IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION

SAMANTHA WIGGINTON, *et al*., Plaintiffs, v. COMMONWEALTH OF KENTUCKY, *et al*., Defendants.	Civil Action No. 3:26-cv-00035-CHB **PLAINTIFFS' RESPONSE IN OPPOSITION TO KENTUCKY STATE UNIVERSITY BOARD OF REGENTS, TAMMI DUKES, AND KOFFI C. AKAKPO'S MOTION TO DISMISS**

INTRODUCTION

The KSU Defendants' Motion to Dismiss should be denied because it depends on an artificial separation between the state policy Plaintiffs challenge and the university officials charged with carrying that policy out. Kentucky State University Board of Regents, Tammi Dukes, in her official capacity as Chair of the Board, and Dr. Koffi C. Akakpo, in his official capacity as President of Kentucky State University [hereinafter collectively, the "KSU Defendants"], are not sued as private wrongdoers, and they are not sued for damages for ordinary academic judgment. They are sued because Senate Bill 185 [hereinafter "SB 185"] makes the Board and President direct implementers of the very program-review, teach-out, student-enrollment, faculty, financial-reporting, and mission-transition provisions that Plaintiffs allege violate Title VI, Equal Protection, *United States v. Fordice*, 505 U.S. 717 (1992), *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), and related land-grant/equitable obligations.

The Motion begins from a premise that is not even within the Complaint. Plaintiffs do not ask this Court to punish KSU for being the historically underfunded 1890 land-grant HBCU. Nor do Plaintiffs claim that the Board, Chair Dukes, or President Akakpo alone created the Commonwealth's decades-long Title VI/*Fordice* problem. Plaintiffs allege that Kentucky created

and maintained a dual land-grant system, received repeated federal notice of KSU-related civil-rights obligations, failed to make KSU whole after the September 18, 2023, USDA/USDOE notice, and then imposed a KSU-only emergency restructuring statute that can only become enforced through KSU's Board, Chair, President, and other implementation officials. *Compl.* ¶¶1-22, 51-55, 66-180, 311-70.

A federal court may enjoin state officials and state instrumentalities from implementing an allegedly unconstitutional or federally unlawful state policy even where those officials did not personally draft the law, personally appropriate the funds, or personally harbor discriminatory animus. *Ex parte Young*, 209 U.S. 123, 157 (1908); *Verizon Md. Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 645 (2002). If Defendants' theory were correct, a State could evade prospective federal relief by assigning implementation to the very public institution harmed by the State's discriminatory system and then arguing that the institution is merely following orders. That is not the law.

The KSU Defendants also repeat several arguments that Plaintiffs have already answered in prior Responses, including third-party standing, Article III injury, traceability, redressability, the effect of teach-out and SACSCOC language, the significance of SB 185's polytechnic mission change, Title VI and Equal Protection pleading, *Fordice* traceability, land-grant-related declaratory and equitable relief, due process, class-certification prematurity, and dismissal with prejudice. Plaintiffs adopt and incorporate, as if outlined in its entirety herein, the positions and arguments outlined in Plaintiffs' Response in Opposition to the Commonwealth of Kentucky, Attorney General Russell Coleman, Council on Postsecondary Education, Dr. Aaron Thompson, and Madison Silvert's Motion to Dismiss, and Plaintiffs' Response in Opposition to Defendant Governor Beshear's Motion to Dismiss, to the extent the KSU Defendants raise or incorporate those same arguments.

This Response addresses the KSU-specific issues that remain. Those issues are straightforward. First, Plaintiffs have standing because they allege their own concrete educational, programmatic, accreditation, degree-value, reliance, alumni, access, and equal-opportunity injuries, which are directly traceable to the KSU Defendants' implementation duties. Second, prospective relief against the Board, Chair, and President would redress those injuries by stopping or conditioning program closures, teach-out submissions, faculty actions, student enrollment restrictions, and mission transition steps until federal law is satisfied. Third, Title VI, Equal Protection, *Fordice, Arlington Heights*, retaliation, land-grant, due-process, state-law, and equitable claims are adequately pleaded, or at a minimum, curable by amendment. The Motion to Dismiss should, therefore, be denied in its entirety.

LEGAL STANDARD

To the extent the KSU Defendants mount a facial Rule 12(b)(1) attack, the Court accepts the Complaint's material allegations as true and construes them in Plaintiffs' favor. *Gentek Bldg. Prods., Inc. v. Sherwin-Williams Co*., 491 F.3d 320, 330 (6th Cir. 2007); *Cartwright v. Garner*, 751 F.3d 752, 759-60 (6th Cir. 2014). At the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). Traceability is not the proximate cause, and Defendants need not be the sole cause or final link in the causal chain. *Bennett v. Spear*, 520 U.S. 154, 168-69 (1997); *Parsons v. U.S. Dep't of Justice*, 801 F.3d 701, 713-15 (6th Cir. 2015). Redressability requires a likely relief from a favorable order; it does not require a guarantee that a single injunction will cure every injury. *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982); Parsons, 801 F.3d at 715.

