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

SAMANTHA WIGGINTON, *et al.*,	)	
	)	*Electronically Filed*
Plaintiffs,	)	
v.	)	
	)	CIVIL ACTION NO. 3:26-cv-00035-CHB
	)	
COMMONWEALTH OF KENTUCKY, *et al.*	)	
	)	**FINANCE'S REPLY IN SUPPORT**
	)	**OF RENEWED MOTION TO DISMISS**
Defendants.	)	

Defendant, Secretary Holly McCoy Johnson, in her official capacity as Secretary of the Finance and Administration Cabinet, Commonwealth of Kentucky, by and through counsel, submits the following Reply in Support of her Renewed Motion to Dismiss Plaintiffs' Complaint (Doc. 54), with prejudice, under Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 12(b)(1) and (12)(b)(6). Plaintiffs fail to show that an actual, justiciable controversy exists between them and the Finance Cabinet Secretary. Plaintiffs challenge only one law in this action, Senate Bill 185 (R.S. 2026) ("SB 185"), which does not provide the Finance Cabinet Secretary the authority to implement or enforce any of the bill's provisions related to the harm Plaintiffs allege in their Complaint.

Plaintiffs' Response to the Finance Cabinet Secretary's Renewed Motion to Dismiss appropriately states the "question unique to Secretary Johnson is narrow[,]"; however, Plaintiffs' framing of the issue and the request for prospective injunctive relief is not reflected by the actual language of SB 185. (Doc. 62, Page ID# 1850). The harms from SB 185, as alleged by the Plaintiffs, generally include funding and curriculum restriction allegations. Plaintiffs provide detailed and extensive citations related to the authority of the Finance Cabinet Secretary, but fail

to show that she is a proper party to this action. Senate Bill 185 does not provide the Finance Cabinet Secretary any enforcement authority, nor a role in the alleged university underfunding. Therefore, Plaintiffs' request for prospective injunctive relief as to the Finance Cabinet Secretary fails and her Renewed Motion to Dismiss should be granted.

Plaintiffs ultimately lack standing, depriving this Court of subject matter jurisdiction and warranting dismissal under Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 12(b)(1), and for the same reasons under Fed. R. Civ. P. 12(b)(6).

I. The Express Language in Senate Bill 185 Does Not Support Plaintiffs' Arguments.

Plaintiffs cite SB 185, Section 1(4) to argue the "express override of KRS 164A.560 reinforces the point: KSU's existing elected arrangement no longer controls the mandated EMARS [Enhanced Management Administrative Reporting System] reporting and reconciliation." (Doc. 62, Page ID# 1853.) Plaintiffs thereafter argue the Finance Cabinet's "preexisting system responsibilities supply the implementation role." *Id*. However, the express language of SB 185 does not support Plaintiffs' argument that emphasizes the "express override of KRS 164A.560." The bill does not include such an "express override" that overtly prohibits KSU from entirely proceeding under KRS 164A.560, as the university previously elected to do. Senate Bill 185 adds an additional reporting method regarding "all financial transactions," but with specific oversight from the Council on Postsecondary Education relating to the General Assembly's declared state of financial exigency.

As discussed in the Finance Cabinet Secretary's Renewed Motion, KRS 164A.560(1) provides that the "governing boards of the postsecondary educational institutions electing to perform in accordance with KRS 164A.555 to 164A.630 regarding the acquisition of funds, accounting, purchasing, capital construction, and affiliated corporations shall do so by

regulation." Under KRS 164A.560, ***before*** SB 185 was enacted, KSU previously implemented 745 KAR 1:035, Procurement Procedures, originally effective in 1992, to allow for the governing board to perform fiscal management functions in accordance with KRS 164A.555 to 164A.630. Therefore, under the authorization KRS 164A.560, KSU elected to perform a variety of financial management functions specified in KRS 164A.575, which range from negotiating contractual services to establishing procedures to foster volume purchasing. *See* KRS 164A.575. As such, prior to the enactment of SB 185, KSU had elected to perform expansive financial management functions.

