

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

Filed Electronically

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

PLAINTIFFS

v.

MOTION FOR PROTECTIVE ORDER

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

DEFENDANTS

*** **

Plaintiff Kentucky Education Association (“KEA”), pursuant to CR 26.03, respectfully moves the Court for an Order prohibiting Defendant Matthew G. Bevin (“Bevin”) from taking the deposition of KEA. A copy of the Notice of Deposition is attached hereto as Exhibit 1. The questions to be resolved in this matter are ones purely of law based upon undisputed fact, and therefore no discovery relating to KEA is necessary or allowable.

KEA and its co-plaintiffs filed their Complaint in this action on April 11, along with a Motion for Temporary Injunction. The matter came before the Court at a status hearing on April 19. During the hearing, the Court indicated that the matter could be addressed on written submissions, and that a decision on the merits would be rendered prior to the effective date of SB 151 obviating the need for a decision on the Motion for Temporary Injunction. When counsel for Bevin, Steve Pitt (“Pitt”), asked about taking limited discovery; using as an example questioning KEA President Stephanie Winkler (“Winkler”) about her understanding of the inviolable contract,

the Court indicated generally that discovery did not seem necessary under the circumstances, but did not completely foreclose the possibility. Later that afternoon, Pitt emailed the undersigned and other counsel regarding dates to take depositions. The undersigned responded on April 23 objecting to the request based upon the procedural posture of the case and the Court's comments at the April 19 hearing. *See* Exhibit 2. There was no further communication regarding the matter until Bevin served Deposition Notices, including that for KEA, on April 30. No issues of fact will be raised in Plaintiffs' Motion for Summary Judgment to be filed on May 2.

ARGUMENT

The Kentucky Rules of Civil Procedure provide that “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action”. CR 26.02. “Even though it might be otherwise incompetent and inadmissible, information may be elicited if it appears reasonably calculated to lead to the discovery of admissible evidence.” *Ewing v. May*, 705 S.W.2d 910, 912 (Ky. 1986); *Volvo Car Corp. v. Hopkins*, 860 S.W.2d 777, 778 (Ky. 1993). Importantly, trial courts have broad discretion over discovery disputes and they “enjoy great leeway and discretion in entering and enforcing discovery orders.” *Southern Financial Life Ins. Co. v. Combs*, 413 S.W.3d 921, 932 (Ky. 2013); *Sexton v. Bates*, 41 S.W.3d 452, 455 (Ky. App. 2001). CR 26.03 empowers the trial court, upon a showing of good cause, to issue protective orders limiting or prohibiting discovery to “protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense”. *See, e.g., Fiorella v. Paxton Media Group, LLC*, 424 S.W.3d 433, 437 (Ky. App. 2014). Here, the Court has determined that the case should be addressed on the merits through briefing, as the issues are purely legal based upon undisputed fact; there is no need for factual discovery. As such, Bevin's Notice of Deposition

seeking to depose a representative of KEA is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

In addition, because the Court has indicated that a decision will be rendered prior to the effective date of SB 151, a decision on the Motion for Temporary Injunction is no longer necessary and any facts relating to “irreparable harm” are no longer relevant. In the Notice of Deposition, Governor Bevin orders KEA to “designate a representative or representatives who can testify about: (i) the allegations that KEA’s President Stephanie Winkler verified in the Verified Complaint filed in this action; and (ii) the allegations contained in Ms. Winkler’s affidavit that was filed as Exhibit B to the Verified Complaint in this action.” Importantly, the facts supporting the Complaint are available both in the record and from other public sources. Moreover, President Winkler’s affidavit also concerns undisputed factual information widely available from public sources. Items 9 through 15 of President Winkler’s affidavit concern the “irreparable harm” that SB 151 will cause teachers, students, schools, and the general public. As a decision on the Motion for Temporary Injunction is no longer necessary in light of the Court’s expedited review, President Winkler’s knowledge, thoughts, or opinions as to “irreparable harm” are not relevant to the remaining legal issues in this matter and the allegations of “irreparable harm” are now moot.

Deposing President Winkler or any other KEA representative would be unduly burdensome and improper as there are no facts in dispute in this matter and such deposition is not reasonably calculated to lead to admissible evidence. “[E]ven very slight inconvenience may be unreasonable if there is no occasion for the inquiry and it cannot benefit the party making it.” *Serrano v. Cintas Corp.*, 699 F.3d 884, 901 (6th Cir. 2012) (quoting 8A Charles Alan Wright & Arthur R. Miller et al., *Federal Practice and Procedure* § 2036 (3d ed. 2012)). For the foregoing reasons, KEA requests that its Motion be granted.

Respectfully submitted,

WALTHER, GAY & MACK, PLC

/s/ Victoria F. Dickson, Esq.
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COUNSEL FOR PLAINTFF KEA

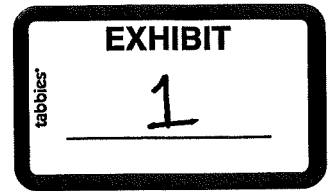
NOTICE OF HEARING

Please take notice that the foregoing Motion shall come on for hearing before the Franklin Circuit Court on Monday, May 7, 2018 at 9:00 a.m. or as soon thereafter as counsel may be heard.

