COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION ___
CIVIL ACTION NO. 18-CI-________

COMMONWEALTH OF KENTUCKY
ex rel. ANDY BESHEAR, ATTORNEY GENERAL

and

KENTUCKY EDUCATION ASSOCIATION

and

KENTUCKY STATE LODGE FRATERNAL ORDER OF POLICE PLAINTIFFS

v. **VERIFIED COMPLAINT FOR A DECLARATION OF RIGHTS, A TEMPORARY INJUNCTION, AND A PERMANENT INJUNCTION**

MATTHEW G. BEVIN, in his official capacity
as Governor of the Commonwealth of Kentucky

SERVE: Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601

and

BERTRAM ROBERT STIVERS, II, in his official capacity
as President of the Kentucky Senate

SERVE: 702 Capitol Avenue
Annex Room 236
Frankfort, Kentucky 40601

David Byerman, Director
Legislative Research Commission
700 Capitol Avenue, Room 300
Frankfort, Kentucky 40601-3449

and

DAVID W. OSBORNE, in his official capacity as
Speaker Pro Tempore of the Kentucky House of Representatives

SERVE: 702 Capitol Avenue
Annex Room 332C
Frankfort, Kentucky 40601

David Byerman, Director
Legislative Research Commission
700 Capitol Avenue, Room 300
Frankfort, Kentucky 40601-3449

and

BOARD OF TRUSTEES OF THE TEACHERS' RETIREMENT SYSTEM OF THE STATE OF KENTUCKY

SERVE: Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601

and

BOARD OF TRUSTEES OF THE KENTUCKY RETIREMENT SYSTEMS DEFENDANTS

SERVE: Office of the Attorney General
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Frankfort, Kentucky 40601

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Come now the Plaintiffs, Commonwealth of Kentucky, *ex rel.* Andy Beshear, Attorney General, Kentucky Education Association ("KEA"), and the Kentucky State Lodge Fraternal Order of Police ("Kentucky State FOP Lodge"), by and through counsel, and bring this action for a declaration of rights, a temporary injunction, and a permanent injunction against the Defendants, Matthew Griswold Bevin, in his official capacity as Governor of the Commonwealth of Kentucky ("Governor Bevin"), Bertram Robert Stivers, II, in his official capacity as President of the Kentucky Senate ("Senator Stivers"), David W. Osborne, in his official capacity as Speaker Pro Tempore of the Kentucky House of Representatives ("Representative Osborne"), the Board of

Trustees of the Kentucky Teachers Retirement System ("KTRS"), and the Board of Trustees of the Kentucky Retirement Systems ("KRS").

INTRODUCTION

March 29, 2018 was the 57th day of the 2018 Kentucky Legislative Session. By this time, a "pension reform" bill – Senate Bill 1 – had been introduced in the Senate, but had failed to secure the necessary votes to pass that single chamber and lay dormant after being returned to committee. Strong public opposition led the sponsor of SB 1 to declare the bill was "on life support," and the President of the Senate stated that there was "little hope" the bill would pass.

Then, just after 2:00 p.m. on March 29, the Kentucky House of Representatives called for a recess, so that its Committee on State Government could meet. The unannounced meeting was not held in the legislative hearing rooms, but instead in a small conference room. Claiming the space was too small, the public – including the hundreds of teachers rallying outside – was excluded. At that time, the Committee called Senate Bill 151 ("SB 151"), an 11-page bill relating to sewer services.

The Committee immediately amended SB 151, stripping all language about sewers. The bill suddenly became a massive 291-page overhaul of Kentucky's public pension systems. The Chair, Representative Jerry T. Miller, announced the Committee would vote on the bill during the meeting, even though most committee members had not seen, much less read, the 291-page "surprise" bill. Nor had any actuarial analysis been prepared, as required by KRS 6.350, which is necessary to determine if the bill will work, *i.e.*, would the bill save money or cost the Commonwealth the additional $3 plus billion that has since been reported. The Committee allowed no public testimony, excluding any say for the public employees whose pensions were being cut. And the Committee did not make a single copy of the bill available to the public during the meeting to allow Kentucky citizens to know what their "public servants" were doing.

Just minutes after the bill passed the committee on a purely partisan vote, it was called on the floor of the full House, where the new SB 151 received its first public reading. Once again, state representatives were forced to vote on the bill without reading it, without public testimony, and without an actuarial analysis. The vote also occurred in violation of Section 46 of the Kentucky Constitution, which required the "new" bill – and not some prior sewer version – to receive three readings on three different days.

Only 49 of the 100 state representatives voted for the bill, with 46 voting against and 5 not voting. The Speaker Pro Tempore of the House signed the bill, instead of the Speaker himself as required by Section 56 of the Kentucky Constitution. SB 151 then moved to the Senate, which likewise rushed it through passage late into the night, avoiding the same hearings and public participation that had defeated its own attempts at cutting pensions for public employees. Governor Bevin signed the bill into law on April 10, 2018.

As passed, the new SB 151 substantially alters and ultimately reduces the retirement benefits of the over 200,000 active members of the pension systems, including teachers, police officers, and firefighters. In doing so, it breaks the "inviolable" contract that the Commonwealth made with its public employees under KRS 21.480, KRS 61.692, KRS 78.852, and KRS 161.714. Under those laws, the legislature promised Kentucky's public employees that, in exchange for their decades of public service, they would be guaranteed certain retirement benefits. By enacting SB 151, Governor Bevin and the General Assembly have substantially impaired and broken that contract, in violation of the Kentucky Constitution and state statute.

