

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
Twelfth Division, 6th Judicial Circuit**

**PRATT REMMEL, GALE STEWART, GLEN HOOKS,
ROBERT B. LEFLAR, ELAINE DUMAS, MICHAEL B. DOUGAN,
HARVEY JOE SANNER, AND JACKIE SIMPSON**

PLAINTIFFS

v.

Case No. 60CV-21-341

**LESLIE RUTLEDGE, Individually and as
Attorney General of the State of Arkansas**

DEFENDANT

FIRST AMENDED COMPLAINT

Come the Plaintiffs, Pratt Rimmel, Gale Stewart, Glen Hooks, Robert B. Leflar, Elaine Dumas, Michael B. Dougan, Harvey Joe Sanner, and Jackie Simpson, and for their First Amended Complaint against the Defendant, Leslie Rutledge, Attorney General of the State of Arkansas, state:

Nature of the Case

1. This case involves the authority, or limitations thereon, of the Attorney General of the State of Arkansas to engage in legal and judicial activities on behalf of and in the name of the State that are in excess of the express authority granted to the Attorney General by Constitution and statutes of the State of Arkansas (the “*ultra vires* acts”) and the unauthorized use of monies and other resources of the State by the Attorney General in pursuant of those *ultra vires* activities (“the illegal exactions”).

The Parties

Plaintiffs

2. Plaintiff, Pratt Rimmel, is a citizen, resident and taxpayer who resides in the State of Arkansas.

3. Plaintiff, Gale Stewart, is a citizen, resident and taxpayer who resides in the State of Arkansas.

4. Plaintiff, Robert B. Leflar, is a citizen, resident and taxpayer who resides in the State of Arkansas.

5. Plaintiff, Elaine Dumas, is a citizen, resident and taxpayer who resides in the State of Arkansas.

6. Plaintiff, Glen Hooks, is a citizen, resident and taxpayer who resides in the State of Arkansas.

7. Plaintiff, Michael B. Dougan, is a citizen, resident and taxpayer who resides in the State of Arkansas.

8. Plaintiff, Harvey Joe Sanner, is a citizen, resident and taxpayer who resides in the State of Arkansas.

9. Plaintiff, Jackie Simpson, is a citizen, resident and taxpayer who resides in the State of Arkansas.

10. All Plaintiffs are taxpayers of and voters in the State of Arkansas, and have an inherent interest as citizens of the State in ensuring that the public officials of the State, including the Attorney General, act within their authority as set out in the Arkansas Constitution and the laws of the State.

Defendant

11. The Defendant, Leslie Rutledge (Rutledge), is a citizen and resident of Pulaski County, State of Arkansas. She is the duly-elected and currently-serving Attorney General of the State of Arkansas, with her official office located in the City of Little Rock, Pulaski County, Arkansas. Ms. Rutledge is sued herein in both her individual and representative capacities.

Factual Background

12. In the general election conducted in the State of Arkansas in November 2014, the Defendant Rutledge was elected the Attorney General of the State of Arkansas. She was reelected to that office in the general election of November 2018.

13. Pursuant to Article 6, Section 22 of the Constitution of Arkansas, “The ... Attorney General shall perform such duties as may be prescribed by law.” No other duties of the Attorney General are set forth in the Constitution, and it was and is left to the General Assembly of the State to prescribe the duties and responsibilities of the Attorney General. *Taylor v. Zanone Properties*, 2000 342 Ark. 465, 30 S.W.3d 74 (2000); *Parker v. Murry*, 221 Ark. 554, 254 S.W.2d 468 (1953).

14. The General Assembly of the State of Arkansas has enacted statutes relating to the duties of the Attorney General, which, in relevant part, include the following:

A. **Ark. Code Ann. § 25-16-702.** (Duties), which provides in relevant part:

(a) The Attorney General shall be the attorney for all state officials, departments, institutions, and agencies. *Whenever any officer or department, institution, or agency of the state needs the services of an attorney, the matter shall be certified to the Attorney General for attention.* (Emphasis added)

(b)(1) All office work and advice for state officials, departments, institutions, and agencies shall be given by the Attorney General and his or her assistants, and no special counsel shall be employed or additional expense paid for those services.

