TIM GRIFFIN
ATTORNEY GENERAL

March 30, 2026

Arkansas Board of Corrections
ATTN: Jamie Barker, Chairman
Post Office Box 20550
White Hall, Arkansas 72612

Re: Settlement Offers

Dear Chairman Barker and board members:

As you are aware, the Board of Corrections is involved in two separate lawsuits. In one, the Board sued the Governor, the Arkansas Department of Corrections, and the Secretary of Corrections ("BOC Litigation"). That case is currently on appeal to the Arkansas Supreme Court. In the other, the Attorney General sued the Board after the Board violated Arkansas Freedom of Information Act ("FOIA") provisions related to open meetings and open records ("FOIA Case").

Enclosed with this letter you will find two settlement offers, one for each lawsuit. As discussed more below and fully set out in the settlement offers, the offers resolve all claims in the BOC Litigation and all claims between the Attorney General and the Board in the FOIA Case.

FOIA Case Settlement Offer

The settlement agreement for the FOIA Case would require the Board to concede three FOIA violations and to commit to complying with the FOIA in the future. As detailed below, the violations the Attorney General alleged are supported by publicly available documents and sworn testimony. In return, the Attorney General would dismiss the case against the Board. The three FOIA violations alleged in the operative complaint are:[1]

1. Pre-December 8, 2023 Private Meeting. Before December 8, 2023, former Chairman Benny Magness and board member Lee Watson held an improper meeting to discuss matters both knew were likely to come before the Board for official discussions and decisions. Indeed, Mr.

[1] In December 2023, the Attorney General's initial complaint relied on a published news article that asserted the Board, without a public meeting, had installed Jerry Bradshaw in a supervisory role. After it became clear that had not happened, the Attorney General amended his complaint, removing those allegations. That claim therefore no longer exists. *See City of Little Rock v. Dayong Yang*, 2017 Ark. 18, at 7, 509 S.W.3d 632, 636 ("An amended complaint, unless it adopts and incorporates the original complaint, supersedes the original complaint.").

Magness and Mr. Watson admitted to facts constituting an open-meetings violation when they were under oath before the General Assembly's Joint Performance Review.

During that sworn testimony, Mr. Magness admitted that he and Mr. Watson met outside a public meeting to appoint Mr. Watson the so-called "litigation liaison" and directed Mr. Watson to find outside counsel. Additionally, Mr. Watson confirmed that he and Mr. Magness discussed whether the Board should retain counsel privately, outside of a formal meeting.

During his sworn testimony before Joint Performance Review, Mr. Watson asserted that the FOIA's open-meeting provisions did not apply to a meeting of two Board members. That belief is mistaken. As the Arkansas Supreme Court has long held, "any group meeting … less in number than a quorum" in which members "discuss[] or tak[e] any action on any matter on which foreseeable action will be taken" violates the FOIA.[2] Two members can meet for that improper purpose just as surely as three can.[3] That was clear in 2023 when Mr. Magness and Mr. Watson held their improper meeting or meetings, and it is even clearer now with recent amendments to the FOIA.[4]

Recognizing Mr. Watson's mistaken belief—apparently arrived at in good faith—about the FOIA's application, one of the settlement agreement's terms is that there is no evidence of a violation of Arkansas Code Annotated § 25-19-104.

2. December 8, 2023 Executive Session. On December 8, 2023, the Board entered an executive session. Executive sessions may be called "only for the purpose of … considering the employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee."[5] As soon as the governing body either decides to act "related to the legal purpose[] for which the session was called" or that "other action is needed," it must immediately exit executive session and "act … [in] public."[6]

The December 8 executive session began by discussing Secretary Profiri's job performance, and that was a proper purpose for an executive session. But in a declaration signed under penalty of perjury, former board member Dr. Whitney Gass describes how the December 8 executive session eventually exceeded its initial proper purpose.

Dr. Gass confirms that, while in that executive session, the Board discussed the Attorney General's supposed "conflicts of interest[]"; the constitutionality of certain laws; Mr. Watson's

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[2] *Mayor & City Council of El Dorado v. El Dorado Broadcasting Co.*, 260 Ark. 821, 824, 544 S.W.2d 206, 208 (1976).

[3] *See* Ark. Att'y Gen. Op. 2011-067 (explaining that "the number [of members] in attendance is not, by itself, dispositive").

[4] *See* Ark. Code Ann. § 25-19-103(8) (defining "[i]nformal meeting" as "the gathering of two (2) or more members of a governing body outside of a public meeting").