Under Rule 12(b)(6), the Court accepts well-pleaded facts as true, draws reasonable inferences for Plaintiffs, and asks only whether the Complaint plausibly states entitlement to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-70 (2007); *Handy-Clay v. City of Memphis*, 695 F.3d 531, 538 (6th Cir. 2012). The Court

may not accept Defendants' preferred narrative, decide that teach-outs will be adequate, weigh competing explanations for KSU's financial condition, or resolve legislative and administrative motive at the pleading stage. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158-61 (2014).

RELEVANT FACTS AND IMPLEMENTATION POSTURE

The relevant allegations are outlined in the Complaint and in Plaintiffs' prior Responses. Kentucky maintained a dual land-grant higher-education structure in which UK served as the 1862 institution, and KSU served as Kentucky's 1890 institution because Black students were excluded from the white land-grant system. *Compl.* ¶¶57-65. OCR notified Kentucky in 1981 that it was operating a racially segregated system of higher education in violation of Title VI, and Kentucky's successive desegregation plans treated enhancement of KSU, including its mission, programs, funding, facilities, land-grant work, and administration, as a continuing remedial obligation. *Compl*. ¶¶66-114.

The 2009 Final Report is central because it identifies KSU's status as Kentucky's historically Black university and its 'unique mission as the Commonwealth's small, liberal arts university' as features Kentucky and CPE were required to account for and enhance, not as defects to be eliminated. *Compl*. ¶¶8-11, 104-08. The September 18, 2023, USDA/USDOE notice then identified at least $172,135,168 in additional support that should have been available to KSU, explained that the shortfall harmed infrastructure, student services, and research competitiveness, and urged a substantial state allocation and forward-looking matching commitment without offsets. *Compl.* ¶¶12-16, 116-24.

Kentucky did not make KSU whole before enacting SB 185. *Compl*. ¶¶125-28. Instead, SB 185 declares a five-year state of financial exigency at KSU, imposes CPE prior approval for obligations or expenditures of $20,000 or more, requires program review by the KSU Board in consultation with CPE, allows CPE to direct amendments to KSU's program and teach-out

submissions, caps KSU at no more than ten academic areas of study for five academic years, commands KSU to close programs approved for closure by SACSCOC, authorizes termination of university employees including tenured employees, imposes student debt-enrollment restrictions, and rewrites KSU's statutory mission as a residential polytechnic institution. *Compl.* ¶¶129-45; SB 185.

The KSU Defendants are direct implementers of those provisions. The Board of Regents is KSU's governing body and, under SB 185, is responsible for academic program review submissions, recommendations on which programs to maintain or close, teach-out planning, and related implementation decisions. *Compl.* ¶51. Chair Dukes is sued in her official capacity to ensure that the Board can implement prospective relief. *Compl.* ¶52. President Akakpo is sued in his official capacity to effectuate relief relating to program review, admissions, student enrollment, personnel authority, financial reporting, and other SB 185 implementation duties. *Compl.* ¶53. Plaintiffs seek to restrain state-imposed action that injures KSU stakeholders and KSU's statutory mission, and the official-capacity Defendants are sued for prospective declaratory and injunctive relief to prevent implementation of unlawful state policies and to require lawful compliance with federal and state obligations. *Compl*. ¶¶54-55.

Public implementation facts confirm, rather than defeat, imminence. The KSU Defendants' Motion states that KSU prepared and submitted its program proposal to CPE before the June 1, 2026, statutory deadline. *Mot*. at 3. KSU publicly announced that the Board approved the academic plan required under SB 185, authorized delivery to CPE, and moved KSU into the next phase of work under SB 185's five-year transition. *See* *Kentucky State University, Board of Regents advances Kentucky State University academic plan under Senate Bill 185* (May 28, 2026). CPE then publicly announced that it approved six newly defined areas of study, approved twenty-eight continuing academic programs, approved closure of four undergraduate programs - music education, music performance, political science, and child development and family studies

- and approved a financial obligation and expenditure approval policy for KSU. *See Ky. Council on Postsecondary Education, CPE approves six areas of study for Kentucky State University* (June 12, 2026). KSU also publicly stated that FY27 planning used conservative assumptions that enrollment could decline approximately twenty percent by spring 2027, and that those assumptions account for SB 185's balance-related enrollment restriction. *See Kentucky State University, A Clear View of Our Work Ahead* (June 12, 2026). These facts make Defendants' "speculative injury" argument untenable.

ARGUMENT

I. PLAINTIFFS HAVE ARTICLE III STANDING AGAINST THE KSU DEFENDANTS.

A. ***Plaintiffs assert their own injuries, not only KSU's institutional rights.***

The KSU Defendants adopt the Commonwealth/CPE standing and third-party-standing arguments. *Mot*. at 8 n.4. Plaintiffs have already addressed those arguments and adopt the corresponding portions of their prior Responses. The argument fails here for the same reason it fails there: Plaintiffs do not sue merely because they prefer a different funding policy for KSU. They sue because they are current students, admitted or prospective students, alumni, and members of the KSU community whose educational opportunities, program pathways, faculty relationships, accreditation security, degree value, alumni network, land-grant/HBCU identity, and equal access to state higher-education benefits are directly burdened by SB 185 and the Commonwealth's refusal to remediate federally identified underfunding. *Compl*. ¶¶29-41, 181-289.

