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

SAMANTHA WIGGINTON, *et al*., Plaintiffs, v. COMM. OF KENTUCKY, *et al*., Defendants.	Civil Action No. 3:26-cv-00035-CHB-EBA **PLAINTIFFS' MOTION FOR ADDITIONAL EXTENSION OF LIMITED DISCOVERY AND FOR CONFERENCE ON KSU DEPOSITION IMPASSE**

Plaintiffs move under Federal Rules of Civil Procedure 6(b)(1)(A) and 16(b)(4), Local Rules 7.1 and 37.1, and the Court's case-management orders to extend the October 23, 2026 limited discovery deadline through December 4, 2026. Plaintiffs also request a telephone conference before Magistrate Judge Atkins under ECF#51, ¶ 5(B), because Plaintiffs and Kentucky State University ("KSU") have reached an impasse concerning completion of KSU's organizational deposition and the associated production disputes. The extension would permit completion of existing preliminary-injunction discovery, including the DOR continuation noticed for November 12 and President Koffi Akakpo's deposition noticed for November 13. ECF#139; ECF#140.

The remaining work includes ongoing conferences with the Governor's Office, the Office of State Budget Director ("OSBD"), and the Finance and Administration Cabinet; unresolved KSU testimony and production issues; the continuing efforts to obtain federal-agency evidence; the University of Kentucky ("UK") subpoena dispute; and the legislative-discovery dispute taken under advisement on October 22. Plaintiffs request a definite completion schedule with interim reporting, while maintaining the preliminary-injunction hearing and related deadlines established by the Court. The supporting Declaration of James M. Morris documents the recent efforts and remaining obstacles.

The federal-agency requests remain unresolved following the October 5 denial of ECF#110 without prejudice. ECF#126. Additional time is needed for the continuing Touhy process and, if necessary, appropriately renewed relief.

I. The current schedule and requested relief

The July 14 Scheduling Order authorized discovery related to the preliminary-injunction request, limited each side to twelve depositions and fifteen requests of each specified written-discovery type, and directed cooperation and expedited resolution of disputes. ECF#49, ¶¶ 2–4. The September 3 minute entry allowed Plaintiffs' counsel through September 30 to schedule further depositions. ECF#98, ¶ 3. On October 2, the Court granted a further extension through October 23, explaining that additional time was necessary, and removed the November 2–3 hearing from its calendar to permit orderly preparation and briefing. ECF#125, pp. 1–3.

The Court's October 23, 2026 Order scheduled the Evidentiary Hearing for January 26-27, 2027, with pre-hearing filing deadlines scheduled in conformity therewith. ECF#142. Plaintiffs seek no change to that hearing setting or the prehearing submission requirements. December 4 allows six additional weeks for completion and leaves a meaningful period for transcript review, witness preparation, stipulations, and the orderly prehearing submissions contemplated by ECF#49 and ECF#125.

II. Conferences with the Governor and Finance Cabinet remain active

Governor and OSBD. Counsel arranged an October 14 conference concerning the Governor's and OSBD's discovery. Plaintiffs sought clarification of the searches for responsive records and dates for organizational testimony. The Governor's counsel disputed the breadth of the proposed inquiry and maintained that discovery concerning the Governor was limited to the USDA letters. On October 21, Plaintiffs requested a further update and deposition dates. On October 22, the Governor's counsel requested Plaintiffs' availability the following week for a further meet-and-confer. *Morris Decl*. ¶ 4; Ex. 2. The notices at R. 127 and R. 128 were cancelled for rescheduling in November, 2026, at ECF#131. The outstanding testimony and scope discussions therefore cannot be completed by October 23.

The proposed extension would allow counsel to resolve the remaining requests, identify responsive material already supplied and any actual production gaps, determine appropriate organizational witnesses, and conduct testimony within the limits the Court has imposed. Plaintiffs seek institutional evidence concerning the federal funding communications and the pertinent factual roles of the Governor's Office and OSBD. If their competing interpretations of the permitted scope remain unresolved after conference, Plaintiffs request that the discrete issue be presented through ECF#51.

