# IN THE CIRCUIT COURT OF PULASKI, ARKANSAS

SEAN LYNN; and
LAURA HAMMETT — PLAINTIFFS

v. Case No. 60CV-26-216

BOARD OF TRUSTEES of the UNIVERSITY of ARKANSAS, in their official capacity;
et al. — DEFENDANTS

**Brief In Support Of Plaintiffs' Response To The Boards' Motion To Dismiss**

**The Board is not immune from official-capacity claims for prospective or declaratory relief.**

State actors named in their official capacity are not immune under Article 5, § 20 of the Arkansas Constitution from equitable relief that will prevent their illegal, unconstitutional, and ultra vires actions from continuing or recurring in the future. A claim for injunctive relief falls within the recognized exception to sovereign immunity for illegal or unconstitutional acts. *Land v. BAS, LLC*, 2025 Ark. 107, 3, 713 S.W.3d 1, 5, *reh'g denied*.

To avoid dismissal on sovereign immunity grounds, a plaintiff alleging a due process violation must "plead facts that, if proven, would demonstrate a due process violation that she

can argue was an illegal or unconstitutional act sufficient to avoid sovereign immunity." *Land* 2025 Ark. 107 at 5, 713 S.W.3d at 6, *reh'g denied* (Sept. 4, 2025)(citing *Williams v. McCoy*, 2018 Ark. 17 at 4, 535 S.W.3d 266, 269). In Land, the circuit court found denied the Commissioner of State Lands summary judgment on a claim of insufficient notice before a tax sale of the plaintiff's property, because it found that genuine issues of material fact remained concerning whether the Commissioner had violated BAS's due process rights. *Id*. at 3. The Supreme Court of Arkansas reversed. *Id*. at 4.

There are distinctions between *Land* and this case that demand a different outcome. The differences are both procedural and substantive.

Procedurally, a motion for summary judgment is based on a lack of genuine disputes of material fact. *Id*. at 3. On a motion to dismiss, the court treats the facts alleged in the complaint as true and view them in the light most favorable to the plaintiff. *Grine v. Bd. of Trustees,* 338 Ark. 791, 796, 2 S.W.3d 54, 57 (1999)(pin cite used by the Board for other purpose, brief at 1). Taking the facts as alleged in the plaintiffs' complaint as true, the violations of the plaintiffs' constitutional rights and illegal actions of the UALR employees that are condoned by the Board are egregious.

The following are samples of facts alleged and described with particularity in the complaint that show some of the *ultra vires,* wanton, capricious, bad faith, injurious, or arbitrary acts that the Board is defending:

No one petitioned a court for permission to treat Lynn without his consent. Page 13.

No petition was filed, and thus no judicial order issued pursuant to Ark. Code Ann. § 20-9-604. Page 13.

In the first 23 hours of confinement, Lynn was forced to ingest fentanyl, lorazepam, haloperidol, levetiracetam, dexmedetomidine, and olanzapine. Pages 14 – 15.

Lynn was held in four-point restraints for up to three days at a time, continuously, for a total of nine days. Much of that time his genitals were needlessly exposed. Cf. Page 18.

The defendants starved Lynn. Pages 38 – 39.

The Board has yet to address the lies told by its employees to the plaintiffs, including withholding the triage report and documentation of the administration of fentanyl for sixteen months. Page 53.

Defendants failed to preserve video that would show some of the alleged illegal conduct. Paragraphs 289 and 298.

The Board permits a policy prohibiting citizens from video recording UAMS personnel and equipment, even when those personnel are forcing an individual to remain in the hospital and engaging in repeated and continuous harmful or offensive contact with that individual. Pages 54 – 55.

The alleged conduct occurred over two years ago and the Board has made no effort to have UAMS Police Department or any prosecutorial agency investigate any of the alleged criminals. Pages 17, 40 – 41.

The plaintiffs' 72 pages of well pleaded facts, taken as true – as must be on a motion to dismiss – contain ample allegations of conduct that falls within the exception to sovereign immunity.

