26-CI-00587

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

CIVIL ACTION No. 26-CI-587

STUDENT DOE 1, et al., **PLAINTIFFS**

vs.

COMMONWEALTH OF KENTUCKY, et al., **DEFENDANTS**

ORDER

This matter is before the Court upon Defendant, Governor Andy Beshear's *Motion to Dismiss;* Defendant, Finance and Administration Cabinet Secretary Holly McCoy Johnson's *Motion to Dismiss*; and Defendant, Commissioner of the Department of Revenue Thomas B. Miller's *Motion to Dismiss*. This matter was called before the Court on Wednesday, June 17, 2026 during the Court's regular civil motion hour. Upon review of the parties' briefs and papers, and after being sufficiently advised, this Court hereby **GRANTS** Defendants Beshear, Johnson, and Miller's *Motions*.

STANDARD OF REVIEW

Under Kentucky law, when a court considers a motion to dismiss under Civil Rule 12.02, "the pleadings should be liberally construed in a light most favorable to the plaintiff and all allegations taken in the complaint to be true." *Gall v. Scroggy*, 725 S.W.2d 867, 869 (Ky. Ct. App. 1987) *citing Ewell v. Central City,* 340 S.W.2d 479 (Ky. 1960). "The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Mims v. W.S. Agency, Inc.*, 226 S.W.3d 833, 835 (Ky. Ct. App. 2007) *quoting James v. Wilson*, 95

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S.W.3d 875, 883-84 (Ky. Ct. App. 2002). In *D.F.Bailey, Inc. v. GRW Engineers Inc.*, 350 S.W.3d 818 (Ky. Ct. App. 2011), the Kentucky Court of Appeals discussed a trial court's standard of review when ruling on a motion to dismiss. "[T]he question is purely a matter of law. […] Further, it is true that in reviewing a motion to dismiss, the trial court is not required to make any factual findings, and it may properly consider matters outside of the pleadings in making its decision." *Id*. at 820 (internal citations omitted).

ANALYSIS

I. Governor Andy Beshear

Plaintiffs must possess a judicially recognizable interest in the subject matter of the action, and must meet three requirements: (1) injury, (2) causation, and (3) redressability. Plaintiffs fail to meet the three requirements with regard to the suit against Governor Andy Beshear.

In a declaratory judgment action, an actual controversy occurs when a defendant's position would "impair, thwart, obstruct or defeat plaintiff in his rights." *Commonwealth v. Kentucky Retirement Systems*, 396 S.W.3d 833, 839 (Ky. 2013) (quoting *Revis v. Daugherty,* 287 S.W. 28, 29 (Ky. 1926)). When making a state official a defendant an action that alleges a statute is unconstitutional, that official must possess a connection to the enforcement of the action, but "'[g]eneral 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)).

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In order for a state officer to be enjoined, that state officer must have responsibility for the enforcement or execution of the statute in question. A statute in issue must vest enforcement power within the state official. Here, Plaintiffs assert that, under Section 81 of the Kentucky Constitution, the Governor has a general duty to take care that the laws be faithfully executed. Additionally, SB 185 mentions the Governor twice in the emergency clause: the Governor is to receive a quarterly update from the Council on Postsecondary Education on the financial status of Kentucky State University, and an annual update from the Council on Postsecondary Education on the debts and collection efforts reported by KSU to the Council. Without enforcement power, Plaintiffs lack standing with regard to the suit against the Governor. The Governor cannot cause Plaintiffs' injuries. *see Kasey v. Beshear*, 626 S.W.3d 204 (Ky. App. 2021).

Plaintiffs must raise a concrete and particularized injury that is caused by the Governor, and that injury must be actual or imminent and distinct and palpable. A prospective claim, such as the Governor taking some action related to KSU's Boad of Regents, is not an action that is causing or will cause injury to Plaintiffs. The provisions in SB 185 that relate to the Governor does not give the Governor authority to enforce or implement any of the provisions of SB 185; the provisions only provide the Governor with updates regarding the financial status of KSU and updates on the debts and collection efforts.

Moreover, the general duty under Section 81 to take care that the laws be faithfully executed are not sufficient to make him proper party in this action. A general duty to enforce state laws does not make the Governor a proper defendant in every action that attacks the constitutionality of a state statute. If an injury occurs, it must be fairly traceable

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to the Governor's conduct, or conduct that the Governor could undertake pursuant to SB 185. Based upon the Governor's role in SB 185, there would be no conduct done by the Governor for this Court to redress. There is no action that the Governor has taken under SB 185, nor can he take any action under SB 185 that could injure Plaintiffs.

The Governor's role under SB 185 is passive, in that he only receives information about the provisions that other entities have the power to implement and enforce. SB 185 is silent beyond the Governor's reception of the two updates from the Council and does not grant the Governor any authority to take action with regard to either update.

At issue before the Court is SB 185. SB 185 does not reference nor amend KRS 164.011 or KRS 164.312, which gives the Governor statutory authority to appoint and remove members of the Council on Postsecondary Education and the Kentucky State University Board of Regents. The general appointment and removal authority under the above-named statutes is not sufficient to establish standing in this case challenging SB 185. Ultimately, the acts that present a question of harm to the Plaintiffs are acts reserved for the Council and the Board.

Standing is a threshold jurisdictional issue, and lack of subject matter jurisdiction requires dismissal. The Court believes that Plaintiffs have failed to allege that any action of the Governor has caused or could cause any injury to the Plaintiffs with regard to implementation and execution of SB 185. Accordingly, there exists no claim upon which relief can be granted as to the Governor.