Finance Cabinet. The parties met and conferred on October 12. Finance transmitted a written counterproposal limiting its potential Rule 30(b)(6) deposition to the Office of the Controller's prospective technical role in providing KSU access to EMARS. Its proposal identifies eight technical subjects and excludes broader legislative rationale, institutional comparisons, and matters assigned to other entities. Ex. 3. Plaintiffs had proposed inquiry into Finance's own authority, relevant funding transactions and classifications, implementation responsibilities, and available remedial steps. The parties must resolve which subjects properly fall within Finance's own knowledge and the Court's limited discovery authorization.

Finance offered additional conference times for October 19 and 20. After Plaintiffs requested other availability, Finance agreed on October 22 to check calendars and continue the discussion the following week. *Morris Decl.* ¶ 5; Ex. 3. That exchange reflects ongoing substantive efforts to narrow the deposition. Additional time would allow those efforts to conclude, followed by designation, preparation, production as appropriate, and examination. Plaintiffs do not represent that Finance has accepted Plaintiffs' broader topic proposal.

III. KSU and Plaintiffs have reached an impasse requiring Court guidance

Counsel exchanged and attempted to narrow their positions and arranged further discussions during October 15–21. Plaintiffs and KSU are now at an impasse concerning the remaining examination. Both KSU and Plaintiffs therefore request the telephone conference

required by ECF#51, ¶ 5(B), to address scope, production coverage, protection, preparation, certified questions, and additional examination time. If issues remain after that conference, the Court can authorize a focused motion and expedited response under ¶ 5(C).

IV. Federal agency efforts remain incomplete after the denial without prejudice

The USDA and U.S. Department of Education ("USDOE") requests were transmitted in August and are reflected in ECF#86 and 87. They seek, among other things, the underlying data, methodology, and factual foundation for the federal funding communications. Plaintiffs sought Court involvement in September through ECF#110. The October 5 denial without prejudice, ECF#126, means that relief must be pursued through continued agency engagement and any properly renewed proceeding.

USDA has now substantively responded, but the requested discovery is unfinished. Its October 14 letter challenged relevance and burden, identified public NIFA data sources, and requested a clearer explanation before further consideration. Plaintiffs responded that day. On October 17, Assistant U.S. Attorney Tiffany Fleming stated that USDA was searching its systems for information concerning the 2023 and 2025 letters. She also reported difficulty accessing Plaintiffs' linked materials and offered a secure transfer arrangement. Plaintiffs supplied CPE documentation by email that morning. *Morris Decl.* ¶ 10; Ex. 4. These developments show active processing; they do not supply the requested agency testimony or complete the underlying evidentiary production.

USDOE acknowledged the request and the need for Touhy review in September. Following Plaintiffs' October 14 inquiry, Phil Rosenfelt referred to the fiscal year-end timing of Plaintiffs' September 29 email and offered further assistance and discussion. On October 16, he proposed a discussion the following Monday at approximately 4:30 p.m. after Plaintiffs' counsel was detained in court. *Morris Decl.* ¶ 11; Ex. 4. Plaintiffs have not obtained the information and

authorized testimony needed to complete this discovery. The communications do not establish a completed agency production, an authorized deposition date, or final resolution of the demand.

An extension would preserve time to obtain a concrete response, pursue narrowed production and authorized non-apex testimony, and seek appropriate relief if those efforts fail. Plaintiffs recognize that any renewed application must address the agency procedures, service, applicable protections, and the proper court under Rule 45. They seek scheduling relief here; any contested enforcement request will be presented through the proper procedure. A deadline that expires while agency searches and authorization discussions remain active would prevent useful follow-through on the evidence sought before the cutoff.

V. The UK and legislative disputes also require time for implementation of rulings

UK's pending motion seeks to quash or modify the subpoena and obtain protection from the requested discovery. ECF#105; ECF# 105-1. UK argues, among other things, that the federal agencies and existing parties are more appropriate sources for the funding evidence, that the requests exceed the limited scope and impose undue burden, and that immunity provides an additional ground for relief. ECF#105-1, pp. 2–7, 13–14. Plaintiffs opposed the motion. ECF#109. Additional time is needed to obtain and evaluate the agency evidence and to carry out whatever targeted production or testimony the Court permits.