Title VI protects all persons from discrimination in federally assisted programs. 42 U.S.C. §2000d. The statutory definition of "program or activity" includes all operations of a public college, university, or public system of higher education receiving federal financial assistance. 42 U.S.C. §2000d-4a(2)(A). Plaintiffs are the persons who receive or seek the

educational benefits of the covered higher-education program. They therefore have their own federal interests at stake.

This is why student plaintiffs have been permitted to litigate HBCU desegregation and funding claims. In *Coalition for Equity & Excellence in Maryland Higher Education, Inc. v. Maryland Higher Education Commission*, 977 F. Supp. 2d 507, 519-20 (D. Md. 2013), current students at Maryland's public HBCUs had standing to challenge current policies traceable to the de jure system. Likewise, in *Denton v. Board of Governors for the State University System of Florida*, No. 24-10567, slip op. at 15-16, 50-51 (11th Cir. June 9, 2026), the Eleventh Circuit agreed that current FAMU students had standing to bring *Fordice*, Title VI, and Equal Protection claims alleging diminished educational opportunities at Florida's only public HBCU, reversing the dismissal of those claims at the Rule 12(b)(6) stage.

Defendants' assertion that Plaintiffs are improperly suing KSU for harm done to KSU misstates the pleading. The Complaint alleges that Plaintiffs themselves are harmed when the State narrows the academic, faculty, accreditation, admissions, and land-grant capacity of the institution through which they receive educational benefits. A student need not be the university to suffer an equal-educational-opportunity injury. *See Northeastern Fla. Chapter of Associated Gen. Contractors v. City of Jacksonville,* 508 U.S. 656, 666 (1993)(equal-treatment injury exists when a government barrier denies equal footing).

B. ***The pleaded injuries are concrete, particularized, and imminent.***

The KSU Defendants argue that no named Plaintiff alleges that his or her precise major has already been eliminated, that no Plaintiff has already been denied enrollment, and that no Plaintiff has already had a payment plan dishonored. *Mot*. at 8, 10-14. That argument imposes an exhaustion-of-injury requirement that Article III does not contain. Plaintiffs seek prospective relief before irreversible program closures, faculty terminations, enrollment restrictions,

accreditation injuries, and degree-value harms become complete. *See Susan B. Anthony List*, 573 U.S. at 158-61.

Current students plead more than a generalized concern for KSU's reputation. They allege program restrictions, program closures, altered degree pathways, loss of faculty mentors, accreditation risk, changed academic climate, mission/governance changes, and diminished value of KSU degrees. *Compl.* ¶¶181-225. Alumni allege concrete, ongoing injuries to the value of their degrees, institutional reputation, alumni network value, recruitment, and the HBCU/land-grant identity attached to their credentials. *Compl.* ¶¶226-57. Prospective and admitted students allege reliance and enrollment injuries. *Compl.* ¶¶258-89. At least one named current student with standing is enough to support prospective relief for the claim at the pleading stage. *Parsons*, 801 F.3d at 710.

Implementation is not speculative. KSU's Board has approved and transmitted the SB 185 academic plan; CPE has approved six areas of study, twenty-eight continuing academic programs, four undergraduate program closures, and a financial obligation/expenditure approval policy; and KSU has publicly tied FY27 enrollment planning to a potential twenty-percent decline and to SB 185's balance-based enrollment restriction. Those facts do not defeat standing; they confirm that the threatened injuries are underway.

Nor does the absence of a named current student in a closed program end the case. Plaintiffs challenge campuswide and systemwide injuries: a five-year KSU-only financial-exigency regime, a new state-imposed mission, academic-area caps, program closures and teach-outs, faculty instability, accreditation risk, admissions and debt-enrollment restrictions, and degree-value harm. In *Fordice* litigation, the relevant educational injury is not limited to whether a plaintiff's exact major is abolished on the first implementation date. Program array, mission assignment, funding, faculty, governance, and institutional attractiveness are themselves part of the equal-opportunity injury. *Fordice*, 505 U.S. at 728-33.

C. Traceability and redressability are especially clear as to the KSU Defendants.

The KSU Defendants' traceability argument fails because SB 185 assigns them direct implementation duties. The Board must review all academic programs in consultation with CPE, propose which programs to maintain, recommend which programs to close or subject to substantive change, and prepare teach-out plans or arrangements. SB 185 §2(1)-(2). KSU must close programs approved for closure and operate within the statutory academic-area cap. SB 185 §2(3)-(4). The President has authority under SB 185 to terminate university employees, including tenured employees, under specified circumstances. SB 185 §2(5). KSU must administer debt-based enrollment restrictions and related reporting. SB 185 §3. Those duties are not tangential. They are the mechanisms through which the challenged injuries occur.

Traceability does not require Plaintiffs to show that the KSU Defendants caused Kentucky's entire historical funding disparity. Plaintiffs allege a chain of injury: Kentucky created and maintained KSU's underfunded remedial condition; Kentucky failed to make KSU whole after formal federal notice; Kentucky enacted SB 185; and the KSU Defendants are implementing the KSU-only mission, program, faculty, enrollment, and financial provisions that aggravate the Title VI/*Fordice* injuries. A defendant need not be the final or sole cause of injury. *Bennett*, 520 U.S. at 168-69; *Parsons*, 801 F.3d at 713-15. Denton likewise rejected an unduly narrow causation approach where students' diminished opportunities were traceable to state higher-education administrators, boards, and officials responsible for funding, curricular, and oversight policies. *Denton*, slip op. at 15-16.

