

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

**RICHARD H. MASON,
SHELLY BUONAUITO,
MARY WEEKS, VERLON ABRAMS,
and SARAH B. THOMPSON**

PLAINTIFFS

VS.

Case No. 18-_____

**DICK TRAMMEL, TOM SCHUECK,
ROBERT S. MOORE, JR., ALEC FARMER,
AND PHILIP TALDO, Members of the
Arkansas State Highway Commission;
SCOTT E. BENNETT, Director,
ARKANSAS DEPARTMENT OF TRANSPORTATION;
DENNIS MILLIGAN, Treasurer of the
State of Arkansas; ANDREA LEE, Auditor
Of the State of Arkansas; LARRY W. WALTHER,
Director, Arkansas Department of Finance &
Administration; and ASA HUTCHINSON,
Governor of the State of Arkansas.**

DEFENDANTS

COMPLAINT

Come the Plaintiffs, Richard H. Mason, Shelly Buonaiuto, Mary Weeks, Verlon Abrams and Sarah B. Thompson, and for their Complaint against the Defendants, Dick Trammel, Tom Schueck, Robert S. Moore, Jr., Alec Farmer and Philip Taldo, as the duly appointed and currently serving members of the Arkansas State Highway Commission; Scott E. Bennett, Director of the Arkansas Department of Transportation; Dennis Milligan, Treasurer of the State of Arkansas; Andrea Lee, Auditor of the State of Arkansas; Larry W. Walther, Director of the Arkansas

Department of Finance and Administration; and Asa Hutchinson, Governor of the State of Arkansas, state:

Nature of Suit

1. This is an action requesting a declaratory judgment that the expenditure of funds generated from the sale of State of Arkansas Four-Lane Highway Construction and Improvement General Obligation Bonds (“the Bonds”) authorized by Amendment No. 91 to the Constitution of the State of Arkansas on Interstate Highways or other federal or state highways in excess of four lanes is contrary to the express terms and provisions of said Amendment 91 and prohibited. Plaintiffs seek an injunction against the Defendants to prohibit any expenditure of such funds for construction, improvement or maintenance of any highway in excess of four (4) lanes; and the restoration of funds heretofore expended for construction or improvement of any highway in excess of four (4) lanes.

Jurisdiction

2. This Court has jurisdiction over the parties and subject matter of this case pursuant to Amendment 80, Sec. 6, of the Arkansas Constitution; Ark. Code Ann. Sec. 16-13-201; Arkansas Supreme Court Administrative Order 14; and Article 16, Section 13 of the Arkansas Constitution.

3. This Court has venue of this case pursuant to Ark. Code Ann. Sec. 16-60-104(3)(A).

Parties

4. Plaintiff, Richard H. Mason, is a citizen and resident of El Dorado, Union County, Arkansas, and a taxpayer of the State of Arkansas.

5. Plaintiff, Shelly Buonaiuto, is a citizen and resident of Fayetteville, Washington County, Arkansas, and a taxpayer of the State of Arkansas.

6. Plaintiff, Mary Weeks, is a citizen and resident of Little Rock, Pulaski County, Arkansas, and a taxpayer of the State of Arkansas.

7. Plaintiff, Verlon Abram, is a citizen and resident of Wilburn, Cleburne County, Arkansas, and a taxpayer of the State of Arkansas.

8. Plaintiff, Sarah B. Thompson, is a citizen and resident of Fayetteville, Washington County, Arkansas, and a taxpayer of the State of Arkansas.

9. Defendant, Dick Trammel, is a citizen and resident of Arkansas. Defendant Trammel is a member and current Chairman of the Arkansas State Highway Commission, and is sued in his official and representative capacity as such Commissioner.

10. Defendant, Tom Schueck, is a citizen and resident of Pulaski County, Arkansas, and is a member and current Vice-Chairman of the Arkansas State Highway Commission, and is sued in his official and representative capacity as such Commissioner.

11. Defendant, Robert S. Moore, Jr., is a citizen and resident of Arkansas County, Arkansas, and is a member of the Arkansas State Highway Commission, and is sued in his official and representative capacity as such Commissioner.

12. Defendant, Alec Farmer, is a citizen and resident of Arkansas, and is a member of the Arkansas State Highway Commission, and is sued in his official and representative capacity as such Commissioner.

