UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
AT FRANKFORT

SAMANTHA WIGGINTON, *et al.*,	)	
	)	
Plaintiff,	)	
v.	)	
	)	CIVIL ACTION NO. 3:26-cv-00035-CHB
	)	
COMMONWEALTH OF KENTUCKY, *et al.*	)	
	)	**GOVERNOR'S MOTION TO DISMISS**
	)	
Defendants.	)	

Defendant, Governor Andy Beshear, in his official capacity as the Governor of the Commonwealth of Kentucky, by and through counsel, moves this Court to dismiss him from the above-styled action, with prejudice, under Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 12(b)(1) and (12)(b)(6). Senate Bill 185 (R.S. 2026), the legislation Plaintiffs challenge, provides neither enforcement nor implementation authority to the Governor. As a result, Plaintiffs fail to raise an actual case or controversy with the Governor and lack standing, rendering this Court without subject matter jurisdiction, and Plaintiff fails to state a claim upon which relief can be granted as to the Governor. The Governor submits the below Memorandum in Support of his Motion.

MEMORANDUM IN SUPPORT

In this declaratory judgment action, Plaintiffs challenge Senate Bill 185 (R.S. 2026) ("SB 185") enacted in 2026 relating to Kentucky State University. (Doc. 1.) They name the Governor as a Defendant in his official capacity "relating to SB 185, statewide implementation, reporting obligations, and the Commonwealth's ongoing duties under federal and state law." (Doc. 1, Page ID# 12.) Other than in the caption (*id.*, Page ID#1), the "Parties" section (*id.*, Page ID# 12), and

in the introduction and factual background stating that the United States Department of Agriculture and the United States Department of Education issued a letter to the Governor on September 18, 2023, regarding Kentucky State University (*id.*, Page ID## 5, 25-26), Plaintiffs' Complaint does not mention the Governor. Plaintiffs do not allege any conduct of the Governor has caused them any alleged injury or violates any federal or state law. They do not allege the Governor could take any action under SB 185 that would harm them, or that he could take any action under the bill, *at all*. Plaintiffs do not ask the Court to enjoin or require any action that the Governor could take under SB 185.

Instead, Plaintiffs name the Governor because of his role as Governor and his general duty to take care that the laws be faithfully executed under Section 81 of the Kentucky Constitution, which does not make him a proper party and does not create an actual case or controversy. Neither does the plain text of SB 185. Senate Bill 185 mentions the Governor only three times – in its emergency clause, and then twice more only to receive: (1) a quarterly update from the Council on Postsecondary Education on the financial status of Kentucky State University, which the Council must send to the Legislative Research Commission; and (2) an annual update from the Council on Postsecondary Education on the debts and collection efforts reported by Kentucky State University to the Council, which the Council must also send to the Legislative Research Commission. (Doc 1-6, Page ID## 1, 7.) Senate Bill 185 does not provide the Governor with the authority to enforce or implement its provisions. There is no sufficient connection between the Governor and enforcement or implementation of SB 185 to make him a proper party, and Plaintiffs do not set forth any claim that the Governor has taken, is taking, or will take any action under SB 185, because SB 185 does not provide him authority to do so. Thus, Plaintiffs lack standing and fail to state a claim for relief as to the Governor.

As such, the Court should dismiss the Governor from this action.

LEGAL STANDARD

Under Fed. R. Civ. P. 12(b)(1) and (6), respectively, a court may dismiss a complaint for lack of subject-matter jurisdiction or failure to state a claim upon which relief can be granted. In considering a Rule 12(b) motion to dismiss, the Court must construe the complaint in a light most favorable to the plaintiff and accept all factual allegations as true. *Prater v. City of Burnside, Ky.*, 289 F.3d 417, 424 (6th Cir. 2002). However, a court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986) (citation omitted).

"The party invoking federal jurisdiction bears the burden of establishing standing." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). Constitutional standing requires a plaintiff to show they have "suffered (1) an injury that is (2) 'fairly traceable to the defendant's allegedly unlawful conduct; and that is (3) 'likely to be redressed by the requested relief.'" *Prime Media, Inc. v. City of Brentwood*, 485 F.3d 343, 349 (6th Cir. 2007) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). If a plaintiff lacks standing, a federal court lacks subject matter jurisdiction and must dismiss the case. *Murray v. U.S. Dep't of Treasury*, 681 F.3d 744, 748 (6th Cir. 2012).

