

**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

**ORDER FOR DECLARATORY RELIEF
AND PRELIMINARY INJUNCTION**

On the 6th day of August 2021, came on for hearing all pending motions by the parties in the captioned cases, and from the pleadings filed herein and the argument of counsel, the court doth find as follows:

1. Plaintiffs' *Motion for Consolidation Pursuant to Rule 42(a) of the Arkansas Rules of Civil Procedure*, filed on August 5, 2021, in *Little Rock School District and Marion School District v. Honorable Asa Hutchinson*, 60CV21-4763 is granted. Both cases shall hereafter be styled as 60CV-21-4692, which is the earlier case number of the two previously separate cases.

2. The *Motion to Intervene* of Barry Hyde, in his Official Capacity as the County Judge for Pulaski County and Eric Higgins, in his Official Capacity as Pulaski County Sheriff, filed on August 5, 2021, is granted.

3. All of the moving parties allege that Act 1002 of 2021 is unconstitutional in one or more respects and have requested relief pursuant to Rule 65 of the Arkansas Rules of Civil Procedure.

4. The parties requested that the court issue a *Temporary Restraining Order*. TROs are customarily issued without notice to any of the defendants and are viable only for a short period of time until a hearing can be arranged. Given the parties, the constitutional issues involved, and the fact that the court was able to expedite the matter on its calendar, the court chose not to issue a TRO. As a hearing was held, the procedural posture shifted to being one of a request for issuance of a preliminary and/or permanent injunction.

5. 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.”

6. 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.

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

8. 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.

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

10. 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)

11. 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.

12. 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.

13. Act 1002 of 2021, as enacted, facially violates the separation of powers doctrine 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.

14. Act 1002 of 2021, facially violates the separation of powers doctrine as it usurps the authority specifically granted to the Governor with respect to declarations of emergency as set forth in A.C.A. §12-75-107 (as modified by Act 403 of 2021.)

15. Act 1002 of 2021, as enacted, facially 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.

16. All other causes of action alleging Act 1002 to be unconstitutional, by any party, for any reason, not specifically addressed herein, are denied without prejudice. The court has determined that resolution of such additional causes of action will require the introduction of testimony and evidence and/or stipulation of facts by and between the parties.

17. Because there is no method by which the court can cure the unconstitutionality of Act 1002 of 2021 without substantially rewriting such legislative enactment, it is the obligation of the court to preliminarily declare that Act 1002 of 2021, in its entirety, is unconstitutional under both the separation of powers clause and the equal protection clause of the Arkansas Constitution.

18. Pending further order of this court, or of a court of superintending jurisdiction, Act 1002 of 2021 is declared unconstitutional and its application, in any manner, is hereby preliminarily enjoined.

IT IS SO ORDERED AND ADJUDGED.



TIMOTHY DAVIS FOX
CIRCUIT JUDGE

8/6/21
DATE