Senate Bill 185 cannot be construed to be an "express override" of KSU's prior financial management system in a way that results in implementation authority for SB 185 by the Finance Cabinet Secretary. SB 185 adds to KSU's statutorily proscribed financial management of institutions of higher education, as set forth in KRS 164A.560, but SB 185 does not revoke the prior decision of the governing board of KSU to perform these financial management functions. *See* 745 KAR 1:035. Further, SB 185's requirement that KSU must report all financial transactions in EMARS most certainly does not transfer any of these authorities to the Finance Cabinet Secretary, as no such enforcement authority is set forth anywhere in the bill.

The enactment of SB 185 addressed KSU reporting by stating, "Notwithstanding KRS 164A.560, beginning no later than July 1, 2027, all financial transactions of Kentucky State University shall be reported and reconciled no less than monthly in the Enhanced Management Administrative Reporting System (EMARS)." SB 185, Section 1(4). The bill therefore added to KSU's financial transaction reporting mechanisms, but nowhere does it transfer enforcement authority to the Finance Cabinet Secretary. The financial enforcement and control that Plaintiffs claim are the source of their alleged harm were not transferred from KSU to the Finance Cabinet

Secretary by way of the bill in question. Senate Bill 185 does not provide the Finance Cabinet Secretary a role in its expenditure management, nor any oversight related to the General Assembly's declaration of a state of financial exigency.

Specifically, Section 1(2) of SB 185 "declares that a state of financial exigency exists at Kentucky State University for five (5) years from the effective date of this Act or until such a date that the General Assembly affirmatively declares, based upon the recommendation of the Council on Postsecondary Education, that the university's finances are stable, whichever occurs first." Again, the express language of SB 185 does not grant the Finance Cabinet Secretary any authority pertaining to the "state of financial exigency," and likewise the Finance Cabinet Secretary has no role or implementation authority specifically as to the harms Plaintiffs allege. Similarly, SB 185 does not provide the Finance Cabinet Secretary with any authority regarding the recommendation that "the university's finances are stable," that Section 1(2) requires.

Section 1(3)(a) of SB 185 further restricts KSU from entering "into any obligation or mak[ing] any expenditure costing twenty thousand dollars ($20,000) or more without prior approval of the Council on Postsecondary Education, including but not limited to any purchase, contract, or increase due to a personnel action." Again, the bill does not provide the Finance Cabinet Secretary with any role or authority regarding the financial restrictions and mandates it establishes. The spending threshold and requisite approvals do not involve the Finance Cabinet Secretary. Senate Bill 185, Section 1(3)(b), further explicitly requires KSU to "Provide a monthly report of university finances to the Council on Postsecondary Education *in the format requested by the council*." (Emphasis added). Thus, the bill does not even provide the Finance Cabinet Secretary with any authority regarding the format of the accompanying reports, much less any role pertaining to implementing or enforcing the reports' the actual contents.

Senate Bill 185 mandates that KSU must "Fully cooperate with the council in its exercise of the financial oversight granted to the council under this subsection[.]" *Id*. Nowhere in SB 185 is any enforcement authority provided to the Finance Cabinet Secretary regarding the bill's declaration of "financial exigency." As such, Plaintiffs detailed and extensive citations related to the authority of the Finance Cabinet Secretary fail to show that she is a proper party to this action. Although the sole claim against the Finance Cabinet Secretary is for prospective injunctive relief related to future actions stemming from SB 185, such necessarily fail as to the Finance Cabinet Secretary because she has no enforcement authority pertaining to the injuries alleged by Plaintiffs, specifically funding issues associated with KSU.

