

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION ____
CIVIL ACTION NO. 18-CI-_____

COMMONWEALTH OF KENTUCKY
ex rel. ANDY BESHEAR, ATTORNEY GENERAL

and

KENTUCKY EDUCATION ASSOCIATION

and

KENTUCKY STATE LODGE FRATERNAL ORDER OF POLICE

PLAINTIFFS

v.

MOTION FOR TEMPORARY INJUNCTION

MATTHEW G. BEVIN, in his official capacity
as Governor of the Commonwealth of Kentucky

and

BERTRAM ROBERT STIVERS, II, in his official capacity
as President of the Kentucky Senate

and

DAVID W. OSBORNE, in his official capacity as
Speaker Pro Tempore of the Kentucky House of Representatives

and

BOARD OF TRUSTEES OF THE TEACHERS'
RETIREMENT SYSTEM OF THE STATE OF KENTUCKY

and

BOARD OF TRUSTEES OF THE KENTUCKY
RETIREMENT SYSTEMS

DEFENDANTS

*** **

NOTICE

Let the parties take notice that, pursuant to the Local Rules, this Motion for a Temporary Injunction will be heard on Wednesday, April 18, 2018, at 9:00 AM or as soon thereafter as counsel may be heard in Franklin Circuit Court, 222 Saint Clair Street, Frankfort, KY 40601.

MOTION

Pursuant to Kentucky Rules of Civil Procedure ("CR") 65.01 and 65.04, Plaintiff Commonwealth of Kentucky *ex rel.* Andy Beshear, moves the Court to enter an Order temporarily enjoining the Defendants, Governor of Kentucky Mathew Griswold Bevin, the Board of Trustees of the Teachers' Retirement System of the State of Kentucky, and the Board of Trustees of the Kentucky Retirement Systems, from acting under, administering, or enforcing Senate Bill 151 ("SB 151"), provisions of which violate both the Kentucky Constitution and state statute.

On March 29, 2018, the General Assembly passed SB 151, which substantially alters and ultimately reduces the retirement benefits of the Commonwealth's state, city, and county employees, including teachers, police officers, and firefighters. On April 10, 2018, Defendant Governor Matthew G. Bevin, signed SB 151 into law.

SB 151 is unconstitutional because it breaches the inviolable contract the General Assembly made with Kentucky's public employees that guarantees them certain retirement benefits in exchange for their decades of public service. The passage of SB 151 directly violates the Kentucky Constitution, including KY. CONST. § 19, that prohibits the enactment of any law impairing the obligation of contracts. SB 151 impairs the obligations of the inviolable contracts the General Assembly created for the public retirement systems established in KRS 21.480, KRS 61.692, KRS 78.852, and KRS 161.714, and breaks those contracts. Moreover, the manner in

which the General Assembly passed SB 151 violated Sections 2, 13, 46, and 56 of the Kentucky Constitution, as well as KRS 6.350 and KRS 6.955.

The Attorney General has a legal duty to uphold Kentucky's Constitution and its laws. As such, the Attorney General hereby requests that the Court enter a temporary injunction:

- A. Enjoining the Governor from taking any action to administer or enforce SB 151 or otherwise reduce the retirement benefits guaranteed under the inviolable contract; and
- B. Enjoining the Boards of Trustees of KTRS and KRS from taking any action to administer or enforce SB 151 or otherwise act to reduce the retirement benefits guaranteed under the inviolable contract.

In support of his Motion, the Attorney General adopts and incorporates the allegations set forth in his Verified Complaint for Declaratory Judgment and Injunctive Relief. In further support of his Motion, the Attorney General submits the attached Memorandum of Law.

Respectfully Submitted,

ANDY BESHEAR
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Motion for Temporary Injunction and attached Memorandum In Support and Proposed Order via the Court's electronic filing system, and that I served true and accurate copies of the foregoing Motion for Temporary Injunction, attached Memorandum In Support, and Proposed Order on the individuals whose names appear on the following Service List on this the 11th day of April, 2018.

/s/ Andy Beshear

Andy Beshear
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MATTHEW G. BEVIN, in his official capacity
as Governor of the Commonwealth of Kentucky, *et al.*

DEFENDANTS

MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION

The Plaintiffs, the Commonwealth of Kentucky *ex rel.* Andy Beshear, Attorney General, the Kentucky Education Association (“KEA”), and the Kentucky State Lodge Fraternal Order of the Police (“FOP”), tender the following memorandum of law in support of their Motion.

INTRODUCTION

On March 29, 2018, the General Assembly passed Senate Bill 151 (“SB 151”), which substantially alters and ultimately reduces the retirement benefits of the Commonwealth’s state, city, and county employees. SB 151 is unconstitutional because it breaches the inviolable contract the General Assembly made with Kentucky’s public employees that guarantees them certain retirement benefits in exchange for their decades of public service. The passage of SB 151 directly violates the Kentucky Constitution, including KY. CONST. § 19, that prohibits the enactment of any law impairing the obligation of contracts. SB 151 impairs the obligations of the inviolable contracts the General Assembly created for the public retirement systems established in KRS 21.480, KRS 61.692, KRS 78.852, and KRS 161.714, and breaks those contracts.

Moreover, the manner in which the General Assembly passed SB 151 violated Sections 2, 13, 46, and 56 of the Kentucky Constitution, as well as KRS 6.350 and KRS 6.955.

The Attorney General has a legal duty to uphold Kentucky's Constitution and its laws. As such, the Attorney General hereby requests that the Court enter a temporary injunction:

- A. Enjoining the Governor from taking any action to administer or enforce SB 151 or otherwise reduce the retirement benefits guaranteed under the inviolable contract; and
- B. Enjoining the Boards of Trustees of the Teachers' Retirement System of the State of Kentucky and the Kentucky Retirement System from taking any action to administer or enforce SB 151 or otherwise act to reduce the retirement benefits guaranteed under the inviolable contract.

STATEMENT OF FACTS

The facts in this case are simple and uncontroverted. March 29, 2018 was the 57th day of the 2018 Kentucky Legislative Session. By this time, a "pension reform" bill – Senate Bill 1 – had been introduced in the Senate, but had failed to secure the necessary votes to pass that chamber. Strong public opposition led the sponsor of SB 1 to declare the bill was "on life support," and the President of the Senate stated that there was "little hope" the bill would pass. Prior to SB 1 reaching the full Senate, the Attorney General had twice informed the legislature of the numerous ways it violated the inviolable contract for each public retirement system. (*See* Attorney General's Letters to the General Assembly, Exhibit A.)

Then, just after 2:00 p.m. on March 29th, the Kentucky House of Representatives called for a recess, so that its Committee on State Government could meet. The unannounced meeting was not held in the legislative hearing rooms, but instead in a small conference room. The public

– including hundreds of teachers rallying just outside – was excluded. The Committee Chair called SB 151, which – at that time – was an 11-page sewer bill.

The Committee immediately amended SB 151, stripping all language about sewers.¹ The bill suddenly became a massive 291-page overhaul of Kentucky's public pension systems. The Committee Chair, Representative Jerry T. Miller, announced the Committee would vote on the 291-page bill during the meeting, even though most committee members admitted they had not seen, much less read the 291-page amendment. Nor had any actuarial analysis been prepared or attached as required by KRS 6.350, which is necessary to determine if the bill would save any money. At least one economist now asserts that an appropriate analysis would have shown the bill will *cost* an additional \$3.3 billion in debt for state pension systems and \$1.7 billion in debt for local pension systems over the next 35 years. (*See* Affidavit of Jason Bailey, Exhibit B.) The Committee allowed no public testimony, excluding any say for the public employees whose pension benefits were being cut. Nor did the Committee make a single copy of the bill available to the public during the meeting.

The bill passed the Committee on a purely partisan vote. It was then immediately called on the floor of the full House, where the new SB 151 received its first public reading. Once again, state representatives were forced to vote on the bill without reading it, without public testimony, and without an actuarial analysis.

Only 49 of the 100 state representatives voted for the bill, with 46 voting against and 5 not voting. The Speaker Pro Tempore of the House then signed the bill as the "Speaker-House

¹ SB 151 stands in stark contrast to the open and deliberative process that marked the 2013 pension reform package. *See* 2013 SB 2; 2013 HB 440. Unlike with SB 151, which was passed in just over eight hours without hearings, an actuarial analysis, or fiscal note, in 2012, the legislature created a bipartisan task force dedicated to addressing growing public-sector pension fund liabilities. *See* 2012 HCR 162. After a year of public meetings and suggestions from a range of stakeholders the task force made agreed recommendations to the General Assembly. Those recommendations included benefit modifications for future hires and revenue increases to help fund the pension plan. In 2013, the General Assembly passed these reforms with wide bipartisan support.

of Representatives.” SB 151 then moved to the Senate, which likewise rushed it through passage, avoiding any hearings and public participation. Governor Bevin signed the bill into law on April 10, 2018.

As passed, SB 151 substantially alters and ultimately reduces the retirement benefits of the over 200,000 active members of the pension systems, including teachers, police officers, and firefighters. In doing so, it breaks the “inviolable” contract that the Commonwealth made with its public employees under KRS 21.480, KRS 61.692, KRS 78.852, and KRS 161.714. Under those laws, the legislature promised public employees that, in exchange for their decades of public service, they would be guaranteed certain retirement benefits. By enacting SB 151, Governor Bevin and the General Assembly have broken that contract and substantially impaired those benefits in violation of the Kentucky Constitution and state statute. Moreover, the manner in which the General Assembly passed SB 151 violated Sections 2, 13, 46, and 56 of the Kentucky Constitution, as well as KRS 6.350 and KRS 6.955.

To prevent further immediate, irreparable harm to our dedicated public employees, this Court should enjoin SB 151 until it has the opportunity to rule on the merits of this action.

STANDARD FOR INJUNCTIVE RELIEF

A court may grant a temporary injunction if it is “clearly shown by verified complaint, affidavit, or other evidence that the movant’s rights are being or will be violated by adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action, or the acts of the adverse party will tend to render such final judgment ineffectual.” CR 65.04(1). Granting a temporary injunction is in the discretion of the trial court.

Maupin v. Stansbury, 575 S.W.2d 695, 697-98 (Ky. App. 1978). The Court explained in *Maupin*:

Applications for temporary injunctive relief should be viewed on three levels. First, the trial court should determine whether the plaintiff has complied with CR 65.04

by showing irreparable injury. This is the mandatory prerequisite to the issuance of any injunction. Secondly, the trial court should weigh the various equities involved. Although not an exclusive list, the court should consider such things as possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo. Finally, the complaint should be evaluated to see whether a substantial question has been presented. If the party requesting relief has shown a probability of irreparable injury, presented a substantial question as to the merits, and the equities are in favor of issuance, the temporary injunction should be awarded. *Id.* at 699.

Plaintiffs carry the burden of “clearly showing” these elements. *Id.* at 698; CR 65.04.

ARGUMENT

The Commonwealth and its public employees, including teachers and police officers, are now suffering and will continue to suffer irreparable injury under SB 151. As a result, the equities weigh heavily in favor of enjoining SB 151. In addition, the Commonwealth has presented a substantial question for the Court’s consideration. Accordingly, the Court should exercise its sound discretion and grant an injunction.

I. Plaintiffs’ Rights Are Being and Will Be Violated by SB 151, and Plaintiffs Will Suffer Irreparable Injury Absent Injunctive Relief.

This Court should grant the Plaintiffs’ request for injunctive relief to enjoin SB 151. The Defendants’ enforcement of unlawful legislation will violate Plaintiffs’ rights and cause the Commonwealth and public employees to suffer immediate, on-going, and irreparable injury prior to a final judgment in this action. The acts of the Defendants prior to the entry of a final judgment will render a final judgment ineffectual, because scores of experienced public employees have retired and will continue to retire before the Court renders such judgment.

In order to show harm, a party must first allege possible abrogation of a concrete right. *Id.* at 698. The movant must make a clear showing that these rights will be immediately impaired. *Id.* The element of “immediacy” contemplates that the parties show an urgent necessity for relief. *McCloud v. City of Cadiz*, 548 S.W.2d 158, 161 (Ky. App. 1977). This means “a

reasonable probability that injury will be done if no injunction is granted.” *Hamlin v. Durham*, 32 S.W.2d 413, 414 (Ky. 1930).

A. The Commonwealth and Public Employees are Suffering Irreparable Harm because SB 151 violates the Kentucky Constitution and Kentucky Statute.

The public suffers irreparable harm when public officials violate the Kentucky Constitution. *See* KY. CONST. § 29. The Kentucky Supreme Court has recognized that a potential ongoing violation of the Kentucky Constitution and state statute automatically qualifies as irreparable harm, warranting injunctive relief before final adjudication. *See Legislative Research Comm’n v. Fischer*, 366 S.W.3d 905, 909-10 (Ky. 2012). Here, SB 151 is causing and will continue to cause irreparable damage to the Commonwealth and its public employees because it violates both Kentucky’s Constitution and its statutes.

1. SB 151 causes irreparable damage to Kentucky public employees because it violates Section 19 of the Kentucky Constitution.

SB 151 violates Section 19 of the Kentucky Constitution, part of the Kentucky Bill of Rights. While the Constitution provides the General Assembly with legislative authority, the Kentucky Bill of Rights provides “[n]o ex post facto law, nor any law impairing the obligation of contracts, shall be enacted... .” KY. CONST. § 19.

Decades ago, the General Assembly made a contract with the Commonwealth’s public employees, including teachers, police officers, firefighters, and social workers. The General Assembly promised Kentucky’s public employees that, in exchange for their public service, they would be guaranteed certain retirement benefits. The General Assembly made that contract “inviolable”² – meaning it could never be broken – and wrote it into our law as KRS 21.480, KRS 61.692, KRS 78.852, and KRS 161.714.

