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.*	)	
	)	**GOVERNOR'S REPLY IN SUPPORT**
	)	**OF RENEWED MOTION TO DISMISS**
Defendants.	)	

Plaintiffs fail to show that an actual, justiciable controversy exists between them and the Governor. Plaintiffs challenge only one law in this action: Senate Bill 185 (R.S. 2026) ("SB 185"). They do not challenge any other law. Their Complaint does not mention any of the statutes they point to regarding budget recommendations or budget requests, appointments to the Kentucky State University Board of Regents, or appointments to the Council on Postsecondary Education, and their speculative hypotheticals do not establish standing. Their claims are only against SB 185.

Under SB 185, the Governor has ***zero*** responsibility or authority to implement or enforce any of the bill's provisions. He merely has the passive role of receiving two financial updates from the Council on Postsecondary Education, which the Council must also send to the Legislative Research Commission. Senate Bill 185 does not grant the Governor any authority to do ***anything*** other than receive those updates – it does not allow him to take any action on the updates or require any further information from the Council or any other entity, even if he does not receive the report. The Governor not only is not a key or primary implementer of SB 185, he is not an implementer, ***at all***. There is ***no*** link between Plaintiffs' alleged harm and the Governor.

Plaintiffs cannot overcome this fact and 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. Plaintiffs' Speculative Hypotheticals Raise Laws They Do Not Challenge Or Mention In Their Complaint, And Are Conjecture That Does Not Provide Standing.

None of Plaintiffs' speculative hypotheticals that the Governor could take some action under *other* laws governing the Council on Postsecondary Education or the Kentucky State University Board of Regents changes the fact that Plaintiffs do not have standing. First, Plaintiffs do not raise any of the hypotheticals as allegations in their Complaint, and cannot now assert them in response to the Renewed Motion. In addition, none of those other laws are mentioned in, impacted by, or connected with SB 185 – not KRS 48.100, not KRS 48.110, not KRS 48.160, not KRS 164.011, and not KRS 164.321. Again, Plaintiffs do not mention these other statutes in their Complaint and challenge none of them. Their claims are solely against SB 185. Further, speculative hypotheticals are conjecture and cannot provide the basis for standing.

Moreover, Plaintiffs' claim that the Governor would not comply with this or any court orders regarding SB 185 is absurd. Indeed, counsel for the Governor sought an agreed dismissal from Plaintiffs' counsel and the proposal that Plaintiffs' counsel rejected included the term that the Governor would comply with any final judgment of the Court.

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' argument that they have standing here as to the Governor. As the Governor stated in his Renewed Motion,

which Plaintiffs ignore in their response, not only did the students in *Denton* not sue the Florida Governor, they also did not sue to challenge a piece of legislation. Instead, they 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 Governor with any authority to enforce or implement its provisions, whatsoever. Again, the bill merely requires that he, along with the Legislative Research Commission, be provided a quarterly update and an annual update, and the bill does not allow or require the Governor to do anything based on the updates or otherwise. As the Governor stressed in his Renewed Motion, unlike the officials in *Denton* that the court found were connected to the alleged conduct, neither SB 185 nor any other Kentucky law grants the Governor authority to appropriate funds to increase Kentucky State University funding or to increase resources at the university or curricula offered there. The legislature makes appropriations and the university makes decisions about its resources and curricula.

The plaintiffs in *Coalition for Equity & Excellence in Md. Higher Educ. v. Md. Higher Educ. Comm'n*, 977 F.Supp.2d 507 (D. Maryland 2013), also sued state officials responsible for funding and curricular decisions – *not the Governor* – alleging 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, 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. Again, as the Governor stated in his Renewed Motion, unlike the

state officials sued who had responsibilities relevant to the plaintiffs' claims, here the Governor has ***zero*** responsibilities relevant to Plaintiffs' claims.