ARGUMENT

Plaintiffs lack standing to sue the Governor because they fail to allege that any action of the Governor has caused or could cause any of their alleged injuries. The Governor's role as Governor and his general authority to ensure the laws are faithfully executed does not raise an actual case or controversy between him and Plaintiffs and does not make the Governor a proper

party. Further, Plaintiffs fail to state a claim upon which relief can be granted as to the Governor. Consequently, the Court should dismiss Plaintiffs' Complaint.

I. Plaintiffs' Complaint Fails to Establish Standing.

This Court lacks subject matter jurisdiction over Plaintiffs' Complaint regarding the Governor because Plaintiffs lack standing and fail to raise an actual case or controversy as to the Governor. "[A] suit against state officials that is in fact a suit against a State is barred regardless of whether it seeks damages or injunctive relief." *EMW Women's Surgical Center, P.S.C. v. Beshear*, 920 F.3d 421, 444-45 (6th Cir. 2019) (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102, (1984)). One "important exception" exists for suits "challenging the constitutionality of a state official's action." *Id.* (citing *Pennhurst State Sch. & Hosp.*, 465 U.S. 89, 102) (citing *Ex parte Young*, 209 U.S. 123 (1908)).)

When making a state official a defendant in an action alleging a statute is unconstitutional, "such officer must have some connection with the enforcement of the act[.]" *Ex Parte Young*, 209 U.S. 123, 157 (1908). In other words, "'General authority to enforce the laws of the state is not sufficient to make government officials the proper parties to litigation challenging the law.'" *Children's Healthcare is a Legal Duty, Inc. v. Deters*, 92 F.3d 1412, 1416 (6th Cir. 1996) (quoting *1st Westco Corp. v. School Dist. of Philadelphia*, 6 F.3d 108, 113 (3d Cir. 1993)). The exception under *Ex Parte Young* "does not apply when a defendant state official has neither enforced nor threatened to enforce the allegedly unconstitutional statute." *Id.* at 1415. It does not reach state officials who lack a "special relation to the particular statute" and "[are not expressly directed to see its enforcement." *Ex Parte Young*, 209 U.S. at 157.

More specifically, "The mere fact that a governor is under a general duty to enforce state laws does not make him a proper defendant in every action attacking the constitutionality of a

state statute." *Children's Healthcare*, 92 F.3d at 1416. (quoting *Shell Oil Co. v. Noel*, 608 F.2d 208, 211 (1st Cir. 1979) (citing *Gras v. Stevens*, 415 F. Supp. 1148, 1152 (S.D.N.Y. 1976)). There must be "a realistic possibility the official will take legal or administrative actions against the plaintiff's interests." *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1048 (6th Cir. 2015) (citing *Children's Healthcare*, 92 F.3d at 1416; *1st Westco*, 6 F.3d at 114). *See also Universal Life Church Monastery Storehouse v. Nabors*, 35 F.4th 1021, 1031-32 (6th Cir. 2022) (holding that the Tennessee Governor having the supreme executive power of the state and the duty to ensure the laws are faithfully executed did not invoke federal jurisdiction, and that the court needed specific, plausible allegations about what the Governor had done, was doing or might do to injure plaintiffs). General enforcement authority is not sufficient. *Id.* Only a state officer with responsibility for the enforcement or execution of a statute may be enjoined from enforcing that statute. *See Johnson Bonding Co., Inc. v. Commonwealth of Ky.*, 420 F.Supp. 331, 334 (E.D. Ky. 1976).

Here, Plaintiffs do not allege any specific action of the Governor that has caused, is causing, or would cause them injury, and they do not assert there is a realistic possibility that the Governor will take any action against their interests. Plaintiffs name the Governor as a Defendant in his official capacity "relating to SB 185, statewide implementation, reporting obligations, and the Commonwealth's ongoing duties under federal and state law." (Doc. 1, Page ID# 12). Plaintiffs mention the Governor only four times in their Complaint: (1) in the caption (i*d.*, Page ID# 1); in the "Parties" section (*id.*, Page ID# 12); and in the introduction and factual background stating that the United States Department of Agriculture and the United States Department of Education issued a letter to the Governor on September 18, 2023, regarding Kentucky State University (*id.*, Page ID## 5, 25-26).

Plaintiffs do not allege any conduct of the Governor has caused them any alleged injury or violates any federal or state law. They do not allege the Governor could take any action under SB 185, *at all*, much less that he could take any action under the bill that would harm them. Plaintiffs fail to show an actual case or controversy exists between them and the Governor.

