

**COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION \_\_\_\_  
CIVIL ACTION NO. 18-CI-\_\_\_\_\_**

**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**

**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR EXPEDITED BRIEFING AND REVIEW AND TO REQUIRE  
RESPONDENT TO FILE AN ANSWER BY APRIL 30**

Contemporaneous with this Motion for Expedited Briefing and Review, the Commonwealth, by and through Governor Matthew G. Bevin, has filed a Petition for Declaration of Rights against the Attorney General. The Petition asks the Court to declare that Speaker Pro Tempore David Osborne (“Speaker Osborne”) was the “presiding officer” pursuant to Section 56 of the Constitution when he signed all of the bills and resolutions enacted and adopted during the Regular Session of the 2018 General Assembly.

The Petition is necessary due to the Attorney General’s bold but specious public claim that bills signed by Speaker Osborne are unconstitutional because he was not elected as Speaker of the House of Representatives. This argument calls into

question every bill and resolution signed by Speaker Osborne and, if successful, will result in nullification of the entire 2018 session. If the Attorney General is right (and he is not), comprehensive and much-needed reforms to Kentucky's foster care and adoption systems will not be implemented (House Bill 1), child marriage will continue (Senate Bill 48), pregnant inmates will not have access to long overdue medical care and substance abuse treatment (Senate Bill 133), increases to line-of-duty death benefits will not be possible (House Bill 185), and Kentucky will not have an Executive Branch budget (House Bill 200) or additional revenue to implement it (House Bill 366).

Because of the far-reaching implications of the Attorney General's allegation, Governor Bevin brings this declaratory judgment action on behalf of the Commonwealth to confirm Speaker Osborne was the presiding officer when he signed the bills and resolutions passed during the Regular Session of the 2018 General Assembly. Because of the overwhelming public interests at stake—coupled with the immediate effective dates of certain laws and the upcoming effective dates of other laws—the Court should expedite review so that Kentucky can move forward.

### **FACTUAL BACKGROUND**

**1. Senate Bill 151 passes the General Assembly.** Senate Bill 151 ("SB 151"), the pension reform bill, passed the House of Representatives and Senate on March 29, 2018. Once enrolled in the House, Speaker Osborne signed the bill. On April 10, 2018, Governor Bevin signed SB 151 into law.

**2. The Attorney General files suit seeking to invalidate SB 151.** The Attorney General filed an action on April 11, 2018, seeking to invalidate SB 151 (the “AG Action”). In the AG Action, the Attorney General asserts, among other things, that SB 151 is unconstitutional pursuant to Section 56 of the Kentucky Constitution because Speaker Osborne signed the bill. In his prayer for relief in the AG Action, the Attorney General asks the Court to “issue a declaration and order that SB 151 was passed in violation of Section 56 of the Kentucky Constitution.” (AG Action, Verified Complaint at ¶¶ 31-32.)

The Attorney General also filed a Motion for Temporary Injunction in the AG Action. In his motion, the Attorney General persists in and further explains his argument that SB 151 is unconstitutional pursuant to Section 56 of the Kentucky Constitution. (Mot. at 12-13.)

**3. The Constitution does not state that the “Speaker” is the “presiding officer” of the House of Representatives.** Section 56 of the Kentucky Constitution provides that “[n]o bill shall become a law until the same shall have been signed by the presiding officer of each of the two Houses in open session.” The Constitution does not define “presiding officer,” and Section 56 is the only place where “presiding officer” is used in the Constitution. Section 34, however, provides that the “House of Representatives shall choose its Speaker and other *officers*.”<sup>1</sup> (Emphasis

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<sup>1</sup> Section 34 itself should conclusively disprove the Attorney General’s claim that the Speaker is the one and only “presiding officer.” By separating the “Speaker” from “other officers,” the Constitution plainly does not require the Speaker to be the “presiding officer.”

added.) The Constitution *does not* provide the “Speaker” with any specific duties. In fact, the term “Speaker” appears only in Sections 34 and 86 of the Constitution, and Section 86 notes only that the President of the Senate shall receive the same compensation as the Speaker of the House of Representatives.

Similarly, “presiding officer” is not defined *per se* in the House Rules of Procedure, although those rules do set forth certain duties of the Speaker and indicate that the Speaker Pro Tempore shall perform those duties in the absence of the Speaker. *See* House Rules 26, 28.