Senate Bill 185 – the *only* legislation Plaintiffs challenge – does not provide the Governor with any authority to implement or enforce its provisions. The Governor does not appropriate state funds, under SB 185 or otherwise. He does not make decisions on university curricula, programs, staff, or resources. He makes budget *recommendations* to the General Assembly; the General Assembly *enacts* the budget and appropriates funds.[1]

The fact that the Governor of Mississippi was a defendant in *United States v. Fordice*, 505 U.S. 717 (1992) does not make the Governor of the Commonwealth a proper party here. Standing was not at issue in *Fordice* or the underlying case in the lower courts, and those cases do not show that the governor there argued he was not a proper party. *See Fordice*, 505 U.S. 717. The district court and the Fifth Circuit in that case pointed out that "[t]he efforts of the members of the Board of Trustees and the officials of the University of Mississippi together with various state officials, *including the Governor* and Lieutenant Governor of the State of Mississippi, and the Mississippi Legislature to impede and deter efforts to integrate the student body at the University of Mississippi during the 1961–62 school year are well documented." *Ayers v. Allain*, 674 F.Supp. 1523, 1529 (N.D. Miss. 1987), rev'd by *Ayers v. Allain*, 893 F.2d 732 (5th Cir. 1990) (internal citations omitted); *Ayers v. Allain*, 893 F.2d at 734 n. 5 (internal citations omitted). The decisions showed that the Governor of Mississippi had direct involvement in and a connection with a history of *de jure* discrimination regarding the Mississippi university system.

[1] Somehow, Plaintiffs falsely claim in their response that "**this Governor** designated CPE's predecessor to develop, implement, and monitor the statewide response." (Doc. 61, Page ID#: 1822.) As Plaintiffs' Complaint shows, this is factually impossible – the predecessor to the Council was formed in the early 1980s; this Governor took office on December 10, 2019. (*See* Doc. 1, Page ID##: 17-18.)

Plaintiffs cannot show any connection here to establish standing as to the Governor. The one piece of legislation that Plaintiffs challenge does not provide the Governor with any authority to implement or enforce its provisions. In arguing these other decisions apply to the Governor here, Plaintiffs point to allegations in their Complaint that simply have nothing to do with the Governor, (*see*, *e.g.*, Doc. 61, Page ID##1826-27), and fail to recognize that unlike the States in those cases that courts found had affirmative duties relevant to the allegations, here the Governor has ***zero*** affirmative duties under SB 185. Plaintiffs also omit in their Response that here they have sued the State by separately naming the Commonwealth of Kentucky.

Contrary to Plaintiffs' false assertions, the Governor did confront the other decisions in his Renewed Motion, and the Governor does not equate traceability with sole, direct, last-link enforcement. Rather, as he makes clear in his Renewed Motion, the Governor argues that Plaintiffs have not and cannot show ***any*** traceability between him and the harms Plaintiffs allege under SB 185. The Governor has ***no*** link to enforcement under SB 185, and Plaintiffs cannot show ***any*** harm that can flow from any action of the Governor, directly or indirectly. There is no conduct of the Governor or injury caused by him for the Court to redress. Thus, Plaintiffs lack standing.

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

In his Renewed Motion, the Governor argues that Plaintiffs fail to show any connection between him and the only law they challenge, SB 185. The argument is not that a governor can never be sued; instead, it is that Plaintiffs must articulate an actual, justiciable controversy that shows sufficient connection between the Governor and the alleged harm. Plaintiffs do not and cannot show any connection between the Governor and SB 185 that has caused, is causing, or could cause them harm. As SB 185 does not provide the Governor with any authority to

implement or enforce its provisions, it likewise does not grant any authority to provide any prospective relief. There is simply no action of the Governor for this Court to enjoin and no relief from the Governor to provide to Plaintiffs.

IV. Immunity Bars Plaintiffs' Claims Against The Governor.

The Governor is immune from Plaintiffs' suit. First, Plaintiffs' response ignores application of Eleventh Amendment immunity to its claims that do not arise under Title VI. Like the Title VI count, none of Plaintiffs' claims mention the Governor, at all. Outside of their Title VI count, Plaintiffs mention the 2023 letter from the USDA that was sent to multiple governors, but that letter welcomed hosting a workshop to examine funding data – it did not require or request that the Governor take any affirmative action. Again, the Governor does not appropriate funding; the General Assembly appropriates funds. *See* KY. CONST. § 46.

The Governor is immune from Plaintiffs' state law claims under Counts VI and VII of the Complaint, even if they could be construed to raise any allegations against the Governor. Sovereign immunity bars all state-law claims filed against the Governor 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 Governor has not consented to suit. Thus, these claims are barred as to the Governor. Regarding Plaintiffs' 42 U.S.C. § 1983 claims, sovereign immunity bars any such claim for monetary relief against the Governor. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71, n. 10 (1989). Any claim for injunctive relief under § 1983 against the Governor should also be dismissed because Plaintiffs do not allege the Governor has taken or could take any action that should be redressed or enjoined, under SB 185 or otherwise.