II. None Of The Cases From Other Jurisdictions This Court Instructed Be Addressed Overcome Plaintiffs' Lack Of Standing.

Nothing in *Coalition for Equity & Excellence in Md. Higher Educ. v. Md. Higher Educ. Comm'n*, 977 F.Supp.2d 507 (D. Maryland 2013), or *Denton v. Bd. of Governors for the State Univ. System of Fla.*, 2026 WL 1660092 (11th Cir. June 9, 2026), supports Plaintiffs having standing here as to the Finance Cabinet Secretary. In *Denton*, the plaintiffs sued to challenge the defendants' conduct that violated federal law and caused the plaintiffs' alleged injuries. *See Denton generally*, 2026 WL 1660092. Here, Plaintiffs challenge SB 185, legislation that does not provide the Finance Cabinet Secretary with any authority to enforce its provisions. The bill requires that KSU report all financial transactions by July 1, 2027, in EMARS, but it does not provide the Finance Cabinet Secretary any authority related to this reporting. Although the Finance Cabinet Secretary does have a role with respect to the system in question – EMARS – SB 185 does not provide her with any authority concerning the actual reporting, much less any enforcement authority related to the Plaintiffs' alleged harm. As further discussed in the Finance Cabinet Secretary's Renewed Motion, SB 185 does not grant her any authority concerning the

appropriation or funding in question. The General Assembly appropriates the funding, not the Finance Cabinet Secretary. *See* Ky. Const. § 46.

As for *Coalition for Equity & Excellence in Md. Higher Educ. v. Md. Higher Educ. Comm'n*, 977 F.Supp.2d 507 (D. Maryland 2013), the plaintiffs sued state officials responsible for funding and curricular decisions, and alleged violations of Title VI and the Equal Protection Clause of the Fourteenth Amendment due to chronic underfunding and segregative curricular policy decisions. 977 F.Supp.2d at 510-513. They alleged the State never met its commitments under the Office of Civil Rights (OCR) partnership agreement and cited "'OCR's failure to effectively and aggressively enforce relevant desegregation[,]'" and sought "'to prevent the State of Maryland from continuing to ... maint[ain] ... a dual system of education based on race.'" *Id.* at 519. As the Finance Cabinet Secretary argues in her Renewed Motion to Dismiss, and unlike the state officials sued in *Denton* who had responsibilities relevant to the plaintiffs' claims, here the Finance Cabinet Secretary has no enforcement authority concerning the harms Plaintiffs allege.

Plaintiffs cannot show any connection here to establish standing as to the Finance Cabinet Secretary. Senate Bill 185, the sole piece of legislation that Plaintiffs challenge, does not provide the Finance Cabinet Secretary with any authority to enforce its provisions. Plaintiffs' Response discusses *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1048-49 (6th Cir. 2015), and attempts to set forth an argument concerning "the last direct enforcer," and the rejection of "the premise that only the last direct enforcer may remain a defendant." (Doc. 62, Page ID# 1854.) However, such is inapplicable with respect to the Finance Cabinet Secretary because she is not provided ***any*** enforcement authority in SB 185. There is no traceability with respect to the harms alleged by Plaintiffs and the Finance Cabinet Secretary therefore has no link

to the harms in question. Thus, Plaintiffs lack standing as to the Finance Cabinet Secretary, leaving this Court without subject matter jurisdiction and warranting dismissal under Fed. R. Civ. P. 12(b)(1).

III. Plaintiffs Cannot Show Any Connection Between Their Alleged Harm And The Finance Cabinet Secretary, Warranting Dismissal.

As the Finance Cabinet Secretary contends in her Renewed Motion to Dismiss, Plaintiffs fail to show a justiciable connection between her and the only law they challenge, SB 185. Plaintiffs must articulate an actual, justiciable controversy that shows sufficient connection between the Finance Cabinet Secretary and the alleged harm. Although Plaintiffs only request prospective injunctive relief as to the Finance Cabinet Secretary, they still do not and cannot show any connection between the Finance Cabinet Secretary and SB 185 that has caused, is causing, or could cause them harm. As SB 185 does not provide the Finance Cabinet Secretary with any implementation authority, it likewise does not provide any authority to provide any prospective relief. There is simply no relief from the Finance Cabinet Secretary to provide to Plaintiffs, as SB 185 provides her no authority concerning the funding and curriculum issues in question.