However, *Mason’s Manual of Legislative Procedure*, which the House of Representatives follows in the absence of specific rules, is abundantly clear. Section 575 of *Mason’s Manual* states that the “presiding officer” of a legislative body is the individual who (a) opens the session and calls the members to order; (b) announces business; (c) recognizes members to the floor; (d) states and puts all questions to vote; (e) preserves order and decorum; (f) restrains the members when engaged in debate; (g) decides all points of order; (h) informs the body on points of order; (i) signs or authenticates all acts or orders of the body; (j) receives and announces messages and communications; (k) guides and directs the proceedings of the body; (l) enforces all laws and regulations applicable to the body; and (m) enjoys general charge and supervision over the legislative chamber, galleries, and adjoining spaces.<sup>2</sup> *Mason’s Manual* goes on to expressly state that when the initial presiding officer—in other

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<sup>2</sup> MASON’S MANUAL OF LEGISLATIVE PROCEDURE § 575 at 406-07.

words, the Speaker—must vacate the chair, “the speaker pro tempore . . . should take the chair” and carry out the above mentioned duties.<sup>3</sup>

**4. Every bill passed this session was signed by Speaker Osborne.** The office of Speaker of the House of Representatives has been vacant since January 8, 2018. Since that time, Speaker Osborne has assumed the duties of Speaker. This has included, with few exceptions, calling the House of Representatives to order each day and presiding over its actions. It has also included signing the following bills and resolutions:

A. Senate Bills 3, 5, 6, 19, 30, 37, 48, 56, 57, 61, 68, 70, 71, 73, 78, 86, 88, 91, 96, 97, 98, 101, 104, 106, 108, 109, 110, 112, 116, 119, 122, 123, 126, 129, 130, 131, 132, 133, 137, 138, 139, 140, 142, 144, 150, 151, 152, 160, 181, 182, 200, 201, 202, 203, 204, 210, 211, 228, 249, and 250;

B. House Bills 1, 2, 3, 4, 5, 11, 22, 30, 33, 46, 64, 68, 69, 70, 71, 74, 75, 81, 84, 92, 93, 96, 97, 100, 101, 114, 116, 120, 122, 124, 128, 130, 132, 133, 136, 138, 140, 142, 146, 147, 148, 150, 153, 157, 158, 164, 167, 168, 169, 176, 177, 185, 187, 191, 193, 198, 200, 201, 202, 203, 204, 207, 213, 214, 218, 220, 223, 241, 244, 246, 252, 259, 260, 261, 263, 264, 265, 270, 273, 274, 275, 277, 281, 289, 290, 291, 302, 305, 306, 307, 310, 314, 319, 323, 324, 327, 329, 334, 343, 345, 348, 356, 360, 362, 363, 366, 367, 369, 370, 373, 381, 385, 388, 394, 398, 400, 402, 424, 427, 429, 430, 431, 434, 443, 444, 454, 463, 464, 475, 476, 487, 497, 512, 513, 517, 527, 528, 530, 557, 586, 592, and 606;

C. Senate Joint Resolutions 52, 158, and 218;

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<sup>3</sup> MASON’S MANUAL OF LEGISLATIVE PROCEDURE § 579 at 411.

- D. House Joint Resolutions 33, 74, and 196;
- E. Senate Concurrent Resolutions 171 and 176;
- F. House Concurrent Resolutions 7, 35, 152, and 226.

**5. The Governor must enforce Kentucky's laws.** The “supreme executive power of the Commonwealth” is vested in the Governor. Ky. Const. § 69. One of the Governor’s duties as the “Chief Magistrate” is to “take care that the laws be faithfully executed.” Ky. Const. § 81. To do so, of course, requires that the Governor know which laws to execute. The Attorney General has now called all legislation passed by the 2018 General Assembly into question. Accordingly, the Governor seeks this Court’s judgment that Speaker Osborne was the “presiding officer” for purposes of Section 56 when he signed all bills, joint resolutions, and concurrent resolutions during the 2018 General Assembly.<sup>4</sup>

**6. The legal doctrine of issue preclusion necessitates this action.** People listen when the “chief law officer” of the Commonwealth claims that a bill is unconstitutional because it was signed by the wrong person. And because people listen, and because the same person signed every passed bill, a flurry of legal actions will likely ensue against bills passed this session.

Kentucky recognizes the legal doctrine of issue preclusion. *Yeoman v. Com., Health Policy Bd.*, 983 S.W.2d 459, 464-65 (Ky. 1998). Issue preclusion bars a party

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<sup>4</sup> To be clear, the Governor is not seeking a declaration that all bills passed by the 2018 General Assembly are substantively constitutional. Rather, the much more narrow issue is that Speaker Osborne, acting as presiding officer, was constitutionally authorized to sign the legislation passed this session for purposes of Section 56.

from relitigating an issue “actually litigated and finally decided in an earlier action.”

