IN THE SUPREME COURT OF ARKANSAS

DORIS IVY JACKSON, *et al.* APPELLEES

v. No. CV-23-358

ARKANSAS DEPARTMENT OF EDUCATION, *et al*. APPELLANTS

EMERGENCY MOTION FOR STAY & EXPEDITED CONSIDERATION

On Friday, the Pulaski County Circuit Court rubberstamped a proposed restraining order that blocks the LEARNS Act. That order effectively shutters the Department of Education, halts teacher raises, cancels maternity leave, freezes efforts to combat human trafficking and promote school safety, and threatens to delay the start of school. And beyond that, the order's reasoning means that every emergency clause for decades—from appropriations to criminal statutes—was defective, opening the floodgates to claims that everything from this Court's budget to long-final criminal convictions is invalid. A single circuit court lacks the authority to sow such chaos, so this Court should immediately stay that order pending its own review.

Plaintiffs filed this case three weeks ago but did little to move it forward. Instead, they repeatedly amended their pleadings, delaying resolution and maximizing prejudice from a potential restraining order. The circuit court indulged those efforts, giving the State less than 24 hours to respond to Plaintiffs' latest amendments and then, just hours after the State replied, issuing Plaintiffs' draft order—typos and all.

That order bars the Department from "implementing or enforcing" LEARNS either for 14 days or until June 20 (the order incoherently says both). (RP 521). Consequently, while LEARNS will still be law on August 1, the order (unless this Court blocks it) means that until then, the State may not continue school safety or human-

trafficking training, hire tutors, fund 12-week maternity leave or teacher raises, or compose working groups for the "numerous" necessary rules. Ex. A ¶¶6, 20 (Oliva). That denies benefits to students and teachers now and means that other provisions will not be up and running in time for this school year. *Id.* ¶¶6-15, 19-20. It also means that the Marvell-Elaine School District, which needs to know whether it can partner with the Friendship Foundation and start preparing for the school year, can't move forward and may be unable to start on time. And if left uncorrected, its logic threatens to flood the courts with illegal-exaction, due-process, and habeas claims.

To prevent that, the State asks for a stay and expedited consideration.

Background

A. To ensure that students succeed, LEARNS "extensive[ly]" amended Arkansas's education policies—raising teacher salaries, improving school security, and giving parents more options. Act 237, §73(a). Those changes require the Department to develop "new rules and procedures," and recognizing that, the legislature made most of LEARNS effective immediately and all of it effective well before the regular August 1 effective date. *Id.* That gave the Department and school districts "time ... to implement" it. *Id.* So until the circuit court's order, the Department was hiring tutors for a pilot program, *id.* §20, and drafting rules for "Educational Freedom Account[s]" that it planned to release shortly, *id.* §42. Oliva ¶11. And districts were "work[ing] with law enforcement to improve school safety," *id.* §8, training teachers to thwart human trafficking, *id.* §16, extending their maternity-leave policies to 12 weeks, *id.* §21, developing math tutoring programs, *id.* §30, and "[r]evis[ing] each teacher contract" to increase salary, *id.* §35.

B. Plaintiffs have other ideas and want to block those reforms—from teacher raises to maternity leave. Yet rather than challenge LEARNS itself, they decided to throw a wrench in the implementation process by picking on a struggling school: Marvell-Elaine. That District has fewer than 350 students. Less than 5% of its students read at grade level, and their average ACT score is a dismal 14. (RP 477). So last fall, the Board of Education placed Marvell-Elaine both in Level 5 – Intensive Support and on its consolidation list. (RP 467, 486); Ark. Code Ann. 6-15-2915.

But the Marvell-Elaine community didn't want to lose its school. At an April meeting with the Board, students, teachers, and alumni pleaded with the Board to not consolidate. (RP 269-429). Rather, they proposed using a newly effectual LEARNS provision, which lets private entities contract to assume management of failing schools. Ark. Code Ann. 6-15-3201 to -3204. The Board agreed, and an interview committee comprised of community members and state employees unanimously chose to partner with Friendship. (RP 480). Plaintiff Jesselia Maples's organization also interviewed with the committee but did not win the contract. *Id.*

Almost immediately, Plaintiffs sued, arguing that LEARNS's emergency clause is defective and that Marvell-Elaine had thus jumped the gun. The circuit court agreed and, in a sweeping order, enjoined not simply the transformation contract but *all* LEARNS implementation. (RP 520-21). Further, it forbade the State from using its pre-LEARNS authority to consolidate Marvell-Elaine. *Id.* The District—and much of Arkansas's education policy—now hangs in limbo.