[5] *Id.* § 25-19-106(c)(1)(A).

[6] *Com. Printing Co. v. Rush*, 261 Ark. 468, 475–76, 549 S.W.2d 790, 795 (1977).

"consultation with an employment attorney" about the constitutionality of those laws; and whether to retain special counsel and, if so, which specific attorney to retain. Those topics far exceeded the proper scope of the executive session, dealing with topics about which the Board was required to discuss and act publicly, like filing lawsuits against other public officials and retaining private attorneys.[7]

3. Response to Request for Public Records. After the Board's improper executive session, the Attorney General made six public-records requests under the FOIA. For three of those requests, the Board provided no responsive records. When an entity subject to the FOIA does not produce responsive records, it must give one of three responses: (1) state "that no records exist," (2) confirm the existence of responsive records but state they are "subject to exemptions" and "identify the applicable exemptions," or (3) state that it "lacks administrative control over any responsive records."[8] The Board provided none of those responses and thus violated the FOIA.

BOC Litigation Settlement Offer

The settlement agreement for the BOC Litigation would require the Board to agree that Acts 185 and 659 of 2023 are constitutional and do not violate Amendment 33 to the Arkansas Constitution, that the Board illegally retained special counsel, and that there were several procedural issues with the case. Because the BOC Litigation is on appeal, the settlement agreement proposes the Parties file a joint motion before the Arkansas Supreme Court, as described below.

The Supreme Court has distinguished between when the basis for the circuit court's order becomes moot and when "the appeal itself is ... moot."[9] Here, if the Parties agree to the settlement, the grounds for the circuit court's summary-judgment order and permanent injunction will be moot because there is no longer a disagreement between the parties. But the appeal will not be moot because Defendants in the BOC Litigation will still be subject to the circuit court's erroneous order, until it is vacated or reversed.

In that situation, the Supreme Court has noted that it will "reverse the grant of summary judgment" and "remand ... with instructions to lift the injunction and dismiss [the] complaint."[10] *Ark. Dep't of Corr. v. Williams*, 2009 Ark. 523. The Parties' joint motion would thus ask the Supreme Court to follow the same course in the BOC Litigation.

The fact that the settlement agreement for the BOC Litigation will be effective only when the Supreme Court reverses or vacates the circuit court's summary-judgment order and permanent injunction serves two purposes. First, if the Supreme Court denies the joint motion, the Parties will be able to continue the appeal, and Defendants will still be able to seek relief without conflicting

[7] Dr. Gass's declaration is attached as an exhibit to the operative complaint.

[8] Ark. Code Ann. § 25-19-104(a)(3).

[9] *Hutchinson v. Armstrong*, 2022 Ark. 59, at 10, 640 S.W.3d 395, 400 (preliminary injunction); *see Ark. Dep't of Corr. v. Williams*, 2009 Ark. 523, 357 S.W.3d 867 (summary judgment and permanent injunction).

[10] *Williams*, 2009 Ark. 523, at 9, 357 S.W.3d at 872.

with the settlement agreement. Second, because the bulk of the settlement agreement will not be effective until after the circuit court's summary-judgment order and permanent injunction are reversed or vacated, the agreement will not contradict the circuit court's order.

* * *

The settlement agreements for the BOC Litigation and FOIA Case are in the parties' best interest, preventing additional costs to the taxpayers, avoiding the uncertainties of continued litigation, and allowing the parties to focus on what matters—serving Arkansans.

Best Regards,

Noah P. Watson

Settlement Agreement

This Agreement is entered into between Tim Griffin, in his official capacity as Attorney General of Arkansas; the Arkansas Board of Corrections; and the Board of Corrections' Chairman Jamie Barker, in his official capacity. As fully set out below, the Board admits to violations of the Arkansas Freedom of Information Act's open-meeting and open-records provisions and the Attorney General will release the Board from all claims that he could have raised in this litigation.

Preamble

1. The Attorney General sued the Board and its Chairman (collectively, the "Board") in the Circuit Court of Pulaski County, in *Tim Griffin, in his Official Capacity as Attorney General of Arkansas v. Arkansas Board of Corrections*, No. 60CV-23-9637 ("FOIA case").

2. In the operative complaint, the Attorney General alleges that the Board violated the Arkansas Freedom of Information Act ("FOIA") in three ways:

   a. *First*, former Chairman Benny Magness and Board Member Lee Watson held at least one improper meeting to discuss matters that both knew were likely to come before the Board for official discussions and decisions.

   b. *Second*, during an executive session on December 8, 2023, the Board exceeded the permissible scope of discussion during an executive session, including a discussion about the retention of outside counsel and about specifically retaining Abtin Mehdizadegan and Hall Booth Smith, P.C., as outside counsel.

   c. *Third*, the Board failed to properly respond to multiple requests for public records under the FOIA.