Senate Bill 185 does not provide the Governor with any authority to enforce or implement its provisions. In addition to its emergency clause, SB 185 references the Governor only twice, and then only to receive: (1) a quarterly update from the Council on Postsecondary Education on the financial status of Kentucky State University, which the Council must send to the Legislative Research Commission; and (2) an annual update from the Council on Postsecondary Education on the debts and collection efforts reported by Kentucky State University to the Council, which the Council must also send to the Legislative Research Commission. (Doc 1-6, Page ID## 1, 7.) Senate Bill 185 does not provide the Governor with the authority to enforce or implement its provisions.

Plaintiffs cannot show they have suffered or will suffer an injury that is fairly traceable to any conduct of the Governor or that the Governor has acted or could act unlawfully under SB 185. They do not raise specific, plausible allegations about what the Governor has done, is doing, or might do to injure them. Senate Bill 185 requires the Council on Postsecondary Education to send a report and an update to the Governor – and to the Legislative Research Commission. Neither provision of SB 185 requiring sending the report and update to the Governor require the Governor to do anything other than receive them. Those provisions do not give him authority to enforce or implement any provision of SB 185. If they did, then the Legislative Research Commission would also need to be a defendant.

In addition, although the Governor has statutory authority to appoint and remove members of the Kentucky State University Board of Regents, SB 185 does not amend or affect the statutes governing the board's makeup. Neither does the bill require the Governor to take any action of the board related to its provisions. Plaintiffs fail to allege the Governor has taken or has threatened to take action to enforce or implement SB 185 related to the board. In fact, they cannot allege such because SB 185 does not grant the Governor *any* enforcement or implementation authority, whatsoever.

Again, Plaintiffs cannot show they have suffered or are threatened to suffer an injury that is fairly traceable to any conduct of the Governor. They cannot show any conduct of the Governor that could likely be redressed by any of their requested relief. Senate Bill 185 does not provide any realistic possibility of the Governor taking action to enforce or implement its provisions, because it does not provide him any authority to do so. Thus, there simply is no conduct of the Governor for the Court to redress.

The Governor's general authority to ensure the laws are faithfully executed is not sufficient to make him a proper party to this case. *See Deters*, 92 F.3d at 1416 (6th Cir. 1996); *Russell*, 784 F.3d at 1048); *Universal Life Church Monastery Storehouse*, 35 F.4th at 1031-32. As Plaintiffs fail to establish standing and do not raise an actual case or controversy as to the Governor, the Court lacks subject matter jurisdiction and should dismiss the Governor from this action, with prejudice, under Fed. R. Civ. P. 12(b)(1).

II. Plaintiffs Fail To State A Claim For Relief As To the Governor.

For the same reasons Plaintiffs lack standing, they also fail to state a claim upon which relief can be granted as to the Governor. Again, Plaintiffs name the Governor as a Defendant in

his official capacity "relating to SB 185, statewide implementation, reporting obligations, and the Commonwealth's ongoing duties under federal and state law." (Doc. 1, Page ID# 12).

Senate Bill 185 does not grant the Governor the authority to enforce or implement its provisions. With regard to the Governor, SB 185 only requires that a report and an update be sent to him and the Legislative Research Commission. (Doc. 1-2, Page ID## 1,7.) There is no action of the Governor for the Court to enjoin or for which to enter a declaratory judgment. *See Johnson Bonding Co., Inc.* 420 F.Supp. at 334 (E.D. Ky. 1976) ("… [S]tate officers who must be enjoined are those who have responsibility for the enforcement or execution of this statute.").

Accordingly, there is no action of the Governor from which the Court can grant Plaintiffs relief. The Court should dismiss Plaintiffs' Complaint against the Governor, with prejudice, under Fed. R. Civ. P. 12(b)(6).

CONCLUSION

Senate Bill 185 does not provide the Governor with any authority to enforce or implement its provisions. As the Governor's general authority under Section 81 of the Kentucky Constitution is not sufficient to make him a property party and SB 185 does not provide the Governor with any authority to enforce or implement its provisions, Plaintiffs fail to raise any actual case or controversy as to the Governor and lack standing, leaving this Court without subject matter jurisdiction. Plaintiffs also fail to state a claim for relief against the Governor. Therefore, the Court should dismiss the Governor from this action, with prejudice, under Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

Respectfully submitted,

/s/ S. Travis Mayo
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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2026, I electronically filed the foregoing Response via the Court's CM/ECF system, causing all counsel of record to be served.

/s/ S. Travis Mayo
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