Redressability is equally clear. An order directed to the Board, Chair Dukes, and President Akakpo could stop or condition KSU's program-closure submissions, teach-out implementation, faculty terminations, debt-based enrollment bars, academic-area restructuring, budget/financial reporting measures, and mission-transition actions while the federal claims are

adjudicated. It could require the KSU Defendants to preserve student pathways, faculty continuity, accreditation processes, and nondiscriminatory implementation. Article III does not require the Court to order the KSU Defendants alone to appropriate all remedial funds or to cure every statewide violation. *Larson,* 456 U.S. at 243 n.15; *Parsons*, 801 F.3d at 715. Partial relief that prevents or mitigates the KSU Defendants' implementation injuries is enough.

Defendants' assertion that an injunction against KSU would not bind CPE misses the point. Plaintiffs have sued CPE and its officials separately, and Plaintiffs have responded to CPE's Motion separately. The question here is whether relief against the KSU Defendants would redress injuries flowing from their own implementation role. As outlined in the Complaint, it clearly would. The Board, Chair, and President cannot close programs, terminate faculty, implement teach-outs, administer debt bars, or submit official plans in violation of federal law simply because CPE also has authority.

D. ***Teach-outs, SACSCOC language, and faculty-retention assurances do not eliminate injury.***

The KSU Defendants repeat the Commonwealth/CPE argument that SACSCOC approval and teach-out plans eliminate injury. *Mot*. at 3-4, 10-12. Plaintiffs have already addressed that argument and adopted their prior positions. A teach-out is not proof that a program closure causes no injury. It is a remedial mechanism triggered because a program is being closed or materially changed. Students may be harmed by the loss of program depth, electives, faculty mentors, and peer cohorts; the loss of research or clinical opportunities; stigma; transfer and graduate-school uncertainty; accreditation scrutiny; and diminished degree value, even where some path to completion remains.

Likewise, SB 185's command that KSU follow SACSCOC instructions does not prove that accreditation harm is impossible. The Complaint alleges that KSU was already in a sensitive accreditation posture and that SB 185 places under extraordinary state control the same

categories that SACSCOC monitors: governance, fiscal control, board and administrative functions, CEO authority, academic leadership, personnel, federal and state responsibilities, physical resources, and educational mission. *Compl*. ¶¶146-68. The Court cannot determine under Rule 12 that every future SACSCOC process will cure every educational, reputational, accreditation, faculty, and degree-value injury.

The KSU Defendants' reliance on prospective faculty-retention language is likewise premature. Plaintiffs do not claim a freestanding constitutional right to one professor. They allege that the state-imposed program closure and financial-exigency regime will destabilize faculty capacity, advising, mentorship, research opportunities, accreditation, and the value of degrees at Kentucky's only public HBCU. Those are educational harms. The adequacy of particular teach-outs and staffing plans is a factual question, not a pleading-stage defense.

E. **Phillips *and* Dambrot *do not control this case.***

The KSU Defendants' reliance on *Phillips v. Missouri*, No. 25-04067-CV-C-BP, 2025 U.S. Dist. LEXIS 153933 (W.D. Mo. July 28, 2025), is misplaced. *Phillips* involved a professor challenging the alleged state underfunding of Lincoln University, and the court found that the plaintiff had not pleaded a particularized injury traceable to the university officials. Here, the named Plaintiffs include current students, admitted/prospective students, and alumni who allege concrete educational and degree-value injuries from an enacted KSU-only statute that the KSU Defendants are actively implementing. The Board's May 2026 plan approval and CPE's June 2026 program-structure and closure approvals confirm direct implementation, not remote disagreement with historical appropriations.

Dambrot v. Central Michigan University, 839 F. Supp. 477 (E.D. Mich. 1993), is likewise distinguishable. That case involved student efforts to challenge a basketball coach's termination. Plaintiffs here do not seek to vindicate one employee's contract. They challenge a KSU-only restructuring regime that authorizes program-linked faculty and staff terminations,

program closures, mission change, and five years of financial exigency at the institution, the Commonwealth was federally required to enhance. The alleged loss of faculty capacity is one component of a broader Title VI/Fordice and Equal Protection injury to educational opportunity. Dambrot does not decide that HBCU students lack standing to challenge a state-imposed program/faculty restructuring scheme traceable to de jure segregation.

F. ***The KSU Defendants' alleged independent authority does not defeat standing or redressability.***

The KSU Defendants argue that KSU already possessed authority to review programs, deny reenrollment to students with debt, refer debts for collection, and remove faculty for financial reasons. *Mot.* at 14-15. That argument does not defeat standing. Plaintiffs challenge SB 185 as enacted and as implemented, not an abstract question of whether a university may ever revise programs or manage finances. The fact that KSU may possess general powers under KRS Chapter 164 makes the KSU Defendants' role in implementation more significant, not less. General institutional authority must be exercised consistently with Title VI, Equal Protection, *Fordice*, due process, and federal equitable obligations.