The process under which SB 151 was passed also violates numerous provisions of both the Kentucky Constitution and state statute. These laws were designed to prevent the exact trickery and exclusion of the public that the General Assembly exhibited on March 29. Each of these violations – including violations of Sections 2, 46, and 56 of the Kentucky Constitution and KRS 6.350 and 6.955 – invalidate SB 151.

Kentucky's employees and the people they serve will suffer irreparable injury if SB 151 is allowed to take effect. Already, the Governor's threats to strip retirement benefits from public employees have led to record retirements of teachers, state troopers, and other public servants. If SB 151 is allowed to take effect, hundreds – and perhaps thousands – of additional public employees will retire, leading to both an education and public safety crisis. Indeed, the mere passage of SB 151 resulted in the closure of 27 school districts the very next day and the following Monday because teachers have begun to take their sick days as a direct consequence of SB 151's elimination of their ability to use such days to calculate their retirement eligibility.

Plaintiffs therefore respectfully request that the Court enter an order declaring SB 151 unconstitutional and enjoining Governor Bevin, the Board of Trustees of KTRS, and the Board of Trustees of KRS from enforcing it.

NATURE OF ACTION

1. This Verified Complaint for a Declaration of Rights, a Temporary Injunction, and a Permanent Injunction is governed by the Kentucky Declaratory Judgment Act, KRS 418.010, *et seq.*, and Kentucky Rules of Civil Procedure ("CR") 57 and 65.

2. KRS 418.040 provides this Court with authority to "make a binding declaration of rights, whether or not consequential relief is or could be asked" when a controversy exists. An

actual and justiciable controversy regarding violations of the Kentucky Constitution and state laws clearly exists in this action.

3. CR 65 permits this Court to issue a preliminary injunction and, in a final judgment, a permanent injunction, which may restrict or mandatorily direct the doing of an act.

4. The Attorney General requests an expedited review pursuant to KRS 418.050 and CR 57. SB 151 unconstitutionally eliminates benefits promised to public employees, causing them immediate harm. Moreover, hundreds of public employees have already announced their intention to retire – a significant increase over the historical average – in response to the introduction of pension "reform." Absent immediate relief, SB 151 will force more teachers, law enforcement officers, firefighters, and other crucial public employees to choose between continued employment or the reduction or loss of benefits that were guaranteed to them by state law and the Kentucky Constitution. For these reasons, this justiciable controversy presents an immediate concern that the Court should promptly resolve.

PARTIES

5. Plaintiff, Andy Beshear, is the duly elected Attorney General of the Commonwealth of Kentucky, a constitutional office pursuant to Sections 91, 92, and 93 of the Kentucky Constitution. Pursuant to KRS 15.020, Attorney General Beshear is the chief law officer of the Commonwealth and all of its departments, commissions, agencies, and political subdivisions. Attorney General Beshear is duly authorized by the Kentucky Constitution, statutes and the common law, including his *parens patriae* authority, to enforce Kentucky law. As Attorney General, he has the authority to bring actions for injunctive and other relief to enforce the Kentucky Constitution and the Commonwealth's statutes and regulations, including the

authority to bring an action against the Governor and other state agencies for injunctive relief. *See* KY. CONST. § 91; KRS 15.020.

6. Plaintiff, KEA, is a not-for-profit corporation organized under the laws of Kentucky. KEA is a voluntary membership association comprised of student, active and retired teachers and active and retired education support professionals. KEA advocates for the professional welfare of its members. All active and retired members of KEA participate in or are annuitants of KTRS or CERS.

7. Plaintiff, Kentucky State FOP Lodge, is a fraternal organization composed of current and retired law enforcement officers, as well as local and regional lodges throughout the Commonwealth. It is dedicated to, among other things, bettering the conditions under which its individual members serve, and generally promoting the rights and welfare of law enforcement officers. Its members include both current and retired participants in the state and county retirement systems.

8. Defendant, Matthew Griswold Bevin, is the duly elected Governor of the Commonwealth of Kentucky, a constitutional office. The Governor is the Chief Magistrate of the Commonwealth, pursuant to Section 69 of the Kentucky Constitution, and he is charged by Section 81 of the Constitution with taking care that the laws of the Commonwealth be "faithfully executed." Moreover, Governor Bevin controls the Board of Trustees of KRS through his power to appoint ten of its members, as well as the Secretary of the Personnel Cabinet. KRS 61.645(1)(a), (e). Governor Bevin also exercises influence over the Board of Trustees of KTRS through his power to appoint two of its members and the chief state school officer. KRS

161.250(1)(b)(3). Further, Governor Bevin has stated that he believes he has "absolute authority" to reorganize any state board pursuant to KRS 12.028.[1]

9. Defendant, Bertram Robert Stivers, II, is the President of the Kentucky Senate, a constitutional office. At all relevant times, Senator Stivers was the presiding officer of the Kentucky Senate.

10. Defendant, David W. Osborne, is the Speaker Pro Tempore of the Kentucky House of Representatives.

11. Defendant, Board of Trustees of the Teachers' Retirement System of the State of Kentucky, is responsible for the general administration and management of KTRS. KRS 161.250(1)(a). KTRS is an independent agency and instrumentality of the Commonwealth with the powers and privileges of a corporation and the purpose of providing retirement allowances for teachers and their beneficiaries and survivors. KRS 161.230. The Board's membership consists of the chief state school officer and the State Treasurer as ex officio members, two trustees appointed by the Governor, four elected teacher trustees, two elected lay trustees, and an elected retired teacher trustee. KRS 161.250(1)(b).