² *Inviolable*, Black’s Law Dictionary (10th ed. 2014) *adj.*: Safe from violation; incapable of being violated. *Inviolable*, The American Heritage Dictionary (2d ed. 1985) *adj.*: Secure from violation or profanation.

By letters dated February 28, 2018, and March 6, 2018, the Attorney General notified all members of the General Assembly and the public that the pension bills it was considering – then SB 1 and its Committee Substitute – violated the inviolable contract in 21 ways. (*See* Exhibit A.) The letters explained that a substantial impairment of the contract would violate Section 19 of the Kentucky Constitution, which prohibits the enactment of “any law impairing the obligation of contracts.” Those letters put the General Assembly and the public on notice that SB 1, if passed, would breach the inviolable contract and therefore violate the Kentucky Constitution.

Nevertheless, the General Assembly passed SB 151, which undeniably and substantially reduces and impairs benefits and rights due to future retirees under KRS and KTRS. In short, the bill contains at least 15 violations of the inviolable contract. Because these violations create a substantial impairment to the contract the General Assembly made with its employees, SB 151 violates Section 19 of the Kentucky Constitution. These constitutional violations represent an “abrogation of []concrete right[s,]” *Maupin*, 575 S.W.2d at 698, and “...reasonable probability that injury will be done if no injunction is granted.” *Hamlin*, 32 S.W.2d at 414.

Under each of the inviolable contracts the General Assembly created, public employees’ benefits provided in a specific range of statutes are protected from being reduced or impaired by alteration, amendment, or repeal. SB 151 violates this inviolable contract in the following ways:

Kentucky Teachers

The inviolable contract in KRS 161.714 protects benefits provided between KRS 161.22 through KRS 161.710. SB 151 violates that inviolable contract as follows:

- KRS 161.623 allows teachers who started before July 1, 2008, to convert accrued sick leave toward retirement, and allows teachers hired after July 1, 2008 to convert up to three hundred days of accrued sick leave toward retirement. Section 74 of SB 151 caps the amount of accrued sick leave members may convert toward retirement to the amount accrued as of December 31, 2018, materially altering and impairing the rights and benefits due under the inviolable contract.

Kentucky Employees

The inviolable contract in KRS 61.692 protects benefits provided to members of the Kentucky Employees Retirement System (“KERS”) between KRS 61.510 through 61.705. SB 151 violates that inviolable contract as follows:

- KRS 61.510 allows non-hazardous, Tier I employees to include lump-sum payments in creditable compensation. Section 14 of SB 151 violates the inviolable contract because it expressly excludes lump-sum payments from creditable compensation for non-hazardous, Tier I employees, retiring after July 1, 2023.
- KRS 61.510 allows uniform and equipment allowances to be included in members’ creditable compensation. Section 14 of SB 151 violates the inviolable contract because it expressly excludes uniform and equipment allowances as well as undefined “other expense allowances,” paid on or after January 1, 2019, from creditable compensation.
- KRS 61.546 allows KERS Tier I employees to use sick leave service credit for retirement eligibility. Section 16 of SB 151 violates the inviolable contract because it prohibits KERS Tier I employees from using sick leave service credit for retirement eligibility, if they retire on or after July 1, 2023.
- Prior to passage of SB 151, KRS 61.702(2)(b) did not require employers of KERS Tier I members, employed after July 1, 2003, to deduct up to 1% of the member’s creditable compensation for purposes of hospital and medical insurance under the plan. Section 30 of SB 151 imposes this new requirement, altering and impairing the ultimate calculation of KERS members’ retirements and violating the inviolable contract.
- KRS 61.510 requires Tier I hazardous employees’ final compensation be calculated using the creditable compensation from three (3) fiscal years the employee was paid the highest average monthly rate. It requires the highest five (5) years for Tier I nonhazardous employees. In either case, the compensation need not be calculated using complete fiscal years. Section 14 of SB 151 requires, after January 1, 2019, that Tier I hazardous employees’ final compensation be calculated using the creditable compensation from their highest three (3) *complete* fiscal years, and that the highest five (5) *complete* fiscal years be used to calculate for Tier I nonhazardous employees’ final compensation. This change, altering and impairing the final compensation calculation guaranteed to Tier I employees, is in violation of KRS 61.510.
- KRS 61.597 guaranteed annual interest credit of at least 4% to KERS Tier I and Tier II employees who opted into the hybrid cash balance plan. Section 19 of SB 151 violates the inviolable contract because it removes the guaranteed annual interest credit of at least 4%, reducing it to 0%.

Kentucky State Police

The inviolable contract in KRS 16.652 protects benefits provided to members of the State Police Retirement Systems (“SPRS”) between KRS 16.510 through 16.645. SB 151 violates that inviolable contract as follows:

- KRS 16.645 and KRS 61.546 allow SPRS Tier I employees to use sick leave service credit for retirement eligibility. Section 16 of SB 151 violates the inviolable contract by prohibiting SPRS Tier I employees from doing so if they retire on or after July 1, 2023.
- KRS 16.645 and KRS 61.702(b) did not require employers of SPRS Tier I members, employed after July 1, 2003, to deduct up to 1% of the member’s creditable compensation for purposes of hospital and medical insurance under the plan. Section 30 of SB 151 imposes this new requirement, altering and impairing the ultimate calculation of SPRS members’ retirements and violating the inviolable contract.

County Employees

The inviolable contract in KRS 78.852 protects benefits provided to members of the County Employees Retirement System (“CERS”) between KRS 78.510 through KRS 78.852. SB 151 violates that inviolable contract as follows:

- KRS 78.510 allows non-hazardous, Tier I employees to include lump-sum payments in creditable compensation. Section 15 of SB 151 violates the inviolable contract because it expressly excludes lump-sum payments from creditable compensation for non-hazardous, Tier I employees, retiring after July 1, 2023, altering and impairing the ultimate calculation of CERS members’ retirements.
- KRS 78.510 allows uniform and equipment allowances to be included in members’ creditable compensation. Section 15 of SB 151 violates the inviolable contract because it expressly excludes uniform and equipment allowances as well as undefined “other expense allowances,” paid on or after January 1, 2019, from creditable compensation – altering and impairing the ultimate calculation of CERS members’ retirements.
- KRS 78.616 allows CERS Tier I employees to use sick leave service credit for retirement eligibility. Section 17 of SB 151 violates the inviolable contract because it prohibits CERS Tier I employees from using sick leave service credit for retirement eligibility, if they retire on or after July 1, 2023.
- Prior to passage of SB 151, KRS 78.545 and KRS 61.702(2)(b) did not require employers of CERS Tier I members, employed after July 1, 2003, to deduct up to 1%

of the member's creditable compensation for purposes of hospital and medical insurance under the plan. Section 30 of SB 151 makes this new requirement, altering and impairing the ultimate calculation of CERS members' retirements and violating the inviolable contract.

- KRS 78.510 requires CERS Tier I hazardous employees' final compensation be calculated using the creditable compensation from three (3) fiscal years the employee was paid the highest average monthly rate. It requires the highest five (5) years for Tier I nonhazardous employees. In either case, the compensation need not be calculated using complete fiscal years. Section 15 of SB 151 requires, after January 1, 2019, that Tier I hazardous employees' final compensation be calculated using the creditable compensation from their highest three (3) *complete* fiscal years, and that the highest five (5) *complete* fiscal years be used to calculate for Tier I nonhazardous employees' final compensation. This change violates KRS 78.510 by altering and impairing the final compensation calculation guaranteed to Tier I employees.
- KRS 61.597 and 78.545 guaranteed annual interest credit of at least 4% to CERS Tier I and Tier II employees who opted into the hybrid cash balance plan. Section 19 of SB 151 violates the inviolable contract because it removes the guaranteed annual interest credit of at least 4%, reducing it to 0%.

Certainly, the General Assembly has not – and cannot – demonstrate that SB 151 is reasonable or necessary to serve an important public purpose. In passing SB 151, the General Assembly declined to enact, or even consider, measures that would provide dedicated revenue³ for the purpose of funding public pensions, much less attach an actuarial analysis or fiscal note of its impact on KTRS, KRS, and ultimately, public employees. Ignoring these facts and the law, the General Assembly passed SB 151 and Governor Bevin signed it into law.

Defendant Governor Bevin exercises influence over KRS and KTRS through his power to appoint members to their respective boards and his current claim of “absolute authority”

³ In both his February 28, 2018 and March 6, 2018 letters to the General Assembly, the Attorney General recommended the legislature consider other revenue streams – such as expanded gaming – instead of attempting to unconstitutionally reduce and impair benefits due under the inviolable contract. Notably, in 2008, the executive budget proposed an expansion of gaming estimated to increase revenue by \$780 million to reduce the budget gap. Here, SB 151 sponsor, Representative Bam Carney, stated SB 151 would, at best, save \$300 million over 30 years. See Daniel Desrochers, et. al., <http://www.kentucky.com/news/politics-government/article207317709.html> (last visited Apr. 2, 2018).

pursuant KRS 12.028 to reorganize any state board as it pleases him.⁴ See KRS 61.645(1)(a), (e); KRS 161.250(1)(b)(3). The KTRS Board is responsible for the administration of the Teachers' Retirement System of the State of Kentucky. See KRS 161.250(1)(a). The KRS Board is responsible for general administration of KERS, CERS, and SPRS. See KRS 61.645.

SB 151 will become operational through the administration and enforcement by the Defendants Governor Bevin, KTRS, and KERS – resulting in an ongoing violation of Section 19 of the Kentucky Constitution. Such violation necessarily causes irreparable harm warranting injunctive relief before final adjudication. *Fischer*, 366 S.W.3d at 909-10. Accordingly, this Court should grant the Commonwealth's motion for a temporary injunction.

2. SB 151 causes irreparable damage by violating Section 46 of the Kentucky Constitution.

SB 151 violates Section 46 of the Kentucky Constitution, causing irreparable damage to the Commonwealth and its public employees. Section 46 mandates the General Assembly comply with certain requirements before a bill becomes law. SB 151 failed to meet these requirements before the General Assembly passed the bill and delivered it to the Governor. Accordingly, SB 151 represents an ongoing violation of the Kentucky Constitution, causing irreparable harm to the Commonwealth and warranting the requested temporary injunctive relief.

SB 151 violated the readings requirement of Section 46 of the Kentucky Constitution. Section 46 provides in pertinent part “[e]very bill shall be read at length on three different days in each House, but the second and third readings may be dispensed with by the majority of all the members elected to the House in which the bill is pending.” Kentucky's highest court has held that Section 46 **requires** each bill receive three readings and the readings shall be on different

⁴ Jack Brammer, *Bevin Says He Has “Absolute Authority” to Disband Any State Board*, Lexington Herald-Leader, June 21, 2016 (available at <http://www.kentucky.com/news/politics-government/article85085272.html>) (last visited Apr. 2, 2018).

days. *Kavanaugh v. Chandler*, 72 S.W.2d 1003, 1004 (Ky. 1934). These requirements are “mandatory,” and their purpose “is to secure caution and deliberation in each house.” *Id.*

As passed, SB 151 received only one reading in the House, in direct violation of Section 46. At that point, SB 151 was an entirely different bill, with 291 pages of new law. The constitutional purpose of “caution and deliberation” was violated by pretending two previous readings of an 11-page sewage bill were sufficient. Moreover, the House failed to take a vote “by the majority of its members” to dispense with the required second and third readings of SB 151. Even worse, the Senate did not conduct *any* readings of SB 151 in its now 291-page form.

The General Assembly simply cannot circumvent the constitution through such maneuvers. *Arnett v. Sullivan*, 132 S.W.2d 76, 80 (Ky. 1939) (“[C]onstitutions should never be amended or disregarded either by public officials (including courts) or private individuals, . . . since its provisions are always mandatory and never directory.”) Otherwise, the Constitutional requirement is no longer mandatory and the purpose of “caution and deliberation” is not served.

Courts in our sister states whose constitutions similarly require three readings have held that if amendments “vital[ly] alter[]” or “wholly change[]” the bill, the amended bill must receive three new readings on three separate days. *Hoover v. Bd. of Cnty. Comm’rs, Franklin Cnty.*, 482 N.E.2d 575, 579 (Ohio 1985). Previous readings only satisfy the constitutional requirement where the subject of the substituted or amended bill “has a common purpose” with and “is germane to the original bill.” *Magee v. Boyd*, 175 So. 3d 79, 114 (Ala. 2015). Plainly, SB 151 – a sewage bill that became a pension bill – does not satisfy this test.

3. SB 151 causes irreparable damage by violating Section 56 of the Kentucky Constitution.

SB 151 violates Section 56 of the Kentucky Constitution, causing irreparable damage to the Commonwealth and its public employees. The presiding officer of the House of

Representatives, the Speaker, failed to affix his signature to the bill as constitutionally required. KY. CONST. § 56; *see also*, *D & W Auto Supply v. Dep't of Revenue*, 602 S.W.2d 420, 425 (1980) (holding that enrollment of a bill is not conclusive of constitutional validity). Because SB 151 impermissibly violates the Kentucky Constitution, it necessarily warrants the requested temporary injunctive relief before final adjudication. *Fischer*, 366 S.W.3d at 909-10.

