

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 2018-CI-00414**

**COMMONWEALTH OF KENTUCKY, ex rel.
MATTHEW G. BEVIN, in his official capacity as
Governor of the Commonwealth of Kentucky**

PETITIONER

v.

**ANDY BESHEAR, in his official capacity as
Attorney General of the Commonwealth of Kentucky**

RESPONDENT

REPLY IN SUPPORT OF MOTION TO DISMISS

The Governor has failed to provide any facts to demonstrate any controversies between himself and the Attorney General aside from the validity of 2018 S.B. 151 (“Pension Bill”). The Pension Bill is already being challenged on numerous grounds in *Beshear v. Bevin*, No. 18-CI-00379 (Franklin Cir. Ct. filed Apr. 11, 2018) (“Pension Case”), which has been consolidated with this case. It is uncontested that the Attorney General has not challenged the constitutionality of any other act of the 2018 Kentucky Legislature, and the Governor does not allege any facts suggesting that such challenges are forthcoming.

The Governor’s Response shows how this separate action is neither needed nor allowed. Indeed, in an attempt to justify its filing, the Governor simultaneously argues both that “the Attorney General’s presiding-officer theory, if adopted, would invalidate every law and resolution passed this legislative session,” (Response 5), and then, on the very same page, that “the Court’s resolution of [the Pension Case] will not resolve the controversy at issue in this case.” (*Id.*) It is a straightforward logical contradiction to argue that the Attorney General’s argument on the validity of Rep. Osborne’s signature in the Pension Case would invalidate every

act of the 2018 General Assembly, but that a decision in the same case on the same argument would not resolve it.

The Governor’s response merely reaffirms that he brought his declaratory judgment action solely to test a legal argument that is already at issue in the Pension Case. “An action for a declaratory judgment cannot be instituted to secure a determination of substantive rights involved in a pending suit.” *Mammoth Med., Inc. v. Bunnell*, 265 S.W.3d 205, 210 (Ky. 2008). “Nor is a disputed question of law or procedure raised in a pending suit such an actual controversy as comes within the letter, reason, or spirit of the Declaratory Judgment Act.” *Jefferson Cnty. ex rel. Coleman v. Chilton*, 33 S.W.2d 601, 605 (Ky. 1930). The Governor raises only a disputed question of law already pending in the Pension Case, which will be adequately resolved in the Pension Case.

The Governor’s remaining arguments appear to be more attacks on the role of the Attorney General and the individual who holds the office. For instance, the Governor asks questions such as “shouldn’t the Commonwealth’s ‘chief law officer’ be concerned to the utmost with the procedural constitutionality of *every* Kentucky law? . . . Instead of upholding and defending all the laws of the Commonwealth, the Attorney General has cherry-picked an individual bill that he simply dislikes” (Response 4-5.)

“The Attorney General has not only the power to bring suit when he believes the public’s legal or constitutional interests are under threat, but appears to have even the duty to do so.” *Commonwealth ex rel. Beshear v. Commonwealth Office of the Governor ex rel. Bevin*, 498 S.W.3d 355, 362 (Ky. 2016). He has filed suit to void the Pension Bill on account of its many serious and fundamental constitutional flaws, including the violation of public employees’ right

to guaranteed retirement benefits under the Contracts Clause. The failure of the General Assembly to comply with Ky. Const. § 56 is only one of many constitutional failings of SB 151.

The Governor’s action seeks “a determination of substantive rights involved in a pending suit.” *Bunnell*, 265 S.W.3d at 210. As such, it must be dismissed.

Respectfully Submitted,

ANDY BESHEAR
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Motion to Dismiss using the Court’s electronic filing system on May 30, 2018, which will send an electronic notice to all counsel of record.

/s/ La Tasha Buckner
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