12. Defendant, Board of Trustees of the Kentucky Retirement Systems, is responsible for the general administration and management of the Kentucky Employees Retirement System ("KERS"), the County Employees Retirement System ("CERS"), and the Kentucky State Police Retirement System ("SPRS"). KRS 61.645. The Board of Trustees of KRS consists of seventeen members: the Secretary of the Personnel Cabinet, three trustees elected by the members of CERS, one trustee elected by members of SPRS, two trustees elected by members of

[1] Jack Brammer, *Bevin Says He Has "Absolute Authority" to Disband Any State Board*, Lexington Herald-Leader, June 21, 2016 (available at http://www.kentucky.com/news/politics-government/article85085272.html) (last visited Apr. 2, 2018).

KERS, and ten trustees appointed by the Governor. KRS 61.645(1). The Board of Trustees of KRS has the powers and privileges of a corporation, which it exercises to oversee KERS, CERS, and SPRS.

JURISDICTION AND VENUE

13. An actual, justiciable controversy exists, and this Court has subject matter jurisdiction over this action pursuant to KRS 418.040, KRS 23A.010, CR 57, and CR 65.

14. Venue is appropriate in this Court pursuant to KRS 452.405, because the primary offices of the Attorney General and the Defendants are located in Frankfort, Franklin County, Kentucky. Furthermore, this action generally relates to violations of Kentucky law, which were either determined or accomplished in Frankfort, Franklin County, Kentucky. Additionally, this action generally relates to violations of the Kentucky Constitution that occurred in Frankfort, Franklin County, Kentucky.

15. Pursuant to KRS 418.040, *et seq.*, this Court may properly exercise *in personam* jurisdiction over the Defendants. Because Senator Stivers and Representative Osborne are named as defendants in their official capacities, the Court may exercise *in personam* jurisdiction over the General Assembly.

FACTUAL BACKGROUND

The General Assembly Attaches Pension Reform to a Sewage Bill

16. On February 15, 2018, SB 151 was introduced in the Senate as "an act relating to the local provision of wastewater services." The nine-page bill was referred to the Senate Committee on Natural Resources & Energy Committee the next day.

17. On March 12, 2018, SB 151 was taken from that committee, given its first constitutionally mandated reading on the floor of the Senate, and returned to that committee. For this reading, the content of SB 151 dealt only with sewer services.

18. On March 13, 2018, SB 151 was again taken from the Senate Committee on Natural Resources & Energy, given its second constitutionally mandated reading, and then returned to the committee. For this second reading, the content of SB 151 dealt only with sewer services.

19. On March 14, 2018, the Senate Committee on Natural Resources & Energy reported SB 151 favorably, with a Committee Substitute. Again, the hearing and vote dealt with SB 151 as an 11-page bill dealing with sewer services.

20. On March 16, 2018, SB 151 received another reading on the floor of the Senate, and passed 36-0. The vote was in favor of the content of the bill, which dealt exclusively with sewer services.

21. Thus, during its first, second, and third readings on the floor of the Senate, SB 151 was "an act relating to the local provision of wastewater services." It did not contain any provisions relating to the state pension system.

22. On March 19, 2018, SB 151 was received in the House of Representatives and sent to the House Committee on Committees.

23. On March 20, 2018, SB 151, as it then existed exclusively as a sewer bill, was taken from the Committee on Committees, given its constitutionally mandated first reading on the House floor, and returned to the Committee on Committees, which posted SB 151 to the House Committee on State Government.

24. On March 21, 2018, SB 151 was taken from the House Committee on State Government, given its constitutionally mandated second reading on the House floor – again, exclusively as a sewer bill – and returned to the same committee.

25. At the time of both its first and second readings in the House of Representatives, SB 151 was "an act relating to the local provision of wastewater services." It did not contain any provisions relating to the state pension system.

26. Just after 2:00 p.m. on March 29, 2018, the House of Representatives recessed so that the House Committee on State Government could meet. The previously unannounced meeting was held in a small conference room and the public was excluded. At that time, the Committee called SB 151, which was still an 11-page bill relating to sewer services.

27. House Committee Substitute 1 to SB 151 was then introduced. The Substitute stripped all provisions of the wastewater treatment bill and replaced it with pension reform provisions.

28. The new SB 151 completely overhauled the public pension system and, as set forth more fully below, it unconstitutionally breached the inviolable contract that the Commonwealth made with its public employees, including its teachers and police officers.

29. The House Committee on State Government refused to hear testimony from the public concerning SB 151.

30. During the Committee meeting, Representative Jim Wayne objected to holding a vote on SB 151 because no actuarial analysis was provided to the members of the Committee or attached to the bill, in violation of KRS 6.350.

31. The Chair of the House Committee on State Government, Representative Jerry T. Miller, overruled Representative Wayne's objection, and called for a vote on SB 151 shortly

after it was distributed to Committee members, thereby ensuring that the Committee members did not have time to read SB 151 in its entirety.

32. The Committee on State Government then reported the bill favorably to the House. Only then was the title amended by a vote of the Committee, changing it from "an act relating to the local provision of wastewater services" to "an act relating to retirement."

33. The new SB 151 was immediately reported to the House of Representatives, all on the evening of March 29, 2018. It then received its first reading on the floor of the House of Representatives in its new form, as "an act relating to retirement."

34. Again, Representative Wayne objected to the passage of SB 151 without an actuarial analysis. The Speaker Pro Tempore of the House, Representative Osborne, ruled that it was legal to pass SB 151 without such an analysis. Representative Rocky Adkins appealed this ruling of the Chair, but the ruling was upheld by a vote of 58-33.