Section 56 requires that, before a bill can become law, the presiding officer of each of the two Houses must – among other things – affix his signature to the bill in open session. This requirement “is express, sweeping, and mandatory.” *Hamlett v. McCreary*, 156 S.W. 410, 411 (Ky. 1913). In *Hamlett*, Kentucky’s then-highest court, Section 56 “...is mandatory in its provisions, and not merely declaratory, since it prohibits a bill from becoming a law until it shall have been signed by the presiding officer of each house.” *Id.* at 412. Kentucky’s highest court has held that the presiding officer over the House is the Speaker. *Kirchendorfer v. Tincher*, 264 S.W. 766 (Ky. 1924); *see also* *Flint v. Kentucky Legislative Ethics Commission*, No. 2014-CA-745, 2015 WL 2152871 (Ky. App. 2015) (Exhibit C).⁵

Jeff Hoover is the most recent Speaker, and therefore the presiding officer whose signature is required. He did not affix his signature to SB 151. Instead, Speaker Pro Tem David Osborne signed the bill as the “Speaker-House of Representatives,” which he is not. (*See* Excerpt of SB 151, Exhibit D.)⁶ As such, the bill did not meet the constitutional requirements for enrollment into law, in violation of Section 56 of the Kentucky Constitution, causing irreparable harm to the Commonwealth.

⁵ The legislature recognizes the Speaker of the House as its presiding officer. *Citizen’s Guide to the Kentucky Constitution*, Legislative Research Commission, Research Report No. 137, p. 21 (Revised June 2013), <http://www.lrc.ky.gov/lrcpubs/rr137.pdf> (last visited Apr. 2, 2018).

⁶ SB 151 is available at <http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2018-Reg-SB-0151-2470.pdf> (last visited April 11, 2018).

4. SB 151 causes irreparable damage by violating Section 13 of the Kentucky Constitution.

SB 151 violates Section 13 of the Kentucky Constitution, causing irreparable damage to the Plaintiffs and the Commonwealth. Section 13 provides “[n]o person shall, for the same offense, be twice put in jeopardy of his life or limb, nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.” SB 151 deprives public employees of their contractual rights to certain retirement benefits. The Kentucky Supreme Court has held “[w]hen contract rights are taken for the public use, there is a constitutional right to compensation in the same manner as when other property rights are taken.” *Folger v. Com.*, 330 S.W.2d 106, 108 (Ky. 1959) (citation omitted). SB 151 deprives public employees of – among other things – their right to use sick leave toward their retirement and retirement eligibility, the right to include certain lump sum payments and uniform allowances toward creditable compensation, and ultimately, the agreed upon formula by which their retirement allowances are calculated. The contractual rights deprived by SB 151 are the property of the public employees. SB 151 does not provide these employees with any compensation in exchange for depriving them of their contractual rights. SB 151 therefore violates Section 13 of the Kentucky Constitution.

5. SB 151 causes irreparable damage by violating KRS 6.350 and KRS 6.955(1).

The Commonwealth also suffers irreparable harm when a statute is violated. *Fischer*, 366 S.W.3d at 909-10. The General Assembly violated KRS 6.350 and KRS 6.995(1) by failing to attach either an actuarial analysis or a fiscal note to SB 151 prior to full consideration of the House and then the Senate. Because the General Assembly did not comply with these statutory

provisions prior to considering and passing SB 151, it violated KRS 6.350 and KRS 6.955(1), causing irreparable harm to the Commonwealth's public employees.

KRS 6.350 requires that any bill before the General Assembly that would increase or decrease benefits or participation in a state-administered retirement system be accompanied by an actuarial analysis prior to consideration of the bill. The purpose of KRS 6.350 is to determine if the bill will work, *i.e.*, will it save money or perhaps cost the Commonwealth more money. *Id.*

Here, no actuarial analysis accompanied SB 151. Instead, during a committee meeting of the House Committee on State Government, the committee called Senate Bill 151, which was an 11-page sewer bill. SB 151 was immediately amended, stripping any language about wastewater. It then became a 291-page overhaul of Kentucky's public pension plans. Absent from the bill was any accompanying actuarial analysis as required by KRS 6.350. The committee subsequently took a vote and reported the bill favorably out of committee for consideration of the members of the Kentucky House of Representatives. As a result, SB 151 violated KRS 6.350, causing immediate and irreparable harm to the public.

SB 151 also violated KRS 6.955 because the bill affects local governments, but was not accompanied by a fiscal note. KRS 6.955(1) requires a fiscal note for any bill or resolution of the legislature relating to local government. SB 151 clearly impacts local governments, because it creates, alters, or amends provisions requiring local governments to contribute to the pensions of CERS members. Because SB 151 was not accompanied by a fiscal note as prescribed under KRS 6.995(1) – SB 151 is in violation of KRS 6.995(1). Instead, the chair of the committee unilaterally suspended statutes the whole General Assembly enacted, and shoved SB 151 through committee to the full House without the actuarial analysis and fiscal note required by law.

While the General Assembly may suspend laws, *see* KY. CONST. § 15, it took no such action to suspend either KRS 6.350 or KRS 6.955(1). The General Assembly, therefore, is bound like any other body to comply with the laws of the Commonwealth. Accordingly, SB 151 is invalid, and the legislature's violation of Kentucky statute in passing the bill has caused, is causing, and will continue to cause irreparable harm to the public.

6. SB 151 causes irreparable damage by violating Section 2 of the Kentucky Constitution.

Section 2 of the Kentucky Constitution provides, “[a]bsolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.” The Kentucky Supreme Court has held that the General Assembly, in exercise of its power “...may not unreasonably invade and violate private rights guaranteed under the federal or state constitutions.” *Kentucky Cent. Life Ins. Co., v. Stephens*, 897 S.W.2d 583, 591 (Ky. 1995).

The General Assembly passed SB 151 in violation of both constitutional and statutory requirements, and it deprives public employees of their constitutional and statutory rights. In passing SB 151, the legislature exercised absolute and arbitrary power by: calling a meeting of the House Committee on State Government in a conference room to the exclusion of the public; introducing the new SB 151 as a 291-page pension reform bill as completely changed from an 11-page sewage bill, without committee members or the public having any opportunity to review the amended bill; introducing and voting on the bill without an actuarial analysis and fiscal note as required by statute; voting the bill out of committee and to the full House without providing any stakeholder or member of the public the opportunity to be heard on the bill, and without three different readings on the bill with an entirely new title and content; and voting on the bill under the cover of night despite violating statutory and constitutional requirements. Acting with absolute and arbitrary power, the legislature did all of this in just more than eight hours.

The passage of SB 151, therefore, violates the rights of the people of the Commonwealth to be free from the exercise of arbitrary power over their lives, liberty, and property.

B. The Commonwealth Suffers Irreparable Harm because SB 151 Forces Public Employees to Retire, Depriving the Public of High Quality Public Servants.

The public has suffered irreparable harm as a result of SB 151, and continues to suffer irreparable harm. Even before passage of SB 151, as a direct result of Defendants' efforts to abrogate public employees' rights to the promised retirement benefits, record numbers of public employees have retired rather than be subjected to unlawful reductions in benefits. (*See* Affidavit of Matt Robbins at 1, Exhibit E; Affidavit of Nicolai Jilek, Exhibit F.)

For instance, in September 2017, after Governor Bevin introduced his plan to dismantle the public pension systems, the number of state and local government employees who retired surged 37% over the same month in the previous year.⁷ KTRS saw an even greater increase in the number of teacher retirees—a jump of 64% following Governor Bevin's pension proposal.⁸ The unprecedented wave of retirements has continued, and it will only accelerate now that Governor Bevin has signed SB 151 into law. (*See* Exhibit F at 2.)

Defendants' actions have left retirement-eligible public employees with an impossible choice – retire now, or lose the pension benefits you were promised.⁹ If SB1 is allowed to take effect, hundreds – and perhaps thousands – of public employees will be forced to retire to preserve their retirement benefits, depriving the people of the Commonwealth of important

⁷ See John Cheves, *September Retirements Surge as Kentucky Lawmakers Consider Pension Overhaul*, Lexington Herald-Leader, Sept. 6, 2017, available at <http://www.kentucky.com/news/politics-government/article171567482.html> (last visited Apr. 3, 2018).

⁸ Tom Loftus, *Kentucky Pension Crisis: More Public Employees Are Retiring As Governor Bevin Works on Reform*, Courier-Journal, Oct. 10, 2017, available at <https://www.courier-journal.com/story/news/politics/2017/10/10/kentucky-pension-crisis-retirements-surge-bevin-works-reform/749214001/> (last visited Apr. 3, 2018).

⁹ Even though the irreparable harm here is not merely monetary, even monetary harm can be irreparable. *See Commonwealth Revenue Cabinet v. St. Ledger*, 955 S.W.2d 539 (Ky. App. 1997).

public benefits. Education professionals already anticipate that a large number of retirement eligible teachers will retire earlier as a result of the uncertainty caused by SB 151. (*See e.g.*, Exhibit E at 1; Affidavit of Rob Clayton, Exhibit G; Affidavit of Stephanie Winkler, Exhibit H.)

The public is harmed by the early retirement of thousands of capable teachers and other public servants who would prefer to remain working, but must retire to protect the pension benefits on which they and their families depend. (*Id.*) The mass retirements of experienced teachers will have a substantial negative impact on school district budgets because of the cost to onboard new, inexperienced teachers and the cost to hire substitutes. (*Id.*)

Finally, SB 151 harms students' education, the safety of our neighborhoods, and public services in general, because it discourages the most talented students and individuals from entering public service. (Exhibit E at 1; Exhibit F at 3.) In truth, compensation is a motivating factor in the decision to join a profession. However, there is already a significant disparity in compensation between the highly-skilled work of educators and public employees and the compensation of highly-skilled professions in the private sector. Kentucky's pension benefits narrowed that gap. Unfortunately, SB 151 makes significant reductions to those benefits.

SB 151 will cause far fewer highly skilled students to become educators and police officers. This shift presents a potential danger to education, which represents an investment in the current and future human capital accumulation of Kentucky's children and young adults. It also represents a danger to public safety. The enactment of SB 151 makes this harm imminent.

II. The Equities Weigh in Favor of Issuing a Temporary Injunction.

In ruling on a motion for a temporary injunction, the Court must evaluate various equitable considerations. The relative benefits and detriments should be weighed, which entails a consideration of whether the Defendants will be harmed by the issuance of the injunction or

whether its effect will merely be to maintain the *status quo*. *Maupin*, 575 S.W.2d at 698 (citing *Kentucky High School Athletic Ass'n v. Hopkins*, 552 S.W.2d 685 (Ky. App. 1977)).

A. The Temporary Injunction will Not Harm the Public Interest.

The public has a strong interest in ensuring that the Commonwealth complies with its contractual obligations, honors its commitment to its public employees, and follows the Kentucky Constitution. By enjoining the application of SB 151, the Court will ensure that the Commonwealth continues to abide by the promises it has made to its public employees and that a law that was passed in violation of the Constitution does not take effect.

Moreover, an injunction will ensure that public employees are not forced to choose between retirement and foregoing the benefits that they were promised. For example, SB 151 changes the calculation of retirement benefits for KERS and CERS members who retire after this calendar year. Absent an injunction, more public employees will retire to preserve the benefits they were promised, depriving the public of the essential services those employees provide.

However, while the public will be harmed if Defendants act under SB 151, the Defendants will not be prejudiced by temporary injunctive relief. Such relief will allow public employees to continue working and contributing toward their retirements, and ultimately, their share of those benefits. Holding Defendants to the promises they made the public employees cannot harm the Defendants. Thus, a temporary injunction will serve the public interest.

B. The Temporary Injunction is Necessary to Restore the *Status Quo*.

The inviolable contract has been in place for decades. It is the status quo. Yet in the span of mere hours, the General Assembly converted SB 151 – a wastewater treatment bill – into a massive pension overhaul bill and then passed that bill without public review or input. In doing so, it violated the Kentucky Constitution and Kentucky law by substantially impairing the inviolable contract upon which public employees had relied.

The Court should restore the status quo that existed before the unconstitutional and illegal passage of SB 151 by enjoining Defendants from enforcing that law. By doing so, the Court will reinstate the terms of the inviolable contract between the Commonwealth and public employees. The equities involved in this matter weigh in favor of granting a temporary injunction. To do so protects the public's interest in compliance with the Constitution, enforces a valid contract, and restores the *status quo* of the parties prior to the enactment of the unlawful bill.

III. Plaintiffs Presents a Substantial Question of Law.

For the reasons discussed above, the Plaintiffs present a substantial question of law regarding whether the provisions of SB 151 are unconstitutional, in violation of Sections 2, 13, 19, 46, and 56 of the Kentucky Constitution. In addition, Plaintiffs have presented a substantial question of law as to whether the General Assembly violated KRS 6.955 and KRS 6.350, rendering SB 151 legally null and void. Accordingly, the Plaintiffs have presented multiple substantial questions of law, satisfying the third prong of *Maupin*.

CONCLUSION

The Plaintiffs have demonstrated irreparable harm to the public. The equities, particularly the public interest, weigh greatly in favor of the issuance of a temporary injunction. The Plaintiffs also raise substantial questions of constitutional and statutory law. Because the equitable relief requested is the only means to mitigate the irreparable harm the Plaintiffs and the Commonwealth face and will continue to face, the Court should issue a temporary injunction.

Respectfully Submitted,

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ATTORNEY GENERAL

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EXHIBIT A

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EXH : 000001 of 000013



COMMONWEALTH OF KENTUCKY
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February 28, 2018

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Kentucky Legislators
702 Capitol Ave
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Re: Senate Bill 1

Dear Legislators:

Last week, Senate Bill 1 ("SB 1") was filed in the General Assembly. SB 1 seeks to substantially alter and ultimately reduce the retirement benefits for current and future state, city, and county retirees including teachers, police officers, firefighters, and social workers. The Attorney General's Office was not provided any advanced copy of SB 1. This letter is therefore our first opportunity to advise you on the multiple legal violations that we have thus far identified within the bill's 289 pages.