B. **Ark. Code Ann. § 25-16-703** (Additional duties--U.S. Supreme Court--Other federal courts) which provides:

(a) The Attorney General shall maintain and defend the interests of the state in matters before the United States Supreme Court and all other federal courts *and shall be the legal representative of all state officers, boards, and commissions in all litigation where the interests of the state are involved.* (Emphasis added)

15. The “interests of the state” are not defined in the Constitution or statutes of the State of Arkansas, but have been defined by the courts of Arkansas on a case-by-case basis. The “interests of the state” are generally considered to include any legitimate matter of general public concern that is or can be addressed by the State government in law or policy. “Legitimate” means that which is lawful, legal, recognized by law, or in accordance with law.

16. The statutes quoted above, taken together, clearly indicate that the “interests of the State” in litigation involve cases where the State of Arkansas, is a direct party in the litigation or where the laws or regulations of the State are involved.

17. During her tenure as Arkansas Attorney General, Defendant Rutledge has engaged and continues to engage in activities as such Attorney General on behalf of the State of Arkansas that have consisted of using the name of the State in political and highly-partisan litigation and other activities in which a state agency or official is not involved, in which the State Constitution or the validity of a state law is not involved, or in which an interest of the State is not involved.

18. That litigation and those activities are described in the following paragraphs.

***Defendant Rutledge Has Initiated Or Joined In Litigation In
The Name Of The State Of Arkansas For Her Own Political Purposes and
In Which An Interest Of The State Was Not Involved***

19. On or about November 9, 2020, Defendant Rutledge filed an *amicus curiae* brief on behalf of the State of Arkansas in a lawsuit then pending in the United States Supreme Court entitled *Republican Party of Pennsylvania v. Boockvar*, Nos. 20-524 and 20-574, urging the Supreme Court to reverse a decision of the Pennsylvania Supreme Court regarding a Pennsylvania law or procedure that was alleged to allow mail-in ballots to be received three days after Election Day. This Petition was filed notwithstanding the absence of credible facts or legal precedence to support the claims asserted in the brief, and without consultation with or approval

of the Governor of the State of Arkansas (the chief executive officer of the State), or without a request having been made by the head of any other agency of the State for Defendant Rutledge to do so. Such filing required the services of Attorney General Rutledge and personnel in that Office who are paid from tax funds of the State of Arkansas, and the use of materials and equipment of the Office of the Arkansas Attorney General that are provided and available from tax funds of the State of Arkansas appropriated to the Office of the Attorney General. The U.S. Supreme Court unanimously refused to hear the case.

20. On or about December 9, 2020, Defendant Rutledge, on behalf of the State of Arkansas, filed a Bill of Complaint in Intervention with the Supreme Court of the United States in the case of *Texas v. Pennsylvania et al.*, No. 22O155 (Original) arguing that that Court delay the December 14, 2020, Electoral College vote and block the States of Georgia, Michigan, Pennsylvania and Wisconsin from casting their votes in the Electoral College for the Democratic candidate, Joe Biden, thus overturning President-Elect Biden's national election victory in the November 5, 2020 general election. This Bill of Complaint was filed notwithstanding the absence of credible facts or legal precedence to support the claims of the Attorneys General, and without consultation with or approval of the Governor of the State of Arkansas, or without a request of the head of any other agency of the State for her to do so. Such filing required the services of Attorney General Rutledge and personnel in that Office who are paid from tax funds of the State of Arkansas, and the use of materials and equipment of the Office of the Arkansas Attorney General that are provided and available from tax funds of the State of Arkansas

appropriated to the Office of the Attorney General. The U.S. Supreme Court again unanimously refused to hear the case.

21. Defendant Rutledge attempted to profit from her joining in the lawsuit described in Subparagraphs (a) and (b) above, by issuing the following post on the “Leslie Rutledge For Arkansas” Facebook website (stated to be Defendant’s official website for her campaign for Governor) declaring that “Arkansas is in the Fight!”, and appealing to members of the public to donate money to her campaign for governor in 2022:

Leslie Rutledge for Arkansas

Arkansas is in the fight! Now, will you help me win? Donate here

<http://ow.ly/wohd30mWVU>

POLITICS.RAISETHEMONEY.COM politics.raisethemoney.com

Rutledge’s activities described above were not in the interest of the State of Arkansas, but in her own political and economic interest.