As for Plaintiffs' claims under Title VI, Plaintiffs again do not mention the Governor in those counts, *at all*. (Doc. 1, Page ID##: 63-65, 70.) Their Complaint expressly alleges, "The Commonwealth, CPE, and other covered recipient Defendants receive federal financial assistance for education, higher education, land-grant, and related programs or activities." (*Id.*, Page ID:3 64, ¶ 312.) The Governor is not a recipient of federal financial assistance. Plaintiffs further allege that "Defendants have denied benefits, imposed burdens, and subjected Plaintiffs to discrimination by continuing the underfunding and structural subordination of KSU after formal federal notice and by enacting and implementing KSU-only restructuring before curing the disparity." (*Id.*, ¶ 316.) The Governor has not taken, and under state law cannot take, any of these actions. Plaintiffs do not allege intentional discrimination by the Governor, but instead raise allegations against Kentucky, a separately-named Defendant. In addition, Plaintiffs seek declaratory, injunctive, equitable, and compensatory economic damages in Count I. (*Id.*, ¶ 321.)

The Governor does not receive federal financial assistance. Plaintiffs direct their allegations under Title VI to the Commonwealth and other separately named Defendants, not the Governor. They also seek monetary damages, a claim from which the Governor is immune under the Eleventh Amendment. *See Boler v. Earley*, 865 F.3d 391, 409-10 (6th Cir. 2017) (citing *Ernst v. Rising*, 427 F.3d 351, 358 (6th Cir. 2005)). Thus, the Governor is immune from Plaintiffs' allegations against him, and the congressional abrogation of Eleventh Amendment immunity does not apply to allow those claims against him. Further, as the above shows, Plaintiffs fails to state a claim under Title VI upon which relief can be granted as to the Governor. As a result, the Court should dismiss Plaintiffs' Title VI claims against the Governor under Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

With regard to Plaintiffs Title VI retaliation and adverse post-action claim in Count IV, they do not allege any injury by the Governor. They again reference the 2023 USDA letter, which did not require or request the Governor to take any action; as stated throughout this Reply, the General Assembly, not the Governor, appropriates funds. The Court should dismiss the Governor.

V. *Ex Parte Young* Does Not Apply To Save Plaintiffs' Claims Against The Governor.

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 "[a]re not expressly directed to see its enforcement." *Ex Parte Young*, 209 U.S. at 157.

More specifically, "The mere fact that a governor is under a general duty to enforce state laws does not make him a proper defendant in every action attacking the constitutionality of a state statute." *Children's Healthcare*, 92 F.3d at 1416 (quoting *Shell Oil Co. v. Noel*, 608 F.2d 208, 211 (1st Cir. 1979) (citing *Gras v. Stevens*, 415 F. Supp. 1148, 1152 (S.D.N.Y. 1976)). There must be "a realistic possibility the official will take legal or administrative actions against the plaintiff's interests." *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1048 (6th Cir. 2015) (citing *Children's Healthcare*, 92 F.3d at 1416; *1st Westco*, 6 F.3d at 114). *See also Universal Life*

Church Monastery Storehouse v. Nabors, 35 F.4th 1021, 1031-32 (6th Cir. 2022) (holding that the Tennessee Governor having the supreme executive power of the state and the duty to ensure the laws are faithfully executed did not invoke federal jurisdiction, and that the court needed specific, plausible allegations about what the Governor had done, was doing or might do to injure plaintiffs). General enforcement authority is not sufficient. *Id.* Only a state officer with responsibility for the enforcement or execution of a statute may be enjoined from enforcing that statute. *See Johnson Bonding Co., Inc. v. Commonwealth of Ky.*, 420 F.Supp. 331, 334 (E.D. Ky. 1976).

Here, there is no enforcement connection, *whatsoever*, that exists or may arise from the challenged act, SB 185. There is absolutely no realistic possibility that the Governor will take legal or administrative action against Plaintiffs' interests. Under SB 185, the Governor has no implementation or enforcement authority, and the bill does not give him authority to adopt rules or train implementers of SB 185. The Governor has no connection with any alleged injury under SB 185, because under the bill he only receives two updates. Senate Bill 185 gives the Governor ***no*** responsibility for executing any of its provisions. The statutes Plaintiffs argue in their Response – but nowhere in their Complaint – do not show the connection that *Ex Parte Young* requires. Instead, they are pure conjecture.

