COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
CASE NO. 2026-CA-0946
Electronically Filed

STUDENT DOE 1, *et al.* **APPELLANTS/MOVANTS**

v.

COMMONWEALTH OF KENTUCKY, *et al.* **APPELLEES/RESPONDENTS**

COMMISSIONER MILLER'S RESPONSE TO APPELANTS' MOTION TO RELATE AND HEAR APPEALS TOGETHER OR CONSOLIDATE; EXPEDITE RECORD AND BRIEFING; AND RECOMMEND TRANSFER UNDER RAP 17(F)

Appellee, Thomas B. Miller, in his official capacity as Commissioner of the Department of Revenue ("Commissioner Miller"), submits this Response to Appellants' motion to relate and hear appeals together or consolidate, expedite record and briefing, and recommend transfer under Rule of Appellate Procedure ("RAP") 17(F). The Court should deny the motion to consolidate Appellants' separate appeals and transfer both appeals to the Kentucky Supreme Court. The Court should deny the motion to consolidate because Appellants separately appeal two Franklin Circuit Court Orders entered nearly two months apart that applied completely different standards, one of which reached the merits of Appellants' claims Order, the other of which did not (the Order dismissing Commissioner Miller). Further, the Court should deny the motion to transfer because Appellants have a pending motion to transfer in the Kentucky Supreme Court, and Appellants fail to show that these appeals cannot proceed through the normal appellate process and that the Court of Appeals cannot adequately address the questions at issue.

I. Factual And Procedural Background.

Appellants filed an original motion for a temporary injunction in Franklin Circuit Court on May 21, 2026. On June 24, 2026, Appellants filed a supplemental motion for temporary injunctive

relief. The Franklin Circuit Court denied the original motion by Order issued June 25, 2026. On June 30, 2026, the circuit court granted Commissioner Miller's motion to dismiss, dismissing the Commissioner as a party, with prejudice, and holding that Appellants lacked standing as to Commissioner Miller and that the court lacked subject matter jurisdiction. On July 6, 2026, after Commissioner Miller was no longer a party because of the court's dismissal, the circuit court denied Appellants' supplemental motion for temporary injunctive relief.

On July 6, 2026, Appellants filed an interlocutory appeal with this Court seeking relief from both the June 25 and July 6, 2026, circuit court orders. Having already been dismissed from the underlying suit, Commissioner Miller was not a proper party to the interlocutory appeal, and Appellants did not list Commissioner Miller as a party within the caption or certificate of service of their emergency motion. Appellants, however, subsequently filed a motion to "correct" the parties listed in the caption and add Commissioner Miller as a party. This Court denied Appellants' prior interlocutory appeal on August 18, 2026. *Student Doe 1, et al. v. Commonwealth of Kentucky, et al.*, No. 2026-CA-0834-I (Ky. App. 2026). In its Order denying the interlocutory appeal, the Court stated that because the Governor, the Secretary of the Finance and Administration Cabinet, and the Commissioner of the Department of Revenue had been dismissed below and were not parties *sub judice*, the Court would not consider the arguments made in their tendered responses to the interlocutory appeal. *Id.*, at 3.

Subsequently, the circuit court granted the remaining Defendants' (Appellees/Respondents herein) motions to dismiss and denied Appellants' motion for declaratory judgment. *Student Doe 1, et al. v. Commonwealth of Kentucky et al.*, Order, Civil Action No. 26-CI-00587 (Franklin Cir. Ct. Aug. 24, 2026). In that Order, the court treated the motions to dismiss as motions for summary judgment and applied that standard under Kentucky Rule of Civil Procedure ("CR") 56.01. *Id.*, at

3-4. The court also ruled on the merits of Appellants' action, ruling that passage of Senate Bill 185 (R.S. 2026) did not violate the provisions of the Kentucky Constitution that Appellants raised in their Complaint. *See id. generally*. Appellants then filed a notice of appeal of the circuit court's Order dismissing the case under the summary judgment standard as to the parties that had not been previously dismissed under the standards governed by CR 12.02(a) and CR 12.02(f). *See Student Doe 1, et al. v. Commonwealth of Kentucky et al.*, Notice of Appeal, Franklin Cir. Ct., Civil Action No. 26-CI-00587, Aug. 24, 2026. Appellants then a combined motion to relate and hear appeals together or consolidate, expedite record and briefing, and recommend transfer under RAP 17(F).

