UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
FRANKFORT

CIVIL ACTION NO. 3:26-CV-00035-CHB-EBA

SAMANTHA WIGGINTON, *et al.*, PLAINTIFF,

V. **ORDER**

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

*** *** *** ***

This matter is before the Court on the motion of Defendant, Andy Beshear, in his official capacity as Governor of the Commonwealth of Kentucky, seeking a protective order under Federal Rule of Civil Procedure 26(c) to prohibit the Plaintiffs from taking his deposition. [R. 75]. The Defendants filed a response in opposition, [R. 83], to which the Governor filed a reply. [R. 96]. Therefore, this matter is ripe for review.

FACTUAL AND PROCEDURAL BACKGROUND

This case involves an ongoing controversy surrounding Kentucky State University (KSU), Kentucky's 1890 land-grant institutional, as well as the Commonwealth's only public Historically Black College or University (HBCU). [R. 45 at pg. 1]. District Judge Claria Horn Boom recently summarized the historical background of KSU as it relates to the ongoing controversy. [*See id*. at pgs. 2-5]. As relevant to the underlying dispute, the undersigned will outline a short factual and procedural background below.

Following years of significant operational, financial, and accreditation struggles, Kentucky's legislature passed Senate Bill (SB) 185 during the 2026 legislative session. [*Id*. at pg. 6]. SB 185 declares a "state of financial exigency" at KSU for the next five years based on the recommendation of the Council on Postsecondary Education (CPE). [R. 1-6 (SB 185)]. The bill

also changed language from Kentucky Revised Statue (KSR) § 164.29 that stated the General Assembly's intent for KSU to "serve as a four (4) year residential institution emphasizing a program of liberal studies appropriate to its size and resources." [*Id*. at 7]. In its place, SB 185 creates a new section of KRS Chapter 164 and defines KSU as a four-year polytechnic institute "that focuses on highly technical, industry-based applied learning and offers liberal studies and polytechnic programs that are aligned with the workforce needs of the Commonwealth and consistent with the historical mission of an HBCU." [*Id*. at pg. 1].

SB 185 also states that KSU shall not approve any obligation or expenditure of $20,000 or more without the approval of CPE. [*Id*. at pg. 1]. Further, among other things, KSU is required to deny admission, readmission, or enrollment to any person who has owed KSU more than $1,000 for more than 60 days; requires KSU to submit quarterly reports to CPE detailing any outstanding balances of $1,000 or more that have been overdue for more than 60 days; directs KSU to conduct program review based on alignment with the university's mission as a polytechnic institution; limits KSU to no more than 10 areas of academic study; requires the Board of Regents, with the assistance of CPE, to propose programs for closure and seek approval for closure from KSU's accrediting body; and authorizes termination of any university employee, including tenured employees. [*See generally id*.]. Governor Andy Beshear signed SB 185 into law on April 13, 2026. [R. 1 at pg. 28].

Shortly after the bill was signed into law, on May 11, 2026, the Plaintiffs initiated the underlying putative class action. [*See id.*]. The plaintiffs include several current and former KSU students, individually and on behalf of all similarly situated current students, alumni, prospective students, and admitted students of KSU. [*Id*. at pgs. 9-11]. They name as defendants the Commonwealth of Kentucky; Russell Coleman, the Attorney General of Kentucky; the CPE;

Aaron Thompson, the President of the CPE; Madison Silvert, the Chair of the CPE; the KSU Board of Regents; Tammi Dukes, the Chair of the KSU Board of Regents; Koffi C. Akakpo, the President of KSU; Andy Beshear, the Governor of Kentucky; Holly M. Johnson, the Secretary of the Kentucky Finance and Administration Cabinet; and Thomas B. Miller, the Commissioner of the Kentucky Department of Revenue. [*Id*. at pgs. 11-14]. Against these defendants, the plaintiffs assert eight causes of action stemming from Plaintiffs' allegation that Kentucky continues to implement policies traceable to its former system of de jure segregation, resulting in "continuing inequitable effects" that "threaten KSU's mission, programs, faculty, facilities, funding capacity, land-grant activities, and administration." [*Id*. at pg. 30].

