

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.

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

DEFENDANTS

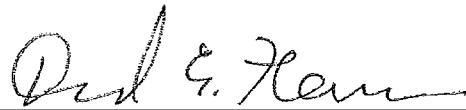
**LEGISLATIVE DEFENDANTS' MOTION TO DISMISS AND
MOTION FOR LEAVE TO FILE A BRIEF ON THE MERITS AS AMICUS CURIAE**

Come the Defendants, 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, (“Legislative Defendants”), by Counsel, pursuant to the Court’s April 20, 2018 scheduling order and CR 12.02(a), (b), (c), and (f), and hereby move the Court to dismiss the Plaintiffs’ Complaint against them, with prejudice, for lack of subject matter jurisdiction in the above-referenced case.¹ A Memorandum of Law in Support of this Motion to Dismiss is contemporaneously filed.

¹ Counsel for the Legislative Defendants noted at the hearing on April 19, 2018, that one or both of the Legislative Defendants had not been properly served, and that by appearing, they were not waiving that argument. By filing this Motion to Dismiss, the Legislative Defendants are again not waiving that argument, nor any argument that the Plaintiffs’ Complaint fails to state a claim upon which relief can be granted; however, those defenses are not included herein because the Legislative Defendants assert legislative immunity applies and is a threshold issue that dispenses with the Plaintiffs’ Complaint as to them.

Additionally, pursuant to the Court's April 20, 2018 scheduling order, the Legislative Defendants move the Court for leave to file a Brief on the Merits as Amicus Curiae, a copy of which is also contemporaneously filed with this Motion to Dismiss, and request that these two motions be heard at the previously scheduled oral argument on June 7, 2018.

Respectfully submitted,



David Fleenor
Vaughn Murphy
Tyler Peavler
Office of the President
702 Capitol Avenue, Room 236
Frankfort, KY 40601
*Counsel for Defendant,
Bertram Robert Stivers, II*

and

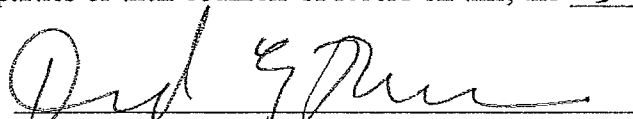
Eric Lycan
Office of the Speaker Pro Tempore
702 Capitol Avenue, Room 332
Frankfort, KY 40601
*Counsel for Defendant,
David W. Osborne*

NOTICE

Notice is hereby given that this matter will come on for hearing on June 7, 2018 at 9:00 a.m. in Courtroom H of the Franklin County Circuit Court.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion to Dismiss, with any attached exhibits, has been served on the following parties or their counsels of record on this, the 23rd day of May, 2018.



Attorney for Legislative Defendants

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 Leighty

Alison Messex

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

Finance and Administration Cabinet

702 Capitol Avenue, Suite 101

Frankfort, KY 40601

Robert B. Barnes

Teachers' Retirement System

479 Versailles Road

Frankfort, KY 40601

Joseph Bowman

1260 Louisville Road

Frankfort, KY 40601

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ORDER

The Plaintiffs, Commonwealth of Kentucky, *ex rel.* Andy Beshear, Attorney General, *et al.* and the Defendants, 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, having appearing before the Court, and the Court being duly and sufficiently advised, the Court hereby finds as follows:

- (1) The Defendants, Bertram Robert Stivers, II, as President of the Kentucky Senate, and David W. Osborne, as Speaker Pro Tempore of the Kentucky House of Representatives, have absolute immunity from suit for actions taken in their official capacity as elected members of the Kentucky General Assembly;
- (2) The Defendants, Bertram Robert Stivers, II, as President of the Kentucky Senate, and David W. Osborne, as Speaker Pro Tempore of the Kentucky House of Representatives, nonetheless, have an important and potentially beneficial perspective to offer to the Court on the issues of great public interest raised by the Plaintiffs in this action; and
- (3) The Plaintiff and Defendants mutually desire to fully brief the Court on the issues raised, so that an Opinion and Order entered by the Court is based on as complete a record as is possible in this action.

THEREFORE, the Court orders as follows:

- (1) The Defendants, Bertram Robert Stivers, II, as President of the Kentucky Senate, and David W. Osborne, as Speaker Pro Tempore of the Kentucky House of Representatives, are DISMISSED, from the above-styled action, as parties;
- (2) The Defendants, Bertram Robert Stivers, II, as President of the Kentucky Senate, and David W. Osborne, as Speaker Pro Tempore of the Kentucky House of Representatives, are GRANTED the option to brief the Court as AMICUS CURIAE only on the same schedule as the other Defendants, as established by this Court's Order entered on April 20, 2018; and
- (3) The Defendants, Bertram Robert Stivers, II, as President of the Kentucky Senate, and David W. Osborne, as Speaker Pro Tempore of the Kentucky House of Representatives, and their counsels of record shall remain on the service and distribution lists so that they receive all pleadings and other documents in this action.

SO ORDERED, this _____ day of _____, 2018.

HON. PHILLIP J. SHEPHERD
Judge, Franklin Circuit Court

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
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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
Office of the President
702 Capitol Avenue
Capitol Annex, Room 236
Frankfort, KY 40601

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