C. Worse, the circuit court's holding—invalidating the longstanding practice of voting simultaneously but separately on the legislation and the emergency clause—

threatens many laws. A college student counting on a scholarship to pay for summer courses starting next week suddenly cannot. Act 413. A teenager who obtained his driver's license this month but had his permit for less than 30 days is now driving illegally. Act 550. Prison guards who carry a gun in their car are now breaking the law. Act 752. Homeless shelters stopping an overdose might be too. Act 586. The Department of Health can't license rural emergency hospitals for another two months. Act 59. And laws the legislature believed were unconstitutional may spring back to life for two months. *See Haile v. Sanders*, No. 23-cv-5 (E.D. Ark); Act 254; *Nat. State Distrib. LLC v. ABC*, No. 22-cv-1262 (E.D. Ark.); Act 839.

The order also jeopardizes criminal convictions and sentences. For instance, the Fair Sentencing of Minors Act contains an emergency clause enacted like this one. Act 539 (2017). That Act is not retroactive, so juveniles sentenced between its signing and the effective date of non-emergency legislation would no longer be parole-eligible and require resentencing. *Segerstrom v. State*, 2019 Ark. 36, at 4.

And the order would render every salary, rental, or utility payment made between July 1 and August 1 for decades an illegal exaction—and require the State to shut down this summer to avoid breaking the law again. *Jacksonville v. Smith*, 2018 Ark. 87, at 6. Indeed, the order reasoned that appropriations emergency clauses are not only procedurally but also substantively invalid, by holding laws with emergency clauses must take effect immediately, rather than with the fiscal year. (RP 521).

Absent an immediate stay, then, one hasty order by a single trial judge threatens to upend expectations and flood the courts with claims by everyone from new drivers and mothers denied maternity leave to prison guards and inmates.

Reasons for Granting an Immediate Stay

Because the State is likely to succeed on the merits and the public will suffer irreparable harm absent a stay—and a stay won't injure Plaintiffs—the Court should stay the circuit court's order. *Smith v. Pavan*, 2015 Ark. 474, at 3 (per curiam).

A. The State is likely to prevail on appeal.

The State is likely to succeed because the circuit court's order doesn't comply with the rules of civil procedure and conflicts with decades of precedent.

1. The circuit court's order is facially void. The court acknowledged that TROs may not "exceed 14 days" unless "extend[ed]" "for good cause." Rule 65(b)(2); (RP 516). Yet the order incoherently states both that it would "not exceed [14] days" and that it "shall expire on June 20" (25 days). (RP 521). Because those dates are inconsistent and the latter is not allowed by Rule 65, the order is facially void.

2. The emergency clause is valid because it received a separate roll call vote. The circuit court incorrectly held that LEARNS's emergency clause is defective because it wasn't passed by a "separate roll call" vote as required by Ark. Const. art. 5, §1. Not so. The journals of each house—the *only admissible evidence* about the legislative process, *Wiseman v. Madison Cadillac Co.*, 88 S.W.2d 1007, 1009 (Ark. 1935)—say otherwise. The House Journal notes that LEARNS "passed," then records a separate vote on the emergency clause. (RP 265-66). Likewise, the Senate Journal provides that the Act "passed," then notes that "the President ordered the Secretary to call the roll upon the adoption of the emergency clause," which "was adopted." (RP 182-83). The circuit court's holding amounts to an attack on the jour-

nals' validity, but allowing challenges to those records would be "disastrous." *Ruddell v. Gray*, 285 S.W. 2, 4 (Ark. 1926). The "existence of a law" should not "rest upon [so] uncertain [a] foundation," *Ark. State Fair Ass'n v. Hodges*, 178 S.W. 936, 939 (Ark. 1915), that it is subject to challenge by plaintiffs "interested in nullifying" it. *People ex rel. Manville v. Leddy*, 53 Colo. 109, 121 (1912). Rather, "settled law" treats the journals as "conclusive." *Moehring v. Kayser*, 21 Ark. 457, 459 (1860). Because they confirm a separate roll-call vote, the circuit court was wrong.