Plaintiffs filed a request for a temporary restraining order to enjoin the enforcement of SB 185, [R. 2], which was denied by Judge Boom. [R. 45]. Subsequently, Judge Boom entered a Scheduling Order and discovery ensued. [R. 49]. There are currently several renewed motions to dismiss, [R. 52; R. 54; R. 58; R. 65; R. 66], and motions to stay discovery pending the resolution of those motions, [R. 53; R. 55; R. 57], pending before the Court. As discovery continues pending the resolution of those motions, Defendant Governor Beshear has filed the underlying motion seeking a protective order to prohibit the Plaintiffs from taking his deposition. [R. 75].

LEGAL STANDARD

A trial court has "broad discretion" to determine the scope of discovery. *Rhodes v. McDannel*, 945 F.2d 117, 119 (6th Cir. 1991). Federal Rule of Civil Procedure 26(b)(1) provides that—unless otherwise limited— "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." FED. R. CIV. P. 26(b)(1). This language is broadly construed to include "any matter that bears on,

or that reasonably could lead to other matters that bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).

The scope of discovery, however, is not without limitation. It is "well established that the scope of discovery is within the sound discretion of the trial court." *Chrysler Corp. v. Fedders Corp.*, 643 F.2d 1229, 1240 (6th Cir. 1981) (citing *H. K. Porter Co., Inc. v. Goodyear Tire and Rubber Co.*, 536 F.2d 1115 (6th Cir. 1976)). As such, "[a] ruling by the trial court limiting or denying discovery will not be cause for reversal unless an abuse of discretion is shown." *Id*.

Discovery may be limited pursuant to Rule 26(c), under which a court may issue a protective order that "forbids the discovery or disclosure" a party seeks. FED. R. CIV. P. 26(c). The rule provides:

> A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense….

Id.

ANALYSIS

Governor Beshear seeks a protective order pursuant to Federal Rule of Civil Procedure 26(c) to prohibit the plaintiffs from taking his deposition. [R. 75]. The Governor argues that the request to depose him is a "fishing exposition seeking information that is not relevant to their claims challenging SB 185." [R. 96 at pg. 2]. In their response in opposition, Plaintiffs argue that the Governor's motion should be denied, and his participation in a deposition should be compelled, in part, because he has personal knowledge about various aspects of his response to federal agency letters prior to SB 185's enactment. [R. 83].

I.

Generally, high-ranking government officials are not subject to depositions. *Murray v. U.S. Dep't of Treasury*, No. 08-CV-15147, 2010 WL 1980850, at *2 (E.D. Mich. May 18, 2010). This is because of the "responsibilities and time constraints incumbent on high-ranking officials" and because "testifying in every case to which the agency or administration is a party would monopolize the official's time." *Id.* (citing *In re United States (Kessler)*, 985 F.2d 510, 512 (11th Cir. 1993); *Simplex Time Recorder Co. v. Sec'y of Labor*, 766 F.2d 575, 586 (D.C. Cir. 1985); *United States v. Morgan*, 313 U.S. 409, 422, 61 S. Ct. 999, 85 L.Ed. 1429 (1941)). However, this limitation is not absolute. *See e.g., Boudreau v. Bouchard*, No. 07-10529, 2008 WL 4386836, at *2 (E.D. Mich. Sept. 25, 2008) ("But this limitation is not absolute. Depositions of high ranking officials may be permitted where the official has first-hand knowledge related to the claim being litigated.") (internal citations omitted).

The general rule across the circuits is "that absent extraordinary circumstances, high-ranking officials may not be subjected to depositions or called to testify regarding their official actions." *See Coleman v. Schwarzenegger*, Nos. CIV S-90-0520 LKK JFM, C01-1351 TEH, 2008 WL 4300437, at *3-4 (E.D. Cal. Sept. 15, 2008) (collecting cases). Under the extraordinary circumstances test, depositions of high-ranking officials may be permitted (1) where the official has first-hand knowledge related to the claim being litigated and (2) where it is shown that other persons cannot provide the necessary information. *Murray*, 2010 WL 1980850, at *2; *Scott v. Louisville/Jefferson Cnty. Metro Gov't*, No. 320CV00535BJBCHL, 2023 WL 5250963, at *4 (W.D. Ky. Aug. 15, 2023); *EMW Women's Surgical Ctr., P.S.C. v. Glisson*, No. 3:17CV-00189-GNS, 2017 WL 3749889, at *2 (W.D. Ky. Aug. 30, 2017); *Morgan v. Bevin*, No. 3:17-CV-00060-GFVT-EBA, 2018 WL 6331685, at *5, 2018 U.S. Dist. LEXIS 204657, at *14–15 (E.D. Ky. Dec.