As you know, you – the General Assembly – created an inviolable contract between the Commonwealth and its public employees. You passed this contract into law as KRS 21.480, KRS 61.692, KRS 78.852, and KRS 161.714. Under those laws, you promised Kentucky's public employees that, in exchange for their public service, they would be guaranteed certain retirement benefits. You declared these promises to be inviolable, meaning that you could not later break them.¹

The Commonwealth's public employees have upheld their end of the contract, working for decades on behalf of our Kentucky families. The General Assembly, on the other hand, will violate the contract if it passes the current version of SB 1 into law, as it would materially reduce, alter, or impair the contract's guaranteed benefits. For teachers, SB 1 unlawfully reduces cost of living adjustments, caps the use of sick time, extends years of service to qualify for some benefits, and forces teachers to contribute significantly more of their salaries to their retirement. For state police officers, state employees, and county employees, the bill unlawfully changes how public employees' retirement is calculated, reduces or caps sick leave benefits, and imposes new deductions on already strapped salaries.

Below, I have provided an initial description of some of the most serious violations:

1. Kentucky Teachers

The General Assembly created an inviolable contract with public educators under KRS Chapter 161. The contract protects benefits provided between KRS 161.220 and KRS 161.710. *See* KRS 161.714. SB 1 amends or repeals these very statutes, thereby unlawfully and materially reducing, altering, or impairing pension benefits due to KTRS members. Violations include:

¹ *Inviolable*, Black's Law Dictionary (10th ed. 2014) *adj.*: Safe from violation; incapable of being violated. *Inviolable*, The American Heritage Dictionary (2d ed. 1985) *adj.*: Secure from violation or profanation.

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- **Reduction of Cost of Living Adjustments:** The inviolable contract guarantees teacher retirees a 1.5% annual COLA. *See* KRS 161.620(2). SB 1, Section 73 reduces the annual member COLA from 1.5% to 0.75%. This reduction may reduce retirement benefits by up to \$73,000. As such, it materially impairs the rights and benefits due to retirees, and therefore violates the inviolable contract. *See e.g.*, OAG 17-031.
- **Mandatory Annual Contribution Increases:** Under the inviolable contract, teachers are required to contribute a defined amount of their annual compensation to the retirement system's health fund. *See* KRS 161.540. SB 1, Section 57 mandates that the KTRS governing board increase member contributions by up to one percent (1%) annually under certain conditions. This increase materially impairs the rights guaranteed to KTRS members and therefore violates the inviolable contract.
- **Cap of Sick Time Used to Increase Service Credit:** The inviolable contract does not cap the amount of accrued sick leave that teachers who started before July 1, 2008, may convert to additional service credit for purposes of their retirement. *See* KRS 161.623. SB 1, Section 74 caps the amount of accrued sick leave that members may convert to the amount accrued as of July 31, 2018. This limitation materially alters and impairs the rights and benefits due to employees who started before July 1, 2008, and therefore violates the inviolable contract.
- **Increase of Years of Service Requirement For 3% Benefit Factor:** The KTRS pension plan guarantees a 3% benefit factor for calculating retirees' retirement allowances, if the member has 30 years of service. *See* KRS 161.620. SB 1, Section 73 increases the service years required for this 3% benefit factor, limiting it to employees retiring with thirty (30) years of service, who have at least twenty (20) years of that service as of July 1, 2018. While members without twenty (20) years of service may still receive the 3% benefit factor, they are forced to work thirty-five (35) years and be at least age sixty (60) upon retirement to receive the factor. Because this increase materially alters the contractual service requirements and guaranteed benefits related thereto, it violates the inviolable contract.

2. Kentucky Employees

The Kentucky Employees Retirement System ("KERS") pension rights and benefits are located at KRS Chapter 61, with the inviolable contract found in KRS 61.510-61.705. *See* KRS 61.692. SB 1 amends or repeals these very statutes, thereby unlawfully and materially reducing, altering, or impairing pension benefits due to KERS members. Violations include:

- **Excludes Compensatory Time Payments From Creditable Compensation:** The inviolable contract allows lump-sum payments for compensatory time to be included in the creditable compensation of Tier I nonhazardous employees.² *See* KRS 61.510. SB 1, Section 14 expressly excludes lump-sum payments from creditable compensation for non-hazardous, Tier I employees, retiring after July 1, 2023. This exclusion materially alters and impairs the ultimate calculation of KERS members' retirement allowances, and therefore violates the inviolable contract.
- **Eliminates Uniform and Equipment Allowances From Creditable Compensation:** Under the inviolable contract, uniform and equipment allowances may be included in KERS members'

² Tier I employees began their employment prior to September 1, 2008. Tier II employees began their employment on or after September 1, 2008 but prior to January 1, 2014.

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creditable compensation. *See* KRS 61.510. SB 1, Section 14 expressly excludes such allowances, paid on or after January 1, 2019, from creditable compensation. This exclusion materially alters and impairs the ultimate calculation of KERS members' retirement allowances, and therefore violates the inviolable contract.

- **Caps Service Credit For Accumulated Sick Leave:** Under the inviolable contract, KERS Tier I employees are not limited in the amount of service credit they may receive for their accrued, unused sick leave. *See* KRS 61.546. SB 1, Section 16, caps service credit for sick leave for Tier I members who retire on or after August 1, 2018. Effective August 1, 2018, for any KERS member retiring on or after August 1, 2018, the maximum amount of service credited for sick leave would be set by – and could not exceed – the amount credited for balance on July 31, 2018. Because this cap materially impairs the sick leave conversion rights and benefits guaranteed to members, it violates the inviolable contract.
- **Prohibits Use of Sick Leave For Determination of Retirement Eligibility:** The inviolable contract guarantees KERS Tier I members may use accumulated, unused sick leave to determine retirement eligibility. *See* KRS 61.546. SB 1, Section 16 prohibits KERS Tier I employees from using sick leave service credit for retirement eligibility, if they retire on or after August 1, 2018. Because this prohibition materially impairs the rights and benefits due to members, it violates the inviolable contract.
- **Imposes Deductions from Creditable Compensation for Group Hospital and Medical Insurance:** The inviolable contract does not include deductions in any amount from KERS Tier I members' creditable compensation for hospital and medical insurance. *See* KRS 61.702(2)(b). SB 1, Section 30 requires an employer of a KERS Tier I member employed after July 1, 2003 to deduct up to 3% of the member's creditable compensation for purposes of hospital and medical insurance under the plan. Because this provision alters and impairs the ultimate calculation of KERS members' retirement allowances, it violates the inviolable contract.
- **Alters Final Compensation Calculation:** The inviolable contract requires Tier I hazardous employees' final compensation be calculated using the creditable compensation from the three (3) fiscal years the employee was paid the highest average monthly rate. It requires the highest five (5) years for Tier I nonhazardous employees. *See* KRS 61.510. SB 1, Section 14 requires, after January 1, 2019, that Tier I hazardous employees' final compensation be calculated using the creditable compensation from their highest three (3) *complete* fiscal years, and that the highest five (5) *complete* fiscal years be used to calculate for Tier I nonhazardous employees' final compensation. Because SB 1 alters and impairs the final compensation calculation guaranteed to hazardous and nonhazardous Tier I employees, it violates the inviolable contract.
- **Eliminates Guaranteed Annual Interest For Hybrid Cash Balance Plan Participants:** KERS Tier I and Tier II employees who opted into the current hybrid cash balance plan are guaranteed an annual interest credit of at least 4%. *See* KRS 61.597. SB 1, Section 19 removes this guarantee. Because this change materially impairs the rights of these employees, it violates the inviolable contract.

3. Kentucky State Police

The State Police Retirement System ("SPRS") pension rights and benefits are located at KRS Chapter 16, with the inviolable contract found in KRS 16.510-16.645. *See* KRS 16.652. SB 1 amends or

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repeals these very statutes, thereby unlawfully and materially reducing, altering, or impairing pension benefits due to SPRS members. Violations include:

- **Caps Service Credit For Accumulated Sick Leave:** The inviolable contract guarantees Tier I employees are not limited in the amount of service credit they may receive for their accrued, unused sick leave. *See* KRS 16.645; KRS 61.546. SB 1, Section 16, caps service credit for sick leave for Tier I members who retire on or after August 1, 2018, requiring that the maximum amount of service credited for sick leave be set by – and could not exceed – the amount credited for balance on July 31, 2018. This cap materially impairs rights and benefits due to members, and therefore violates the inviolable contract.
- **Prohibits Use of Sick Leave For Determination of Retirement Eligibility:** The inviolable contract guarantees SPRS Tier I members may use accumulated, unused sick leave to determine retirement eligibility. *See* KRS 16.645; KRS 61.546. SB 1, Section 16 prohibits SPRS Tier I employees from using sick leave service credit for retirement eligibility, if they retire on or after August 1, 2018. This prohibition materially impairs rights and benefits due to members, and therefore violates the inviolable contract.
- **Imposes Deductions from Creditable Compensation for Group Hospital and Medical Insurance:** The inviolable contract does not include deductions in any amount from SPRS Tier I members' creditable compensation for hospital and medical insurance. *See* KRS 16.645; KRS 61.702(2)(b). SB 1, Section 30 requires an employer of a SPRS Tier I member, employed after July 1, 2003, to deduct up to 3% of the member's creditable compensation for purposes of hospital and medical insurance under the plan. Because this provision alters and impairs the ultimate calculation of SPRS members' retirement allowances, it violates the inviolable contract.

4. County Employees

The County Employees Retirement System ("CERS") pension rights and benefits are located at KRS Chapter 78, with the inviolable contract found in KRS 78.510-78.852. *See* KRS 78.852. SB 1 amends or repeals these very statutes, thereby unlawfully and materially reducing, altering, or impairing pension benefits due to CERS members. Violations include:

- **Excludes Compensatory Time Payments From Creditable Compensation:** The inviolable contract allows lump-sum payments for compensatory time to be included in the creditable compensation of Tier I nonhazardous employees. *See* KRS 78.510. SB 1, Section 15 expressly excludes lump-sum payments from creditable compensation for non-hazardous, Tier I employees, retiring after July 1, 2023. This exclusion materially alters and impairs the ultimate calculation of CERS members' retirement allowances and therefore violates the inviolable contract.
- **Eliminates Uniform and Equipment Allowances From Creditable Compensation: Currently,** uniform and equipment allowances may be included in CERS members' creditable compensation. *See* KRS 78.510. SB 1, Section 15 expressly excludes uniform and equipment allowances, paid on or after January 1, 2019, from creditable compensation. This exclusion materially alters and impairs the ultimate calculation of CERS members' retirement allowances, and therefore violates the inviolable contract.
- **Caps Service Credit For Accumulated Sick Leave:** The inviolable contract guarantees that CERS Tier I employees are not limited to the amount of service credit they may receive for his or

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her accrued, unused sick leave. Tier II employees can receive up to twelve (12) months of service credit. *See* KRS 78.616. SB 1, Section 17, caps service credit for sick leave for CERS members who retire on or after August 1, 2018, requiring the maximum amount of service credited for sick leave be set by – and not exceed – the amount credited for balance on July 31, 2018. Because the cap materially impairs the sick leave rights and benefits due to CERS members, it violates the inviolable contract.

- **Prohibits Use of Sick Leave For Determination of Retirement Eligibility:** The inviolable contract guarantees CERS members may use accumulated, unused sick leave to determine retirement eligibility. *See* KRS 78.616. SB 1, Section 17 prohibits CERS employees from using sick leave service credit for retirement eligibility, if they retire on or after August 1, 2018. This prohibition materially impairs rights and benefits guaranteed to CERS members, and therefore violates the inviolable contract.
- **Imposes Deductions from Creditable Compensation for Group Hospital and Medical Insurance:** The inviolable contract does not include deductions, in any amount, from CERS Tier I members' creditable compensation for hospital and medical insurance. *See* KRS 78.545; KRS 61.702(2)(b). SB 1, Section 30 requires an employer of a CERS Tier I member, employed after July 1, 2003, to deduct up to 3% of the member's creditable compensation for purposes of hospital and medical insurance under the plan. As this provision alters and impairs the ultimate calculation of CERS members' retirement allowances, it violates the inviolable contract.
- **Alters Final Compensation Calculation:** The inviolable contract requires CERS Tier I hazardous employees' final compensation to be calculated using the creditable compensation from the three (3) fiscal years the employee was paid the highest average monthly rate. It requires the highest five (5) years for CERS Tier I nonhazardous employees. *See* KRS 78.510. SB 1, Section 15 requires, after January 1, 2019, that CERS Tier I hazardous employees' final compensation be calculated using the creditable compensation from their highest three (3) *complete* fiscal years, and that the highest five (5) *complete* fiscal years be used to calculate CERS Tier I nonhazardous employees' final compensation. Because this provision alters and impairs the ultimate calculation of CERS members' retirement allowances, it violates the inviolable contract.
- **Eliminates Guaranteed Annual Interest For Hybrid Cash Balance Plan Participants:** CERS Tier I and Tier II employees who opted into the current hybrid cash balance plan are guaranteed an annual interest credit of at least 4%. *See* KRS 61.597; *see also*, KRS 78.545. SB 1, Section 19 removes this guarantee. Because this change materially impairs the rights of these employees, it violates the inviolable contract.

Based on the above, if passed into law, SB 1 would unquestionably breach the inviolable contract. Additional violations of the contract likely exist, as this analysis is limited to our initial review of the 289 page bill. However, at this time it is clear that if you pass SB 1 into law, you should expect numerous lawsuits, which the Commonwealth will lose.