A defendant cannot defeat redressability by saying it could voluntarily re-create the same injury under a different source of authority. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000). If SB 185 implementation is enjoined because it violates federal law, KSU could not simply relabel the same discriminatory mission-narrowing, program closures, faculty terminations, or debt barriers as discretionary decisions designed to accomplish the same unlawful objective. Moreover, Kentucky's newly enacted faculty-removal statute itself requires board-developed process, written notice, an opportunity to respond before the board, and testimony before removal for bona fide financial reasons. 2026 Ky. Acts ch. 169. Those process requirements undercut, rather than support, dismissal of Plaintiffs' due-process and implementation claims.

G. Class-certification issues are premature.

The KSU Defendants' references to the absence of a named student in a currently closed program improperly collapse Article III into Rule 23. The Complaint pleads named current students, alumni, admitted/prospective students, and putative classes/subclasses. *Compl.* ¶¶29-41, 181-289, 296-310. If at least one named Plaintiff has standing as to a claim for prospective relief, class certification and subclass composition are matters for Rule 23, not Rule 12. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997), does not require dismissal before class discovery and class certification briefing.

II. THE KSU DEFENDANTS ARE PROPER PARTIES FOR PROSPECTIVE RELIEF.

The Motion repeatedly states that the Complaint alleges no "direct wrongdoing" by KSU and that the KSU Defendants are merely required or able to take actions under SB 185. *Mot.* at 6. That statement proves Plaintiffs' point. The KSU Defendants are proper parties because they are required or empowered to implement the challenged state action. Official-capacity litigation does not require Plaintiffs to allege that Chair Dukes or President Akakpo acted with individual malice or that the Board alone created the State's dual system. The question is whether Plaintiffs allege an ongoing violation of federal law and identify officials or entities with a sufficient connection to implementation and prospective relief. *Ex parte Young*, 209 U.S. at 157; *Verizon Md.*, 535 U.S. at 645.

The Complaint satisfies that standard. The Board is the KSU governing body responsible for academic program review, program-maintenance and closure recommendations, teach-out planning, and implementation decisions. *Compl.* ¶51. Chair Dukes is sued so that Board-level prospective relief can be implemented. *Compl.* ¶52. President Akakpo is sued to effectuate relief relating to program review, admissions, student enrollment, personnel authority, financial

reporting, and other SB 185 duties. *Compl.* ¶53. Those pleaded duties match the challenged statutory provisions.

To the extent Defendants contend that the Board itself is not a proper §1983 defendant for certain forms of relief, that argument would at most require narrowing the vehicle for particular counts. It would not dismiss the Title VI claims against covered recipient/program actors, nor would it dismiss official-capacity prospective relief against Chair Dukes and President Akakpo. Plaintiffs do not seek individual-capacity damages from them. They seek orders that prevent ongoing federal violations and preserve the *status quo* while Kentucky's Title VI/*Fordice* obligations are adjudicated.

The KSU Defendants' position would produce an untenable remedial gap. CPE says KSU must submit, close, teach-out, report, and implement. KSU says CPE and the Commonwealth caused the problem. The Commonwealth says Plaintiffs challenge KSU's operations. Federal courts do not permit state actors to avoid prospective relief through a shell game among state agencies and public instrumentalities. Each official-capacity defendant with implementation authority may be bound to prevent ongoing federal violations.

III. THE COMPLAINT STATES A TITLE VI CLAIM AGAINST THE KSU DEFENDANTS.

A. ***Title VI reaches KSU as a federally assisted public higher-education program actor.***

Title VI prohibits discrimination on the grounds of race, color, or national origin under any program or activity receiving federal financial assistance. 42 U.S.C. §2000d. The term "program or activity" includes all operations of a public college, university, or public system of higher education receiving federal assistance. 42 U.S.C. §2000d-4a(2)(A). The Complaint alleges that the Commonwealth, CPE, KSU, and other covered recipient Defendants receive federal financial assistance, and that KSU is the historically Black 1890 land-grant institution

through which Plaintiffs receive, received, or seek educational benefits. *Compl.* ¶¶42, 51-55, 146-80, 312-16.

Defendants cite the rule that individuals are not personally liable under Title VI. Nothing in Plaintiffs' Complaint alleges personal liability by Chair Dukes or President Akakpo in their individual capacities, and Plaintiffs do not seek damages from them as individual Title VI wrongdoers. They sue the Board/KSU as public program actors and the officials in their official capacities for prospective relief. If the Court concludes that Title VI relief must be directed to the entity and federal prospective relief to the officials under *Ex parte Young*, that is a remedy-structuring issue; it is not a basis to dismiss the Title VI theory or to remove the officials necessary to ensure compliance.

B. ***The Complaint pleads intentional discrimination and* Fordice *traceability; it does not rely on disparate impact alone.***

The KSU Defendants argue that Plaintiffs fail to allege a race-based decision by KSU against a named Plaintiff. *Mot.* at 15-16. That argument is too narrow. Plaintiffs allege intentional discrimination through the *Arlington Heights* and *Fordice* framework: a *de jure* dual land-grant system; OCR's 1981 Title VI findings; repeated remedial plans requiring KSU enhancement; the 2009 commitment to protect and account for KSU's historically Black status and unique small liberal-arts mission; the 2023 federal notice identifying a substantial KSU land-grant funding gap; the Commonwealth's failure to remediate; and the enactment and implementation of a KSU-only emergency restructuring statute that changes KSU's mission, programs, faculty capacity, debt-enrollment rules, and fiscal autonomy without imposing comparable burdens on UK. *Compl.* ¶¶1-22, 66-180, 311-21, 344-52.