3, 2018). Federal Courts in this district and in the Western District of Kentucky have followed the extraordinary circumstances test in determining whether a sitting Governor should be required to participate in a deposition. *See Cooperrider v. Perry*, No. 3-CV-00016-GFVT-EBA, 2026 WL 988479, at *3 (E.D. Ky. Apr. 13, 2026); *Morgan*, 2018 WL 6331685, at *5; *EMW Women's Surgical Ctr., P.S.C.*, 2017 WL 3749889, at *4.

II.

Here, Governor Beshear is undoubtedly a high-ranking official that—without a showing of extraordinary circumstances—would not normally be subject to the burden of depositions. *EMW Women's Surgical Ctr., P.S.C.*, 2017 WL 3749889, at *3 (citing *See New York v. Oneida Indian Nation of New York*, No. 95-CV-0554 (LEK/RFT), 2001 WL 1708804 (N.D.N.Y. Nov. 9, 2001) ("[w]ithout a doubt, Governor Pataki is such a high-ranking state government official for whom the Court should not lightly impose the burden of providing a deposition.")). Thus, the inquiry becomes whether extraordinary circumstances exist to subject Governor Beshear to a deposition in this case.

To support their argument that the Governor should be compelled to participate in a deposition, the Plaintiffs rely on two letters addressed to the Governor prior to the enactment of SB 185. First, a September 18, 2023, joint letter from the United States Department of Education (USDE) and the United States Department of Agriculture (USDA) to Governor Beshear concerning KSU. [R. 83 at pg. 4]. The letter asserted that KSU "has not been able to advance in ways that are on par with the University of Kentucky . . . in large part due to unbalanced funding." [R. 1-5. at 1]. Further, the letter stated that "[u]nequitable funding of [KSU] has caused a severe financial gap," and "in the last 30 years alone, an additional $172,135,168 would have been available for the university." [*Id*. at pg. 2]. The letter suggested "state allocation" and amendments

to the state budget to remedy this alleged funding disparity. [*Id*.]. Plaintiffs argue that "[o]bjective testimony about what reached the Governor's office, how it was routed, who evaluated it, what records accompanied it, and what action followed bears directly on those questions." [*Id*.]. Furthermore, Plaintiffs argue that "the Governor's Office necessarily controls or can identify the state-side evidence of what happened after that notice arrived," and "[a] records custodian cannot testify to those first-hand facts." [*Id*. at pg. 11]. Nor can "[a] budget designee cannot establish what the Governor himself received or did." [*Id*.].

Second, Plaintiffs rely on a January 7, 2025, federal follow-up addressed to the Governor from the USDE and the USDA. [*Id*.]. The follow-up refers to the 2023 letter and "points to an attached spreadsheet containing detailed data and methodology, reports that that [USDE] and USDA hosted a webinar for governors, gubernatorial representatives, and legislative staff, and strongly recommends a bipartisan joint legislative committee to collect data and conduct a historical budget analysis." [*Id*.]. Plaintiffs explain that the federal agencies then recommended a state response—"creation of a bipartisan joint legislative committee to collect data, perform a historical budget analysis, and evaluate the State's share of matching funds for the 1862 and 1890 institutions." [*Id*. at pg. 12]. Plaintiffs argue that this federal follow up and recommendation generated questions that Governor Beshear himself can provide the answer to, such as:

> [W]hen the Governor's Office received the letter and spreadsheet; who opened and routed them; whether the spreadsheet remains in the Office's files; whether Kentucky attended the webinar; if so, who attended; what materials were provided; whether attendees reported to the Governor; whether the State challenged any input or formula; whether the Governor asked legislative leaders to create the recommended committee; whether he asked OSBD or CPE to perform an equivalent analysis; whether Kentucky accepted federal technical assistance; and what response, if any, was sent.

[*Id*.].

Governor Beshear argues that SB 185 does not require any affirmative action from him and, instead, merely directs that he receive two financial updates at the same time as the Legislative Research Commission. [R. 96 at pg. 5]. Further, the Governor explains that the bill does not require any action upon receipt of the updates, nor does it empower him to implement or enforce its provisions. [*Id*.]. Thus, the Governor argues that there are no discoverable questions for him to answer about SB 185. [*Id*.]. The undersigned agrees. A reading of SB 185 reveals that the Governor has no power to act under it. His passive receipt of updates does not constitute extraordinary circumstances to warrant his deposition in this case. Further, the Plaintiffs have already noticed the deposition of the Legislative Research Commission, [R. 91], who receives the same reports as the Governor and thus can answer any necessary questions in his stead. *Murray*, 2010 WL 1980850, at *2.