35. The House of Representatives then passed SB 151 by a vote of 49-46. Representative Osborne, who is the Speaker Pro Tempore of the House of Representatives, then signed the bill on the line labeled "Speaker-House of Representatives."

36. Also during the evening of March 29, 2018, SB 151 was received in the Senate. The Senate then voted to concur in the House Committee Substitute and the amendment to the title. The Senate then passed the bill by a vote of 22-15.

37. SB 151 never received a reading in the Senate after the title and contents of the bill were completely changed, eliminating the provisions relating to wastewater treatment and replacing them wholesale with provisions relating to public pensions.

38. Thus, in a matter of mere hours, SB 151 was completely transformed from its original subject matter, reported out of the House State Government Committee, approved by the

House of Representatives, and approved by the Senate in the dark of night – all before any stakeholders had the opportunity even to read the 291-page bill, much less comment on it.

39. Section 46 of the Kentucky Constitution provides, in relevant part, that "[e]very bill shall be read at length on three different days in each House, but the second and third readings may be dispensed with by a majority of all the members elected to the House in which the bill is pending."

40. No vote was taken in either the House of Representatives or the Senate with regard to SB 151 to suspend the constitutional requirement that a bill receive three separate readings on three separate days in each House prior to passage.

41. SB 151 never received a reading in the Senate in the form in which it was passed – that is, as an act relating to retirement, as opposed to an act relating to wastewater treatment.

42. Moreover, Representative Osborne signed SB 151 on the line for the signature of the "Speaker-House of Representatives."

43. Section 56 of the Kentucky Constitution provides, in pertinent part, that "[n]o bill shall become a law until the same shall have been signed by the presiding officer of each of the two Houses in open session."

44. Under Kentucky law, the Speaker of the House is the presiding officer of the House of Representatives.

45. Representative Osborne is not the Speaker of the House of Representatives, as that position is vacant until filled pursuant to Section 34 of the Kentucky Constitution.

46. In addition, SB 151 was reported out of the House State Government Committee without an actuarial analysis.

47. KRS 6.350, a duly enacted statute, provides that no bill affecting pensions may be reported out of Committee unless accompanied by an actuarial analysis.

48. To date, no actuarial analysis has been performed on SB 151. Instead, a purported actuarial analysis was later added to the bill on the Legislative Research Commission ("LRC") website as an obvious attempt to paper over the fact that SB 151 was passed in violation of the law, because the actuarial analysis was never provided to members of the House Committee on State Government.

49. Specifically, the purported actuarial analysis came too late because it was added to the LRC website after the House Committee on State Government had already reported SB 151. Moreover, the purported actuarial analysis failed to account for the provisions of SB 151 as amended, claiming that it was the same as SB 1 even though numerous provisions between the two bills differed that affected the financial impact of SB 151. In addition, the purported actuarial analysis was provided only by auditors for KRS, and did not contain any analysis of the effects of SB 151 on KTRS.

50. SB 151 was also voted on by both the House of Representatives and the Senate even though it was not accompanied by a fiscal note, and even though neither of those bodies voted by a two-thirds majority to waive the fiscal note requirement.

51. KRS 6.955 specifically prohibits both chambers of the General Assembly from voting on a bill that "relates to any aspect of local government or any service provided thereby" unless the bill is accompanied by a fiscal note, the contents of which are described in KRS 6.965, or unless the chamber of the General Assembly votes, by a two-thirds majority, to waive the fiscal note requirement.

52. Governor Bevin signed SB 151 into law on April 10, 2018.[2]

SB 151 Breaks the Commonwealth's Inviolable Contract

53. The General Assembly promised Kentucky's public employees that, in exchange for their public service, they would be guaranteed certain retirement benefits. This promise was made in the form of a contract, which was passed into law. *See* KRS 21.480; KRS 61.692; KRS 78.852; KRS 161.714. The statutes the General Assembly passed declared this contract to be "inviolable," meaning the General Assembly could not later break it.

54. Kentucky's public employees have upheld their end of the bargain by rendering services for the benefit of the people of the Commonwealth.

55. The new SB 151 made substantial and material changes to the benefits that had been promised to participants in the KTRS, KERS, SPRS, and CERS public pension systems.

56. By enacting and enforcing SB 151, Defendants have materially breached and substantially impaired the inviolable contracts between the Commonwealth and public employees, as set forth below.

Kentucky Teachers Retirement System

57. The General Assembly created an inviolable contract with public educators under KRS Chapter 161. The contract protects benefits provided between KRS 161.220 and KRS 161.710. *See* KRS 161.714.

58. SB 1 amends KRS 161.623, which is within the inviolable contract. In doing so, it unlawfully and materially reduces, alters, or impairs pension benefits due to KTRS members.

[2] The signed SB 151 is available at http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2018-Reg-SB-0151-2470.pdf.

59. Specifically, the inviolable contract does not cap the amount of accrued sick leave that teachers who started before July 1, 2008, may convert to additional service credit for purposes of their retirement. *See* KRS 161.623.

60. Moreover, the inviolable contract currently caps the amount of accrued sick leave that teachers who started on or after July 1, 2008, may convert to additional service credit for purposes of their retirement at 300 days. *See* KRS 161.623(8).

61. Section 74 of SB 151 caps the amount of accrued sick leave that members may convert to the amount accrued as of December 31, 2018. This limitation materially alters and impairs the rights and benefits due to employees, and therefore violates the inviolable contract.

Kentucky Employees Retirement System

62. The KERS pension rights and benefits are located at KRS Chapter 61, with the inviolable contract found in KRS 61.510-61.705. *See* KRS 61.692.