Title VI and Equal Protection intent may be pleaded through circumstantial evidence. *Arlington Heights*, 429 U.S. at 266-68. Discriminatory purpose need not be the sole motive. *Id.* at 265-66. *Fordice* further requires examination of current higher-education policies traceable to

the prior de jure system that continue to have segregative or inequitable effects and can practicably be eliminated. *Fordice*, 505 U.S. at 728-33. Program arrays, missions, funding, governance, admissions, and institutional attractiveness are precisely the types of policies Fordice addresses. *Id.*; *see also Knight v. Alabama*, 14 F.3d 1534, 1541-50 (11th Cir. 1994).

The KSU Defendants' "no race-based distinction by KSU" argument ignores how higher-education desegregation claims work. In a formerly *de jure* system, a State cannot avoid scrutiny by burdening the institution through which Black students historically were required to receive land-grant education. Nor can implementing officials avoid prospective relief by saying they apply the KSU-only statute equally to all KSU students. The injury is that the State has imposed discriminatory burdens on Kentucky's only public HBCU and 1890 institution while leaving the white land-grant comparator and other public institutions untouched.

The holding in *Denton* confirms the point. There, current FAMU students alleged underfunding, land-grant funding disparity, performance-funding inequity, and curricular/programmatic disadvantages at Florida's only public HBCU. The Eleventh Circuit held that the students had standing and that their Fordice, Title VI, and Equal Protection claims survived Rule 12 because the district court improperly credited defendants' factual narrative and weighed motive before discovery. *Denton*, slip op. at 6-7, 39-50. The same Rule 12 principle applies herein.

C. **Jones v. City of Detroit *does not bar Plaintiffs' Title VI theory.***

The KSU Defendants cite *Jones v. City of Detroit*, 20 F.4th 1117 (6th Cir. 2021), for the proposition that Title VI does not impose vicarious liability. *Mot*. at 15-16. Plaintiffs do not rely on vicarious liability for a rogue employee's conduct. They challenge official policies and official implementation by covered public higher-education actors. *Jones* involved whether a municipality could be held vicariously liable for police officers' conduct under Title VI's remedial scheme. It does not hold that a public university or its governing board may implement

an allegedly discriminatory state higher-education statute while avoiding prospective Title VI/Fordice relief.

Nor does *Buchanan v. City of Bolivar*, 99 F.3d 1352 (6th Cir. 1996), help Defendants. The Court, in *Buchanan*, rejected Title VI claims against individual school officials rather than the federally assisted school entity. Plaintiffs here name institutional and official-capacity defendants necessary to prospective relief, and they plead that the challenged program is part of Kentucky's federally assisted public higher-education system.

III. THE COMPLAINT STATES EQUAL PROTECTION CLAIMS UNDER *FORDICE* AND *ARLINGTON HEIGHTS*.

The KSU Defendants' Equal Protection argument repeats their Title VI argument: Plaintiffs allegedly fail to identify a race-based action by KSU and cannot hold KSU liable for the Commonwealth's conduct. *Mot*. at 16-17. Plaintiffs adopt the *Fordice* and *Arlington Heights* arguments outlined in their prior Responses and supplement them here as to the KSU Defendants' implementation role.

Contrary to the position KSU Defendants appear to be taking, *Fordice* does not ask whether the challenged policy uses racial terminology. It asks whether current policies are traceable to the prior de jure system, continue to have segregative or discriminatory effects, and can practicably be eliminated or modified. *Fordice*, 505 U.S. at 728-33. Plaintiffs plead that SB 185 targets the same institution Kentucky was required to enhance, changes the same mission Kentucky previously promised to protect, restricts the same program and faculty capacity that federal desegregation plans treated as remedial, and does so after formal federal notice of an unresolved land-grant funding shortfall. *Compl.* ¶¶66-145, 322-43.

The KSU Defendants are not insulated because they implement state law. Section 1983 and *Ex parte Young* exist precisely because state officials may be enjoined from enforcing or implementing unconstitutional state policies. *See Ex parte Young*, 209 U.S. at 157; *Carten v.*

Kent State Univ., 282 F.3d 391, 396 (6th Cir. 2002)(recognizing official-capacity prospective relief pathway). The no-vicarious-liability principle under §1983 does not matter where Plaintiffs seek prospective relief against officials with responsibility for the challenged policy. Plaintiffs do not allege that Chair Dukes or President Akakpo is vicariously liable for the legislature. Plaintiffs allege that they are the officials whose ongoing implementation will affect the alleged constitutional violation.

The *Arlington Heights* claim is also adequately demonstrated. The historical background, the sequence of events, the KSU-only classification, the departure from prior remedial commitments to protect and enhance KSU's small liberal-arts HBCU mission, the 2023 federal notice, the absence of a make-whole/no-offset plan, and the extraordinary restrictions imposed only on KSU support an inference of discriminatory purpose, deliberate indifference, or unconstitutional perpetuation of de jure vestiges. *Arlington Heights supra* at 266-68. Defendants' assertion that SB 185 is helpful may be their merits defense, but it is not a Rule 12 dismissal ground.

