

IN THE CIRCUIT COURT OF PULASKI COUNTY
AT LITTLE ROCK

Representative/Senator-elect DAN SULLIVAN, in his
official capacity, et al.,

PETITIONERS

V.

CASE NO. 60CV-20-4915

JOSE ROMERO, MD
Secretary of the Arkansas Department of Health,
in his official capacity.

RESPONDENT

PETITIONER’S RESPONSE TO RESPONDENT’S MOTION TO DISMISS

COME NOW, the Petitioners, Arkansas State Legislators, in their official and individual capacities, and private citizens of the State of Arkansas in their individual capacities, by and through undersigned counsel, and in support of their Response to Respondent’s Motion to Dismiss, state and allege as follows:

1. In his Motion to Dismiss, Respondent argues that “Petitioners have failed to state facts or a claim upon which relief can be granted and the Petition should be dismissed pursuant to Ark. R. P. 12(b)(6).”

2. However, the facts necessary to obtain declaratory relief, that is, “the requisite precedent facts or conditions generally” required include:

(1) a justiciable controversy, that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; in other words, a legally protectable interest; and (4) the issue involved in the controversy must be ripe for judicial determination.

McCutchen v. City of Fort Smith, 2012 Ark. 452, 425 S.W.3d 671, 680-81 (2012).

3. Petitioners address each and every one of the precedent facts in Paragraphs 1, 2 and 3, and elsewhere in their Petition for Declaratory Judgment.

4. Plaintiffs have appropriately pleaded that Respondent has issued “directives” consisting of agency statements of general applicability and future effect, none have which have been allowed to expire contrary to law, the protectable statutory and constitutional rights and interests of each Petitioner is affected thereby, and, given that the Respondent seeks continuing enforcement of directives have not been determined to have expired under Arkansas law, the rights, status and legal relations between the parties is ripe for adjudication.

5. Respondent raises in the alternative, Rule 19 of the Arkansas Rules of Civil Procedure and A.C.A. § 16-111-106 as bases for dismissal, issues outside the scope of Respondent’s Motion to Dismiss, and, therefore, should not be considered by the Court, but which Petitioners will address in its supplemental Brief in Support filed contemporaneously and incorporated herein by reference.

WHEREAS, for the reasons stated herein, Petitioners pray for an Order of this Court denying the relief requested in Respondent’s Rule 12(b)(6) Motion to Dismiss, and for such other and further relief the Court deems just and proper.

Respectfully submitted,

STORY LAW FIRM, PLLC

By /s/ Gregory F. Payne

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ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petitioners' Response to Respondent's Motion to Dismiss has been provided to counsel for Respondent this 1st day of October , 2020 via the Court's electronic e-flex filing system.

/s/ Gregory F. Payne
Gregory F. Payne