The circuit court could not look "outside of [that] record." *Helena Water Co. v. Helena*, 216 S.W. 26, 27 (Ark. 1919). Regardless, video recordings confirm a separate vote. Members knew they were voting both "[t]o create the LEARNS Act" and to "declare an emergency." House Video (Mar. 2, 1:13:29-1:13:39 p.m.), https://www.arkansashouse.org/watch-live; Senate Video (Mar. 7, 3:25:20-3:25:35 p.m.), https://senate.arkansas.gov/todays-live-stream-meetings/archived-meetings. And after the vote, both houses announced that "the bill and emergency clause have passed." House Video (2:51:23–2:51:33 p.m.); Senate Video (3:39:00–3:39:11 p.m).

True, the two separate votes were conducted simultaneously, but that's been the practice for decades. (RP 172-73, 495-97). Because that longstanding practice informs the meaning of Art. 5, §1, *Chiafalo v. Washington*, 140 S. Ct. 2316, 2326 (2020), invalidating it "without notice" would be "unjust," *N. Little Rock Sch. Dist. v. Lipsmeyer*, 87 Ark. App. 335, 336 (2004) (Bird, J., concurring). That's especially so for legislative procedures ordinarily unreviewable by courts, *Reaves v. Jones*, 257 Ark. 210, 213 (1974)—which is why this Court previously declined to void legislation passed contrary to "a well settled rule of legislation." *Vinsant v. Knox*, 27 Ark.

266, 281 (1871). Indeed, the circuit court's shocking reasoning would render countless expenditures illegal and threaten convictions and sentences entered between enactment and the non-emergency effective date of legislation. *See, e.g.*, Acts 6, 121, 213, & 235 (Appropriations); Act 539 (2017); Act 19 (2016); Act 946 (2021). The circuit court shouldn't have opened Pandora's box—and this Court should close it.

2. The emergency clause adequately identifies an emergency. The circuit court also concluded that the emergency clause doesn't identify an emergency because any time crunch was "of the legislature's own making." (RP 518). But implementing LEARNS on August 1 isn't an option: schools could not get up to speed in just a few weeks. The legislature's only choices were to speed things up and implement LEARNS this summer or delay implementation for over a year. A reasonable legislator could believe that the Act should be implemented now, not later. Act 237, §73(a). That's sufficient to declare an emergency. *Priest v. Polk*, 322 Ark. 673, 682.

3. The emergency clause applies to "measures." Finally, the circuit court faulted LEARNS for setting "differing effective dates" for different provisions. (RP 520). That holding rests on two false premises—first, that emergency clauses must be "immediately effective," so pegging funding to the start of the fiscal year is impermissible. *Id.* Disastrously, that'd invalidate every appropriations bill and many others. *E.g.,* Acts 52, 134, 183, & 536 (police, teacher, and judicial retirement).

Second, the circuit court held that the Constitution doesn't "allow for line-item emergency clauses with differing effective dates." (RP 519). But as the circuit court conceded, that rule would (oddly) let the legislature attach different emergency clauses to different provisions if it passed them piecemeal, but not if it passed "one

huge, complicated, omnibus bill." *Id.* Nothing in the Constitution forbids attaching different emergency clauses to individual code sections in an omnibus; rather, it permits emergency clauses on "legislative … enactment[s] of any character." Art. 5, §1. An independently codified section is certainly an enactment. *Enactment, Black's Law Dictionary* (11th ed. 2019) ("legal proposition"). The circuit court should not have imposed this extraconstitutional limitation on legislation.

B. The State and public will suffer irreparable harm absent a stay.

1. Absent a stay, the circuit court's order jeopardizes Marvell-Elaine's future. "[T]o properly start school" this August, Marvell-Elaine needs "curriculum, professional training, leadership coaching, special education, food service, transportation, custodial, board governance, and instructional support." (RP 481-82). So Friendship was interviewing teachers and staff. Oliva ¶16. But under the circuit court's order, it can't. (RP 520). With much work to be done, even a one-month delay might make it "impossible for the school to begin on time." (RP 481); Oliva ¶18.