IV. THE TITLE VI RETALIATION CLAIM SHOULD NOT BE DISMISSED WITH PREJUDICE.

The KSU Defendants argue that the Title VI retaliation claim fails because the Complaint allegedly does not identify protected activity by a named Plaintiff and does not identify adverse action by the KSU Defendants. *Mot*. at 17-18. Plaintiffs do not rely on retaliation as their only or primary theory, and Plaintiffs adopt the Title VI arguments already outlined in the prior Responses. At the pleading stage, however, dismissal with prejudice is improper.

Title VI regulations prohibit a recipient or other person from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with rights secured by Title VI or because the individual made a complaint, testified, assisted, or participated in any investigation, proceeding, or hearing under Title VI. 34 C.F.R. §100.7(e).

Courts recognize retaliation claims in analogous funding-clause civil-rights settings, including where retaliation would undermine the statute's enforcement mechanism. *See Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173-84 (2005) (Title IX); *Peters v. Jenney*, 327 F.3d 307, 318-22 (4th Cir. 2003)(Title VI retaliation).

The Complaint alleges federal civil-rights compliance activity, federal notice, stakeholder advocacy, alumni advocacy, institutional efforts to secure land-grant equity, Defendants' actual knowledge of KSU-related civil-rights concerns through the 2023 federal letter and public advocacy, and adverse post-notice action through SB 185 and the failure to remediate. *Compl*. ¶¶353-56. KSU's own public communications also acknowledge advocacy by students, alumni, faculty, staff, and supporters in the SB 185 process. These allegations must be read together with the Complaint's broader factual allegations and the public implementation record, rather than in isolation.

To the extent the Court believes the retaliation count should specify which named Plaintiffs engaged in which protected acts, which KSU officials had notice, or which implementation steps are retaliatory as opposed to independently discriminatory, the appropriate remedy is leave to amend or narrowing of the retaliation theory. It is not dismissal with prejudice of the entire action or dismissal of the KSU Defendants from prospective relief.

V. THE LAND-GRANT DECLARATORY AND EQUITABLE CLAIMS PROPERLY INCLUDE KSU IMPLEMENTERS.

The KSU Defendants argue that Count V seeks a declaration of the Commonwealth's obligations and therefore does not state a claim against them. *Mot*. at 18. Plaintiffs agree that the Commonwealth bears the principal funding and matching obligations. Plaintiffs have already addressed the land-grant and declaratory/equitable theory in their prior Responses and adopt those positions herein. But Count V and the Prayer for Relief also seek non-discriminatory implementation, reporting, monitoring, no-offset protections, preservation of KSU's mission and

land-grant capacity, and prospective relief that necessarily involves the KSU officials who control program review, teach-outs, student pathways, faculty implementation, financial reporting, and SB 185 compliance. *Compl*. ¶¶357-60, 369-70, *Prayer* ¶¶B-M.

KSU's formal status as a 1890 land-grant institution does not eliminate the injury. The 2023 federal notice connected underfunding to infrastructure, student services, and research competitiveness. *Compl*. ¶¶116-24. SB 185 then imposed KSU-only restrictions that affect KSU's ability to perform its HBCU and land-grant mission. The Court may consider federal land-grant statutes, the 2023 notice, and Kentucky's remedial history as predicates for declaratory and equitable relief and as evidence supporting Title VI/*Fordice*/Equal Protection claims. The fact that KSU Defendants cannot appropriate state funds does not mean they may implement mission-narrowing program closures or faculty reductions in a way that entrenches the very federal violations the Court is asked to remedy.

Accordingly, if the Court treats Count V as primarily directed at the Commonwealth and CPE, it should not dismiss the KSU Defendants from the case. They remain necessary parties to preserve the status quo, maintain accreditation and teach-out integrity, prevent irreversible injuries to programs, faculty/student injuries, and implement any remedial order that affects KSU operations.

VI. THE DUE-PROCESS CLAIM IS PLAUSIBLY PLEADED FOR PROSPECTIVE RELIEF.

The KSU Defendants argue that no named Plaintiff has already been deprived of a constitutionally protected property interest without process. *Mot*. at 18-19. Plaintiffs seek prospective relief to prevent imminent deprivations before they occur. The Due Process Clause is not limited to after-the-fact damages. Where a state-created process threatens to deprive students or other protected persons of recognized interests, prospective notice-and-hearing relief is

appropriate. *Mathews v. Eldridge*, 424 U.S. 319, 333-35 (1976); *Goss v. Lopez*, 419 U.S. 565, 574-76 (1975).

The Complaint alleges that to the extent SB 185 imposes debt-based bars on admission, readmission, enrollment, or continued enrollment; alters degree pathways; terminates or loses programs in which students are enrolled; or deprives faculty and academic personnel of protected interests, Plaintiffs and subclass members are entitled to constitutionally adequate notice and a meaningful opportunity to be heard. *Compl*. ¶362. KSU and its officials are the very actors who administer admissions, student enrollment, debt restrictions, program changes, teach-outs, faculty personnel actions, and student communications. *Compl*. ¶¶51-53.