The LRC and legislative-custodian dispute is likewise unresolved. The Court set the October 22 conference and required position statements. ECF#132; ECF#133; ECF#138. The October 22 minute entry allowed supplemental pleadings through October 23 and took the dispute under advisement. ECF#141. Accordingly, the discovery deadline falls on the same day as the authorized supplementation. If the Court permits any production or testimony, reasonable implementation time will be required after the ruling. The extension would allow that work to

occur within a controlled schedule, subject to the Court's determinations concerning privilege, scope, custodians, and other protections.

VI. Good cause supports the requested limited extension

Rule 16(b)(4) permits modification for good cause with the judge's consent. The Sixth Circuit evaluates diligence and also considers prejudice to the opposing party. *Leary v. Daeschner*, 349 F.3d 888, 906–09 (6th Cir. 2003). Rule 6(b)(1)(A) permits an extension requested before the existing period expires. ECF#51, ¶¶ 1–2 and 5, authorizes active management of scheduling, proportionality, and discovery disputes. Rule 30(d)(1) provides for additional examination time when needed for a fair deposition, consistent with Rule 26's limits.

The October record demonstrates continued work under the existing deadline: written agendas identifying particular missing records and unanswered testimony; conferences and proposed follow-up conferences; acknowledgment and review of supplemental KSU production; responses to the federal agencies' requests for clarification; renewed deposition scheduling; and presentation of the legislative dispute to the Magistrate Judge. The latest correspondence places further Governor and Finance discussions after October 23. The federal process remains incomplete, the KSU impasse requires intervention, and the legislative issue was only just submitted. These are concrete obstacles to completion despite the continuing efforts summarized above.

The noticed November depositions independently demonstrate why a further order is necessary. DOR counsel selected November 12 for the continuation. KSU counsel advised on October 21 that President Akakpo had a November 12 conflict and was available November 13. Plaintiffs filed the corresponding notices. ECF#139; ECF#140; Ex. 5. Scheduling agreement and notices do not themselves amend ECF# 125; Plaintiffs therefore request express authorization to complete those examinations during the extension.

Plaintiffs recognize the burden of further discovery and their own interest in prompt preliminary relief. December 4 provides time to complete the already-noticed examinations, obtain resulting transcripts and directly necessary follow-up, and implement timely discovery rulings. Maintaining existing subject-matter and numerical limits, protecting nonparties, using prompt interim reports, and preserving the hearing schedule will limit prejudice. An extension also permits the Court to consider an orderly evidentiary submission rather than leave unresolved requests stranded at the cutoff or return to the piecemeal briefing the Court rejected in ECF#125.

VII. Proposed completion schedule and certification

Plaintiffs request: (1) extension of the limited discovery deadline through December 4, 2026; (2) a KSU deposition dispute conference, with a concise joint statement of resolved and unresolved issues two business days beforehand; (3) completion of further Governor, OSBD, and Finance conferences, followed by a joint status report identifying remaining production, witnesses, dates, and any discrete issues requiring ECF#51 review, within seven days after entry of the extension order; (4) completion of the November 12 and 13 examinations and other permitted discovery by the new cutoff; and (5) a November 20 status report identifying any remaining agency, UK, legislative, or KSU obstacle and a concrete completion proposal. If a later ruling makes compliance by December 4 impracticable, the affected parties should promptly propose a short, specific implementation period for Court approval. Counsel certifies the efforts described in the supporting Declaration.

For these reasons, Plaintiffs respectfully request the additional extension and expedited conference, together with the proposed completion and reporting requirements. A proposed order is submitted separately.

Respectfully submitted,

MORRIS & MORRIS, P.S.C.

By: */s/ James M. Morris*
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ATTORNEYS FOR PUTATIVE CLASS

CERTIFICATE OF SERVICE

I certify that on October 23, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notice to all counsel of record (separate e-mail copy provided to counsel for the Legislative Research Commission).

/s/ James M. Morris
James M. Morris
ATTORNEY FOR PUTATIVE CLASS