3. Because the Parties desire to settle the FOIA case to avoid costs and the uncertainties of continued litigation, the Parties enter this Agreement on the terms set out below.

Terms and Conditions

1. **Admission of Liability.** The Board admits that it violated the FOIA as alleged in the operative complaint. The facts constituting the FOIA violations are publicly available, described in part below:

a. *First*, on April 4, 2024, Mr. Magness and Mr. Watson testified under oath before the General Assembly's Joint Performance Review. During their testimony, they admitted to facts that constitute violations of the FOIA's open-meeting provisions. For example, Mr. Magness admitted that outside of a formal Board meeting he appointed Mr. Watson as the so-called "litigation liaison" and directed Mr. Watson to find outside counsel for the Board. Additionally, Mr. Watson confirmed that he and Mr. Magness discussed such business—which was likely to come before the Board—privately, outside of a formal Board meeting.

b. *Second*, on December 20, 2023, former Board Member Dr. Whitney Gass signed a declaration under penalty of perjury, which is attached as an exhibit to the operative complaint. In that declaration, Dr. Gass describes the Board's improper December 8, 2023 executive session. Although the executive session was purportedly called to discuss former Secretary Profiri, Dr. Gass admits in her declaration that the Board also discussed the Attorney General's supposed "conflicts of interest[]"; the constitutionality of certain laws; Mr. Watson's "consultation with an employment attorney" about the constitutionality of those laws; and whether to retain special counsel and, if so, which specific attorney to retain. Those topics far exceeded the proper scope of the executive session.

c. *Third*, the Attorney General made six requests to the Board for public records under the FOIA, which are attached to the operative complaint. For three of those requests, the Board provided no responsive records. When an entity subject to the FOIA does not produce responsive records, it must give one of three responses: (1) state "that no records exist," (2) confirm the existence of responsive records but state they are "subject to exemptions" and "identify the applicable exemptions," or (3) state that it "lacks administrative control over any responsive records." Ark. Code Ann. § 25-19-104(a)(3). The Board provided none of those responses.

2. **No Evidence of A.C.A. § 25-19-104 Violation.** While the foregoing conduct violated the FOIA's open-records and open-meetings provisions, there is no evidence to support a violation of Arkansas Code Annotated § 25-19-104. Instead, Mr. Watson testified before Joint Performance Review that he believes a two-person meeting between Board members could not violate the FOIA's open-meeting provision. Although that is an incorrect statement of law, it was a statement made in good faith.

3. **Corrective and Prospective Action.**

a. **Rescission of the Illegal Retention.** On January 23, 2026, the Board rescinded the illegal retention of Mr. Mehdizadegan and Hall Booth Smith, P.C.

b. **Future Compliance.** The Board agrees to comply with the FOIA's open-meeting and open-record provisions going forward.

c. **No. Payment to Illegally Retained Counsel.** The Board will not pay, attempt to pay, or coordinate payment to Mr. Mehdizadegan and Hall Booth Smith, P.C., for their representation during the FOIA Case.

4. **Dismissal, Waiver of Claims, and Scope.** Upon execution of this Agreement by the Attorney General and the Board, the Attorney General will move to voluntarily dismiss the Board from the FOIA Case with prejudice under Rule 41 of the Arkansas Rules of Civil Procedure.

The terms in this Agreement constitute full and final satisfaction of any and all claims, including any and all claims for costs and attorney's fees, which were, or could have been, raised by between the Attorney General and the Board in the FOIA Case. This Agreement is between the Attorney General and the Board, any claim against any other party will either continue or may be dismissed in accordance with the Arkansas Rules of Civil Procedure.