22. Defendant Rutledge, in the name of the State of Arkansas, also filed on December 21, 2020, an *amicus curiae* brief in a lawsuit in the United States District Court for the Northern District of New York (Case No. 1:20-cv-00889-MAD-TWD) in which the State of New York made claim against the National Rifle Association for revocation of the NRA’s non-profit corporate status as a result of alleged wide-spread embezzlement and corruption within the management of that organization. Defendant Rutledge, on behalf of the State of Arkansas, supported the NRA in her *amicus* brief. This *amicus* brief was filed notwithstanding the absence of credible facts or legal precedence to support the claims of the Attorney General, and without

consultation with or approval of the Governor of the State of Arkansas, or without a request of the head of any other agency of the State. The case did not involve the interests of the State of Arkansas, but was filed for the purpose of gaining support from the NRA for Defendant Rutledge's political activities. Such filing required the services of Attorney General Rutledge and personnel in that Office who are paid from tax funds of the State of Arkansas, and the use of materials and equipment of the Office of the Arkansas Attorney General that are provided and available from tax funds of the State of Arkansas appropriated to the Office of the Attorney General.

23. In addition, Defendant Rutledge, in the name of the State of Arkansas, also filed on March 31, 2021, an *amicus curiae* brief in a bankruptcy proceeding in the United States Bankruptcy Court for the Northern District of Texas (*In re: National Rifle Association of America; and Sea Girt, LLC*, Debtors, Case No. 21-30085-HDH-11) in which the National Rifle Association was seeking protection against the State of New York's claims (see preceding paragraph). Again, Defendant Rutledge, on behalf of the State of Arkansas, supported the NRA in her *amicus* brief. This brief was filed notwithstanding the absence of credible facts or legal precedence to support the claims of the Attorney General, and without consultation with or approval of the Governor of the State of Arkansas, or without a request of the head of any other agency of the State for her to do so. The case did not involve the interests of the State of Arkansas, but was filed for the purpose of gaining support from the NRA for Defendant Rutledge's political activities. Such filing required the services of Attorney General Rutledge and personnel in that Office who are paid from tax funds of the State of Arkansas, and the use of

materials and equipment of the Office of the Arkansas Attorney General that are provided and available from tax funds of the State of Arkansas appropriated to the Office of the Attorney General.

24. Rutledge has also initiated, intervened in or joined, in the name of the State of Arkansas, various lawsuits challenging regulations and policies issued by various agencies of the United States Government, and advocating the elimination of or reduction in environmental, health and safety, and financial protections for the citizens of Arkansas. Such lawsuits were, and are initiated or joined in by Defendant Rutledge notwithstanding the absence of credible facts or legal precedence to support the claims of the Attorney General, and without consultation with or approval of the Governor of the State of Arkansas, or without a request of the head of any other agency of the State for her to do so. The cases did not involve the interests of the State of Arkansas, and in fact, may be contrary to the interest of all or a large number of citizens of Arkansas, but are filed for the purpose of gaining support with certain persons or organizations for Defendant Rutledge's political activities. Such filings require the services of Attorney General Rutledge and personnel in that Office who are paid from tax funds of the State of Arkansas, and the use of materials and equipment of the Office of the Arkansas Attorney General that are provided and available from tax funds of the State of Arkansas appropriated to the Office of the Attorney General.

*Expenditures of State Funds By Defendant Rutledge
That Are Violations of the Illegal Exaction Provision of
Arkansas Constitution, Art. 16, Sec. 13.*

25. Defendant Rutledge publicly announced her intention to be a candidate for the office of Governor on July 1, 2020. Prior to that time, records relative to the Office of Attorney General in Arkansas show that the amount expended by that Office in a single fiscal year on television and radio advertisements for the services of the Office was \$459,200 expended during fiscal year 2014.

26. Commencing in 2020, in which Defendant Rutledge announced her candidacy for Governor of Arkansas subject to the 2022 election, Defendant Rutledge ran and continues to run an extraordinary number of advertisements of the services of the Office of Attorney General on television, radio and other media in Arkansas and neighboring states. Such advertisements appear multiple times each day, and have been and continue to be run at a cost to the State now in excess of \$2 million. The advertisements originally featured Rutledge's image and voice, but current ads feature her voice only.