Of course, parents should not be expected to send their children to a non-functioning school. So if the transformation contract is off the table, the State might reconsider consolidation to ensure that kids have somewhere to go. Yet the circuit court also "enjoined" the State from "consolidating, dividing or dissolving [Marvell-Elaine]" (RP 521)—though that authority long predates LEARNS. Ark. Code Ann. 6-15-2916(2)(D). And while that may in some sense preserve the status quo, continuing to operate a school with a dismal academic record hurts its students. (RP 477).

2. And the harm isn't limited to one district; it stretches across Arkansas, impacting families from Blytheville to Texarkana. Because the Department is enjoined

from "implementing" LEARNS, it can't hire tutors and literacy coaches, release rules for the new Educational Freedom Accounts, implement new school safety programs, or train teachers to fight human trafficking. Oliva ¶¶6-15, 19-20. And it may lose a "million-dollar" literacy-tutoring grant. *Id.* ¶13. Of course, LEARNS will be effective August 1, so the Department will have to scramble to implement those programs. The circuit court's order puts them on ice for the summer—requiring the Department to play catch up or (more likely) delay those student assistance programs for a year. That deprives families of expected tuition assistance, denies kids tutoring help, and potentially jeopardizes student safety. *Id.* ¶¶9, 12, 19-20.

Enjoining LEARNS implementation harms teachers too—particularly new mothers, since the circuit court barred the Department from funding 12-week maternity leave. *Id.* ¶15. So too, the circuit court's order jeopardizes teacher pay raises; since it bars the Department from paying districts, they may not have the money to pay teachers who signed a contract for $50,000, rather than $36,000. *Id.* ¶¶7-8.

3. The circuit court's order also threatens havoc in other ways. Indeed, if its logic goes uncorrected, the State will face illegal exaction suits if it pays its employees or bills in July. And Arkansans may suddenly face fines and jail for conduct—driving, carrying a firearm, etc.—they thought was legal. Acts 550 & 752. And an unknowable number of offenders may request resentencing. Act 539 (2017).

C. Plaintiffs will not be harmed by a stay.

Conversely, a stay won't harm Plaintiffs. The circuit court worried that "district employees" had to "apply for new jobs with Friendship." (RP 514). But that's not irreparable; lost employment can be redressed by money damages. *Manila Sch. Dist.*

No. 15 v. Wagner, 356 Ark. 149, 155 (2004). Besides, the transformation contract is Marvell-Elaine's only chance to right the ship. Without it, the District will close—and its employees will certainly lose their jobs. (RP 465). At least under the transformation contract, those employees can apply to remain. (RP 168, 514).

The circuit court also suggested that the transformation contract will divert resources away from students. But that argument simply ignores the fact that without a contract, the school can't function and that doesn't benefit anyone. (RP 481). And though the circuit court thought the transformation contract would "deny the Marvell plaintiffs the opportunity to [shape] any future 'transformation contract'" (RP 515), plaintiffs already got their shot here. (RP 480). They can't claim irreparable harm just because they were outvoted. Finally, though the CAPES plaintiffs want to "stop" LEARNS (RP 515), this suit doesn't help that. It does *nothing* to stop LEARNS from taking effect or ensure a referendum.

That's the core problem with the order: whatever happens now, LEARNS takes effect on August 1. Then, Marvell-Elaine can sign a transformation contract. Plaintiffs will have gained nothing. But by then, it may be too late to fix the District in time for the school year—or to implement the other LEARNS changes. The State, Marvell-Elaine, and students and teachers across Arkansas will have lost out.

Conclusion

Because the circuit court's order harms teachers and students both in Marvell-Elaine and across Arkansas, the State asks this Court to immediately stay that order before ordering any briefing necessary to consider the matter fully, or alternatively to order that Appellees respond by noon on June 1, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Nicholas Bronni, hereby certify that on May 30, 2023, I electronically filed the foregoing with the Clerk of the Court using the e-*Flex* system, which shall send notice to all Counsel of Record.

/s/ *Nicholas J. Bronni*
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