

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

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

The matter is before the Court on the Motions for Protective Order filed by the Attorney General, the Fraternal Order of Police (“FOP”), and the Kentucky Education Association (“KEA”). The parties appeared before the Court to argue the matter on May 7, 2018. Travis S. Mayo, La Tasha Buckner, and J. Michael Brown appeared on behalf of the Attorney General; David Leightty appeared on behalf of FOP; Victoria F. Dickson appeared on behalf of KEA; and M. Stephen Pitt appeared on behalf of Governor Bevin.

The Court notes that all parties have agreed to an expedited briefing schedule on the legal issues presented in this case. Until those threshold legal issues have been decided, it is impossible to identify or define the proper scope of any factual discovery. In the event that any disputed issues of material fact are identified in the initial briefing on the summary judgment motions, the Court will deny summary judgment and allow full discovery under CR 26–34. However, at this point, no disputed issues of material fact have been identified by any party. When asked to identify areas of factual dispute that would justify discovery prior to a ruling on the threshold legal issues, counsel for the Governor recited several of Plaintiffs’ factual allegations, but none that are materially relevant to the constitutionality of the challenged legislation. So while the parties may vigorously dispute the factual background and policy reasons for and against the enactment of

Senate Bill 151, the Court's consideration is limited to whether the legislation complies with all statutory and constitutional requirements.

In sum, if any party, including the Governor, identifies an area of disputed material facts, the Court will allow depositions and discovery to make a full record on any such issues. At this point, no such area of factual dispute has been identified. Accordingly, the Court declines the invitation to put the cart (of depositions and discovery) before the horse (of defining the legal issues).

In addition, the Court is aware that all parties to this case have extremely divergent views on the political, economic, and social policies that shape the public debate on the legislation at issue here. The First Amendment guarantees to all the right to vigorously engage in such public debate. However, the political, economic, and social policy disputes between the parties are not relevant to the adjudication of the constitutionality of Senate Bill 151. The debate in this Court must be limited to the legal issues presented, and at this point there has been no showing that there are any factual disputes that are relevant and material to the analysis and resolution of those strictly legal issues.

The Court, having considered the arguments of counsel and being otherwise sufficiently advised, hereby **GRANTS** each Motion for Protective Order under CR 26.03 and **STAYS** all factual discovery pending resolution of the Cross-Motions for Summary Judgment, with the exception of the previously scheduled and unopposed deposition of the Kentucky Teachers' Retirement Systems. If counsel for the Governor asserts a good faith basis to allege that the FOP or the KEA has no members with real and substantial interests in the outcome of the litigation, he may file a motion for relief from this stay to conduct limited discovery on the issue of standing. *See Bailey v. Preserve Rural Roads of Madison County, Inc.*, 394 S.W.3d 350 (Ky. 2011);

Commonwealth ex rel. Brown v. Interactive Media Entertainment and Gaming Ass'n, Inc., 306 S.W.3d 32 (Ky. 2010); *City of Ashland v. Ashland F.O.P. No. 3, Inc.*, 888 S.W.2d 667 (Ky. 1994). However, the Kentucky Supreme Court has unequivocally ruled that the Attorney General has standing to challenge the constitutionality of legislation and executive action implementing legislation. *Commonwealth ex rel. Beshear v. Bevin*, 498 S.W.3d 355, 361–66 (Ky. 2016); *Commonwealth ex rel. Conway v. Thompson*, 300 S.W.3d 152, 172 (Ky. 2008). Accordingly, the Attorney General has standing to challenge the enactment of Senate Bill 151, and the question of whether the KEA or FOP have standing to join as additional plaintiffs in this action is therefore not central to the resolution of this case.

SO ORDERED this ____ day of May, 2018.



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

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