The Motion's reliance on future timing actually supports prospective relief. The KSU Defendants cannot tell students that program closures, debt bars, faculty losses, and teach-outs are too speculative for standing while simultaneously implementing the academic plan and financial policies. KSU publicly states that affected students must have paths to completion through teach-out plans or arrangements, and CPE has publicly approved program closures. Whether the notice, hearing, communication, appeal, and pathway protections are constitutionally adequate is a merits question requiring a record.

The same is true for the faculty-related process as part of Plaintiffs' broader educational injury and subclass allegations. Kentucky's 2026 faculty-removal statute requires a board-developed process, written notice, and an opportunity to respond before the board for removals based on bona fide financial reasons. 2026 Ky. Acts ch. 169. SB 185's expedited KSU-specific regime must be harmonized with federal due process and any state-law procedures. The Court should not dismiss the due-process claim before implementation details, student notices, teach-out materials, debt-bar procedures, and faculty processes are developed or produced.

VII. THE KENTUCKY CONSTITUTION, DECLARATORY-JUDGMENT, AND EQUITABLE CLAIMS SHOULD NOT BE DISMISSED AGAINST THE KSU IMPLEMENTERS.

The KSU Defendants argue that Count VII fails because the Complaint does not specify a Kentucky constitutional provision and does not allege unconstitutional conduct by KSU. *Mot*. at 19-20. Count VII alleges that Defendants' conduct violates Kentucky constitutional principles of equal protection, due process, and non-arbitrary public governance by imposing KSU-only burdens on Kentucky's public HBCU after federal notice of underfunding and without a rational, non-discriminatory remedial plan. *Compl*. ¶366. Those allegations correspond to Kentucky Constitution §§1, 2, and 3, including Kentucky's prohibition on arbitrary power and unequal treatment. *See Commonwealth Nat. Res. & Env't Prot. Cabinet v. Kentec Coal Co., Inc.*, 177 S.W.3d 718, 724 (Ky. 2005)(Section 2 prohibits arbitrary exercise of governmental power); *Vision Mining, Inc. v. Gardner*, 364 S.W.3d 455, 466-69 (Ky. 2011)(rational-basis and equal-protection principles under Kentucky law).

The KSU Defendants' implementation role is again sufficient. The Board and President administer the KSU-only restrictions and have authority over the program, faculty, student enrollment, financial reporting, and mission-transition actions, which are challenged as arbitrary, unequal, and unlawful. If the Court concludes that a more specific state-law pleading is required, Plaintiffs should be granted leave to amend rather than suffer dismissal with prejudice.

Defendants also argue that mandamus or equitable relief is a remedy, not an independent cause of action. *Mot*. at 20-21. Plaintiffs do not dispute that injunctive, mandamus, declaratory, and equitable relief depend on an underlying claim or duty. The Complaint pleads underlying federal and state claims and identifies the equitable relief necessary to prevent irreparable harm from implementation. Count VIII should be treated as a remedial request or equitable count tied to the substantive claims, not as a basis to dismiss the KSU Defendants from the case.

VIII. DISMISSAL WITH PREJUDICE IS IMPROPER.

Like the other Defendants, the KSU Defendants seek dismissal with prejudice. *Mot*. at 1, 21. Plaintiffs adopt the dismissal-with-prejudice arguments outlined in their prior Responses. A dismissal for lack of subject-matter jurisdiction is not an adjudication on the merits and ordinarily must be without prejudice. *Ernst v. Rising*, 427 F.3d 351, 366 (6th Cir. 2005); *Pratt v. Ventas, Inc*., 365 F.3d 514, 522-23 (6th Cir. 2004); *Revere v. Wilmington Fin.*, 406 F. App'x 936, 937 (6th Cir. 2011).

Nor would dismissal with prejudice under Rule 12(b)(6) be appropriate. Rule 15(a)(2) directs courts to give leave when justice so requires freely, and the Sixth Circuit applies that rule liberally. *Brown v. Matauszak*, 415 F. App'x 608, 614-16 (6th Cir. 2011); *Morse v. McWhorter*, 290 F.3d 795, 800 (6th Cir. 2002). If the Court believes Plaintiffs should plead additional details about current program closures, affected students, post-filing implementation, specific protected activity, due-process procedures, KSU federal funding, official-capacity roles, or state-law provisions, Plaintiffs can amend. Dismissal with prejudice would be especially inappropriate where the implementation facts have continued to develop after the Complaint and after the KSU Defendants filed their Motion.

CONCLUSION

Plaintiffs have pleaded concrete and imminent injuries arising from Kentucky's failure to remedy federally identified KSU underfunding and from SB 185's KSU-only emergency restructuring. The KSU Defendants are not peripheral parties. They are the Board, Chair, and President, charged with implementing program reviews, program closures, teach-outs, faculty decisions, student enrollment restrictions, financial reporting, and mission transition. Plaintiffs sue them in their official capacities for prospective relief to stop ongoing federal and state-law violations and to preserve KSU's programs, accreditation, faculty continuity, student pathways, degree value, HBCU identity, and land-grant capacity while the merits are adjudicated.

For the foregoing reasons, and for the reasons outlined in Plaintiffs' prior Responses that are adopted and incorporated herein, Plaintiffs respectfully request that the Court deny the KSU Defendants' Motion to Dismiss in its entirety. In the alternative, any dismissal should be without prejudice and with leave to amend.

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