63. SB 1 amends or repeals these very statutes, thereby unlawfully and materially reducing, altering, or impairing pension benefits due to KERS members, as set forth more fully below.

64. The inviolable contract allows lump-sum payments for compensatory time to be included in the creditable compensation of Tier I nonhazardous employees. *See* KRS 61.510. Section 14 of SB 151 expressly excludes lump-sum payments from creditable compensation for non-hazardous, Tier I employees, retiring after July 1, 2023. This exclusion materially alters and impairs the ultimate calculation of KERS members' retirement allowances, and therefore violates the inviolable contract.

65. Under the inviolable contract, uniform and equipment allowances may be included in KERS members' creditable compensation. *See* KRS 61.510. Section 14 of SB 151

expressly excludes such allowances as well as undefined "other expense allowances," paid on or after January 1, 2019, from creditable compensation. This exclusion materially alters and impairs the ultimate calculation of KERS members' retirement allowances, and therefore violates the inviolable contract.

66. The inviolable contract guarantees KERS Tier I members may use accumulated, unused sick leave to determine retirement eligibility. *See* KRS 61.546. Section 16 of SB 151 prohibits KERS Tier I employees from using sick leave service credit for retirement eligibility, if they retire on or after January 1, 2023. Because this prohibition materially impairs the rights and benefits due to members, it violates the inviolable contract.

67. The inviolable contract does not require deductions in any amount from KERS Tier I members' creditable compensation for hospital and medical insurance. *See* KRS 61.702(2)(b). Section 30 of SB 151 requires an employer of a KERS Tier I member employed after July 1, 2003 to deduct up to 1% of the member's creditable compensation for purposes of hospital and medical insurance under the plan. Because this provision alters and impairs the ultimate calculation of KERS members' retirement allowances, it violates the inviolable contract.

68. The inviolable contract requires Tier I hazardous employees' final compensation be calculated using the creditable compensation from the three (3) fiscal years the employee was paid the highest average monthly rate. It requires the highest five (5) fiscal years for Tier I nonhazardous employees. *See* KRS 61.510. In either case, the inviolable contract does not require that the fiscal years used for calculation be complete fiscal years. *Id.* Section 14 of SB 151 requires, after January 1, 2019, that Tier I hazardous employees' final compensation be calculated using the creditable compensation from their highest three (3) *complete* fiscal years, and that the highest five (5) *complete* fiscal years be used to calculate for Tier I nonhazardous

employees' final compensation. Because SB 151 alters and impairs the final compensation calculation guaranteed to hazardous and nonhazardous Tier I employees, it violates the inviolable contract.

69. KERS Tier I and Tier II employees who opted into the current hybrid cash balance plan are guaranteed an annual interest credit of at least 4%. *See* KRS 61.597. Section 19 of SB 151 removes this guarantee, and instead guarantees a return of 0%. Because this change materially impairs the rights of these employees, it violates the inviolable contract.

Kentucky State Police Retirement System

70. The SPRS pension rights and benefits are located at KRS Chapter 16, with the inviolable contract found in KRS 16.510-16.645. *See* KRS 16.652.

71. SB 151 amends or repeals these very statutes, thereby unlawfully and materially reducing, altering, or impairing pension benefits due to SPRS members.

72. The inviolable contract guarantees SPRS Tier I members may use accumulated, unused sick leave to determine retirement eligibility. *See* KRS 16.645; KRS 61.546. Section 16 of SB 151 prohibits SPRS Tier I employees from using sick leave service credit for retirement eligibility, if they retire on or after January 1, 2019. This prohibition materially impairs rights and benefits due to members, and therefore violates the inviolable contract.

73. The inviolable contract does not include deductions in any amount from SPRS Tier I members' creditable compensation for hospital and medical insurance. *See* KRS 16.645; KRS 61.702(2)(b). Section 30 of SB 151 requires an employer of a SPRS Tier I member, employed after July 1, 2003, to deduct up to 1% of the member's creditable compensation for purposes of hospital and medical insurance under the plan. Because this provision alters and

impairs the ultimate calculation of SPRS members' retirement allowances, it violates the inviolable contract.

County Employees Retirement System

74. The CERS pension rights and benefits are located at KRS Chapter 78, with the inviolable contract found in KRS 78.510-78.852. *See* KRS 78.852.

75. SB 151 amends or repeals these very statutes, thereby unlawfully and materially reducing, altering, or impairing pension benefits due to CERS members.

76. The inviolable contract allows lump-sum payments for compensatory time to be included in the creditable compensation of Tier I nonhazardous employees. *See* KRS 78.510. Section 15 of SB 151 expressly excludes lump-sum payments from creditable compensation for non-hazardous, Tier I employees, retiring after July 1, 2023. This exclusion materially alters and impairs the ultimate calculation of CERS members' retirement allowances and therefore violates the inviolable contract.

77. Under prior law, uniform and equipment allowances may be included in CERS members' creditable compensation. *See* KRS 78.510. Section 15 of SB 151 expressly excludes uniform and equipment allowances as well as undefined "other expense allowances," paid on or after January 1, 2019, from creditable compensation. This exclusion materially alters and impairs the ultimate calculation of CERS members' retirement allowances, and therefore violates the inviolable contract.

78. The inviolable contract guarantees CERS members may use accumulated, unused sick leave to determine retirement eligibility. *See* KRS 78.616. Section 17 of SB 151 prohibits CERS employees from using sick leave service credit for retirement eligibility, if they retire on

or after January 1, 2023. This prohibition materially impairs rights and benefits guaranteed to CERS members, and therefore violates the inviolable contract.