Specifically, should you pass SB 1 and thereby break the inviolable contract, a court must determine whether that breach violates the Contracts Clause of the United States Constitution and Section 19 of the Kentucky Constitution. However, the Kentucky Supreme Court has held: "[a]ny reduction or demonstrable threat to those promised benefits might well run afoul of" Kentucky's Constitution. *Jones v. Bd. of Trustees of Kentucky Ret. Sys.*, 910 S.W.2d 710, 713 (Ky. 1995). It is our conclusion that a court will not uphold any of the violations in SB 1.

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As the chief law officer of the Commonwealth and the people's lawyer, I took an oath to protect the Constitution. You took that same oath. In that light, I urge you to take the necessary and appropriate steps to address these legal concerns and any others that might arise during the legislative process. If another agency is willing to provide its legal analysis, I would be happy to review it and provide additional comments.

I would also strongly suggest that, instead of passing SB 1, you consider legalizing expanded gaming. By doing so, you can create a dedicated revenue stream that will begin to address the unfunded liability, and will do so without raising taxes.

If you would like to discuss the concerns I have raised, please feel free to contact me. I remain committed to working with you to protect Kentucky families and our valued public employees.

Sincerely,



Andy Beshear
Attorney General



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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March 6, 2018

Kentucky Legislators
702 Capitol Ave
Capitol Annex
Frankfort, KY 40601

Sent via Email

Re: Proposed Senate Substitute for Senate Bill 1

Dear Legislators:

Last week, I provided you a letter stating Senate Bill 1 ("SB 1"), if passed, would violate the inviolable contract that you, the General Assembly, made with Kentucky's public employees. My office's initial review of SB 1 identified at least twenty-one (21) such violations of the inviolable contract. Since that time, a Proposed Senate Substitute ("PSS") has been published.¹ As with the initial bill, the Office of the Attorney General was not provided with any advanced copy of the 293-page PSS for review.

Having now reviewed the PSS, we find that it fails to cure *any* of the twenty-one (21) violations identified in SB 1, including unlawful reductions in cost of living adjustments for teachers, caps on the use of sick time, and alterations to retirement allowance calculations.

As you know, the General Assembly promised Kentucky's public employees that, in exchange for their public service, they would be guaranteed certain retirement benefits. This promise was made in the form of a contract, which was passed into law. *See* KRS 21.480; KRS 61.692; KRS 78.852; KRS 161.714. The statutes passed by the General Assembly declared this contract to be "inviolable," meaning the General Assembly could not later break it.

If passed into law the PSS would breach the inviolable contract, resulting in numerous lawsuits against the Commonwealth – lawsuits the Commonwealth will lose. Like my previous letter, I have provided a description of some of the PSS's violations below:²

¹ As of this date and time of this letter, the Senate Standing Committee for State and Local Government has not adopted the Proposed Senate Substitute, but it is available at <http://www.lrc.ky.gov/SB1PSS.PDF>.

² For a comparison of my review of SB 1 and the Proposed Senate Substitute, please see my letter of February 28, 2018, available at https://ag.ky.gov/pdf_news/20180228_KY-Legislators.pdf.

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1. Kentucky Teachers

The General Assembly created an inviolable contract with public educators under KRS Chapter 161. The contract protects benefits provided between KRS 161.220 and KRS 161.710. *See* KRS 161.714. The PSS amends or repeals these statutes, thereby unlawfully and materially reducing, altering, or impairing pension benefits due to KTRS members. Violations include:

- **Reduction of Cost of Living Adjustments:** The inviolable contract guarantees teacher retirees a 1.5% annual COLA. *See* KRS 161.620(2). Section 73 of the PSS indefinitely reduces the annual member COLA from 1.5% to 1.00%. This reduction significantly reduces guaranteed retirement benefits. As such, the PSS materially impairs the rights and benefits due to retirees, and therefore violates the inviolable contract. *See e.g.*, OAG 17-031.
- **Mandatory Annual Contribution Increases:** Under the inviolable contract, teachers are required to contribute a defined amount of their annual compensation to the retirement system's health fund. *See* KRS 161.540. Section 57 of the PSS mandates that the KTRS governing board increase member contributions by up to one percent (1%) annually under certain conditions. This increase materially impairs the rights guaranteed to KTRS members and therefore violates the inviolable contract.
- **Cap of Sick Time Used to Increase Service Credit:** The inviolable contract does not cap the amount of accrued sick leave that teachers who started before July 1, 2008, may convert to additional service credit for purposes of their retirement. *See* KRS 161.623. Section 74 of the PSS caps the amount of accrued sick leave that members may convert to the amount accrued as of December 31, 2018. This limitation materially alters and impairs the rights and benefits due to employees who started before July 1, 2008, and therefore violates the inviolable contract.
- **Increase of Years of Service Requirement for 3% Benefit Factor:** The KTRS pension plan guarantees a 3% benefit factor for calculating retirees' retirement allowances, if the member has 30 years of service. *See* KRS 161.620. Section 73 of the PSS increases the service years required for this 3% benefit factor, limiting it to employees retiring with thirty (30) years of service, who have at least twenty (20) years of that service as of July 1, 2018. While members without twenty (20) years of service may still receive the 3% benefit factor, they are forced to work thirty-five (35) years and be at least age sixty (60) upon retirement to receive the factor. Because this increase materially alters the contractual service requirements and guaranteed benefits related thereto, it violates the inviolable contract.

2. Kentucky Employees

The Kentucky Employees Retirement System ("KERS") pension rights and benefits are located at KRS Chapter 61, with the inviolable contract found in KRS 61.510-61.705. *See* KRS 61.692. The PSS amends or repeals these very statutes, thereby unlawfully and materially reducing, altering, or impairing pension benefits due to KERS members. Violations include:

- **Excludes Compensatory Time Payments from Creditable Compensation:** The inviolable contract allows lump-sum payments for compensatory time to be included in the creditable

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compensation of Tier I nonhazardous employees.³ *See* KRS 61.510. Section 14 of the PSS expressly excludes lump-sum payments from creditable compensation for non-hazardous, Tier I employees, retiring after July 1, 2023. This exclusion materially alters and impairs the ultimate calculation of KERS members' retirement allowances, and therefore violates the inviolable contract.

- **Eliminates Uniform and Equipment Allowances from Creditable Compensation:** Under the inviolable contract, uniform and equipment allowances may be included in KERS members' creditable compensation. *See* KRS 61.510. Section 14 of the PSS expressly excludes such allowances as well as undefined "other expense allowances," paid on or after January 1, 2019, from creditable compensation. This exclusion materially alters and impairs the ultimate calculation of KERS members' retirement allowances, and therefore violates the inviolable contract.
- **Caps Service Credit for Accumulated Sick Leave:** Under the inviolable contract, KERS Tier I employees are not limited in the amount of service credit they may receive for their accrued, unused sick leave. *See* KRS 61.546. Section 16 of the PSS caps service credit for sick leave for Tier I members who retire on or after January 1, 2019. Effective January 1, 2019, for any KERS member retiring on or after January 1, 2019, the maximum amount of service credited for sick leave would be set by – and could not exceed – the amount credited for balance on December 31, 2018. Because this cap materially impairs the sick leave conversion rights and benefits guaranteed to members, it violates the inviolable contract.
- **Prohibits Use of Sick Leave for Determination of Retirement Eligibility:** The inviolable contract guarantees KERS Tier I members may use accumulated, unused sick leave to determine retirement eligibility. *See* KRS 61.546. Section 16 of the PSS prohibits KERS Tier I employees from using sick leave service credit for retirement eligibility, if they retire on or after January 1, 2019. Because this prohibition materially impairs the rights and benefits due to members, it violates the inviolable contract.
- **Imposes Deductions from Creditable Compensation for Group Hospital and Medical Insurance:** The inviolable contract does not include deductions in any amount from KERS Tier I members' creditable compensation for hospital and medical insurance. *See* KRS 61.702(2)(b). Section 30 of the PSS requires an employer of a KERS Tier I member employed after July 1, 2003 to deduct up to 1% of the member's creditable compensation for purposes of hospital and medical insurance under the plan. Because this provision alters and impairs the ultimate calculation of KERS members' retirement allowances, it violates the inviolable contract.
- **Alters Final Compensation Calculation:** The inviolable contract requires Tier I hazardous employees' final compensation be calculated using the creditable compensation from the three (3) fiscal years the employee was paid the highest average monthly rate. It requires the highest five (5) years for Tier I nonhazardous employees. *See* KRS 61.510. Section 14 of the PSS requires, after January 1, 2019, that Tier I hazardous employees' final compensation be calculated using the creditable compensation from their highest three (3) *complete* fiscal years, and that the highest five (5) *complete* fiscal years be used to calculate for Tier I nonhazardous employees' final compensation. Because the PSS alters and impairs the final compensation calculation guaranteed to hazardous and nonhazardous Tier I employees, it violates the inviolable contract.

³ Tier I employees began their employment prior to September 1, 2008. Tier II employees began their employment on or after September 1, 2008 but prior to January 1, 2014.

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- **Eliminates Guaranteed Annual Interest for Hybrid Cash Balance Plan Participants:** KERS Tier I and Tier II employees who opted into the current hybrid cash balance plan are guaranteed an annual interest credit of at least 4%. *See* KRS 61.597. Section 19 of the PSS removes this guarantee. Because this change materially impairs the rights of these employees, it violates the inviolable contract.

3. Kentucky State Police

The State Police Retirement System (“SPRS”) pension rights and benefits are located at KRS Chapter 16, with the inviolable contract found in KRS 16.510-16.645. *See* KRS 16.652. The PSS amends or repeals these very statutes, thereby unlawfully and materially reducing, altering, or impairing pension benefits due to SPRS members. Violations include:

- **Caps Service Credit for Accumulated Sick Leave:** The inviolable contract guarantees Tier I employees are not limited in the amount of service credit they may receive for their accrued, unused sick leave. *See* KRS 16.645; KRS 61.546. Section 16 of the PSS caps service credit for sick leave for Tier I members who retire on or after January 1, 2019, requiring that the maximum amount of service credited for sick leave be set by – and could not exceed – the amount credited for balance on December 31, 2018. This cap materially impairs rights and benefits due to members, and therefore violates the inviolable contract.
- **Prohibits Use of Sick Leave for Determination of Retirement Eligibility:** The inviolable contract guarantees SPRS Tier I members may use accumulated, unused sick leave to determine retirement eligibility. *See* KRS 16.645; KRS 61.546. Section 16 of the PSS prohibits SPRS Tier I employees from using sick leave service credit for retirement eligibility, if they retire on or after January 1, 2019. This prohibition materially impairs rights and benefits due to members, and therefore violates the inviolable contract.
- **Imposes Deductions from Creditable Compensation for Group Hospital and Medical Insurance:** The inviolable contract does not include deductions in any amount from SPRS Tier I members’ creditable compensation for hospital and medical insurance. *See* KRS 16.645; KRS 61.702(2)(b). Section 30 of the PSS requires an employer of a SPRS Tier I member, employed after July 1, 2003, to deduct up to 1% of the member’s creditable compensation for purposes of hospital and medical insurance under the plan. Because this provision alters and impairs the ultimate calculation of SPRS members’ retirement allowances, it violates the inviolable contract.

4. County Employees

The County Employees Retirement System (“CERS”) pension rights and benefits are located at KRS Chapter 78, with the inviolable contract found in KRS 78.510-78.852. *See* KRS 78.852. The PSS amends or repeals these very statutes, thereby unlawfully and materially reducing, altering, or impairing pension benefits due to CERS members. Violations include:

- **Excludes Compensatory Time Payments from Creditable Compensation:** The inviolable contract allows lump-sum payments for compensatory time to be included in the creditable compensation of Tier I nonhazardous employees. *See* KRS 78.510. Section 15 of the PSS expressly excludes lump-sum payments from creditable compensation for non-hazardous, Tier I employees, retiring after July 1, 2023. This exclusion materially alters and impairs the ultimate calculation of CERS members’ retirement allowances and therefore violates the inviolable contract.

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- **Eliminates Uniform and Equipment Allowances from Creditable Compensation:** Currently, uniform and equipment allowances may be included in CERS members' creditable compensation. *See* KRS 78.510. Section 15 of the PSS expressly excludes uniform and equipment allowances as well as undefined "other expense allowances," paid on or after January 1, 2019, from creditable compensation. This exclusion materially alters and impairs the ultimate calculation of CERS members' retirement allowances, and therefore violates the inviolable contract.
- **Caps Service Credit for Accumulated Sick Leave:** The inviolable contract guarantees that CERS Tier I employees are not limited to the amount of service credit they may receive for their accrued, unused sick leave. Tier II employees can receive up to twelve (12) months of service credit. *See* KRS 78.616. Section 17 of the PSS caps service credit for sick leave for CERS members who retire on or after January 1, 2019, requiring the maximum amount of service credited for sick leave be set by – and not exceed – the amount credited for balance on December 31, 2018. Because the cap materially impairs the sick leave rights and benefits due to CERS members, it violates the inviolable contract.
- **Prohibits Use of Sick Leave for Determination of Retirement Eligibility:** The inviolable contract guarantees CERS members may use accumulated, unused sick leave to determine retirement eligibility. *See* KRS 78.616. Section 17 of the PSS prohibits CERS employees from using sick leave service credit for retirement eligibility, if they retire on or after January 1, 2019. This prohibition materially impairs rights and benefits guaranteed to CERS members, and therefore violates the inviolable contract.
- **Imposes Deductions from Creditable Compensation for Group Hospital and Medical Insurance:** The inviolable contract does not include deductions, in any amount, from CERS Tier I members' creditable compensation for hospital and medical insurance. *See* KRS 78.545; KRS 61.702(2)(b). Section 30 of the PSS requires an employer of a CERS Tier I member, employed after July 1, 2003, to deduct up to 1% of the member's creditable compensation for purposes of hospital and medical insurance under the plan. As this provision alters and impairs the ultimate calculation of CERS members' retirement allowances, it violates the inviolable contract.
- **Alters Final Compensation Calculation:** The inviolable contract requires CERS Tier I hazardous employees' final compensation to be calculated using the creditable compensation from the three (3) fiscal years the employee was paid the highest average monthly rate. It requires the highest five (5) years for CERS Tier I nonhazardous employees. *See* KRS 78.510. Section 15 of the PSS requires, after January 1, 2019, that CERS Tier I hazardous employees' final compensation be calculated using the creditable compensation from their highest three (3) *complete* fiscal years, and that the highest five (5) *complete* fiscal years be used to calculate CERS Tier I nonhazardous employees' final compensation. Because this provision alters and impairs the ultimate calculation of CERS members' retirement allowances, it violates the inviolable contract.
- **Eliminates Guaranteed Annual Interest for Hybrid Cash Balance Plan Participants:** CERS Tier I and Tier II employees who opted into the current hybrid cash balance plan are guaranteed an annual interest credit of at least 4%. *See* KRS 61.597; KRS 78.545. Section 19 of the PSS removes this guarantee. Because this change materially impairs the rights of these employees, it violates the inviolable contract.