13. Defendant, Philip Taldo, is a citizen and resident of Arkansas, and is a member of the Arkansas State Highway Commission, and is sued in his official and representative capacity as such Commissioner.

14. Defendant, Scott E. Bennett, is a citizen and resident of Pulaski County, Arkansas, and is the duly appointed and serving Director of the Arkansas Department of Transportation (formerly

the Arkansas Highways and Transportation Department), with his official office in Pulaski County, Arkansas. Mr. Bennett is sued in his official and representative capacity as such Director.

15. Defendant, Dennis Milligan, is a citizen and resident of Saline County, Arkansas, and is the duly elected and serving Treasurer of the State of Arkansas), with his official office in Pulaski County, Arkansas. Mr. Milligan is sued herein in his official and representative capacity.

16. Andrea Lee, Auditor of the State of Arkansas; is a citizen and resident of Arkansas, and is the duly elected and serving Auditor of the State of Arkansas), with her official office in Pulaski County, Arkansas. Ms. Lee is sued herein in her official and representative capacity.

17. Defendant, Larry W. Walther, is a citizen and resident of Arkansas, and is the duly appointed and serving Director of the Arkansas Department of Finance and Administration), with his official office in Pulaski County, Arkansas. Mr. Walther is sued herein in his official and representative capacity.

18. Defendant, Asa Hutchinson, is a citizen and resident of Pulaski County, Arkansas, and is the duly elected and serving Governor of the State of Arkansas), with his official office in Pulaski County, Arkansas. Governor Hutchinson is sued herein in his official and representative capacity.

Factual Background

19. On November 6, 2012, the voters of the State of Arkansas approved Amendment No. 91 to the Constitution of Arkansas, which authorized the State Highway Commission to issue State of Arkansas Four-Lane Highway Construction and Improvement General Obligation Bonds (“The Bonds) in a total principal amount of One Billion, Three Hundred Million Dollars (\$1,300,000,000) for the purposes of (i) accelerating four-lane highway improvements in progress or scheduled as of January 1, 2011; (ii) funding new four-lane highway improvements not in progress or scheduled as of January 1, 2011; (iii) providing matching funds in connection with

federal highway programs for four-lane highway improvements; and (iv) paying the costs of issuance of the Bonds. (Amend. 91, §4)

Intent of Amendment 91

20. The intent of Amendment 91 is expressly contained in Section 1 of the Amendment, and is stated as follows:

- (a) The state has an outdated and inadequate system of highway funding that is unable to meet the severe and pressing needs to maintain and improve the state's system of state highways, county roads, and city streets;
- (b) Increasing investment in the state highway system, county roads, and city streets will create jobs, aid in economic development, improve quality of life, and provide additional transportation infrastructure, including specifically, a four-lane highway construction plan designed to connect all regions of the state; and
- (c) To provide additional funding for the state's four-lane highway system, county roads, and city streets, this amendment levies a temporary sales and use tax and authorizes general obligation highway construction and improvement bonds for the state's four-lane highway system.

Definition of "Four-Lane Highway Improvements"

21. "Four-lane highway improvements" is defined in Section 2 of Amendment 91 as:

- (g)(1) "Four-lane highway improvements" means construction of and improvements to:
 - (A) Four-lane roadways;
 - (B) Bridges;
 - (C) Tunnels
 - (D) Engineering;
 - (E) Rights-of-way; and
 - (F) Other related capital improvements and facilities appurtenant or pertaining thereto, including costs of rights-of-way acquisition and utility adjustments.
- (g)(2) "Four-lane highway improvements" also means the maintenance of four-lane highway improvements constructed with proceeds of the bonds.

Authorization for and Purposes of Bonds

18. Pursuant to Section 4 of Amendment 91, the State Highway Commission was authorized to issue the Bonds in a total principal amount of One Billion, Three Hundred Million Dollars (\$1,300,000,000) for the purposes of:

- (i) accelerating four-lane highway improvements in progress or scheduled as of January 1, 2011;
- (ii) funding new four-lane highway improvements not in progress or scheduled as of January 1, 2011;
- (iii) providing matching funds in connection with federal highway programs for four-lane highway improvements; and
- (iv) paying the costs of issuance of the Bonds.