79. The inviolable contract does not include deductions, in any amount, from CERS Tier I members' creditable compensation for hospital and medical insurance. *See* KRS 78.545; KRS 61.702(2)(b). Section 30 of SB 151 requires an employer of a CERS Tier I member, employed after July 1, 2003, to deduct up to 1% of the member's creditable compensation for purposes of hospital and medical insurance under the plan. As this provision alters and impairs the ultimate calculation of CERS members' retirement allowances, it violates the inviolable contract.

80. The inviolable contract requires CERS Tier I hazardous employees' final compensation to be calculated using the creditable compensation from the three (3) fiscal years the employee was paid the highest average monthly rate. It requires the highest five (5) years for CERS Tier I nonhazardous employees. *See* KRS 78.510. In either case, the inviolable contract does not require that the fiscal years used for calculation be complete fiscal years. *Id.* Section 15 of SB 151 requires, after January 1, 2019, that CERS Tier I hazardous employees' final compensation be calculated using the creditable compensation from their highest three (3) *complete* fiscal years, and that the highest five (5) *complete* fiscal years be used to calculate CERS Tier I nonhazardous employees' final compensation. Because this provision alters and impairs the ultimate calculation of CERS members' retirement allowances, it violates the inviolable contract.

81. CERS Tier I and Tier II employees who opted into the current hybrid cash balance plan are guaranteed an annual interest credit of at least 4%. *See* KRS 61.597; KRS 78.545. Section 19 of SB 151 removes this guarantee, and instead guarantees a return of

0%. Because this change materially impairs the rights of these employees, it violates the inviolable contract.

SB 151 Violates the Kentucky Constitution

82. By letters dated February 28, 2018 and March 6, 2018, the Attorney General notified all members of the General Assembly and the public that the pension bills it was considering – then SB 1 and its Committee Substitute – violated the inviolable contract in 21 ways.

83. Those letters therefore put the General Assembly and the public on notice that SB 1, if passed, would breach the inviolable contract and therefore violate the Kentucky Constitution.

84. Specifically, the letters explained that a substantial impairment of the contract would violated Section 19 of the Kentucky Constitution, which prohibits the enactment of "any law impairing the obligation of contracts."

85. SB 151 contains 15 of the violations of the inviolable contract identified in the Attorney General's letters. Nevertheless, the General Assembly passed SB 151 and Governor Bevin signed it into law.

86. Moreover, the General Assembly declined to enact or even consider measures that would provide revenue dedicated to funding the retirement systems.

87. SB 151 is therefore not reasonable or necessary to serve an important public purpose.

88. Because SB 151 substantially impairs the contractual benefits guaranteed to Kentucky's public employees, and because Defendants cannot show that SB 151 is reasonable

and necessary to serve an important public purpose, SB 151 violates Section 19 of the Kentucky Constitution.

89. Moreover, SB 151 obligates the Commonwealth to pay *more* toward the state pension systems than under current law, rather than create a savings. Specifically, SB 151 will cost $3.3 billion in debt for state pension systems and $1.7 billion in debt for local pension systems over the next 35 years. *See* Affidavit of Jason Bailey, ¶ 22, attached as Exhibit A.

The Public Has Suffered and Will Suffer
Irreparable Injury Absent a Permanent Injunction

90. As a direct result of Defendants' efforts to abrogate public employees' rights to the promised retirement benefits, record numbers of public employees have retired rather than be subjected to an unlawful reduction in benefits.

91. For instance, in September 2017, after Governor Bevin introduced his plan to dismantle the public pension systems, the number of state and local government employees who retired surged 37% over the same month in the previous year.[3]

92. KTRS saw an even greater increase in the number of teacher retirees—a jump of 64% following Governor Bevin's pension proposal.[4]

93. The unprecedented wave of retirements has continued to the present, and it will only accelerate now that SB 151 has been signed into law. Defendants' actions have left public employees who are eligible to retire with an impossible choice: retire now, or lose the pension

[3] John Cheves, *September Retirements Surge as Kentucky Lawmakers Consider Pension Overhaul*, Lexington Herald-Leader, Sept. 6, 2017 (available at http://www.kentucky.com/news/politics-government/article171567482.html) (last visited Apr. 3, 2018).

[4] Tom Loftus, *Kentucky Pension Crisis: More Public Employees Are Retiring As Governor Bevin Works on Reform*, Courier-Journal, Oct. 10, 2017 (available at https://www.courier-journal.com/story/news/politics/2017/10/10/kentucky-pension-crisis-retirements-surge-bevin-works-reform/749214001/) (last visited Apr. 3, 2018).

benefits you were promised. The Commonwealth is harmed by the early retirement of thousands of capable teachers and other public servants who would prefer to remain working, but must retire to protect the pension benefits on which they and their families depend. Moreover, the retirement systems themselves are hurt by these early retirements, which cause each annuitant to be paid benefits longer than actuarially projected and cut short the anticipated employer and employee contributions to the system. *See* Affidavit of Stephanie Winkler, ¶ 12, attached hereto as Exhibit B. The enactment of SB 151 makes this harm imminent.

94. Moreover, because SB 151 removes teachers' ability to use sick days for retirement eligibility after the end of the current year, teachers have begun to use their sick days now.

95. The result of teachers using sick days has already become apparent. Already, on March 30, 2018, 27 school districts were forced to cancel school because teachers called in sick, to the detriment of the schoolchildren and their parents.

96. In light of the foregoing, Defendants' actions to impair the inviolable contracts between public employees and the Commonwealth violate Section 19 of the Kentucky Constitution.