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The provisions of the PSS would undeniably breach the guarantees of the inviolable contract by significantly reducing the benefits and rights of retirees. The Kentucky Supreme Court has held that even a "...threat to those promised benefits might well run afoul of" Kentucky's Constitution. *Jones v. Bd. of Trustees of Kentucky Ret. Sys.*, 910 S.W.2d 710, 713 (Ky. 1995). For these reasons, it is our conclusion that a court will not uphold these violations.

As the chief law officer of the Commonwealth and the people's lawyer, I urge that you not break the inviolable contract you made with Kentucky state employees, teachers, firefighters, social workers, police officers, and other hardworking members of these systems.

Sincerely,

A handwritten signature in cursive script that reads "Andy Beshear". The signature is written in dark ink and is positioned above the printed name and title.

Andy Beshear
Attorney General

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EXHIBIT B

486430BA-F66C-4564-A539-198B8B497188 : 000040 of 000074

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AFFIDAVIT OF JASON BAILEY

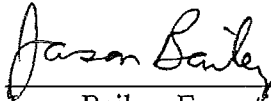
Comes the Affiant, after being duly sworn, and states as follows:

1. My name is Jason Bailey. I am a founder and Executive Director of the Kentucky Center for Economic Policy. I have been the Executive Director since 2011.
2. The Kentucky Center for Economic Policy (KCEP) seeks to improve the quality of life for all Kentuckians through research, analysis and education on important policy issues facing the Commonwealth. KCEP produces research on timely issues; promotes public conversation about those issues through media and presentations; and advocates to decision makers on the need for policies that move all Kentuckians forward.
3. In my role I regularly give testimony, issue analysis in the form of reports, issue facts sheets, and give presentations on budget and tax; economic security; education; health care; jobs and economy; and workforce and economic development.
4. KCEP is a member of the State Priorities Partnership, a national network of organizations that work to address state tax and budget issues and their impact on low- and moderate-income families. The State Priorities Partnership is coordinated by the Center on Budget and Policy Priorities. KCEP is also a member of the Working Poor Families Project and the Economic Analysis and Research Network (EARN).
5. Prior to my role as Executive Director of the Kentucky Center for Economic Policy, I was the Policy Director for 8 years at Mountain Association for Community Economic Development.
6. I received my Bachelor's Degree from Carson-Newman College in 1998 and a Master's Degree in Public Administration with a specialization in public finance in 2007 from New York University.
7. My public service work includes appointments to the Governor's Blue Ribbon Commission on Tax Reform and the Kentucky Teachers' Retirement System Funding Work Group.
8. In the scope of my job, I analyzed Senate Bill 151. The legislation, introduced and passed suddenly in the General Assembly on March 29, 2018, moves new teachers into a less secure hybrid cash balance plan and ends the inviolable contract moving forward for them, making their benefits vulnerable to further cuts in the future.

9. Senate Bill 151 also caps the use of sick leave for teacher retirement benefits and weakens the already-modest hybrid cash balance for state and local non-hazardous employees.
10. By ending the inviolable contract for new teachers, the General Assembly can now also weaken the cash balance benefit at any time in the future. That could include lowering the amount employers credit to teachers' accounts each year (set in the legislation initially at 8 percent of teachers' pay, whereas teachers contribute their current 9.105 percent of pay) or giving them even less of the investment returns.
11. Currently teachers have a legally protected benefit based on when they are hired, providing them with the security of knowing what they will receive when they retire.
12. SB 151 shifts about 1/3 of the cost of the hybrid cash balance plan to school districts, which must contribute 2 percent of new teachers' pay for the benefit. This change will continue the trend of the state backing away from its responsibility to fund K-12 education and asking local schools to bear a larger share of costs. That pattern is creating a growing gap between rich and poor school districts, which is returning to levels that were declared unconstitutional in the 1980s.
13. The bill caps the use of sick leave in calculating retirement benefits for current teachers to the amount of sick leave accrued as of December 31, 2018. This change will also add more costs to local school districts that will have to pay more for substitute teachers as use of sick days increases. The bill raises the retirement eligibility for new teachers to age 65 with 5 years of work experience or at least age 57 and an age plus years of service that equal a minimum of 87. Currently, teachers can retire with full benefits at age 60 with at least 5 years' experience or at any age with 27 years' experience.
14. State and local workers' plans are cut again, and the defined contribution option takes resources from pension plans.
15. The bill weakens the hybrid cash balance plan for state and local non-hazardous employees that was created just five years ago — evidence that ending the teachers' inviolable contract means benefits might be cut further in the future.
16. The state and local non-hazardous plan guaranteed workers a 4 percent rate of return and gave them 75 percent of investment returns above that amount, while the new plan under SB 151 will — like the benefit for new teachers — guarantee

only a 0-percent rate of return and 85 percent of investment returns above that level. That means less in retirement benefits for these workers.

17. What's more, the plan introduces a 401(a) defined contribution (DC) option for state and local non-hazardous employees in which the employer contributes 4 percent of pay (employees put in 5 percent). Workers who choose the DC plan cannot later switch back to the hybrid cash balance plan.
18. The actuary says the DC plan is slightly more expensive than the weakened hybrid cash balance plan, and gives people 100 percent of investment returns rather than 85 percent in the cash balance option. Although DC plans are riskier for employees and will earn lower investment returns over time, the actuary projects that 25 percent of employees will end up in the DC plan.
19. The more employees who contribute to the DC plan instead of paying into the defined benefit/cash balance plan pool, the more the traditional plan is vulnerable to further deterioration. SB 151 allows the Kentucky Retirement Systems (KRS) board to contract with an outside entity to manage the DC investments.
20. The bill also requires KRS employees hired between 2003 and 2008 to pay an additional 1 percent of pay for retiree health care. Kentucky's retiree health plans are currently on a strong growth trajectory under the current law, without the need for additional contributions, with the KERS hazardous health plan 118 percent funded now.
21. The plan ends the ability of current employees to use sick leave service credit for determining retirement eligibility after 2023, and eliminates a \$5,000 post-retirement death benefit for those hired starting in 2014.
22. Actuarial analysis of its impact on Kentucky Retirement Systems, which was attached after the bill was passed, shows it does not save money. In fact, it will cost \$3.3 billion in debt for the state pension systems and \$1.7 billion in debt for the local pension systems over the next 35 years.
23. The added costs are because the plan resets the 30-year period used to pay off the liabilities to start in 2019 rather than 2013, lowering annual payments slightly but resulting in more costs over the entire period. The ability to reset the 30-year period shows that an urgency to pay off unfunded liabilities and repeated claims of imminent insolvency in the plans were unfounded.

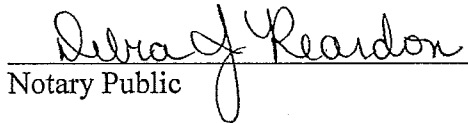


Jason Bailey, Executive Director
Kentucky Center for Economic Policy

COMMONWEALTH OF KENTUCKY

COUNTY OF Madison

Subscribed, sworn to and acknowledged before me by this 2nd day of April,
2018, by Jason Bailey.


Notary Public

Printed Name: DEBRA J. REARDON

My Commission Expires: 09/01/2018

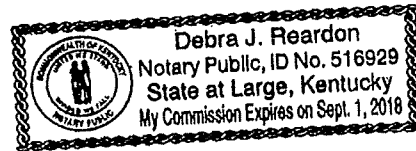


EXHIBIT C

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Flint v. Kentucky Legislative Ethics Commission, Not Reported in S.W.3d (2015)

2015 WL 2152871

Only the Westlaw citation is currently available.

Unpublished opinion. See KY ST
RCP Rule 76.28(4) before citing.

NOT TO BE PUBLISHED
Court of Appeals of Kentucky.

Edward H. Flint, Appellant

v.

Kentucky Legislative Ethics Commission, Appellee

NO. 2014-CA-000745-MR

MAY 8, 2015; 10:00 A.M.

Discretionary Review Denied by
Supreme Court August 17, 2016

APPEAL FROM FRANKLIN CIRCUIT COURT,
HONORABLE PHILLIP J. SHEPHERD, JUDGE,
ACTION NO. 14-CI-00267

Attorneys and Law Firms

BRIEFS FOR APPELLANT: Edward H. Flint, Pro se,
Louisville, Kentucky

BRIEF FOR APPELLEE: H. John Schaaf, Frankfort,
Kentucky

BEFORE: DIXON, KRAMER AND THOMPSON,
JUDGES.

Opinion**OPINION**

THOMPSON, JUDGE:

*1 Edward H. Flint, *pro se*, appeals from an order of the Franklin Circuit Court dismissing his action seeking an order compelling the Kentucky Legislative Ethics Commission (KLEC) to conduct an adjudicatory hearing on his ethics complaint against Speaker of the House of Representatives, Greg Stumbo. The circuit court ruled that Flint failed to state a claim upon which relief can be granted under Kentucky Rules of Civil Procedure (CR) 12.02(f) and dismissed his complaint. We affirm.

Flint sought to initiate impeachment proceedings against the Governor of Kentucky, five Kentucky Supreme Court Justices, five Kentucky Court of Appeals Judges, five Jefferson Circuit Court Judges, and one Jefferson District Court Judge. Under Section 66 of the Kentucky Constitution, the power of impeachment is vested in the House of Representatives and the procedure to be followed set forth in Kentucky Revised Statutes (KRS) 63.030. Speaker Stumbo is the presiding officer of the House.

After filing the various impeachment petitions, Flint filed a complaint with the KLEC alleging Speaker Stumbo engaged in unethical conduct when dealing with his impeachment petitions. He alleged Speaker Stumbo or someone at his direction, pressured or blackmailed the Louisville Courier Journal, the Lexington Herald, and the Associated Press so that the news entities would not report on Flint's impeachment petitions.

Speaker Stumbo filed an answer denying any violation of the Code of Legislative Ethics by himself, his staff, or any member of the House leadership. Additionally, Speaker Stumbo stated the impeachment documents filed by Flint did not conform to KRS 63.030 in that the documents were not accompanied by executed affidavits. He further stated that the documents were not received during a regular legislative session during which the House could review or act upon the alleged violations.

A preliminary inquiry hearing was scheduled for January 8, 2014. Prior to that date, Flint amended his complaint with the KLEC to allege that Speaker Stumbo violated the Code of Legislative Ethics when he did not promptly notify him of the deficiencies in his impeachment petitions.

At the preliminary inquiry, Flint testified regarding the lack of news coverage regarding his impeachment petitions and his concern that he was not earlier notified of the deficiencies in his petitions. Following the inquiry, the KLEC issued an order dismissing Flint's complaint. It found Flint did not "furnish any substantive evidence beyond his personal speculation, showing contact by the Speaker or someone at his direction, with any of the news media concerning Mr. Flint's impeachment efforts." Likewise, investigation by the KLEC uncovered no evidence of contact, "let alone 'blackmail.'" Addressing the allegation in the amended complaint, the KLEC

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found there was nothing in the Code of Legislative Ethics that required Speaker Stumbo to return Flint's deficient impeachment petitions or notify him of the deficiencies. In light of its findings, an adjudicatory hearing was not held.

*2 Flint filed this action in the Franklin Circuit Court. He requested that the Court order the KLEC to conduct an adjudicatory hearing on his ethics complaint and permit discovery. The Franklin Circuit Court granted the KLEC's motion to dismiss for failure to state a claim upon which relief can be granted. CR 12.02(f).

Our standard of review for dismissals pursuant to CR 12.02(f) is as follows:

The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim. In making this decision, the circuit court is not required to make any factual determinations; rather, the question is purely a matter of law. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?

James v. Wilson, 95 S.W.3d 875, 883–84 (Ky.App.2002) (internal quotations and footnote omitted). Under this stated standard, the truth or falsity of Flint's claims against Speaker Stumbo is not at issue. The question is whether Flint is entitled to seek judicial relief from the KLEC's dismissal of his complaint alleging ethical violations against Speaker Stumbo.

"Kentucky's public scandal involving the indictment and conviction of legislators, former legislators, and lobbyists for criminal misconduct prompted/hastened the enactment of Senate Bill 7 during the first extraordinary session of 1993." *Associated Industries of Kentucky v. Commonwealth*, 912 S.W.2d 947, 950 (Ky.1995). The legislation included changes to KRS Chapter 6 referred to as the "Kentucky Code of Legislative Ethics." *Id.*

KRS 6.651 provides for the establishment of the ethics commission as an independent authority and agency of the legislative branch. The commission's authority includes the authority to receive complaints regarding

violation of the Legislative Ethical Code, investigate, and conduct preliminary inquiries. Upon a finding of probable cause, the commission is further empowered to conduct adjudicatory proceedings. KRS 6.686. KRS 6.691(8) provides for an appeal to the Franklin Circuit Court after an adjudicatory hearing by "[a]ny person found by the commission to have committed a violation of [the ethical] code [.]" (Emphasis added).