27. These ads are run in an effort to promote Rutledge's candidacy for the office of Governor, and the volume and frequency of such advertisements have become the subject of extensive public comment and criticism. The advertisements were the subject of a hearing before the Legislative Council on May 15, 2020, in which a State Senator on the Council stated: "It is not really about you all [the Attorney General's Office] promoting the issues or promoting the office of the attorney general. The issue has always been that it's about promoting the individual within that office." The advertising campaign inspired the introduction of a bill in the last (2021)

session of the Arkansas General Assembly (Senate Bill 700), that would require the Attorney General to file a biannual report with the Legislative Council itemizing and summarizing all lawsuits in which the Attorney General was providing representation, including information regarding the amount of state tax dollars spent defending or prosecuting the lawsuit for the previous six months, the total amount of tax dollars spent defending or prosecuting the lawsuit, the state entity, employee or elected official that is the subject of the suit, the act, statute or policy being challenged, and any additional information that would enable the Legislative Council to determine the nature, purposes and cost of the lawsuit.

28. Defendant Rutledge asserts that she is entitled to expend these funds on “consumer education” pursuant to Ark. Code Ann. §4-88-105, which establishes a Consumer Protection Division within the Office of Attorney General of Arkansas. The Consumer Protection Division has numerous functions, powers and duties as set out in Subsection (d)(1) through (6) of that statute, among which are to enforce the provisions of the Arkansas Trade Deceptive Practices Act. The expenses of the Division are to be paid from funds provided for that purpose *by law, including* “Funds deposited into a Consumer Education and Enforcement Account, managed by the Division, from settlements or judgments in favor of the state related to a lawsuit or assurance of voluntary compliance in which the state was a party.” (A.C.A. §4-88-105 (e)(3)(A)) (Emphasis added).

29. The lawsuits conducted by the Office of Attorney General under A.C.A. §4-88-105(e) are investigated, developed, initiated, managed and prosecuted by members of the staff of the Office of Attorney General of Arkansas, who are compensated for their services by tax

monies generated by the State of Arkansas and appropriated for the Office of Attorney General by the General Assembly of Arkansas and approved by the Governor of Arkansas. In investigating, developing, initiating, managing and prosecuting such cases, the staff of the Attorney General use equipment, supplies, monies and other resources provided from tax funds on computers, printers, copiers, furniture, fixtures, leased space, telephones, supplies, filing fees, travel expenses, exhibits, expert witnesses and other customary and necessary resources to investigate, bring and maintain litigation.

30. Further, A.C.A. §4-88-105 (e)(3)(A), quoted above, states:

The expenses of the [Consumer Protection Division] shall be paid by funds “provided by law, *including* without limitation:

(3)(A) Funds deposited into a Consumer Education and Enforcement Account ... from settlements or judgments in favor of the state”

31. A.C.A. §4-88-105(e)(3)(A) is, therefore, a legislative appropriation or allocation of such funds to the Office of Attorney General by the Arkansas General Assembly. As such, those funds are “funds” of the State. Further, subsection 105(e)(3)(A) further refers to such funds as “settlements or judgments *in favor of the state* related to a lawsuit ... in which *the state was a party.*” It is clear that the intent of this statute was to declare judgments or settlements obtained by the Consumer Protection Division of the Attorney General to be “state funds.”

32. Defendant Rutledge attempts to justify her expenditure of millions of dollars on advertisements promoting herself as Attorney General by claiming that such expenditures are authorized by A.C.A. §4-88-105(e)(3)(B), which provides that “The Consumer Education and

Enforcement Account shall not carry a balance greater than one million (\$1,000,000), and that the funds in the account shall be used in a manner determined by the office of the Attorney

General, including without limitation:

- (i) Litigation support;
- (ii) Expert witness fees;
- (iii) Court filing fees;
- (iv) Process server fees;
- (v) Witness fees;
- (vi) Court costs;
- (vii) Court reporter fees;
- (viii) Attorney and staff training;
- (ix) Travel expenses;
- (x) *Consumer education*;
- (xi) Office expenses and improvements; and
- (xii) Investigation expenses.

(Emphasis added)

33. Subsection 4-88-105(e)(3)(B) lists consumer education as only one of twelve purposes for which the funds shall be used. By expending or authorizing the expenditure of millions of dollars from the Consumer Education and Enforcement Account of the Attorney General's Office on television and radio advertisements – amounts far exceeding any previous expenditures by her or previous Attorneys General – during a period immediately preceding and

leading up to the 2022 election, Defendant Rutledge has exceeded and abused the authority granted to the Attorney General under that statutory subsection, and is acting in an *ultra vires* manner. As such, the expenditure of such funds from the Consumer Education and Enforcement Account for such advertising constitutes an illegal exaction under Ark. Constitution Article 16, Section 13. Defendant Rutledge should be required to account for such expenditures, and the funds utilized for such purposes should be refunded to the State.

