

IN THE ARKANSAS SUPREME COURT

NATHANIEL SMITH, MD, MPH, Director of the Arkansas Department of Health, in his official capacity, and his successors in office

PETITIONER

v. No. CV-17-1006

HON. TIMOTHY FOX, PULASKI COUNTY CIRCUIT COURT,
SIXTH DIVISION,

RESPONDENT

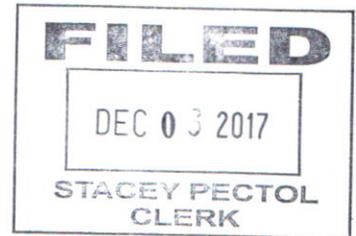
and

MARISA N. PAVAN and TARRAH D. PAVAN,
individually, and as parents, next friends, and
guardians of T.R.P., a minor child

LEIGH D. W. JACOBS and JANA S. JACOBS,
individually, and as parents, next friends, and
guardians of F.D.J., a minor child

COURTNEY M. KASSEL and KELLY L. SCOTT,
individually, and as parents, next friends, and
guardians of A.G.S., a minor child

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RESPONDENTS

EMERGENCY PETITION FOR WRIT OF MANDAMUS, WRIT OF PROHIBITION, WRIT OF CERTIORARI, SUPERVISORY WRIT, OR OTHER APPROPRIATE RELIEF

Nathaniel Smith, MD, MPH, Director of the Arkansas Department of Health (“ADH”), in his official capacity, and his successors in office, state as follows for his Emergency Petition for Writ of Mandamus, Writ of Certiorari, Writ of Prohibition, Supervisory Writ, or any other writ or relief this Court deems appropriate:

1. Defendant requires an expedited ruling on this petition because the mediation that Judge Fox has ordered to take place is scheduled for Saturday, December 9, 2017. Accordingly, for any relief from this Court to be effective, it must be issued by the evening of Friday, December 8, 2017.¹

2. ADH requests that this Court issue any writs necessary to (1) vacate Circuit Judge Fox's *Order Requiring Mediation* dated November 13, 2017 and *Order Concerning Defendant's Motion for Partial Reconsideration* dated November 27, 2017; and (2) order Judge Fox to enter an order consistent with the parties' agreed, proposed order resolving this case. *See* Exhibit B. In the event that this Court does not vacate the mediation orders in their entirety, Defendant asks this Court to (3) vacate the orders to the extent that they require the Attorney General to personally attend and participate in the mediation.

3. This Court has already issued its instructions as to how this case should be resolved. The problem is that Judge Fox disagrees with this Court. In an effort to force the parties to agree to an order that he himself cannot enter without violating this Court's directive, Judge Fox has ordered the parties to

¹ Alternatively, if this Court is unable to decide on whether to grant the relief requested by this Petition by Friday evening, Petitioners respectfully request that this Court issue an order staying Judge Fox's mediation order pending its resolution of this petition.

mediation. The only permissible outcome of the mediation (in Judge Fox's view) is an agreed order which would circumvent the ruling of this Court with which Judge Fox disagrees. If the parties fail to submit such an order, Judge Fox has made clear that he will enjoin Defendant from issuing birth certificates to *anyone*. Further, raising serious separation of powers concerns, Judge Fox has also ordered the Attorney General, a state constitutional officer, to personally participate in this mediation. This Court has the authority to issue an extraordinary writ to correct these errors and should do so forthwith.²

Background

4. Amendment 80 provides that this Court exercises superintending control over all the courts of Arkansas. Ark. Const. amend. 80, § 4. This Court has defined superintending jurisdiction as one of three types of jurisdiction held by the courts of last resort; the other types are appellate and original jurisdiction. *Foster v. Hill*, 372 Ark. 263, 268, 275 S.W.3d 151, 155 (2008). Superintending jurisdiction is an extraordinary power hampered by no specific rules or means. *Id.* By virtue of this jurisdiction, the court may “invent, frame, and formulate new and additional means, writs, and processes.” *Id.* (internal quotation marks omitted). In

² Out of an abundance of caution, Defendant has filed a notice of appeal in this case to preserve all available avenues for review. Defendant believes that an extraordinary writ is the only available remedy in this matter.