Bonds and Amendment 91 Constitute a Contract and Provide for Specific Obligations of the State of Arkansas

19. The Bonds are general obligations of the State of Arkansas, secured by and payable from the general revenues of the State as set forth in Section 15 of Amendment 91. Section 15 of Amendment 91 provides in pertinent part:

- (a) (1) The bonds issued under this amendment shall be direct general obligations of the State of Arkansas for the payment of the debt service on which the full faith and credit of the State of Arkansas is irrevocably pledged as long as the bonds are outstanding.
- (2) The bonds shall be payable from:
 - (A) The Arkansas Four-Lane Highway Construction and Improvement Bond Account; and
 - (B) General revenues of the state as that term is defined in the Revenue Stabilization Law, § 19-5-101 et seq.
- (3) As necessary, the amount of general revenues is pledged to the payment of debt service on the bonds and shall be and remain pledged for these purposes.

(b) (1) This amendment shall constitute a contract between the State of Arkansas and the registered owners of all bonds issued under this amendment which shall never be impaired, and any violation of its terms, whether under purported legislative authority or otherwise, may be enjoined by the Circuit Court of Pulaski County upon the complaint of a bond owner or a taxpayer.

(2) The court shall, in any suit against the commission, the Treasurer of State, or other officer or official of the state prevent a diversion of any funds pledged under this amendment and shall compel the restoration of diverted funds, by injunction or mandamus.

20. To provide funds for payment of the Bonds, Section 3 of Amendment 91 provides for a temporary additional excise tax of one-half percent (0.5%) levied on all taxable sales of property and services subject to the tax levied by the Arkansas Gross Receipts Act of 1941, except for food and food ingredients; and a temporary additional excise tax of one-half percent (0.5%) is levied on all tangible personal property and services subject to the tax levied by the Arkansas Compensating Tax Act of 1949, except for food and food ingredients.

21. The temporary taxes levied under Amendment 91 are to be collected over an approximate ten (10) year period, and thereafter so long as there are bonds outstanding for which tax collections are pledged as provided in the Amendment. (Amend. 91, §4(d)(1))

22. Section 22 of Amendment 91 dictated the form of the submission of then-proposed Amendment 91 to the electors of the State of Arkansas. The Ballot Title as provided by Section 22 read:

A TEMPORARY ONE-HALF PERCENT (0.5%) SALES AND USE TAX FOR STATE HIGHWAYS AND BRIDGES, COUNTY ROADS, BRIDGES AND OTHER SURFACE TRANSPORTATION, AND CITY STREETS, BRIDGES AND OTHER SURFACE TRANSPORTATION, WITH THE STATE'S PORTION TO SECURE STATE OF ARKANSAS GENERAL OBLIGATION FOUR-LANE HIGHWAY CONSTRUCTION AND IMPROVEMENT BONDS AND PERMANENTLY DEDICATING ONE CENT (1¢) PER GALLON OF THE PROCEEDS DERIVED FROM THE EXISTING MOTOR FUEL

AND DISTILLATE FUEL TAXES TO THE STATE AND STREET FUND.

Use of Bond Funds for Expansion of Interstate Highways of More than Four Lanes is in Violation of Amendment 91

23. From the inception of expenditures of funds from The Arkansas Four-Lane Highway Construction and Improvement Bond Account, the Defendants have used and continue to apply the funds generated by the Bonds on roads and highways that are greater in size than four-lanes, and are not state highways. Specifically, large portions of such funds have been used on expanding and widening the Interstate Highway system in Arkansas from their existing four or six lanes to larger roadways.

24. Defendants currently are using funds from The Arkansas Four-Lane Highway Construction and Improvement Bond Account (“The Bond Account”) generated by sale of the Bonds for expansion of approximately 2.5-mile portion of the existing six-lane Interstate 630 highway between Baptist Medical Center entrance/exit to University Avenue to eight or more lanes. The estimated cost of such widening project is approximately \$90 million, of which approximately sixty-five (65) percent, or \$58 million is to be derived from The Bond Account.

25. Defendants are also using or proposing to use funds from The Bond Account to widen an approximately seven (7) mile section of Interstate 30 between the I-440/I-530/I-30 interchange northward to the intersection of Interstate 40 with U.S. Highway 167. In such section, I-30 would be widened from its current configuration of six lanes to eight or ten lanes or more, at an estimated cost of approximately \$700 million, of which sixty-four percent (64%), or approximately \$448 million, would consist of funds from The Bond Account.