*Id.* at 465.

In order for issue preclusion to operate as a bar to further litigation, certain elements must be met: (1) at least one party to be bound in the second case must have been a party in the first case; (2) “the issue in the second case must be the same as the issue in the first case”; (3) “the issue must have been actually litigated”; (4) “the issue was actually decided in that action”; and (5) “the decision on the issue in the prior action must have been necessary to the court’s judgment” and adverse to the party to be bound.”

*Miller v. Admin. Office of the Courts*, 361 S.W.3d 867, 872 (Ky. 2011) (quoting *Yeoman*, 983 S.W.2d at 465). Issue preclusion may be raised as a defense regardless of whether the person was a party to the previous action. *Miller*, 361 S.W.3d at 872.

To prevent a needless flurry of constitutional challenges and the uncertainty that would result for so many vital Kentucky laws enacted during the 2018 legislative session, the Governor brings this action to seek a declaration of rights that Section 56 of the Kentucky Constitution does not require the “Speaker” of the House of Representatives to sign a bill, but only requires the person presiding over the House at that time, regardless of title, to sign the bill.

### **LEGAL STANDARD**

CR 57 provides that “[t]he court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.” Likewise, KRS 418.050 provides that “[a]ny action in which a declaration of rights or determination of questions of construction is the relief asked, may be docketed for early hearing as in the case of a motion.”

## ARGUMENT

The Court should expedite review of this matter and immediately establish a briefing schedule and hearing date. The Court should also order the Attorney General to file an Answer by April 30, 2018.

According to the Kentucky Constitution, the Governor is vested with the “[t]he supreme executive power of the Commonwealth,” *see* Ky. Const. § 69, and he must “take care that the laws be faithfully executed”. Ky. Const. § 81. Because the execution of the Commonwealth’s laws is a matter of great importance and immediate concern and the Attorney General’s contention would invalidate all legislation passed during the Regular Session of the 2018 General Assembly, including those laws already in effect due to emergency clauses, expedited briefing and review of this action is appropriate.

In the Attorney General’s attempt to invalidate SB 151, he asserts that because the former Speaker of the House, Jeff Hoover, did not affix his signature to the bill, “the bill did not meet the constitutional requirements for enrollment into law, in violation of Section 56 of the Kentucky Constitution.” (Attorney General’s Mem. In Support of Mot. For Temporary Injunction, p. 12-13.) The flawed logic and legal analysis offered by the Commonwealth’s chief legal officer, if consistently applied, would invalidate all legislation passed during this session.

Given the claims made by the Attorney General and the far-reaching consequences of his irresponsible and baseless assertions, the Governor respectfully requests that this Court order expedited briefing and review of this matter, including

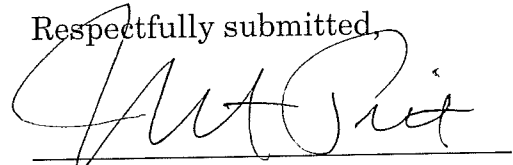


the filing of an Answer no later than April 30, 2018. Expedited briefing and review will help to ensure that the Governor may faithfully execute the laws of the Commonwealth and will more quickly provide much-needed clarity to the citizens of the Commonwealth in identifying legal obligations, which have been made uncertain by the Attorney General's claims. Expedited briefing and review is particularly needed because several bills passed this session contained emergency clauses and are now effective (e.g., Senate Bills 37, 70, 110; House Bills 46, 68, 114, 124, 140, 157, 202, 260, 314, 398, 400, and 454), while most remaining bills will become effective in July.

### CONCLUSION

The Court should grant Governor Bevin's motion to expedite this matter so that it can be resolved as quickly as possible.

Respectfully submitted,



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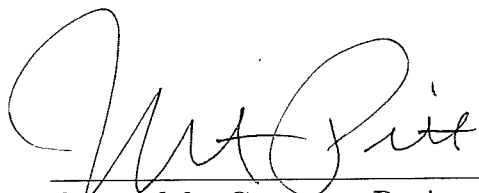
*Counsel for Governor Bevin*

**CERTIFICATE OF SERVICE**

I certify that the forgoing was served, on this the 18th day of April, 2018, upon the following:

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*Respondent*



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