTODY OF COUNTY PROPERTY. The county judge, as the chief executive officer of the county, shall have custody of county property and is responsible for the administration, care, and keeping of such county property, including the right to dispose of county property in the manner and procedure provided by law for the disposal of county property by the county court. The county judge shall have the right to lease, assign, or not assign use of the property whether or not the county property was purchased with county funds or was acquired through donations, gifts, grants, confiscation, or condemnation.

24. Amendment 80, §4 to the Arkansas Constitution, states, in part, “The Supreme Court shall exercise **general superintending control** over all courts of the state...” (emphasis added)

25. A.C.A. §12-75-107, as amended by Act 403 of 2021, legislatively delegates emergency declaration and emergency action authority to the Governor, as the chief executive officer of the state.

26. The Act 1002 of 2021 Emergency Clause states, in part:

[T]hat a regulation that is not necessary is a burden on the public peace, health, and safety of the citizens of this state; that the requirement of face coverings should be removed as soon possible as it is no longer necessary and should not be continued; and that this act should become effective as soon as possible as the requirement of face coverings is not necessary to protect the health and safety of the citizens of Arkansas and is a burden on the public peace, health, and safety of the citizens of this state.

27. The testimony presented at the trial, including the expert medical testimony, clearly statistically establishes that enforcement of Act 1002 of 2021 would cause minors to be infected with Covid-19 who might not otherwise have been infected.

28. The testimony presented at the trial, including the expert medical testimony, clearly statistically establishes that enforcement of Act 1002 of 2021 would cause minors

infected with Covid-19 who might not otherwise have been infected and hospitalized to be hospitalized.

29. The testimony presented at the trial, including the expert medical testimony, clearly statistically establishes that enforcement of Act 1002 of 2021 would cause minors infected with Covid-19, who might not otherwise have been infected and placed on a ventilator to be placed on a ventilator.

30. The testimony presented at the trial, including the expert medical testimony, clearly statistically establishes that Act 1002 of 2021 would cause minors infected with Covid-19 who might not otherwise have been subjected to death from such infection to be subjected to death.

31. The testimony presented at the trial, including the expert medical testimony, with absolutely no testimony or evidence presented by the Attorney General's office in defense of the legislation, conclusively establishes that the Act 1002 conclusion that "it is no longer necessary" to have face coverings is unquestionably erroneous.

32. The testimony presented, including the expert medical testimony, with absolutely no testimony or evidence presented by the Attorney General's office in defense of the legislation, clearly establishes that the Act 1002 conclusion that "the requirement of face coverings is not necessary to protect the health" of Arkansas citizens is unquestionably erroneous.

33. The testimony presented, including the expert medical testimony, with absolutely no testimony or evidence presented by the Attorney General's office in defense of the legislation, clearly establishes that the Act 1002 conclusion that "the requirement of face coverings is not necessary to protect the...safety" of Arkansas citizens is unquestionably erroneous.

34. The brief tendered late by the Attorney General is rife with alleged facts that are not in the record before the court.<sup>4</sup> Additionally, the cases cited by the Attorney General concerning sovereign immunity, standing, and justiciable issues contain statements of law based upon materially different fact patterns than the facts of the present matter and are therefore of little, if any, use to the court in resolving the present matter. None of the moving parties in this case are seeking monetary relief against the State. There is no attempt to control any lawful action by the State, nor are the moving parties seeking to subject the State to any liability. The moving parties are only seeking declaratory judgment that Act 1002 of 2021 is illegal because it violates the Arkansas Constitution in a number of respects. An unconstitutional action is an illegal action, and the ongoing violation of a constitutional right constitutes irreparable harm.

