

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
CIVIL DIVISION**

**THE LITTLE ROCK DOWNTOWN NEIGHBORHOOD  
ASSOCIATION, INC., et al.**

**PLAINTIFFS**

**Vs.**

**Case No. 60CV-20-6460**

**ARKANSAS DEPARTMENT OF  
TRANSPORTATION et al.**

**DEFENDANTS**

**BRIEF IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION**

This case involves the two largest highway construction projects – the “30 Crossing Project” in Little Rock/North Little Rock, and the “Saline County I-30 Project” -- undertaken by the Arkansas Department of Transportation (ArDOT).

The largest is the “30 Crossing” Project, which purports to widen approximately seven miles of Interstate 30 from its southern interchange with I-440 and I-530 to the Interstate 40/Hwy. 67/167 interchange in North Little Rock on the east, and the I-40/Hwy. 365 (MacArthur Drive) intersection on the west, in North Little Rock, including the replacement of the I-30 Bridge. The currently estimated cost of the 30 Corridor Project is \$1.3 billion. However, due to a lack of funding to construct the entire project, ArDOT has elected to construct the project in two Phases. Phase 1 will purport to demolish and replace the I-30 Bridge over the Arkansas River, and reconstruct to 8 lanes or more (depending on the location) that portion of the 30 Corridor

from the I-30/I-630 Interchange northward, across and including the Bridge, to the Broadway Street intersection with I-30 in North Little Rock. I-30 northward from the Broadway Street intersection to the I-30/I-40 intersection will be “restriped” (*i.e.*, the lanes and shoulders would be narrowed so that the roadway would contain four lanes instead of the current three. Phase 1 of this Project is estimated to cost approximately \$638.2 million. (See Exhibit 1 to Complaint: 30 Crossing Financial Plan, p. 18).

The second largest project undertaken by ArDOT is the “Saline County I-30 Project, which purports to widen 5.5 miles of Interstate 30 from two to three lanes in each direction, from the interchange with U.S. Highway 70 (Exit 111) to Sevier Street in Benton (Exit 116) in Saline County, Arkansas, including constructing the Highway 67 interchange (Exit 114). The cost of this project is \$187.3 million.

Both of those projects are in the early stages of construction. To the knowledge of the Plaintiffs, little, if any, destruction and removal of existing roadway has occurred. However, if a preliminary injunction is not issued, ArDOT and its contractors will commence destroying essential parts of the roadbed and/or bridge, making travel over Interstate 30 more hazardous if an injunction is later issued. Further, if ArDOT continues to use its current funding source for this work, it will do so illegally in violation of a decision of the Arkansas Supreme Court.

This case primarily involves the funding that has been and currently continues to be used for these Projects. An understanding of that funding requires a brief explanation of Amendment 91 to the Arkansas Constitution and the actions of ArDOT subsequent to its adoption.

In November 2012, Amendment 91 to the Constitution of Arkansas was enacted imposing a one-half cent sales tax on the taxpayers of Arkansas to be used for issuance of bonds to finance the construction and maintenance of Four-Lane Highways in the State. After the enactment of Amendment 91, ArDOT, or its predecessor agency (Arkansas Highway Department) commenced constructing highway projects in the State under a program named by ArDOT as “the Connecting Arkansas Program” (“CAP”), using Amendment 91 funds.

However, the CAP included projects for widening of existing interstate highways from four lanes (two lanes in each direction) to five, six, eight or more lanes. While there were Federal and other state funds included in the CAP, the State’s share of projects included in the CAP consisted, and continues to consist primarily, if not entirely, of funds generated by the Amendment 91 sales tax.

On October 29, 2020, the Supreme Court of Arkansas rendered an opinion in the case of *Buonaiuto, et al v. Gibson et al*, 2020 Ark. 352, 2020 WL 6375915, which was a challenge to ArDOT’s use of Amendment 91 funds for construction or maintenance of highways in excess of four lanes. The Supreme Court held that funds derived from the sales tax assessed by Amendment 91 could not be expended on expansion of highways of greater than four lanes, and specifically stated that the Arkansas Department of Transportation (ArDOT) lacked authority under Amendment 91 to expend such funds “for major improvements to six-lane interstate highways, such as projects CA0602 [The “30 Corridor Project”] and CA0608 [The “I-630 Widening Project”] ... .” (Supreme Court Opinion, pp. 7-8) A copy of the Supreme Court’s

opinion is attached as **Exhibit 1** to the Plaintiffs' Motion for Preliminary Injunction filed simultaneously herewith.