IV. Immunity Bars Plaintiffs' Claims Against The Finance Cabinet Secretary.

The Finance Cabinet Secretary is immune from Plaintiffs' suit, as discussed further in her Renewed Motion to Dismiss. The Finance Cabinet Secretary has no authority with respect to the funding in question, as the General Assembly appropriates funds. *See* KY. CONST. § 46. Again, Plaintiffs' Complaint requests prospective injunctive relief as to the Finance Cabinet Secretary, but to the extent any state law claims raised in the Complaint could be construed against her, she is immune under the doctrine of sovereign immunity, which bars such state-law claims filed against the Finance Cabinet Secretary in federal court, whether they are for injunctive or

monetary relief. *Ernst v. Rising*, 427 F.3d 351, 368 (6th Cir. 2005). The Commonwealth has not waived this immunity and the Finance Cabinet Secretary has not consented to suit. Thus, these claims are barred as to the Finance Cabinet Secretary.

Regarding Plaintiffs' 42 U.S.C. § 1983 claims, to the extent such are alleged as to the Finance Cabinet Secretary, sovereign immunity bars any such claim for monetary relief. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71, n. 10 (1989). Any claim for injunctive relief under § 1983 as to the Finance Cabinet Secretary should also be dismissed because such do not allege the Finance Cabinet Secretary has taken or could take any action that should be redressed or enjoined, under SB 185 or otherwise.

V. The *Ex Parte Young* Exception Does Not Save Plaintiffs' Claims Against The Finance Cabinet Secretary.

The *Ex Parte Young* exception does not apply in this case. 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.

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). 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, there is no enforcement connection that exists or may arise from Plaintiffs' alleged harms set forth in SB 185. There is no realistic possibility that the Finance Cabinet Secretary will take legal or administrative action against Plaintiffs' interests. Under SB 185, the Finance Cabinet Secretary has no enforcement authority, as the bill does not give her any authority with respect to the funding issues in question. The Finance Cabinet Secretary has no connection with any alleged injury under SB 185, because under the bill she is provided no enforcement authority related to the funding issues complained of by the Plaintiffs. Senate Bill 185 requires all financial transactions of KSU to be reported and reconciled in EMARS but provides no authority to the Finance Cabinet Secretary. Further, SB 185 does not expressly bar KSU from proceeding under the election to "perform financial management functions," as set forth in 745 KAR 1:035. Senate Bill 185 does, however, require certain approvals and input from the Council on Postsecondary Education, but none of that power is provided to the Finance Cabinet Secretary. The various statutes and authority provided to the Finance Cabinet Secretary that Plaintiffs mention in their response do not show the connection that *Ex Parte Young* requires. Plaintiffs therefore fail to show that the Finance Cabinet Secretary is a proper party to this action.

The Finance Cabinet Secretary discussed *Papasan v. Allain*, 478 U.S. 265 (1986), in her Renewed Motion to Dismiss as support for how *Ex Parte Young* does not apply in the instant action. As the Court stated in *Papasan*, "… *Young* applies only where the underlying authorization upon which the named official acts is asserted to be illegal." 478 U.S. at 276. In

addition, the Supreme Court has "described certain types of cases that formally meet the *Young* requirements of a state official acting inconsistently with federal law but that stretch that case too far and would upset the balance of federal and state interests that it embodies." *Id.* Specifically, "*Young* has been focused on cases in which a violation of federal law by a state official is ongoing as opposed to cases in which federal law has been violated at one time or over a period of time in the past, as well as on cases in which the relief against the state official directly ends the violation of federal law as opposed to cases in which that relief is intended indirectly to encourage compliance with federal law through deterrence . . . ." *Id.* at 277-78.

Here, Plaintiffs do not allege any ongoing violation of federal law by the Finance Cabinet Secretary. They challenge SB 185, state legislation, which does not provide the Finance Cabinet Secretary with any authority to enforce its provisions. The Finance Cabinet Secretary is not violating and cannot violate SB 185 because there are no actions for her to take related to the alleged harms. For the same reason, the Finance Cabinet Secretary cannot violate any federal law by implementing or enforcing SB 185 – because the bill does not grant her authority to implement or enforce its provisions. Plaintiffs request solely prospective injunctive relief as to the Finance Cabinet Secretary, allege no acts of the Finance Cabinet Secretary to be illegal, and cannot show that she could take any acts related to the harms alleged in SB 185. The Court should dismiss Plaintiffs' claims against the Finance Cabinet Secretary.