5. **Miscellaneous Provisions.**

a. **Entire Agreement.** This Agreement contains the entire agreement between the Parties. The Parties have not relied upon any promise or statement, oral or written, that is not set forth in this Agreement. The terms of this Agreement are contractual and not a mere recitals. A breach of any portion of this Agreement shall give the non-breaching party a cause of action for breach of contract in an appropriate tribunal possessing jurisdiction over such a claim.

b. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the substantive law of the State of Arkansas.

c. **Voluntary Agreement.** The Parties acknowledge that they each: (1) have had adequate and legally sufficient time to review this Agreement; (2) have been represented by counsel concerning the advisability, meaning, and effect of this Agreement; (3) understand the rights that have been waived and released by this Agreement; and (4) have signed this Agreement voluntarily and without coercion, undue influence, or duress.

d. **Construction.** This Agreement is deemed to have been drafted jointly by the Parties, and in the event of a dispute, it shall not be construed in favor of or against either party.

e. **No Recission for Mistake.** The Parties acknowledge that each has had the opportunity to investigate the facts and law relating to the claims raised in the FOIA Case and any other claims waived and released by this Agreement. The Parties assume the risk of any mistake of fact or law and agree that any mistake of fact or law shall not be grounds for rescission or modification of any part of this Agreement.

f. **Modification.** The Parties agree that this Agreement may not be modified, amended, or altered except by a written agreement executed by all Parties.

g. **Severability.** The provisions of this Agreement are severable, and if any part of it is found to be invalid, unlawful, or unenforceable, the other parts shall remain fully valid, lawful, and enforceable.

h. **Effective Date.** This Agreement shall become effective when signed by the Parties.

i. **Counterparts.** This Agreement may be executed in counterparts, and the counterparts taken together will have binding effect.

j. **Execution.** The persons executing this Agreement assert they are authorized to do so by the party on whose behalf they purport to act.

* * *

AGREED AND CONSENTED TO AND IN WITNESS WHEREOF, we have set our hands on the dates indicated below:

[SIGNATURES ON NEXT PAGE]

TIM GRIFFIN,
ATTORNEY GENERAL OF ARKANSAS

By: ______________________________ ______________________
Signature Date

By: ______________________________
Print Name

ARKANSAS BOARD OF CORRECTIONS

By: ______________________________ ______________________
Signature Date

By: ______________________________
Print Name

JAMIE BARKER, CHAIRMAN
ARKANSAS BOARD OF CORRECTIONS

______________________________ ______________________
Jamie Barker, Chairman Date

Settlement Agreement

This Agreement is entered into between Sarah Sanders, in her official capacity as Governor of Arkansas; Lindsay Wallace, in her official capacity as Secretary of the Arkansas Department of Corrections; and the Arkansas Department of Corrections (collectively, "Defendants") and the Arkansas Board of Corrections; and the Board of Corrections' Chairman Jamie Barker, in his official capacity (collectively, the "Board"). Among other terms fully set out below, the Parties agree Acts 185 and 659 of 2023 are constitutional and do not violate Amendment 33.

Preamble

1. The Board sued Defendants, in *Arkansas Board of Corrections; and Benny Magness, in his Official Capacity as Chairman of the Arkansas Board of Corrections v. Sarah Sanders, in her Official Capacity as Governor of Arkansas; Lindsey Wallace, in her Official Capacity as Secretary of the Arkansas Department of Correction, and the Arkansas Department of Correction*, No. 60CV-23-9598. The case is now on appeal to the Arkansas Supreme Court, No. CV-25-742. This Agreement collectively refers to this litigation as the "BOC Litigation."

2. In its complaint, the Board alleged that portions of Act 185 and 659 of 2023 (codified at Ark. Code Ann. §§ 12-27-107(c), 12-27-126(c), 25-43-403(a)(2)(A)) are unconstitutional under Amendment 33 to the Arkansas Constitution.

3. Because the Parties desire to settle the BOC Litigation to avoid costs and the uncertainties of continued litigation, the Parties enter this Agreement on the terms set out below.

TERMS AND CONDITIONS

1. **Statements on Litigation.** The Board admits the following:

a. **Scope of the Declaratory Judgments Act.** The Board is not a "person" that may seek a declaratory judgment under the Arkansas Declaratory Judgment Act. Ark. Code Ann. § 16-111-102.

b. **Illegally Retained Special Counsel.** The Board's purported retention of Abtin Mehdizadegan and Hall Booth Smith, P.C., was unlawful. *First*, when obtaining counsel, the Board is required to but failed to follow the process in Arkansas Code Annotated § 25-16-702. *Second*, the Board is not a constitutional officer under Arkansas Code Annotated § 25-16-711 because the Board was created by statute, not by the Arkansas Constitution. Nor did the requisite conflict under that provision exist when the Board purported to retain special counsel. *Third*, the Board failed to comply with the Procurement Law when purporting to retain special counsel.

c. **Amendment 33.** Acts 185 and 659 of 2023 are constitutional and do not violate Amendment 33 to the Arkansas Constitution.

d. **Defendants Were Procedurally Prejudiced.** Defendants were prejudiced by the circuit court's failure to follow Rule 56 of the Arkansas Rules of Civil Procedure when the circuit court entered its order before the time allowed for defendants to file a reply to the Board's motion for summary judgment.