The Governor discussed *Papasan v. Allain*, 478 U.S. 265 (1986), in his Renewed Motion to further show how *Ex Parte Young* does not apply here. 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 Governor. They challenge SB 185, state legislation. That bill does not provide the Governor with any authority to implement or enforce its provisions. The Governor is not violating and can never violate SB 185 because there are no affirmative actions for him to take under it. For the same reason, he cannot violate any federal law by implementing or enforcing SB 185 – because the bill does not grant him authority to implement or enforce it. Plaintiffs allege no acts of the Governor to be illegal and cannot show that he could take any acts, illegal or legal, under SB 185.

The Court should dismiss Plaintiffs' claims against the Governor.

VI. The Franklin Circuit Court Opinion Is Persuasive.

Contrary to Plaintiffs' argument, the Governor does not raise the Franklin Circuit Court's dismissal of the lawsuit filed there on the basis of lack of standing to raise a preclusion defense. Instead, that state court decision's sound reasoning for dismissal applies here as well – like the plaintiffs there, Plaintiffs here lack standing and therefore deprive the Court of subject matter jurisdiction.

The Franklin Circuit Court correctly found, "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))." *Student Doe 1, et al. v. Comm. of Ky., et al*., No. 26-CI-587, Order, at 2 (Franklin Cir. Ct. June 30, 2026) (Exhibit A to Renewed Motion to Dismiss). The court continued, "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." *Id.*, at 3. The court acknowledged that the Governor's role under SB 185 is passive in that he only receives information about the provisions that *other entities* have authority to implement and enforce and ruled, "Without enforcement power, Plaintiffs lack standing with regard to the suit against the Governor. The Governor cannot cause Plaintiffs' injuries." *Id.,* at 3-4. The court wrote: "A prospective claim, such as the Governor taking some action related to KSU's Boad [sic] 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." *Id.*, at 3.

Here, dismissal is warranted because Plaintiffs fail to show an actual, justiciable controversy with the Governor. Senate Bill 185 does not grant the Governor implementation or enforcement authority and there is no connection between that challenged act and the Governor. Instead, under the bill he receives two financial updates. Plaintiffs cannot trace any alleged injury caused by the Governor or that could be caused by him under the only law they challenge – SB 185. Likewise, they cannot show that the Governor has any connection to the *de jure* racial

discrimination they allege. There is no act – ongoing or future, direct or indirect – for this Court to redress or enjoin. Like in the state court case, Plaintiffs lack standing to bring their claims against the Governor in this case. Consequently, the Court should dismiss Plaintiffs' claims against the Governor for lack of subject matter jurisdiction.

VII. Plaintiffs Fail To State A Claim For Relief As To The Governor.

For the same reasons, the Court should dismiss Plaintiffs' claims against the Governor for failure to state a claim upon which it can grant them relief. Again, Plaintiffs name the Governor as a Defendant in his official capacity "relating to SB 185, statewide implementation, reporting obligations, and the Commonwealth's ongoing duties under federal and state law." (Doc. 1, Page ID# 12). Senate Bill 185 does not grant the Governor the authority to enforce or implement its provisions. There is no action of the Governor for the Court to enjoin or for which to enter a declaratory judgment. *See Johnson Bonding Co., Inc.* 420 F.Supp. at 334 (E.D. Ky. 1976) ("… [S]tate officers who must be enjoined are those who have responsibility for the enforcement or execution of this statute.").

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

CONCLUSION

Senate Bill 185 does not provide the Governor with any authority to enforce or implement 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 Governor and lack standing, leaving this Court without subject matter jurisdiction. Plaintiffs also fail to state a claim for relief against the Governor. Therefore, the Court should dismiss the Governor from this action under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), with prejudice.

Respectfully submitted,

/s/ S. Travis Mayo
S. Travis Mayo
General Counsel
Sam Flynn
Chief Deputy General Counsel
Laura C. Tipton
Deputy General Counsel
Office of the Governor
501 High Street, Second Floor
Frankfort, KY 40601
(502) 564-2611
travis.mayo@ky.gov
sam.flynn@ky.gov
laurac.tipton@ky.gov

Counsel for Defendant
Governor Andy Beshear

CERTIFICATE OF SERVICE

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

/s/ S. Travis Mayo
S. Travis Mayo