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing was electronically filed via the Court's electronic filing system on this the 24th day of April, 2018, which will send a copy to all counsel of record.

/s/ Victoria F. Dickson, Esq.
COUNSEL FOR PLAINTIFF KEA



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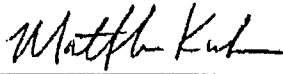
DEFENDANTS

NOTICE OF DEPOSITION

Under CR 30.02(6), please take notice that undersigned counsel will take the deposition of Plaintiff Kentucky Education Association ("KEA") at 700 Capital Avenue, Room 110, Frankfort, Kentucky 40601 on May 9, 2018 at 10:00 a.m. EDT. The deposition will be taken before a notary public, and the testimony will be recorded stenographically and by video to be used for all purposes permitted by the Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence.

KEA shall designate a representative or representatives who can testify about: (i) the allegations that KEA's President Stephanie Winkler verified in the Verified Complaint filed in this action; and (ii) the allegations contained in Ms. Winkler's affidavit that was filed as Exhibit B to the Verified Complaint in this action.

Submitted by,



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S. Chad Meredith
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Counsel for Governor Bevin

Jeff Walther

From: Jeff Walther
Sent: Monday, April 23, 2018 4:28 PM
To: 'Pitt, Steve (Gov Office)'; dleightty@earthlink.net
Cc: Brown, J.Michael (KYOAG); Buckner, La Tasha A (KYOAG); Mayo, Travis (KYOAG); Meredith, Chad (Gov Office); Kuhn, Matt F (Gov Office)
Subject: RE: Beshear, KEA and FOP v. bevin, et al.

Steve-

Your request to depose Ms. Winkler (or take any other discovery) is not consistent with the procedural status of the matter as evidenced by Judge Shepherd's comments at last week's hearing and his subsequent Order. At the very least your request is premature. For these reasons, Ms. Winkler and KEA object to your request.

As Judge Shepherd correctly noted last week, the issues presented in the case are ones purely of law. For that reason, the Judge is prepared to decide the case on the merits, rather than first addressing the Motion for Temporary Injunction. There are no facts Ms. Winkler could testify to that are relevant to the Court's decision on the various legal claims presented. For example, you suggested at the hearing that Ms. Winkler's understanding of the nature of the inviolable contract is an issue you wished to explore. Her understanding of and opinion on the issue as a lay person, such as it might exist, is completely irrelevant to the question before the Court-whether SB151 is in violation of the statute(s) creating the inviolable contract.

I remain open to further discussion, but for the present, Ms. Winkler and KEA object to your request.

Please let me know if you have any questions.

Jeffrey S. Walther
Walther, Gay & Mack, PLC
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From: Pitt, Steve (Gov Office) <Steve.Pitt@ky.gov>
Sent: Thursday, April 19, 2018 4:16 PM
To: Jeff Walther <jwalther@wgmfirm.com>; dleightty@earthlink.net
Cc: Brown, J.Michael (KYOAG) <JMichael.Brown@ky.gov>; Buckner, La Tasha A (KYOAG) <LaTasha.Buckner@ky.gov>; Mayo, Travis (KYOAG) <Travis.Mayo@ky.gov>; Meredith, Chad (Gov Office) <Chad.Meredith@ky.gov>; Kuhn, Matt F (Gov Office) <Matt.Kuhn@ky.gov>
Subject: Beshear, KEA and FOP v. bevin, et al.

Jeff and David,

We would like to take the depositions of Stephanie Winkler and Berl Perdue, Jr., both of whom verified the Verified Complaint in the above action, at the earliest opportunity. Chad, Matt and I would appreciate your getting back to us by close of business Monday, Apr. 23, with some proposed dates you and they are available. We would anticipate deposing them, *inter alia*, on the facts stated in the Verified Complaint, the facts asserted in Ms. Winkler's affidavit that is

attached to the Verified Complaint, and her publicly reported comments and statements during the past few weeks concerning the pension bill process in the general assembly .

Thanks.

Steve Pitt

M. Stephen Pitt

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Keep up with Governor Bevin:



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**ORDER GRANTING
MOTION FOR PROTECTIVE 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 the motion of the Plaintiff, Kentucky Education Association (“KEA”), by and through counsel, for a Protective Order prohibiting Defendant Matthew G. Bevin (“Bevin”) from taking the deposition of KEA pursuant to CR 26.03. The Court, having reviewed the Motion and finding itself sufficiently informed and advised, ORDERS and ADJUDGES that KEA’s Motion for Protective order is GRANTED.

Done this _____ day of _____, 2018.

JUDGE, FRANKLIN CIRCUIT COURT
DIVISION I

Tendered By:

WALTHER, GAY & MACK, PLC

/s/ Victoria F. Dickson, Esq.

Jeffrey S. Walther, Esq.

Victoria F. Dickson, Esq.

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COUNSEL FOR PLAINTFF KEA