**The Board cited authorities that recognize exceptions to immunity that apply here.**

The exceptions allowing this case to proceed appear in the Board's own authorities, yet the Board quotes only the general rule while omitting the exceptions those cases recognize.

For example, the Board stated that "[s]uits against the State are expressly forbidden by this provision. *Grine v. Bd. of Trustees*, 338 Ark. 791, 796, 2 S.W.3d 54, 57-58 (1999)." In the following section on sovereign immunity, there is this statement of an exception. "Equity does have jurisdiction to enjoin or restrain officers of State agencies where the act to be restrained is *ultra vires,* wanton, capricious, in bad faith, injurious, or arbitrary." *Grine*, 338 Ark. at 799, 2 S.W.3d at 59.

The Board next cited a 1909 case. "The Arkansas Supreme Court stated long ago in *Pitcock v. State*, 91 Ark. 527, 535, 121 S.W. 742 (1909), '[A] sovereign State cannot be sued except by its own consent; and such consent is expressly withheld by the Constitution of this State.'" Brief at 1. The sentence from "stated" through the final period, is a direct quote from *Grine*. *Grine*, 338 Ark. at 796, 2 S.W.3d at 58. If counsel read the case law she cited, then she chose not to disclose how it is distinguished from this case.

Pitcock concerned a contract dispute between the Board of Commissioners of the Arkansas State Penitentiary that was providing inmates as labor to several companies. *See generally Pitcock*, 91 Ark. 527, 121 S.W. at 743. The suit was for an injunction against breaking the contract. *Id*. The court differentiated between purely pecuniary interests and an unlawful act to the injury of the complaining party[.]" *Id*. at 746. In this case, the plaintiffs are not asking for economic damages from the Board.

The Board then cited a case in which it was plaintiff and appellee. "The Board, which manages and oversees the campuses of the University of Arkansas System, is an instrumentality of the state and immune from suit. *See Washington County v. Bd. of Trs.*, 2016 Ark. 34, 480 S.W.

3d 173." Brief at 1. The "see" signal is used instead of no signal before the cited case when there is an inferential step between the authority cited and the proposition it supports. THE BLUEBOOK 62 (the editors of the Columbia Law Review, et al. eds., 21st ed. 2020). The Board took an inferential leap, instead. The court never used the words "immune from suit." In fact, the Board was not being sued. The Board was the plaintiff. The proposition supported by the case is that the Board is "immune from ad valorem taxation." *Washington Cnty. v. Bd. of Trs. of the Univ. of Arkansas*, 2016 Ark. 34, 1, 480 S.W.3d 173 (2016) (Westlaw shows 13 uses of "immune" followed by a form of taxation each time, including in the synopsis and headnotes). This is the kind of hallucination one might expect from generative AI; It should not be expected from lead counsel representing UAMS and the Board.

The Board next cited another case against it, *Andrews*, that is a case about purely pecuniary issues. *See Bd. of Trs. of Univ. of Ark. v. Andrews*, 2018 Ark. 12, 535 S.W.3d 616. Checking the KeyCite Yellow Flag on Andrews leads to another Arkansas Supreme Court case that clarifies the difference between the usual damages case as opposed to the immunity exempt cases like this one. "Notably, the Board conceded that *Andrews* did not 'explicitly or implicitly overrule the line of cases that allow lawsuits for injunctive relief where a state official or agency is acting unlawfully, unconstitutionally, or otherwise outside the scope of his/its authority (ultra vires).' *See Bd. of Trs. of Univ. of Ark. v. Andrews*, 2018 Ark. 12, 535 S.W.3d 616." *Arkansas State Plant Bd. v. McCarty*, 2019 Ark. 214, 4, 576 S.W.3d 473, 475 (2019).

Likewise, Ark. Cmty. Corr. 1 v. Barnes, 2018 Ark. 122 was also a purely pecuniary case. The plaintiff asked for damages, attorneys' fees and costs. In this case, the plaintiffs are not asking for any money from the Board. The plaintiffs expect that policy limits on the Doctors Insurance policies will satisfy the plaintiffs by settlement. In fact, the declaratory relief

requested, removing the professor medical doctors who were the most culpable for plaintiffs' damages will save millions of dollars per year in salaries for the state. At least two of the doctors are defendants in another malpractice case, demonstrating they are a high risk to the state.