35. It is unclear from the Attorney General's brief whether that office is actually arguing that sovereign immunity means there is absolutely no situation in which an action may proceed against the State. If such argument is being made, it is untenable. For the argument to be valid, that specific constitutional provision would have to be interpreted as being superior or "super-preemptive" to every other provision of the Arkansas Constitution. Under such a theory, the General Assembly could violate the separation of powers doctrine at will and there would be no judicial review of such legislation. That theory would also mean that the Governor, as the chief executive, could issue Executive Orders that were contrary to legal legislation passed by

---

<sup>4</sup> As previously mentioned, the Attorney General called no witnesses to place any sworn testimony in the record in support of the constitutionality of Act 1002. On page one of its *Post-Trial Brief*, the Attorney General makes the statement that, "When the General Assembly passed Act 1002, many people, including health experts, believed the COVID-19 pandemic was coming to an end." There is no evidence in the record to support such statement. On page two of its brief, the Attorney General states, "In April 2021, vaccinations not masks, were believed to be the way to prevent not only the transmission of COVID-19, but as a way to end the pandemic." Given the testimony of Dr. Romero, the Arkansas Secretary of Health, about the combined use of vaccinations and masks this seems to be an intentional act on the part of the Attorney General to deliberately mislead the court. Several pages of the Attorney General's brief contain a timeline about who knew what and when they knew it. Absolutely none of the statements are supported in the record before the court because the Attorney General chose not to call any witnesses.

the General Assembly and there would be no judicial review. The Arkansas Highway Commission could seize private property and pay only a nominal sum, and the landowner would have no right of redress. All state law enforcement agencies could seize vehicles, boats, guns, cash, and other items of personal property, and the owners of such property would have no ability to file any action against the State to seek the return of their private property.

36. There are two diverse hemispheres that together comprise the universe of what is commonly referred to as "The Law." There are equitable issues and issues of law. An example of an area which falls within the parameters of equity is domestic relations. Principles that are inherently subjective in nature are included as part of the resolution of equity cases. The judge's own moral code, to the extent that it informs what a judge believes to be fair or appropriate, within broad constitutional boundaries, is an appropriate and integral part of any equity decision. The judge's personal history, educational experiences, geographic residency during his or her life, and social and economic background, are all inherently part of the complex equation that yields the judicial outcome that the individual judge believes is "just" in an equity case. Again, this is within broad constitutional boundaries.

37. In cases involving issues of law, with very limited exceptions, the judge's personal beliefs are not properly part of the judicial decision. Period. None of the subjective input in an equity decision should be used in a law issues case. The decision-making should be objective in nature. What the state appellate case law or the United States Supreme Court says on an issue is generally "binding" precedent, and a trial court judge has no constitutional authority to go outside the parameters of those decisions. If there is federal district and federal appellate case law on the specific state issue it is only "persuasive" or "non-binding" precedent which might provide insight into the legal issue.

38. If there is no applicable state or federal precedent, then there is a mélange of well-established rules of constitutional and statutory construction which a trial judge is required to utilize to formulate his or her decision. If language is clear and unambiguous, the words must be given their normal and customary meaning. Legislative and constitutional provisions have a presumption of constitutionality and, if there appear to be conflicting provisions, they must be harmonized if at all possible. Courts may strike punctuation or words if such action salvages a remainder that expresses the legislative or constitutional purpose. Courts may never add punctuation or wording to make language constitutional because that constitutes legislating and violates the separation of powers doctrine. Constitutional provisions always trump legislative enactments. Newer provisions control over older provisions. More specific constitutional or legislative provisions generally take precedence over more general provisions.

39. “Activist judge” is a descriptive phrase most often used in a pejorative context by individuals who disagree with judicial decisions. An objective definition of an “activist judge” is a jurist who prioritizes some personal issue or belief over that of the Rule of Law in legal issue cases. The phrase “activist judge” can never be accurately employed in equity cases as equity cases are, by their very nature, subjective, and many different variables are appropriate to be considered by a jurist’s decision on equitable issues.

40. There are jurists, both elected and appointed, who have a juridical philosophy that includes a strong component of “social justice.” That particular aspect of a judge’s philosophy may be properly included in some equity case decisions. If, however, the judge places “social justice” ahead of the Rule of Law in a legal issue case, then the term “activist judge” is appropriate with respect to that jurist. The same analysis applies to judges who have extremely strong partisan political beliefs. Depending on the type of equitable issues involved, such beliefs

may have a proper place in a judge's decision-making process. Partisan political beliefs have no place in deciding a case, such as the present matter, that involves legal issues.