As noted above, one of the projects included in the CAP involving the widening of existing highways to more than four lanes is the "30 Corridor Project" (specifically referred to in the above-mentioned Supreme Court decision as being one on which Amendment 91 funds could not be spent), under which ArDOT proposes to destruct and replace the I-30 bridge over the Arkansas River, and widen the bridge and I-30 through Little Rock and North Little Rock in Pulaski County, Arkansas, from the current six lanes (three in each direction) to eight lanes (four in each direction, not including collector/distributor lanes) or ten lanes, depending on the location within the Project Area.

Another such project included in the CAP is the "Saline County I-30 Project described above. That section of I-30 would be widened for 5.5 miles from the existing four lanes (two in each direction) to six lanes (three in each direction) at a cost of \$187.3 million.

Construction work on portions of I-30 within Phase I of the 30 Crossing Project and on the I-30 Saline County Project has commenced by ArDOT and its contractors and is on-going. See ArDOT Information Release dated November 9, 2020, attached as **Exhibit No. 2** to the Motion, showing ongoing work on the 30 Corridor Project as of that date as "part of ArDOT's Connecting Arkansas Program;" ArDOT Information Release dated November 6, 2020, attached as **Exhibit No. 3** to the Motion, showing ongoing work on the Saline County I-30 Project as "part of ArDOT's Connecting Arkansas Program" to widen 5.5 miles of I-30 to three lanes in each direction; and ArDOT Information Release dated November 13, 2020, attached as **Exhibit**

**No. 4** to the Motion, also showing ongoing work on the Saline I-30 Project as “part of ArDOT’s Connecting Arkansas Program” to widen 5.5 miles of I-30 to three lanes in each direction.

The on-going construction work on the 30 Crossing and Saline County I-30 Projects under the Connecting Arkansas Program, through which those projects are funded in large part by Amendment 91 tax revenues, is an illegal use of tax revenues under Amendment 91 and is in direct contravention of the Supreme Court’s decision in *Buonaiuto, et al v. Gibson et al*, *supra*.

The use of funds derived from Amendment 91 taxes for the 30 Crossing Project and the Saline County I-30 Project will result in irreparable harm to the Plaintiffs, as taxpayers of Arkansas, and to the public of Arkansas, in that the Amendment 91 taxes will not be used for the purposes for which they were approved by the citizens of Arkansas, *i.e.*, the construction of 4-lane highways to connect all portions of the State of Arkansas.

Furthermore, the projects, once started, may not be completed if the Defendants cannot assure the Court and the public that Amendment 91 funds that have been allocated to the Projects, but which cannot be used pursuant to the Supreme Court’s decision, can be replaced from other readily available sources by the Defendants. The Defendants have not demonstrated, as Plaintiffs requested, that they can replace the Amendment 91 funds with other readily available funds. Defendants should be required to demonstrate the ability to replace those funds to the Court’s satisfaction before being allowed to proceed with construction.

It should be remembered that ArDOT was required to divide the 30 Corridor Project into two Phases because it did not have the funds available to perform the Project at one time, and

that was prior to the Supreme Court's ruling that eliminated approximately two-thirds of the funding -- \$495.5 million, *i.e.*, the Amendment 91 funds -- from the project. That money will have to be made up from other sources, and it is highly questionable that ArDOT has that amount of funds available.

Likewise, the Saline County I-30 Project is dependent on Amendment 91 funds for approximately two-thirds of its cost of \$187.3 million, or approximately \$125 million. ArDOT will, to comply with the Supreme Court's ruling, be required to find an uncommitted and available \$125 million to use on the Saline County I-30 Project in addition to the almost \$500 million required for the 30 Crossing Project. Needless to say, there are potentially other projects that are in the same posture, to say nothing of the potential for ArDOT's having to repay Amendment 91 funds for other CAP projects exceeding four lanes. Those issues are not before the Court in this case, but are considerations on whether ArDOT can provide sufficient available funds to replace the Amendment 91 funds that are no longer available to it for these projects.

### ***The Standard of Review***

It is well established in Arkansas jurisprudence that, in determining whether to issue a preliminary injunction pursuant to Rule 65, the trial court must consider two things: (1) whether irreparable harm will result in the absence of an injunction or restraining order, and (2) whether the moving party has demonstrated a likelihood of success on the merits. *Baptist Health*

*v. Murphy*, 365 Ark. 115, 226 S.W.3d 800 (2006); *Three Sisters Petroleum, Inc. v. Langley*, 348 Ark. 167, 72 S.W.3d 95 (2002).