As in *Grine*, in *Byers* "the record does not demonstrate that the ultra vires exception or the bad faith exception to sovereign immunity applies." *Arkansas State Med. Bd. v. Byers*, 2017 Ark. 213, 4, 521 S.W.3d 459, 463 (2017). Grine was decided based on a motion for summary judgment. In their complaint, the Plaintiffs did not exhaust each specific act of battery nor write out transcripts of all the videos Hammett was able to make that captured Lynn's tortured pleas for release. But taking the plaintiffs' allegations as true, there should be enough to deny a motion to dismiss in order to allow the plaintiffs to develop their case.

**The Board Incorrectly Equates Joinder With Representation**

The Board asserts that joinder of the pro se plaintiffs constitutes the unauthorized practice of law. That assertion conflates joinder of parties with legal representation.

The Board stated there is an "obvious question of whether Ms. Hammett is attempting to represent both herself and her son, Mr. Lynn." The answer is no. Each plaintiff is appearing on his or her own behalf.

A signature by each pro se party acknowledging that the signatory seeks relief from the court is the essential indicator of self-representation. *See Monaco v. Lewis*, 2024 Ark. 27, 4, 684 S.W.3d 583, 586. Here, both plaintiffs signed the complaint. The Board itself acknowledged those signatures. Brief at 2 (referencing Complaint at 73).

The Board nevertheless points out that only Hammett's address appears on the summons issued to the Board. But Lynn is listed in the caption of both summons and complaint and signed the pleading asserting his claims.

"[I]n multiple-party cases, only the first-listed party on each side of the case must be listed in the caption. This revision is necessary because of electronic filing software and is consistent with *Nucor Corp. v. Kilman,* 358 Ark. 107, 186 S.W.3d 720 (2004), in which the Supreme Court refused to read the original version of the rule to require "a listing of every plaintiff and every defendant on every summons, no matter how many plaintiffs and defendants are parties to the case." *Id.* at 123, 186 S.W.3d at 729." Ark. R. Civ. P. 4, Reporter's Notes (2019 Amendment). The rule on form of summons literally says the summons must include the "address of the plaintiff." Ark. R. Civ. P. 4(b)(3) (using the singular form of "plaintiff").

Here, Lynn's name was on the caption of the summons. Both plaintiff's addresses were input on the electronic filing system. The deputy clerk issued the summons and said the electronic filing software only outputs one plaintiff's address. Neither party signed the summons. Therefore, the clerk prepared summons is no indication that Hammett is representing Lynn.

To the extent the Court determines that the summons should include both plaintiffs' addresses, any such issue can easily be corrected by amendment. Courts routinely permit amendment of summonses where necessary to perfect service, and there remains ample time to do so. Ark. R. Civ. P. 4(e).

The Board's argument therefore does not demonstrate unauthorized practice of law. At most, it raises a procedural question concerning the form of the summons—an issue that is readily curable and does not justify dismissal of the claims.

Accordingly, the Board's motion to dismiss should be denied.

Respectfully Submitted,

SIGNATURES COLLECTED ON PAGE ATTACHED

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**Certificate of Service**

I, Laura Hammett, hereby certify that on March , 2026, I filed the foregoing electronically with the Clerk of Court using the Arkansas Judiciary Electronic Filing System, which shall send notification to all registered parties or their legal representatives in this matter.

_____ Date: _____

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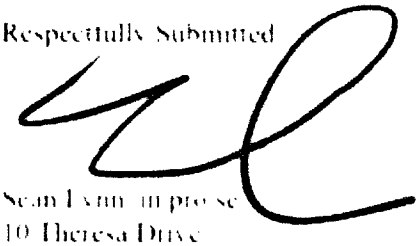
Respectfully Submitted



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**Certificate of Service**

I, Laura Hammett, hereby certify that on March 16 2026, I filed the foregoing electronically with the Clerk of Court using the Arkansas Judiciary Electronic Filing System, which shall send notification to all registered parties or their legal representatives in this matter.

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