41. Utilizing such definition, any trial court or appellate jurist who rules there is no judicial review of unconstitutional actions by the State, would clearly be an "activist judge" because such judicial position is not supported by the Rule of Law.

### **CONCLUSIONS OF LAW**

42. Act 1002 of 2021, as enacted, facially violates the separation of powers clause in that it attempts to usurp the constitutional authority granted to county judges over county buildings and property.

43. Act 1002 of 2021, as enacted, facially violates the separation of powers clause in that it attempts to usurp the exclusive superintending authority concerning the procedure and conduct in the courts of the state that is granted to the Arkansas Supreme Court.

44. Act 1002 of 2021, as enacted, violates the equal protection provisions of Article 2 of the Arkansas Constitution, in that it discriminates, without a rational basis, between minors in public schools and minors in private schools.

45. Act 1002 of 2021, as enacted, violates the equal protection provisions of Article 2 of the Arkansas Constitution, in that it discriminates, without a rational basis, between minors in local school districts and minors in schools run by the Arkansas Department of Corrections or the Arkansas Department of Youth Services.

46. Act 1002 of 2021, as enacted, violates the equal protection provisions of Article 2 of the Arkansas Constitution, in that it discriminates, without a rational basis, between minors in county juvenile facilities and minors in schools run by the Arkansas Department of Corrections or the Arkansas Department of Youth Services.



47. Act 1002 of 2021, as enacted, violates the separation of powers clause in that it infringes upon the exclusive authority given to the Governor as Commander in Chief of the military and naval forces of the State, pursuant to Article VI, §6 of the Arkansas Constitution.

48. Act 1002 of 2021, as enacted, violates both equal protection and the prohibition contained in Amendment 14 to the Arkansas Constitution against “local and special” legislation as it arbitrarily differentiates between similarly situated incarcerated individuals in state-run carceral facilities and county-run carceral facilities.

49. Act 1002 of 2021, as enacted, violates both equal protection and the prohibition contained in Amendment 14 to the Arkansas Constitution against “local and special” legislation as it arbitrarily differentiates between similarly situated juveniles in state run detention facilities and juvenile detention facilities operated by other entities.

50. Act 1002 of 2021, as enacted, violates Article 14, §1, the Education Article of the Arkansas Constitution, as it is contrary to the State’s obligation to “maintain a general, suitable and efficient system of free public schools.”

51. Act 1002 of 2021, as enacted, violates Article 14, §1, the Education Article of the Arkansas Constitution, as it is contrary to the State’s obligation to “adopt all suitable means to secure to the people the advantages and opportunities of education.”

52. On November 22, 2021 the court entered an *Order of Voluntary Dismissal* by the McClane plaintiffs against Jimmy Hickey, Jr. and Matthew Shepherd, the two legislative defendants. Although Arkansas procedure generally allows plaintiffs to non-suit a cause of action one time, the court has determined that an order of dismissal without prejudice in this particular case is not in the best interests of judicial efficiency and economy. First, it might interfere with the timely appeal of this matter. Second, there isn’t any conceivable configuration

in which the plaintiffs can plead a declaratory judgment cause of action concerning the constitutionality of Act 1002 of 2021 against the two legislative defendants in their official capacity as the President Pro Tempore of the Arkansas Senate or the Speaker of the Arkansas House of Representatives. Accordingly, the *Order of Nonsuit* entered on November 22, 2021, is hereby set aside and all causes of action against the two legislative defendants are hereby ordered dismissed with prejudice.

53. All causes of action, as well as any affirmative defenses, raised by any of the parties not specifically addressed hereinabove are denied. It is the intent of the court that this precedent be a final, appealable order in all respects.

IT IS SO ORDERED AND ADJUDGED.



TIMOTHY DAVIS FOX  
CIRCUIT JUDGE

12/29/21  
DATE