

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

**BIO GEN, LLC, DRIPPERS VAPE SHOP, LLC,  
THE CIGARETTE STORE LLC d/b/a SMOKER  
FRIENDLY, and SKY MARKETING  
CORPORATION d/b/a HOMETOWN HERO**

**PLAINTIFFS**

v.

**Case No. 4:23-CV-718 (BRW)**

**GOVERNOR SARAH HUCKABEE SANDERS  
in her official capacity; ATTORNEY GENERAL  
JOHN TIMOTHY GRIFFIN in his official capacity;  
TODD MURRAY, SONIA FONTICIELLA,  
DEVON HOLDER, MATT DURRETT, JEFF PHILLIPS,  
WILL JONES, TERESA HOWELL, BEN HALE,  
CONNIE MITCHELL, DAN TURNER, JANA BRADFORD,  
FRANK SPAIN, TIM BLAIR, KYLE HUNTER, DANIEL SHUE,  
JEFF ROGERS, DAVID ETHREDGE, TOM TATUM, II,  
DREW SMITH, REBECCA REED MCCOY,  
MICHELLE C. LAWRENCE, DEBRA BUSCHMAN,  
TONY ROGERS, NATHAN SMITH, CAROL CREWS,  
KEVIN HOLMES, CHRIS WALTON, and CHUCK  
GRAHAM, each in his or her official capacity as a prosecuting  
attorney for the State of Arkansas; JIM HUDSON, in his official  
capacity as Director of the ARKANSAS DEPARTMENT  
OF FINANCE AND ADMINISTRATION; GREG SLED, in his  
official capacity as Director of the ARKANSAS TOBACCO  
CONTROL BOARD; WES WARD, in his official capacity as  
Secretary of the ARKANSAS DEPARTMENT OF  
AGRICULTURE; and MATTHEW MARSH, in his official  
Capacity as Chair of the ARKANSAS STATE PLANT BOARD**

**DEFENDANTS**

**REPLY IN SUPPORT OF MOTION TO DISMISS  
GOVERNOR SARAH HUCKABEE SANDERS AND ATTORNEY GENERAL TIM  
GRIFFIN OR ALTERNATIVE RENEWED MOTION TO DISMISS**

Come Separate Defendants Governor Sarah Huckabee Sanders and Attorney General Tim Griffin, in their respective official capacities, and for their Reply in Support of their Motion to Dismiss or alternative renewed Motion to Dismiss, state as follows:

1. Plaintiffs' Amended Complaint did not moot the Defendants' Motion to Dismiss as

to Separate Defendants Governor Sanders and Attorney General Griffin.

2. The Amended Complaint did not change or add any of the allegations as against either defendant. *See* Compl. 5 ¶¶ 16-17 (ECF No. 1); *see also* Amend. Compl. 6 ¶¶ 16-17 (ECF No. 51).

3. Therefore, the original Motion to Dismiss as against these defendants should not be treated as moot.

4. Governor Sanders and Attorney General Griffin are entitled to sovereign immunity and should be dismissed as a matter of law. *Dig. Recognition Network, Inc. v. Hutchinson*, 803 F.3d 952, 956 (8th Cir. 2015) (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101 (1984)).

5. Neither defendant has any connection with the enforcement of Act 629, and therefore, their being named in the suit is an “impermissible attempt ‘to make the state a party.’” *Dig. Recognition Network*, 803 F.3d at 960 (quoting *Ex Parte Young*, 209 U.S. 123, 157 (1908)); *see also Calzone v. Hawley*, 866 F.3d 866, 869 (8th Cir. 2017) (requiring “some connection to the enforcement of the challenged laws”).

6. Because the Governor and Attorney General lack a connection with the enforcement of Act 629, just as in *Digital Recognition Network*, there is no “‘causal connection’ between the injury and the defendant[s]’ conduct.” 803 F.3d at 957 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). Thus, Plaintiffs lack standing to bring this lawsuit against the Governor and the Attorney General.

7. To the extent the Court does treat the original motion as moot, Governor Sanders and Attorney General Griffin renew their Motion to Dismiss for the same reasons as stated in the original motion.

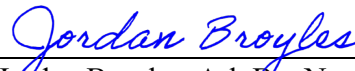
8. They incorporate by reference the arguments and authorities as raised in Defendants' Motion to Dismiss (ECF No. 38) as if set for herein word for word. *See* Fed. R. Civ. P. 10(c).

**CONCLUSION**

For the above-stated reasons, dismissal of Governor Sarah Huckabee Sanders and Attorney General Tim Griffin is warranted at this time based on sovereign immunity and lack of standing as a matter of law.

Respectfully submitted,

TIM GRIFFIN  
Attorney General



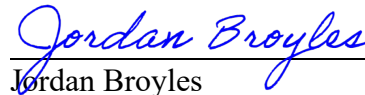
---

Jordan Broyles, Ark Bar No. 2015156  
Senior Assistant Attorney General  
Arkansas Attorney General's Office  
323 Center Street, Suite 200  
Little Rock, AR 72201  
Phone: (501) 682-9482  
Fax: (501) 682-2591  
Email: jordan.broyles@arkansasag.gov

*Attorneys for all Defendants*

**CERTIFICATE OF SERVICE**

I, Jordan Broyles, hereby certify that on August 21, 2023, I electronically filed the foregoing pleading on behalf of all Defendants Governor Sanders and Attorney General Griffin using the CM/ECF system, which will send notifications to all attorneys of record.



---

Jordan Broyles