II. The Court Should Deny Appellants' Motion to Consolidate or Hear the Appeals Together.

This Court should deny Appellants' motion to consolidate their separate appeals and transfer both appeals to the Kentucky Supreme Court because they appeal two separate Orders of the Franklin Circuit Court that applied different standards, and the Order entered later in time reached the merits of the claims, unlike the earlier Order dismissing the Governor, Finance Secretary, and Revenue Commissioner as parties.

In its June 30, 2026, Order, the circuit court dismissed the Governor, the Finance Secretary, and the Commissioner of the Department of Revenue under CR 12.02(a) and CR 12.02(f), ruling Appellants lacked standing and failed to state a claim for relief as to those parties. *See Student Doe 1, et al. v. Commonwealth of Kentucky et al.*, Order, Civil Action No. 26-CI-00587 (Franklin Cir. Ct. June 30, 2026). In so ruling, the circuit court applied the appropriate standards for standing and failure to state a claim for relief. *Id.* The court did not apply the summary judgment standard under CR 56.01 and did not reach the merits of any of Appellants' claims. *See* i*d.*

Nearly two months later, the circuit court dismissed the case, applying the summary judgment standard. *Student Doe 1, et al. v. Commonwealth of Kentucky et al.*, Order, Civil Action

No. 26-CI-00587 (Franklin Cir. Ct. Aug. 24, 2026). After finding Appellants had standing as to the remaining Appellees – nearly two months after the court ruled Appellants *did not* have standing as to Commissioner Miller – the court ruled on the merits of Appellants' claims and held Senate Bill 185 (R.S. 2026) and its passage did not violate the Kentucky Constitution. *See id.*

Appellants ask this Court to consolidate or hear together their separate appeals of separate Orders that were entered nearly two months apart, that apply different standards, one of which reaches the merits, the other of which does not. Although the two Orders were entered in the same underlying action, they do not involve substantially identical issues. The court's Order dismissing the Governor, the Finance Secretary, and the Revenue Commissioner on June 30, 2026, applied the standard for dismissal under CR 12.02(a) for lack of subject matter jurisdiction due to lack of standing and the standard for dismissal under CR 12.02(f) for failure to state a claim upon which relief can be granted. The circuit court did not reach the merits of any of Appellants' claims.

Nearly two months after dismissing the Governor, the Finance Secretary, and the Revenue Commissioner, the circuit court dismissed the case under the summary judgment standard in CR 56.01. In that Order, the court found Appellants had standing as to the remaining parties, based on facts pertaining to those parties and the legislation at issue, Senate Bill 185 (R.S. 2026), that were different than the facts relating to the Governor, the Finance Secretary, and the Revenue Commissioner and the same bill. Further, in the time between the circuit court's dismissal of the Governor, the Finance Secretary, and the Department of Revenue Commissioner, the remaining Defendants and Appellants engaged in briefing, including merits briefing, and made arguments that did not involve the Governor, the Finance Secretary, or the Department of Revenue Commissioner, because they had already been dismissed from the case and were no longer parties. The Court should deny Appellants' motion.

The Court should also deny Appellants' motion to transfer this case to the Kentucky Supreme Court. First, Appellants filed a motion in the Kentucky Supreme Court as to their appeal of the circuit court's August 28, 2026, Order (currently before the Court of Appeals at Case. No. 2026-CA-1068), and that motion is pending. The Supreme Court should have the opportunity rule on that motion. Moreover, Appellants have not shown that these appeals cannot proceed through normal appellate process and that the Court of Appeals cannot adequately address the questions at issue.

CONCLUSION

For the foregoing reasons, Commissioner Miller respectfully requests that this Court deny Appellants' motion.

Respectfully submitted,

/s/ *Catherine A. Poole*
Catherine A. Poole
Bethany Atkins Rice
Office of Legal Service for Revenue
P.O.Box 423
Frankfort, KY 40601
(502) 782-8833
catherine.poole@ky.gov
bethany.atkinsrice@ky.gov

Counsel for Respondent,
Thomas B. Miller, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2026, I electronically filed the foregoing Response via the Clerk's electronic filing system, causing all counsel of record to be served. I further served the following by U.S. Mail, first-class and postage pre-paid: Judge Thomas Wingate, Franklin Circuit Court, 222 St. Clair Street, Frankfort, Kentucky 40601.

/s/ *Catherine A. Poole*
Catherine A. Poole