

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 18-CI-379
- AND -
CIVIL ACTION NO. 18-CI-414

COMMONWEALTH OF KENTUCKY,
ex rel. ANDY BESHEAR, ATTORNEY GENERAL, et al.

PLAINTIFFS

v.

ORDER

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

DEFENDANTS

This matter is before the Court on Plaintiffs' Motion for Temporary Injunction. All parties were represented at a hearing held on April 19, 2018. Having heard the arguments of the parties, reviewed the record, and otherwise being sufficiently advised, the Court hereby

ORDERS:

1. Upon the Court's motion, pursuant to Local Rule 5 of the Franklin Circuit Court and Civil Rule 42.01, *Commonwealth of Kentucky, ex rel. Matthew G. Bevin v. Andy Beshear*, Civil Action No. 18-CI-414, shall be consolidated with *Commonwealth of Kentucky, ex rel. Andy Beshear, et al. v. Matthew G. Bevin et al.*, Civil Action No. 18-CI-379.
2. In briefing the merits of the case, the parties shall comply with the following briefing schedule: Plaintiffs' briefs on the merits shall be filed and served on or before May 2, 2018; Defendants' responses on the merits shall be filed and served on or before May 23, 2018; any replies by Plaintiffs shall be filed and served on or before May 30, 2018; and, a sur-reply by Defendants, addressing in particular the implications of Section 56 of the Kentucky Constitution in the present litigation, may be filed and served on or before June 4, 2018.

3. Oral argument will be held on June 7, 2018 at 9:00 a.m. in Courtroom H of the Franklin County Circuit Court.
4. The Court waives the page limit requirements set forth in Local Rule 4.02.
5. The Attorney General's response to Defendant Governor Bevin's Motion to Disqualify the Attorney General and the Office of the Attorney General shall be served and filed on or before April 23, 2018.
6. In addition to addressing any other legal issues, in briefing the merits of the case the parties shall provide the Court with guidance on the following issues: (a) whether the actuarial analysis for SB 151, required under KRS 6.350 and KRS 6.955(1), could be satisfied under the standard articulated in *Board of Trustees of the Judicial Form Retirement System v. Attorney General of the Commonwealth of Kentucky*, 132 S.W.3d 770, 776-778 (Ky. 2003) and whether the requirements of KRS 6.350 and KRS 6.99595(1) were properly suspended under Section 15 of the Kentucky Constitution; (b) the extent to which the requirement under Section 46 of the Kentucky Constitution that "[e]very bill shall be read at length on three different days in each House" was addressed in debates at the Kentucky Constitutional Convention in 1891, and whether that requirement of Section 46 was met regarding Senate Bill 151; (c) the extent to which the requirement of Section 46 of the Kentucky Constitution for each legislative chamber to vote "by the majority of its members" to create a debt or make an appropriation, may apply to Senate Bill 151 (*see, e.g., Fletcher v. Commonwealth*, 163 S.W.3d 852 (Ky. 2005)); and, (d) who is authorized to sign bills as a presiding officer of the House of Representatives under Section 56 of the Kentucky Constitution.
7. If the parties reach an agreement to allow the dismissal of the President of the Senate and Speaker of the House of Representatives to be dismissed as parties, the Senate President

and House Speaker shall be granted leave to participate in these actions as *amicus curiae*, and to file briefs in accordance with the briefing schedule set forth above. In the event the House Speaker and Senate President are not dismissed by Agreed Order, they may fully brief any claims or defenses that they may wish to present. The Court notes that it has dismissed the House Speaker and Senate President from prior litigation involving challenges to the constitutionality of legislation on the grounds that legislators have absolute immunity from suit. *See Kraus v. Kentucky State Senate*, 872 S.W.2d 433, 440 (Ky. 1993). *See also Eastland v. United States' Serviceman's Fund*, 421 U.S. 491, 507 (1975). If the parties reach agreement on this issue, they shall submit an Agreed Order for review and entry by the Court.

SO ORDERED, this 20th day of April, 2018.

	<p><i>Hon. Phillip J. Shepherd</i></p> <p>/s/ HON. PHILLIP J. SHEPHERD electronically signed 4/20/2018 2:28:05 PM</p>
--	---

PHILLIP J. SHEPHERD, JUDGE
Franklin Circuit Court, Division I

F346131A-2504-4269-9CD8-47FD529ABDF5 : 000003 of 000005

OCSL : 000003 of 000005

DISTRIBUTION:

Andy Beshear
J. Michael Brown
La Tasha Buckner
S. Travis Mayo
Marc G. Farris
Samuel Flynn
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, KY 40601

Jeffrey S. Walther
Walther, Gay & Mack, PLC
163 East Main Street, Suite 200
Lexington, KY 40588

David Leightty
Priddy, Cutler, Naake & Meade PLLC
2303 River Road, Suite 300
Louisville, KY 40206

M. Stephen Pitt
S. Chad Meredith
Matthew F. Kuhn
Office of the Governor
700 Capitol Avenue, Room 101
Frankfort, KY 40601

Brett R. Nolan
General Counsel
Finance and Administration Cabinet
702 Capitol Avenue, Suite 101
Frankfort, KY 40601

David Fleenor
Capitol Annex, Room 236
Frankfort, KY 40601

Eric Lycan
Office of the Speaker
Capitol Annex, Room 332
Frankfort, KY 40601

Brent Woosley
General Counsel
Legislative Research Commission
Room 300, Capitol

Frankfort, KY 40601

Mark Blackwell
Joseph Bowman
Kentucky Retirement Systems
1260 Louisville Road
Frankfort, KY 40601

Robert B. Barnes
Kentucky Teachers' Retirement System
479 Versailles Road
Frankfort, KY 40601