VI. The Franklin Circuit Court Opinion Is Persuasive.

To the extent Plaintiffs' argument in the Response to the Renewed Motion to Dismiss addresses the Finance Cabinet Secretary's discussion of the Franklin Circuit Court's dismissal of Plaintiffs' related lawsuit, such arguments likewise fail in this Court. The state court decision's

sound reasoning for dismissal applies here, as Plaintiffs also lack standing and therefore deprive the Court of subject matter jurisdiction.

Plaintiffs attempt to claim the Franklin Circuit Court's conclusion "rested on a narrower description of SB 185… ." (Doc. 62, Page ID# 1856.) Such an argument is without merit. The Franklin Circuit Court did address the relevant statutory framework and noted "The Secretary's authority, pursuant to KRS 42.012, declares the Finance Cabinet Secretary as the 'chief financial officer of the state', but this does not, on its own, make her a proper party to this action. More specifically, SB 185 provides no role nor authority to implement or enforce any provisions." *Student Doe 1, et al. v. Comm. of Ky., et al*., No. 26-CI-587, Order at 5 (Franklin Cir. Ct. June 30, 2026). Plaintiffs may not agree with the Franklin Circuit Court's ruling dismissing the Finance Cabinet Secretary, but the state court did address the relevant statutory framework and found, "The general authority afforded the Secretary under KRS 42.012 is not sufficient to make her a proper party to this action based on the language in SB 185." *Id*., at 6. Accordingly, dismissal of the Finance Cabinet Secretary is likewise warranted in this action.

Plaintiffs fail to show an actual, justiciable controversy with respect to SB 185, as it does not grant the Finance Cabinet Secretary enforcement authority. As the Franklin Circuit Court stated, and likewise applicable here, "There is no conduct undertaken by the Finance Cabinet Secretary that this Court can redress." *Id*. Plaintiffs lack standing to bring their claims against the Finance Cabinet Secretary in this case. Consequently, the Court should dismiss Plaintiffs' claims against the Finance Cabinet Secretary for lack of subject matter jurisdiction.

VII. Plaintiffs Fail To State A Claim For Relief As To The Finance Cabinet Secretary.

For the same reasons discussed throughout this Reply and in the Renewed Motion to Dismiss, the Court should dismiss Plaintiffs' claims as to the Finance Cabinet Secretary for

failure to state a claim upon which it can grant them relief. Plaintiffs name the Finance Cabinet Secretary as a Defendant in her official capacity "for prospective declaratory and injunctive relief relating to EMARS, statewide fiscal controls, finance-related implementation, and any Cabinet role in enforcing the challenged fiscal provisions of SB 185." (Doc. 1, Page ID# 13). Senate Bill 185 does not grant the Finance Cabinet Secretary the enforcement authority regarding its provisions. There is no prospective injunctive relief for the Court to enjoin with respect to the Finance Cabinet Secretary. *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.").

As such, there is no action of the Finance Cabinet Secretary for which the Court can grant Plaintiffs relief.

CONCLUSION

Senate Bill 185 does not provide the Finance Cabinet Secretary with any enforcement authority regarding its provisions. Sovereign immunity applies and the *Ex Parte Young* exception does not. Plaintiffs fail to raise any actual case or controversy as to the Finance Cabinet Secretary and lack standing, leaving this Court without subject matter jurisdiction. Plaintiffs also fail to state a claim for relief against the Finance Cabinet Secretary. Therefore, the Court should dismiss the Finance Cabinet Secretary from this action under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2026, I electronically filed the foregoing pleading via the Court's CM/ECF system, causing all counsel of record to be served.

/s/ Shan J. Dutta
Shan J. Dutta