CLAIMS

Count I
Declaratory Judgment
Violation of Section 19 of the Kentucky Constitution

97. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

98. Section 19 of the Kentucky Constitution similarly provides that "[n]o ex post facto law, nor any law impairing the obligation of contracts, shall be enacted."

99. SB 151 substantially impairs the inviolable contract between the Commonwealth and its public employees established in KRS 21.480, KRS 61.692, KRS 78.852, and KRS 161.714 by reducing the benefits provided to those employees.

100. SB 151 therefore violates Section 19 of the Kentucky Constitution.

Count II
Declaratory Judgment
Violation of Section 46 of the Kentucky Constitution

101. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

102. Section 46 of the Kentucky Constitution provides, in relevant part, that "[e]very bill shall be read at length on three different days in each House, but the second and third readings may be dispensed with by a majority of all the members elected to the House in which the bill is pending."

103. SB 151, as passed, received only one reading in the House of Representatives.

104. The House of Representatives did not vote, "by a majority of all the members elected to the House in which the bill is pending," to dispense with the second and third readings of SB 151, as passed.

105. SB 151, as passed, did not receive any readings in the Senate.

106. SB 151 therefore violates Section 46 of the Kentucky Constitution.

Count III
Declaratory Judgment
Violation of Section 56 of the Kentucky Constitution

107. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

108. Section 56 of the Kentucky Constitution provides, in pertinent part, that "[n]o bill shall become a law until the same shall have been signed by the presiding officer of each of the two Houses in open session."

109. Under Kentucky law, the Speaker of the House is the presiding officer of the House of Representatives.

110. SB 151 was signed by Representative Osborne, who is not the Speaker of the House.

111. SB 151 therefore was not properly signed by the presiding officer of the House of Representatives, in violation of Section 56 of the Kentucky Constitution.

Count IV
Declaratory Judgment
Violation of Section 13 of the Kentucky Constitution

112. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

113. Section 13 of the Kentucky Constitution provides, in relevant part, that "[n]or shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him."

114. SB 151 deprives public employees of their contractual rights to certain retirement benefits, as set forth above.

115. SB 151 does not provide public employees with any compensation in exchange for depriving them of their contractual rights.

116. The contractual rights deprived by SB 151 are the property of the public employees.

117. SB 151 therefore violates Section 13 of the Kentucky Constitution.

Count V
Declaratory Judgment
Violation of KRS 6.350

118. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

119. KRS 6.350 provides, in relevant part: "A bill which would increase or decrease the benefits or increase or decrease participation in the benefits or change the actuarial accrued liability of any state-administered retirement system shall not be reported from a legislative committee of either house of the General Assembly for consideration by the full membership of that house unless the bill is accompanied by an actuarial analysis." KRS 6.350(1).

120. As introduced to the House Committee on State Government on March 29, 2018, SB 151 will decrease the benefits provided to the participants of KTRS, KERS, SPRS, and CERS, each of which is a state-administered retirement system.

121. The House Committee on State Government reported SB 151 to the floor of the House of Representatives without an actuarial analysis.

122. SB 151 was therefore passed in violation of KRS 6.350(1).

Count VI
Declaratory Judgment
Violation of KRS 6.955

123. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

124. KRS 6.955 provides, in relevant part: "No bill or resolution which relates to any aspect of local government or any service provided thereby shall be voted on by either chamber of the General Assembly unless a fiscal note has been prepared and attached to the bill pursuant to KRS 6.960, except that, if in the chamber in which the bill is being considered, two-thirds

(2/3) of the members elected vote to waive the fiscal note requirement, no note shall be required. The fiscal note waiver shall be certified by the clerk of the chamber in which the bill is being considered, and such certification shall be attached to the bill. Although waived in one chamber, a fiscal note shall be required when the bill goes to the other chamber unless a majority of the members elected to such chamber vote to waive the fiscal note requirement." KRS 6.955(1).

125. SB 151 affects local government because it creates, alters, or amends provisions of law requiring local governments to contribute to the pensions of their employees.

126. Both the House of Representatives and the Senate passed SB 151 without including a fiscal note, and without a vote by two-thirds (2/3) of the members of either chamber to waive the fiscal note requirement.

127. SB 151 was therefore passed in violation of KRS 6.955.

Count VII
Declaratory Judgment
Violation of Section 2 of the Kentucky Constitution

128. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

129. Section 2 of the Kentucky Constitution provides, "[a]bsolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority."

130. SB 151 was passed in a procedure that violated constitutional and statutory requirements, and it deprives public employees of their constitutional and statutory rights.

131. The passage of SB 151 therefore violates the rights of the people of the Commonwealth to be free from the exercise of arbitrary power over their lives, liberty, and property, in violation of Section 2 of the Kentucky Constitution.

Count VIII
Injunctive Relief Against Governor Bevin
(All Plaintiffs)

132. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

133. Plaintiffs are entitled to relief in the form of injunctive relief, both temporary and permanent, restraining and enjoining Governor Bevin and his agents, attorneys, and any other person in active concert or participation with him, from enforcing or complying with SB 151, or in any way unconstitutionally reducing or eliminating the retirement benefits provided to public employees under the inviolable contracts.

134. By reducing retirement benefits beginning July 1, 2018, SB 151 forces public employees to choose between retiring immediately or losing retirement benefits they had previously been promised in an inviolable contract.

135. Moreover, by causing public employees to retire, SB 151 inflicts harm on the Commonwealth, which will be deprived of the services provided by essential, experienced public employees.

136. SB 151 therefore threatens imminent harm to the public and public employees by violating the Kentucky Constitution's prohibition on the impairment of contracts.