Moreover, regarding the two letters the Governor received prior to SB 185's enactment, Plaintiffs are already in possession of copies of the letters, and they have noticed the deposition of a representative of USDA to answer any further questions. [*Id*.]. Any documentation regarding SB 185 that the Plaintiffs seek testimony about can also be obtained through other sources. The Governor explains that he, the Office of the State Budget Director, the Finance and Administration Cabinet, and the Department of Revenue fully responded to an open records request and released all communications from the public about the bill, aside from one internal memo that is covered by attorney-client privilege. [*Id*. at pg. 6]. Therefore, because the Plaintiffs can obtain the information sought through other sources, extraordinary circumstances do not exist to warrant the Governor's deposition. *Murray*, 2010 WL 1980850, at *2.

Furthermore, while the Plaintiffs argue that the Governor should be required to testify about his response to the receipt of the federal agency letters—neither letter directed the Governor

to take any affirmative action. [R. 96 at pg. 5]. While the second letter requested that all governors who received it create a bipartisan joint legislative committee, Governor Beshear explains that he could not have complied with that request under the separation of powers in the Kentucky Constitution. [*Id*.]. Therefore, there is no "response" from the Governor's Office for the Governor to testify about. And even *if* the Governor's Office did respond, the Plaintiffs have failed to explain why any questions regarding said response could not be answered by a representative from the Governor's Office instead of the Governor himself. *Murray*, 2010 WL 1980850, at *2.

Finally, any questions regarding the Governor's budget recommendations—which he submits to the General Assembly each biennium—are publicly available online. [R. 96 at pg. 5]. Under KSR 164.7915, the CPE is required to make a biennial budget request to the General Assembly and to the Governor regarding certain funding items, including the funding to be appropriated to the institutions, systems, agencies and programs of Kentucky's public universities. [*Id*. at pgs. 5-6]. Thus, a CPE representative is more appropriate to answer questions concerning KSU's budget. And, as the Governor points out, the Plaintiffs have already noticed the deposition of a representative of the CPE, [R. 88], proving that the information sought can be obtained through other sources. Additionally, any information sought on the funds that were actually appropriated to KSU and the Commonwealth's other universities can be answered through the Legislative Research Committee representative, as the General Assembly appropriates these funds—not the Governor. [R. 96 at pg. 6]. Therefore, the Plaintiffs can obtain information about the budget recommendations and funds appropriated to KSU through other sources, negating the need for Governor Beshear to appear at a deposition. *Murray*, 2010 WL 1980850, at *2.

III.

In their response, the Plaintiffs also make requests to depose the Governor regarding several statutes unrelated to SB 185, such as governing the appointment of members of the CPE and the KSU Board of Regents and the Governor's Executive Branch Budget Recommendations. [*See* R. 83 at pgs. 5-6]. None of these statues appear in the Plaintiff's complaint, and the authority granted to the Governor by them is irrelevant to the underlying controversy concerning SB 185. As discussed, SB 185 does not empower the Governor to take any action. The Governor should not be required to appear for a deposition to respond to questions about these unrelated statutes.

Moreover, Plaintiffs also reference several actions SB 185 requires, such as program review and closure, staffing reductions, admissions and continued enrollment restrictions, financial controls, and debt collection. [*Id*. at pg. 6]. Again, SB 185 does not empower the Governor with any authority. [*See* R. 1-6]. Therefore, because the Governor has no first-hand knowledge regarding the requirements of SB 185, no extraordinary circumstances exist to require Governor Beshear to appear for a deposition. *Murray*, 2010 WL 1980850, at *2.

CONCLUSION

In conclusion, the undersigned finds that extraordinary circumstances do not exist to compel Governor Beshear to appear for a deposition. Therefore, the undersigned will grant the Governor's motion for a protective order. [R. 75]. Accordingly,

IT IS ORDERED that the Defendant's motion for a protective order, [R. 75], is **GRANTED**.

Signed September 3, 2026.

Signed By:
Edward B. Atkins EBA
United States Magistrate Judge