In *City of Jacksonville v. Smith*, 2018 Ark. 875, 40 S.W.3d 661 (2018), the Arkansas Supreme Court reviewed the *Three Sisters Petroleum* case, and discussed the two elements necessary to be shown to obtain a preliminary injunction:

Rule 65 of the Arkansas Rules of Civil Procedure governs the issuance of preliminary injunctions. In determining whether to issue a preliminary injunction pursuant to Rule 65, the circuit court must consider two issues: (1) whether irreparable harm will result in the absence of an injunction or restraining order and (2) whether the moving party has demonstrated a likelihood of success on the merits. *Ark. Dep't of Human Servs. v. Ledgerwood*, 2017 Ark 308, 530 S.W.3d 336.

...

This court has long held that, “to justify a grant of preliminary injunction relief, a plaintiff must establish that it will likely prevail on the merits at trial.” *Ledgerwood*, 2017 Ark. 308, at 11, 530 S.W.3d at 344. *The test for determining the likelihood of success is whether there is a reasonable probability of success in the litigation. Id.* Such a showing “is a benchmark for issuing a preliminary injunction.” *Id.* (Italics added)

...

Next, we must determine whether irreparable harm will result in the absence of an injunction or restraining order. This court has held that “[e]ssential to the issuance of a temporary restraining order is a finding that a failure to issue it will result in irreparable harm to the applicant.” *Ledgerwood*, 2017 Ark. 308, at 9, 530 S.W.3d at 343 (quoting *Kreutzer v. Clark*, 271 Ark. 243, 244, 607 S.W.2d 670, 671 (1980)). The prospect of irreparable harm or lack of an otherwise adequate remedy is the foundation of the power to issue injunctive relief. 2017 Ark. 308, at 9, 530 S.W.3d at 343. *Harm is normally considered irreparable only when it cannot be adequately compensated by money damages or redressed in a court of law. Id.* (Italics added)

### ***Plaintiffs' Likelihood of Prevailing***

Regarding the requirement of Plaintiffs showing their likelihood of prevailing on the merits of the case at final hearing, this case poses the simple issue of whether the Defendants are continuing to use Amendment 91 funds to construct these CAP projects in contravention of the Supreme Court's decision in *Buonaiuto, et al v. Gibson et al.* The Supreme Court's Opinion (Exhibit 1 to the Plaintiffs' Complaint) is not at all ambiguous or difficult to understand. In fact, the Opinion specifically singled out the 30 Crossing Project as one on which Amendment 91 tax funds could not be used. The Saline County I-30 Project is essentially the same as the 30 Crossing project insofar as the source of funding is concerned, as demonstrated by the Exhibits to the Complaint and this Motion. Furthermore, ArDOT's own public notices and website clearly state that the CAP program, which includes the two projects involved in this case, obtains its funds from Amendment 91, and that those funds are used on the two projects involved in this case. (See Exhibits to the Complaint and Motion)

### ***Irrevocable Harm to Plaintiffs***

The harm to the Plaintiffs, as taxpayers of the State of Arkansas, if ArDOT's work on the two projects involved in this case is not halted immediately, cannot be remedied by monetary damages. Again, if the projects proceed, Amendment 91 taxes will not be used for the purposes for which they were approved by the citizens of Arkansas, *i.e.*, the construction of 4-lane highways to connect all portions of the State of Arkansas. Furthermore, Plaintiffs (and other members of the public) will be harmed if ArDOT cannot produce all of the funds necessary to

complete the Projects and are required to cease work while in the middle of replacing the I-30 bridge or other phases of the construction.

The Plaintiffs have demonstrated and, at hearing, will further demonstrate a likelihood of success on the merits upon final hearing in this case, and irreparable harm.

### ***Conclusion***

A Preliminary Injunction should be issued to the Defendants, Arkansas Department of Transportation and Lori Tudor, Director of the Arkansas Department of Transportation, ordering them to immediately cease construction on the highway construction project known as “30 Crossing” in Pulaski County, Arkansas, and the construction project known as “Saline County I-30,” and enjoining them from conducting any construction or other activity of any nature whatsoever on either of such projects that may be paid for or otherwise relies on Amendment 91 funds until a final hearing can be held in this matter.

Respectfully submitted,

**RICHARD MAYS LAW FIRM PLLC**

*/s/ Richard H. Mays* \_\_\_\_\_

Richard H. Mays

AR Bar # 61043

2226 Cottondale Lane – Suite 100

Little Rock, AR 72202

(501) 891-6116

rmays@richmayslaw.com

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, I transmitted a copy of this Brief in Support of Motion for Preliminary Injunction via electronic mail and also United States Postal Service, postage prepaid, to:

Rita S. Looney, Esq.  
Chief Legal Counsel  
Arkansas Department of Transportation  
P.O. Box 2261  
Little Rock, AR 72203-2261  
[Rita.Looney@ardot.gov](mailto:Rita.Looney@ardot.gov)

Dated: November 16, 2020.

/s/ Richard H. Mays  
Richard H. Mays