The KLEC precisely followed the statutory procedures upon receipt of Flint's complaint against Speaker Stumbo. It conducted a preliminary inquiry and investigation and found no probable cause that Speaker Stumbo committed an ethical violation to warrant an adjudicatory hearing.

There is no statutory authority for Flint to appeal the KLEC's dismissal of the complaint against Speaker Stumbo. The only person who may appeal to the Franklin Circuit Court is one who has been found to have committed a violation. As noted by the Franklin Circuit Court, there is no statutory authority for Flint's complaint and he did not allege any constitutional violation that would confer jurisdiction on that court.

In his amended complaint filed with the KLEC, Flint alleged Speaker Stumbo violated the ethics code because he did not promptly notify Flint that his impeachment petitions against the Governor and various justices and judges were not properly verified as required for impeachment petitions. See KRS 63.030. According to Flint's allegations, the first in his series of impeachment petitions was filed in June 2013. However, he was not notified of the deficiency in his petitions until December 4, 2013, when he was sent a letter by the Chief Clerk of the House. Flint then refiled the petitions with the Clerk.

*3 We agree with the KLEC that there is no provision in the Code of Legislative Ethics which would require Speaker Stumbo to notify Flint that the impeachment petitions were deficient. Additionally, this issue is moot in light of Flint's acknowledgment that he refiled the petitions for impeachment.

The Franklin Circuit Court also interpreted Flint's *pro se* complaint to request that the court order the House of Representatives to act on his impeachment petitions. It properly noted that the power of impeachment is within the exclusive power of the House of Representatives under Section 66 of the Kentucky Constitution and the power to

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establish its rules of procedure for that process conferred to it by Section 39 of the Kentucky Constitution. Under the separation of powers doctrine contained in Sections 27 and 28 of the Kentucky Constitution, one branch of government cannot interfere with the authority of another coequal branch of government. See *Legislative Research Com'n By and Through Prather v. Brown*, 664 S.W.2d 907 (Ky.1984).

The order of the Franklin Circuit Court dismissing Flint's complaint is affirmed.

ALL CONCUR.

All Citations

Not Reported in S.W.3d, 2015 WL 2152871

End of Document

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EXHIBIT D

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GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2018 REGULAR SESSION

SENATE BILL NO. 151

AS ENACTED

THURSDAY, MARCH 29, 2018

FILED
DATE April 10, 2018
5:40pm
ALSO FILED FROM CRIMLS
S. H. L. L. STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

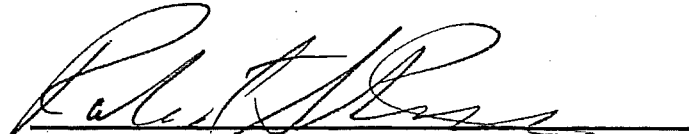
1 AN ACT relating to retirement.


2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔Section 1. KRS 6.505 is amended to read as follows:

4 (1) (a) Each legislator in office on July 1, 1980, may within thirty (30) days after that
5 date, and any legislator thereafter taking office may within thirty (30) days
6 after the date thereof, elect to make monthly contributions to the Legislators'
7 Retirement Plan, in an amount equal to five percent (5%) of his monthly
8 creditable compensation, as defined in KRS 61.510(13), or the amount
9 specified by paragraph (d) of this subsection. The election shall be effective
10 to establish membership in the plan as of July 1, 1980, or as of the date from
11 which the thirty (30) day period is measured, as the case may be. Provided,
12 however, that any legislator who was in office on July 1, 1980, and who is in
13 office at the time he makes the election may, after the expiration of the thirty
14 (30) day period and until May 1, 1982, make the election, in which event he
15 shall pay to the Legislators' Retirement Plan, for the months between July 1,
16 1980, and the date of his election such sum as, when added to any member's
17 contribution by him that is transferred from another retirement system under
18 KRS 6.535, will equal the member's contribution required by this section. If
19 the member makes his election after February 1, 1981, he shall in addition pay
20 to the plan interest on the foregoing sum, at six percent (6%) per annum,
21 calculated as if the sum consisted of equal monthly payments, one (1) of
22 which was due at the end of each month between July 1, 1980, and the date
23 the election was made. The election shall be addressed to and filed with the
24 secretary of the Finance and Administration Cabinet and shall constitute an
25 authorization to the secretary to thereafter cause to be deducted from the
26 member's monthly creditable compensation an amount equal to five percent
27 (5%) thereof, as a voluntarily elected contribution by the member towards the


18 RS SB 151/EN



President of Senate

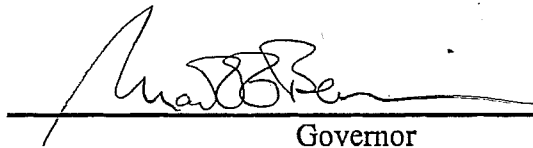
Speaker-House of Representatives

Attest:



Chief Clerk of Senate

Approved



Governor

Date

10 APRIL 2018

- page 292 -

EXHIBIT E

486430BA-F66C-4564-A539-198B8B497188 : 000053 of 000074


EXH : 000001 of 000003

AFFIDAVIT OF MATT ROBBINS

Comes the Affiant, after being duly sworn, and states as follows:

1. My name is Matt Robbins.
2. I am the Superintendent of Daviess County Schools. I have served in this position since 2017.
3. Prior to my role as Superintendent of Daviess County Schools, I was the assistant superintendent for finance and operations at Daviess County Public School district, overseeing a budget of 142.7 million in a district of 11,790 students and 2,300 staff members.
4. I have served as a senior accountant at Riney, Hancock & Co. CPAs from 1993-96 before becoming the assistant superintendent for finance and maintenance in 1997. I have served Daviess County Schools as accounting manager, business manager and director of finance.
5. I received my Bachelor of Science degree from the University of Kentucky. My master's degree in Education Administration and superintendent endorsement came from the University of Louisville in 2012.
6. The teachers and staff in my district are members of the Kentucky Teachers Retirement System. There are approximately 855 teachers in my county.
7. On March 29, 2018, the Kentucky General Assembly passed SB 151 at night, before me or my teachers and staff could review.
8. I have reviewed Senate Bill 151 and based on my education, occupation, and experience it will severely impair my school district and public education throughout Kentucky if it is allowed to go into effect before a court decides the legality of the law.
9. There are a large number of retirement eligible teachers, the uncertainty of the bill's full impact on their retirements, as well as the sudden change in how their sick leave days can be used for retirement eligibility, will cause those teachers to retire sooner rather than later. This will result in a mass exodus of experience and talent from our ranks.
10. This will have a substantial negative impact on our budget because of the cost to onboard new teachers to replace or hire substitutes. This new influx of teachers at the 2% additional TRS cost is expected to exceed \$1 million for my school

district, once fully implemented.



Matt Robbins, Superintendent
Daviness County Public Schools
Owensboro, KY

COMMONWEALTH OF KENTUCKY

COUNTY OF Daviness

Subscribed, sworn to and acknowledged before me by this 30th day of March,
2018, by Matt Robbins.



Notary Public

Printed Name: Dana Boorman

My Commission Expires: February 2, 2020

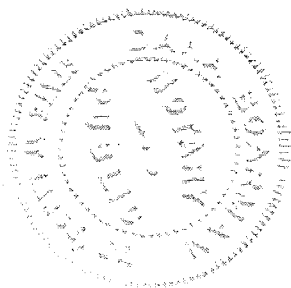


EXHIBIT F

486430BA-F66C-4564-A539-198B8B497188 : 000056 of 000074

EXH : 000001 of 000005

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY
***ex rel.* ANDY BESHEAR, ATTORNEY GENERAL**

PLAINTIFF

v.

AFFIDAVIT OF NICOLAI JILEK

MATTHEW G. BEVIN, in his official capacity
as Governor of the Commonwealth of Kentucky, et al.

DEFENDANTS

I, Nicolai Jilek, being duly sworn, hereby state as follows:

1. I am currently the elected President of the Fraternal Order of Police ("FOP") River City Lodge 614 in Louisville, Kentucky and represent approximately 2,400 members who are active and retired police officers of the Louisville Metro Police Department and retired police officers from the former Louisville Police Department and Jefferson County Police Department.

2. I have been employed as a sworn police officer in the Louisville Metro Police Department since 2007 and have served as both in patrol and investigative positions. I have been a legislative agent for the FOP Kentucky State Lodge since 2014.

3. Prior to working at the Louisville Metro Police Department, I worked as a police officer and detective with the Danville Police Department from 2002-2007.

4. Since the end of the 2017 legislative session, I have heard from many FOP members across the state, both active and retired, all expressing grave concerns about their pensions and their retirement security. In addition, in my position as president of the River City FOP Lodge 614, and as legislative agent for the Kentucky State Lodge, I have kept abreast of police personnel issues across the Commonwealth.

5. Recruitment and retention have become critical issues for law enforcement agencies across the state, forcing many of those agencies to lower their qualification requirements for hiring. Applications with the Louisville Metro Police Department alone fell over 40% in the years following the 2013 legislative changes to the state pension system - changes that dramatically reduced benefits and retirement security for new hires.

6. In the past year, there has been an increase in the number of police retirements based on the fear of what may happen with the pensions. The increase was so sudden and dramatic at times in the Fall of 2017 that the KRS retirement counselors could not meet the demand for appointments created from members wanting to retire.

7. On March 29, 2018, the House of Representatives State Government Committee took SB 151, which was a bill dealing with sewers, and very suddenly and with no warning replaced it with a pension reform bill. This occurred less than 24 hours after the Speaker Pro Tempore of the House of Representatives was quoted as describing the probability of passing a pension bill as "low." The Committee quickly passed the bill to the full House of Representatives before anyone had a chance to properly review it, including FOP. The House of Representatives approved the bill that afternoon and sent it to the Senate, who approved it that night. SB 151 was introduced and rushed through the legislature in the space of less than a single day. It also was passed without the required actuarial analysis.

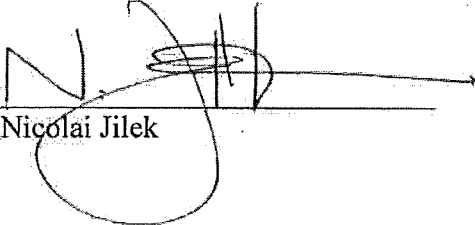
8. SB 151 causes irreparable harm to FOP members, the police who have put their lives on the line every day to serve and protect the public. FOP members as public employees entered into an inviolable contract with the Commonwealth for specific and defined pension benefits. SB 151 violates that contract by taking away or diminishing the benefits they were promised in

return for their service, by altering and amending statutes protected by KRS 61.692 and KRS 78.852.

9. Many FOP members have informed me that they have retired due to anxiety over potential pension reform. With the apparent and perceived blatant disregard for our established and expected deliberative legislative process in how SB 151 was presented and passed as well as the blatant disregard of the intended and literal protections and binding promise of the inviolable contract as described in KRS 61.692 and KRS 78.852, many FOP members have lost faith in their retirement security and the government institutions in place to provide and protect their promised benefits. Now that SB 151 has been passed, I expect that many more FOP members will retire due to increased uncertainty for their future past their law enforcement career. This will irreparably harm Kentucky by depriving it of many of its best and most experienced police officers, and potentially endangering the public.

10. Many FOP member departments have had difficulty recruiting qualified candidates due to the diminished pension benefits, and now that SB 151 further diminishes them and does nothing to improve benefits for new hires, I expect that police departments will have even more difficulty recruiting qualified candidates. This will irreparably harm Kentucky by deterring the best candidates from becoming police officers, and potentially endangering the public.

Further affiant sayeth naught.



Nicolai Jilek

5-22-2021

EXHIBIT G

486430BA-F66C-4564-A539-198B8B497188 : 000061 of 000074

EXH : 000001 of 000003

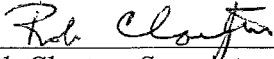
AFFIDAVIT OF ROB CLAYTON

Comes the Affiant, after being duly sworn, and states as follows:

1. My name is Rob Clayton. I am the Superintendent of Warren County Schools. I have served in this position since 2013. I have a superintendent certificate and my Rank I administration certification from U of L.
2. Prior to my role as Superintendent of Warren County Schools, I was the Principal of South Oldham Middle School for seven years. I have worked in the education system for 25 years with the last 18 years in administration, six years as an associate principal, seven as a principal, and five years as Superintendent.
3. The teachers and staff in my district are members of the Kentucky Teachers Retirement System. There are approximately 1,100 teachers in my county.
4. On March 29, 2018, the Kentucky General Assembly passed SB 151, before the public ever saw it.
5. I have analyzed Senate Bill 151 closely now and based on my education, occupation, and experience, I see that this legislation will damage our ability to recruit and retain the best quality people to work with our students by breaking the inviolable contract; thereby, reducing retirement security for future teachers and employees.
6. Whether you attend them or not, public schools are the cornerstone of every community across the Commonwealth. School districts just lost their last significant incentive to offer future employees: a guaranteed and modest pension.
7. SB1 was supposed to save the state \$3.2 billion over 20 years according to the actuarial analysis and \$2.5 billion of the \$3.2 billion was from the proposed claw-back of the retired teacher COLAs. Our General Assembly passed a "Sewage" bill with the remaining \$700 million projected savings still attached after the COLA provision was removed.
8. Of this \$700 million savings, it is estimated that approximately \$500 million was just shifted from state costs to local school districts costs and is not a real savings. This is due to the requirement for local districts to pick up 25% of the contribution costs and related liability for new teachers.
9. In other words, the legislators voted to approve a bill that only saves an average of approximately \$10 million a year while literally destroying the secured pension for future educators in our state.
10. Removing them from the inviolable contract and passing on 1/4 of the

contribution cost plus the related liability to local school districts is a significant shift of financial responsibility from the state to the local taxpayer.