II. Finance and Administration Cabinet Secretary Holly McCoy Johnson

In relevant part, SB 185 states: "Notwithstanding KRS 164A.560, beginning no later than July 1, 2027, all financial transactions of Kentucky State University shall be

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reported and reconciled no less than monthly in the Enhanced Management Administrative Reporting System (EMARS)." The bill sets forth various expenditure related roles to be conducted by the Council on Postsecondary Education. However, SB 185 does not specifically refer to the Finance Cabinet Secretary and does not provide the Finance Cabinet Secretary with any role or authority to enforce or implement its provisions.

In a similar vein to the Governor's analysis, the Finance Cabinet Secretary cannot or could not cause injury to the Plaintiffs. 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.

To meet the standards for standing, Plaintiffs must allege an actual, justiciable controversy, and there must be a concrete injury against the defendant that Plaintiffs may seek recovery for. Under the Declaratory Judgment Act, a court's role is to settle controversies and afford relief to Plaintiffs. The actual controversy occurs when, here, the Finance Cabinet Secretary's position would "impair, thwart, obstruct or defeat" the rights of the Plaintiffs. *Commonwealth v. Ky. Ret. Sys*., 396 S.W.3d 833, 839 (Ky. 2013) (quoting *Revis v. Daugherty*, 287 S.W. 28, 29 (Ky. 1926)).

With regard to an action that alleges a statute is unconstitutional, the state official acting as defendant "must have some connection with the enforcement of the act[.]" *Ex Parte Young*, 209 U.S. 123, 157 (1908). The Finance Cabinet Secretary, notably absent in any way in the bill at issue in this case, has no enforcement role associated with SB 185.

Plaintiffs assert that the Finance and Administration Cabinet is implicated by SB 185's fiscal controls and finance related implementation obligations, but SB 185 assigns

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various fiscal roles to the Council on Postsecondary Education. 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. There must be an injury that is fairly traceable to any conduct of the Finance Cabinet Secretary, or that there exists some assertion that she has acted or could act unlawfully under SB 185. There is no conduct undertaken by the Finance Cabinet Secretary that this Court can redress. Thus, Plaintiffs fail to establish that an actual, justiciable controversy exists between Plaintiffs and the Finance Cabinet Secretary. Therefore, Plaintiffs lack standing as to the Finance Cabinet Secretary.

Consequently, this Court lacks subject matter jurisdiction.

III. Commissioner of the Department of Revenue Thomas B. Miller

Plaintiffs Name the Commissioner as a Defendant in his official capacity and allege that he and the Department of Revenue are "implicated by SB 185's student-debt referral, collection, and tax-refund-interception provisions. To begin, SB 185 does not provide the Commissioner or the Department with any new authority that it did not already have prior to SB 185.[1] The debt-referral provisions of SB 185 mandate acts to be performed by KSU; that language, found in SB 185, Section 4(1) states: "Kentucky State University shall: (a) Diligently attempt to collect debts and refer all debts … to the Department of Revenue." The authority to refer debts, then, rests with KSU. SB 185 does not give authority to Commissioner Miller to refer debts, and it follows that no court action against the Commissioner could redress any harm against the Plaintiffs as a result of the debt-referral activities under SB 185.

[1] KRS 45.238 and KRS 131.565 require institutions such as KSU to certify their debts to the Department. There are also several other statutory provisions that authorize the Commissioner and the Department to perform collection and tax-refund-intercept activities on behalf of KSU. These statutes are not at issue.

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SB 185 does not create any new obligations on the part of the Commissioner or the Department to collect debts on behalf of state agencies such as KSU. Rather, independent authority for collection activities exists in other statutes, such as KRS 45.238. Under KRS 45.238, the Department of Revenue had the necessary authority to collect debts that were certified by an agency or local government, including universities. KRS 45.238 provides that the Department must engage in collection activities on behalf of public agencies and institutions. Regardless of the constitutionality of SB 185, the Department would still have the responsibility to collect debts on behalf of KSU.

Furthermore, the Department had pre-existing statutory authority to withhold the Kentucky individual income tax refund that would otherwise be due to a taxpayer indebted to a state institution under KRS 131.560. Under that statute, KSU must:

> furnish a list of all liquidated debts due to the agency for which withholding is required for individual income tax refunds due to be paid to the debtor of the claimant agency. . . The claimant agency must have made reasonable efforts to collect such debt, and must have provided the debtor the opportunity for appeal and formal hearing as provided by statute, administrative regulation or local ordinance.

KRS 131.565(2). Even before SB 185 was enacted, the Department had a statutory duty to withhold the individual tax income refunds. This authority does not derive from SB 185 nor does it enhance any authorities that the Department had before introduction of the bill. Even if the Commissioner were to be enjoined from performing the debt-collection or tax-intercept provisions found in SB 185, he would have independent authority to perform those duties regardless.

Any injuries that Plaintiffs may or may not have cannot demonstrate that they were harmed by the Commissioner as a result of SB 185, nor can any such injuries be redressable even if the challenged statute was void. It is because of these independent authority sources

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that this Court lacks subject matter jurisdiction and must dismiss the Commissioner from this action.

CONCLUSION

WHEREFORE, Defendant, Governor Andy Beshear's *Motion to Dismiss* is **GRANTED**; Defendant, Finance and Administration Cabinet Secretary Holly McCoy Johnson's *Motion to Dismiss* is **GRANTED**; and Defendant, Commissioner of the Department of Revenue Thomas B. Miller's *Motion to Dismiss* is **GRANTED**.

This order is final and appealable and there is no just cause for delay.

SO ORDERED, this ___ day of June, 2026.

/s/ JUDGE THOMAS DAWSON WINGATE
electronically signed
6/29/2026 3:09:37 PM ET

THOMAS D. WINGATE
Judge, Franklin Circuit Court

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