***Highly-Partisan Political Activities Of Defendant Rutledge
Engaged In By Her As Arkansas Attorney General And
During Business Hours Are Ultra Vires, And The State Resources
Expended By Her On Those Activities Are Illegal Exactions***

34. Rutledge has engaged in extraordinary and highly partisan political activities as Attorney General of the State of Arkansas in an effort to further her political standing and to promote her own personal political ambitions at the expense of the taxpayers of Arkansas. For example, in 2020, Defendant Rutledge served, in her capacity as Attorney General of Arkansas, as National Co-Chair of an organization known as Lawyers for Trump!, and spent many hours away from her office and duties as Attorney General in her duties as such National Co-Chair.

35. In 2020, Rutledge personally and as Attorney General of Arkansas engaged in highly partisan political activities in an organization known as “The Rule of Law Defense Fund.” That organization, among other activities, encouraged persons through email, tweets or other public media to attend a rally sponsored by the Fund, held on the grounds of the U.S. Capitol Mall on January 6, 2021, in protest of the defeat of President Donald J. Trump in the November

2020, general election. Featured speakers were President Trump, his son, Donald J. Trump, Jr., and other members of the Trump administration or campaign. Rutledge was aware of the purpose, nature and tone of the rally, had been contacted regarding the rally by or on behalf of President Trump, and she, through social media, encouraged people attending the rally to march to the U.S. Capitol after hearing President Trump, and other speakers. That rally/march resulted in a siege and vandalism of the U.S. Capitol building, and was seditious activity.

36. In promoting, engaging in or encouraging those actions and litigation as Attorney General of Arkansas, Defendant Rutledge has exceeded her authority as Attorney General under the Constitution, statutes and other laws of the State of Arkansas. Her activities and highly partisan statements, tweets and media postings have clearly indicated that Defendant Rutledge is an Attorney General who represents only those who agree with her political viewpoints. The Defendant Rutledge should be enjoined and prohibited from continuing to act in an *ultra vires*, illegal and other ways in excess of her authority.

37. In promoting and engaging in such partisan and highly-divisive actions, Defendant Rutledge has also expended funds and other resources of the State of Arkansas on purposes, activities and in ways exceeding her authority as Attorney General under the Constitution, statutes and other laws of the State of Arkansas, rendering such expenditures to be illegal exactions under Arkansas Constitution Article 16, Section 13. Defendant Rutledge should be determined to be liable individually for the reimbursement to the State of Arkansas of such funds and other resources of the State of Arkansas used by her or on her behalf in engaging in or promoting such *ultra vires*, illegal and improper activities.

WHEREFORE, Plaintiffs pray that the Court render judgment as follows:

1. Determine that the Defendant Rutledge has, by engaging in the activities described above, exceeded her authority as Attorney General of the State of Arkansas as set forth in the Constitution, statutes and other laws of the State.
2. If the Court determines that Defendant Rutledge has exceeded her authority as Attorney General of the State of Arkansas by engaging in any such activities, enter an injunction prohibiting Defendant Rutledge from continuing to act in an *ultra vires*, illegal and other ways in excess of her authority.
3. Determine that the Defendant Rutledge has, by engaging in the activities described above, expended funds and other resources of the State of Arkansas in ways exceeding her authority as Attorney General under the Constitution, statutes and other laws of the State of Arkansas, rendering such expenditures to be illegal exactions under Arkansas Constitution Article 16, Section 13.
4. If the Court determines that Defendant Rutledge has expended funds and other resources of the State of Arkansas in engaging in such activities, enter an Order or Judgment against the Defendant for repayment of all such funds to the Treasury of the State.

5. Enter an order awarding any and other legal and equitable relief appropriate to the facts of the case.
6. Enter an Order for attorney fees and costs as allowed by law.

Respectfully submitted:

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CERTIFICATE OF SERVICE

The undersigned certifies that, on the date below, he served a copy of the above and foregoing First Amended Complaint upon counsel of record for the parties through the Court's ECF system, and by electronic mail to Michael Mosley, Esq., Assistant Attorney General, Office of the Arkansas Attorney General.

Dated June 28, 2021.

/s/ Richard H. Mays
Richard H. Mays