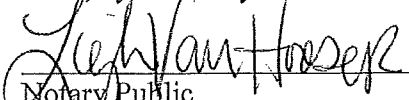
11. Half of the remaining savings comes from changing actuarial methods from percentage of payroll funding to level dollar funding, which costs the state more money over the first few years by front-loading the pension contribution at a time when we do not have the money in the budget to do so.
12. If this bill goes into effect before the courts weigh in the legality, our district will be immediately and permanently impacted by additional costs and a reduction in individual's entering the teaching profession.


Rob Clayton, Superintendent
Warren County Schools, KY

COMMONWEALTH OF KENTUCKY

COUNTY OF Franklin

Subscribed, sworn to and acknowledged before me by this 2nd day of April,
2018, by Rob Clayton.


Notary Public

Printed Name: Leigh Van Hoeser

My Commission Expires: June 20 2019

EXHIBIT H

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EXH : 000001 of 000007

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION ____
CIVIL ACTION NO. 18-CI-_____

COMMONWEALTH OF KENTUCKY
ex rel. ANDY BESHEAR, ATTORNEY GENERAL

and

KENTUCKY EDUCATION ASSOCIATION

and

KENTUCKY STATE FRATERNAL ORDER OF POLICE LODGE
v.

PLAINTIFFS

MATTHEW G. BEVIN, in his official capacity
as Governor of the Commonwealth of Kentucky, et al.

DEFENDANTS

AFFIDAVIT OF STEPHANIE WINKLER

I, Stephanie Winkler, being duly sworn, hereby state as follows:

1. I currently serve as the elected president of the Kentucky Education Association.

I have served in this capacity since June 15, 2013. I am also a teacher duly certified in the Commonwealth of Kentucky. Before becoming President of KEA, I taught 4th grade in Madison County Public Schools.

2. KEA is a voluntary membership organization for school employees and represents over 40,000 members throughout Kentucky. KEA is affiliated with the National Education Association, and has local affiliates in every school district in the state. KEA is the largest professional association in Kentucky.

3. KEA represents public school teachers in grades P-12, classified support professional employees, school administrators, Education and Workforce Development Cabinet employees, Kentucky Community and Technical College system employees, college students

preparing to become teachers, and retired educators. We advocate for their employment and professional interests, including wages, school funding, pensions and health insurance.

4. For months, beginning in September/October of 2017 and continuing to the present, KEA and other stakeholders have been advocating against significant structural changes to the public pension systems. We don't believe structural changes are necessary, but instead believe the legislature should fund the systems per the appropriate actuarial calculations. For months affected stakeholder groups, including KEA members, have been contacting their legislators at home and at their offices, making their opinions known on this issue. The pension discussion has garnered a lot of press coverage and has been the primary political topic of interest in Kentucky for months.

5. During the afternoon of March 29, 2018, the House of Representatives State Government committee took SB 151, an act originally dealing with wastewater services, and amended it to include a massive pension reform bill. The bill was rushed to the floor of the House of Representatives, which passed it and sent it to the Senate, which passed it late that night. All these legislative maneuvers took place on the same day, without giving KEA or the public any chance to comment on the provisions of the bill, or even review the bill to be able to understand it.

6. SB 151 was also passed without the legally required actuarial analysis, so neither KEA nor the public has had an opportunity to properly review the actual financial impact of the bill.

7. After months of being publicly insulted by the governor, who asserted that teachers "hoarded" their sick leave and that they were too "unsophisticated" and "ignorant" to understand their own pension system, this secretive and manipulative legislative maneuver to

push through legal changes to the public pension systems that KEA and other stakeholders were vocally opposed to was the final straw. The governor and a majority of the legislature constantly tout transparency and accountability for public education and the public pension systems, but don't hold themselves to that same standard. Teachers were appalled by the process, which they accurately judged to be outrageous and obviously implemented for the sole purpose of keeping educators and the public from having any input. They reacted strongly. Immediately after the passage of SB 151, thousands of teachers across the state called in sick for Friday, March 30. Over twenty school districts were forced to close due to insufficient numbers of teachers and substitute teachers to cover classes and ensure that students were educated and supervised in a safe environment.

8. Although KEA did not call for the sickout action, it has continued intermittently around the state every day since SB151 was passed. Based on posts we see on social media and conversations our members are having with their colleagues, we reasonably believe that teachers and other educational professionals will continue to protest the passage and possible implementation of SB151 by continuing to call in sick, which will result in continued understaffing or school closings.

9. SB 151 irreparably harms teachers and other educational professionals by violating the inviolable contract that they each entered into with the Commonwealth on the day they each began their public employment. SB 151 illegally diminishes or eliminates the benefits that teachers were promised as conditions of their employment as part of that inviolable contract.

10. SB 151 irreparably harms teachers, educational professionals, and students in that it will strongly induce teachers to retire earlier than they originally planned. KEA reasonably expects that after the passage of SB 151, teachers who are eligible to do so will retire prior to the

dates that their benefits will be diminished, thereby depriving them of income and the personal fulfillment of teaching. These teachers will also have to significantly accelerate their financial and personal planning for retirement.

11. The retirements will also irreparably harm students and will adversely impact their educations by removing the most experienced and knowledgeable teachers from the classroom.

12. SB 151 irreparably harms the Teacher Retirement System of Kentucky ("TRS") in which certified educators participate, and will also irreparably harm the County Employees' Retirement System ("CERS") in which classified personnel participate. As part of their actuarial analysis, the pension systems project the expected rates of retirement. That rate is the basis for investment decisions and is a factor in calculating the statutory employer and employee contributions to be received from each participant. Early retirements shift participants from active contributors to annuitants earlier than actuarially projected. Cutting off those contributions sooner than expected places an unanticipated financial burden on the systems, decreases the time over which the contributions are invested, and obligates each system to pay out retirees over a longer period of time than originally assumed.

13. SB 151 irreparably harms education by discouraging talented students from entering the education profession. The provisions of SB151 create a hybrid cash balance plan that will apply to new hires after July 1, 2018. This plan shifts the financial risk of retirement entirely onto the employee, who may or may not gather enough savings and investment income during his or her career to retire with adequate income. Currently, teachers are guaranteed a defined benefit in retirement based on a factor determined by their final average wage, age and years of service. Once payout of a defined pension begins, it continues for the entire life of the

retiree. The hybrid cash balance plan may allow a future retiree to purchase a lifetime annuity with the proceeds of his or her accumulated account, but the amount of monthly income the retiree will receive will be utterly unpredictable and will have little relationship to what the individual earned as an active teacher. This scheme injects significant financial risk into choosing public education as a profession in Kentucky. Public employment used to be attractive not for its annual salary, but for the defined benefit pension that could be earned over a career. Given these new developments, college students will be far less inclined to become educators knowing that they will earn less annually than their private sector counterparts and will also not be guaranteed a secure retirement. Furthermore, the provisions of SB151 eliminate the "inviolable contract" for all new hires, meaning that the General Assembly may renege on even these questionable promises at any time

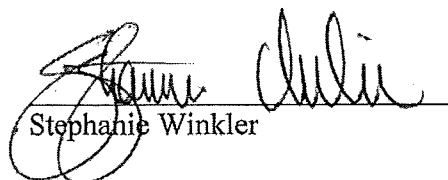
14. SB 151 also irreparably harms teachers and educational professionals by disrespecting them, demeaning their contributions, and devaluing their decades of public service. Throughout the legislative session, many KEA members have complained to KEA that they have been disrespected and disparaged during the legislative process. The illegal violation of the Commonwealth's inviolable contract, and the secretive manner in which the General Assembly rushed it through, demonstrate a willful indifference to the legal rights of teachers and educators, the promises that the Commonwealth has made to its teachers, and the daily sacrifices made by teachers and educators in striving to educate our children. SB 151 is a direct affront to the teaching profession in Kentucky and everyone in it.

15. Finally, and most importantly, the manner by which the legislature passed this bill is an irreparable harm to the democratic process and to all peoples' faith in government. Legislators are elected by the people and are accountable to the people, and are supposed to act

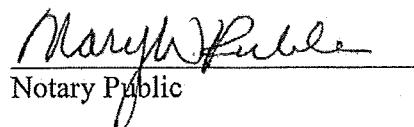
in a manner that creates faith in the deliberative process and confidence in the government and in their leadership. However, all that was utterly undermined by the process used to pass SB151. The legislators involved were deceptive and purposely opaque and their acts were an affront to every thinking, voting citizen of the state. It's worth noting that the rally that occurred in Frankfort on Monday, April 2, 2018 had in attendance not just teachers, but also other public employees, parents, students, and taxpayers. Many of the people who turned out in protest were not directly affected by SB151. They turned out to publicly object to the insulting, disrespectful way the House and Senate behaved toward all citizens.

Further affiant sayeth naught.

COMMONWEALTH OF KENTUCKY)
COUNTY OF Franklin) ss.


Stephanie Winkler

Subscribed and sworn to before me by Stephanie Winkler, Affiant, on this 9th day of April, 2018.


Notary Public

Notary Number: 517584
My commission expires: August 18, 2018

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION ____
CIVIL ACTION NO. 18-CI-_____

COMMONWEALTH OF KENTUCKY

ex rel. ANDY BESHEAR, ATTORNEY GENERAL, *et al.*

PLAINTIFFS

v.

MATTHEW G. BEVIN, in his official capacity

as Governor of the Commonwealth of Kentucky, *et al.*

DEFENDANTS

ORDER

This matter is before the Court on the motion of the Plaintiffs, the Commonwealth of Kentucky *ex rel.* Andy Beshear, Attorney General, Kentucky Education Association (“KEA”), and the Kentucky State Fraternal Order of the Police Lodge (“FOP”), by and through counsel, for Temporary Injunctive relief by Temporary Injunction, pursuant to CR 65.01 and CR 65.04. The Court having considered the Motion and the Commonwealth’s Verified Complaint, and having heard oral argument on the Motion, and being otherwise sufficiently advised, the Court finds that the Defendants, Matthew G. Bevin, Kentucky Retirement Systems Board of Trustees, the Board of Trustees of the Teachers’ Retirement System of the State of Kentucky, should be enjoined from enforcing or acting under Senate Bill 151. The Court finds as follows:

1. Plaintiffs’ rights are being or will be violated by the actions of these Defendants;
2. Plaintiffs will suffer immediate and irreparable injury, loss or damage pending a final judgment in this action, or that the acts of the Defendants will tend to render a final judgment ineffectual without the issuance of a temporary injunction;

3. The balancing of equities weighs in favor of the issuance of a temporary injunction, and Plaintiffs will suffer greater injury by the denial of temporary injunctive relief than Defendants would by the granting of such relief;

4. This action presents a substantial legal question; and

5. Plaintiffs have no adequate remedy at law.

Wherefore, IT IS ORDERED AND ADJUDGED that until further Order of this Court the Defendants, Matthew G. Bevin, the Board of Trustees of Teachers' Retirement System of the State of Kentucky, and the Board of Trustees of the Kentucky Retirement Systems are immediately enjoined from directly or indirectly enforcing or acting under Senate Bill 151, whether alone or in concert with others, including any officer, agent, employee and/or representative of same.

IT IS FURTHER ORDERED that this Order shall be binding upon these Defendants, their agents, employees, employers, and attorneys, and upon those persons that act in concert or participation with them who receive actual notice of this Order by personal service or otherwise.

IT IS FURTHER ORDERED AND ADJUDGED that this Order shall remain in full force and effect until such time as this Court specifically orders otherwise.

SO ORDERED, this ____ of April, 2018.

_____, JUDGE
Franklin Circuit Court, Division _____

Tendered by:

/s/ Andy Beshear

Andy Beshear
Attorney General
Office of the Attorney General
700 Capitol Avenue
Capitol Building, Suite 118
Frankfort, Kentucky 40601-3449
(502) 696-5300

*Counsel for Plaintiff
Commonwealth of Kentucky*

/s/ Jeffrey S. Walther, by permission

Jeffrey S. Walther
Walther, Gay & Mack, PLC
163 East Main Street, Suite 200
Lexington, Kentucky 40588
(859) 225-4714

*Counsel for Plaintiff
Kentucky Education Association*

/s/ David Leighty, by permission

David Leighty
Priddy, Cutler, Naake & Meade PLLC
2303 River Road, Suite 300
Louisville, Kentucky 40206
(502) 632-5292

*Counsel for Plaintiff
Kentucky FOP Lodge*

DISTRIBUTION:

Governor Matthew G. Bevin
c/o Hon. M. Stephen Pitt
Office of the Governor
The Capitol, Suite 100
700 Capitol Avenue
Frankfort, Kentucky 40601

()

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System of the State of Kentucky
479 Versailles Road
Frankfort, Kentucky 40601

Board of Trustees of Kentucky Retirement Systems ()
Perimeter Park West
1260 Louisville Road
Frankfort, Kentucky 40601

Representative David W. Osborne ()
Speaker Pro Tempore, Kentucky House of Representatives
702 Capitol Avenue
Annex Room 332C
Frankfort, Kentucky 40601

Senator Bertram Robert Stivers, II ()
President, Kentucky Senate
702 Capitol Avenue
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