2. **No Payment to Illegally Retained Counsel.** The Board will not pay, attempt to pay, or coordinate payment to Mr. Mehdizadegan and Hall Booth Smith, P.C., for their representation during the BOC Litigation.

3. **Affect on the Appeal.**

a. **Basis for Circuit Court's Order Moot.** This Agreement moots the basis of the circuit court's summary-judgment order and permanent injunction, but the appeal is not moot until the circuit court's summary-judgment order and permanent injunction are vacated. *See, e.g.*, *Hutchinson v. Armstrong*, 2022 Ark. 59, 640 S.W.3d 395; *Ark. Dep't of Corr. v. Williams*, 2009 Ark. 523, 357 S.W.3d 867.

b. **Joint Motion to Vacate or Reverse.** Upon execution of this Agreement, the Parties will file a joint motion with the Arkansas Supreme Court requesting that the Supreme Court (1) vacate or reverse the circuit court's summary-judgment order and permanent injunction as moot and (2) remand to the circuit court with instructions to dismiss the case with prejudice. *See, e.g.*, *Armstrong*, 2022 Ark. 59, 640 S.W.3d 395; *Williams*, 2009 Ark. 523, 357 S.W.3d 867.

4. **Waiver of Claims.** The terms in this Agreement constitute full and final satisfaction of any and all claims, including any and all claims for costs and attorney's fees, which were, or could have been, raised by in the BOC Litigation.

5. **Miscellaneous Provisions.**

a. **Entire Agreement.** This Agreement contains the entire agreement between the Parties. The Parties have not relied upon any promise or statement, oral or written, that is not set forth in this Agreement. The terms of this Agreement are contractual and not a mere recitals. A breach of any portion of this Agreement shall give the non-breaching party a cause of action for breach of contract in an appropriate tribunal possessing jurisdiction over such a claim.

b. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the substantive law of the State of Arkansas.

c. **Voluntary Agreement.** The Parties acknowledge that they each: (1) have had adequate and legally sufficient time to review this Agreement; (2) have been represented by counsel concerning the advisability, meaning, and effect of this Agreement; (3) understand the rights that have been waived and released by this Agreement; and (4) have signed this Agreement voluntarily and without coercion, undue influence, or duress.

d. **Construction.** This Agreement is deemed to have been drafted jointly by the Parties, and in the event of a dispute, it shall not be construed in favor of or against either party.

e. **No Recission for Mistake.** The Parties acknowledge that each has had the opportunity to investigate the facts and law relating to the claims raised in the BOC Litigation and any other claims waived and released by this Agreement. The Parties assume the risk of any mistake of fact or law and agree that any mistake of fact or law shall not be grounds for rescission or modification of any part of this Agreement.

f. **Modification.** The Parties agree that this Agreement may not be modified, amended, or altered except by a written agreement executed by all Parties.

g. **Severability.** The provisions of this Agreement are severable, and if any part of it is found to be invalid, unlawful, or unenforceable, the other parts shall remain fully valid, lawful, and enforceable.

h. **Effective Date.** This Agreement shall become effective only upon the Arkansas Supreme Court granting the join motion described in paragraph 3(b).

i. **Counterparts.** This Agreement may be executed in counterparts, and the counterparts taken together will have binding effect.

j. **Execution.** The persons executing this Agreement assert they are authorized to do so by the party on whose behalf they purport to act.

* * *

AGREED AND CONSENTED TO AND IN WITNESS WHEREOF, we have set our hands on the dates indicated below:

[SIGNATURES ON NEXT PAGE]

SARAH SANDERS,
GOVERNOR OF ARKANSAS

By: ______________________________ ____________________
Signature Date

By: ______________________________
Print Name

ARKANSAS DEPARTMENT OF CORRECTIONS

By: ______________________________ ____________________
Signature Date

By: ______________________________
Print Name

LINDSAY WALLACE, SECRETARY
ARKANSAS DEPARTMENT OF CORRECTIONS

______________________________ ____________________
Lindsay Wallace, Secretary Date

[ADDITIONAL SIGNATURES ON NEXT PAGE]

ARKANSAS BOARD OF CORRECTIONS

By: ______________________________ ______________________
Signature Date

By: ______________________________
Print Name

JAMIE BARKER, CHAIRMAN
ARKANSAS BOARD OF CORRECTIONS

______________________________ ______________________
Jamie Barker, Chairman Date