26. Under the obvious, common, plain and unambiguous language of Amendment 91, the use of funds from The Bond Account for construction, improvements, modifications or maintenance

of roads other than those that are state highways of four lanes or to enlarge state highways from two to four lanes, is contrary to the express intent, purpose and authorization contained in Amendment 91, and is unconstitutional.

27. Defendants continued use of these funds for expansion of roads other than those that are state highways of four lanes or to enlarge state highways from two to four lanes is beyond the authority granted in Amendment 91 and is constitutes a misapplication of public funds.

28. The Defendants, and each of them, have duties and obligations under Amendment 91 relative to the collection, distribution, allocation, and approval of monies from the taxes collected pursuant to Amendment 91, and the selection and approval of highway construction, modification and maintenance projects upon which the monies from The Bond Account are to be expended. Defendant have heretofore approved the use of funds from The Bond Account for construction, improvements, modifications or maintenance of roads other than those that are state highways of four lanes or to enlarge state highways from two to four lanes,

29. The use of funds from The Bond Account for construction, improvements, modifications or maintenance of highways other than those that are state highways of four lanes or to enlarge state highways to four lanes, is a misapplication or illegal expenditure of public funds, and is an illegal exaction under Article 16, Section 13 of the Arkansas Constitution. As such, this action is, as a matter of law, a class action by the named Plaintiffs on behalf of all taxpayers of the State of Arkansas.

30. The Court should enter a declaratory judgment that the use of funds from The Bond Account for construction, improvements, modifications or maintenance of roads other than those that are state highways of four lanes or to enlarge and expand state highways of less than four lanes to four lanes, is contrary to the intent, purpose and authorization contained in Amendment 91, and

is unconstitutional. The Defendants should be restrained and enjoined from continuing to approve or expend funds from The Bond Account for construction, improvements, modifications or maintenance of roads other than those that are state highways of four lanes or to enlarge and expand state highways of less than four lanes to four lanes.

31. Pursuant to Amendment 91, Section 15(b)(2), the Defendants, individually and in their representative capacities, should be required to account for the expenditure of funds from The Bond Account from its inception to current date, and to provide restitution of funds to The Bond Account for any monies expended or authorized to be expended by the Defendants from said Account for construction, improvements, modifications or maintenance of roads other than those that are state highways of four lanes or to enlarge and expand state highways of less than four lanes to four lanes.

32. Plaintiffs should be awarded reasonable attorneys' fees and all costs of this action.

WHEREFORE, Plaintiffs pray that the Court enter a declaratory judgment that the use of funds from The Arkansas Four-Lane Highway Construction and Improvement Bond Account for construction, improvements, modifications or maintenance of roads other than those that are state highways of four lanes or other than to enlarge and expand state highways of less than four lanes to four lanes, is contrary to the intent, purpose and authorization contained in Amendment 91, and is unconstitutional.

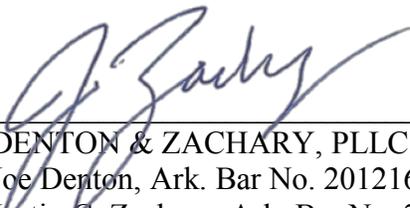
PLAINTIFFS FURTHER PRAY that the Defendants be restrained and enjoined from continuing to approve or expend funds from The Arkansas Four-Lane Highway Construction and Improvement Bond Account for construction, improvements, modifications or maintenance of roads other than those that are state highways of four lanes or other than to enlarge and expand

state highways of less than four lanes to four lanes; and for all other legal, equitable and proper relief.

PLAINTIFFS FURTHER PRAY that the Defendants be required to account for the expenditure of funds from The Bond Account from its inception to current date, and to provide restitution of funds to The Bond Account for any monies expended or authorized to be expended by the Defendants from said Account for construction, improvements, modifications or maintenance of roads other than those that are state highways of four lanes or to enlarge and expand state highways of less than four lanes to four lanes.

PLAINTIFFS FURTHER PRAY that they be awarded reasonable attorneys' fees and all costs of this action; and for all other legal, equitable and proper relief.

Respectfully submitted,

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