137. By reason of the actions and violations described above, KTRS, KERS, SPRS, and CERS participants, as well as the citizens of the Commonwealth, suffered immediate and irreparable injury and will continue to so suffer unless Governor Bevin is immediately restrained and permanently enjoined from enforcing SB 151, or in any way unconstitutionally reducing or eliminating the retirement benefits provided to public employees under the inviolable contracts.

138. Plaintiffs have no adequate remedy at law or otherwise to address this injury, save in a court of equity.

139. No court has refused a previous application for a restraining order or injunction in this matter.

Count IX
Injunctive Relief Against Board of Trustees of KTRS
(Commonwealth and KEA)

140. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

141. Plaintiffs are entitled to relief in the form of injunctive relief, both temporary and permanent, restraining and enjoining the Board of Trustees of KTRS and its agents, attorneys, and any other person in active concert or participation with it, from enforcing or complying with SB 151, or in any way unconstitutionally reducing or eliminating the retirement benefits provided to public school employees under the inviolable contracts.

142. By reducing retirement benefits beginning July 1, 2018, SB 151 forces public employees to choose between retiring immediately or losing retirement benefits they had previously been promised in an inviolable contract.

143. Moreover, by causing public employees to retire, SB 151 inflicts harm on the public, who will be deprived of the services provided by essential public employees.

144. SB 151 therefore threatens imminent harm to the public and public employees by violating Kentucky's prohibition on the impairment of contracts.

145. By reason of the actions and violations described above, KTRS participants, as well as the citizens of the Commonwealth, suffered immediate and irreparable injury and will continue to so suffer unless the Board of Trustees of KTRS is immediately restrained and

permanently enjoined from enforcing or complying with SB 151, or in any way unconstitutionally reducing or eliminating the retirement benefits provided to public employees under the inviolable contracts.

146. Plaintiffs have no adequate remedy at law or otherwise to address this injury, save in a court of equity.

147. No court has refused a previous application for a restraining order or injunction in this matter.

Count X
Injunctive Relief Against Board of Trustees of KRS
(Commonwealth and Kentucky State FOP Lodge)

148. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

149. Plaintiffs are entitled to relief in the form of injunctive relief, both temporary and permanent, restraining and enjoining the Board of Trustees of KRS and its agents, attorneys, and any other person in active concert or participation with him, from enforcing or complying with SB 151, or in any way unconstitutionally reducing or eliminating the retirement benefits provided to public employees under the inviolable contracts.

150. By reducing retirement benefits beginning July 1, 2018, SB 151 forces public employees to choose between retiring immediately or losing retirement benefits they had previously been promised in an inviolable contract.

151. Moreover, by causing public employees to retire, SB 151 inflicts harm on the public, who will be deprived of the services provided by essential, experienced public employees.

152. SB 151 therefore threatens imminent harm to the public and public employees by violating the Kentucky Constitution's prohibition on the impairment of contracts.

153. By reason of the actions and violations described above, KERS, SPRS, and CERS participants, as well as the citizens of the Commonwealth, suffered immediate and irreparable injury and will continue to so suffer unless the Board of Trustees of KRS is immediately restrained and permanently enjoined from enforcing or complying with SB 151, or in any way unconstitutionally reducing or eliminating the retirement benefits provided to public employees under the inviolable contracts.

154. Plaintiffs have no adequate remedy at law or otherwise to address this injury, save in a court of equity.

155. No court has refused a previous application for a restraining order or injunction in this matter.

156. Plaintiffs are entitled to further relief as may be shown by the evidence and legal authority that may be presented in this proceeding. Plaintiffs reserve the right to amend this Complaint, as necessary, to request any further relief to which they are entitled.

WHEREFORE, Plaintiffs demand judgment against Defendants as set forth in the prayer for relief, below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand as follows:

I. That this Court issue a declaration and order that:

A. SB 151 breaches the inviolable contract between the Commonwealth and its public employees.

B. SB 151 violates Section 2 of the Kentucky Constitution.

C. SB 151 violates Section 13 of the Kentucky Constitution.

D. SB 151 violates Section 19 of the Kentucky Constitution.

E. SB 151 was passed in violation of Section 46 of the Kentucky Constitution.

F. SB 151 was passed in violation of Section 56 of the Kentucky Constitution.

G. SB 151 was passed in violation of KRS 6.350.

H. SB 151 was passed in violation of KRS 6.955.

II. That the Court issue a restraining order, temporary injunction, and permanent injunction, restraining and enjoining Governor Bevin and all his agents, attorneys, representatives, and any other persons in active concert or participation with him from enforcing SB 151 or in any way reducing or eliminating the retirement benefits provided to public employees under the inviolable contracts.

III. That the Court issue a restraining order, temporary injunction, and permanent injunction, restraining and enjoining the Board of Trustees of KTRS and all its agents, attorneys, representatives, and any other persons in active concert or participation with it from enforcing SB 151 or in any way reducing or eliminating the retirement benefits provided to public employees under the inviolable contract.

IV. That the Court issue a restraining order, temporary injunction, and permanent injunction, restraining and enjoining the Board of Trustees of KRS and all its agents, attorneys, representatives, and any other persons in active concert or participation with it from enforcing SB 151 or in any way reducing or eliminating the retirement benefits provided to public employees under the inviolable contract.

V. That Plaintiffs be awarded any and all other relief to which they are is entitled, including attorneys' fees and costs.

DATE: April 11, 2018

Respectfully Submitted,

ANDY BESHEAR
ATTORNEY GENERAL

By: */s/ Andy Beshear*

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Counsel for Plaintiff Kentucky FOP Lodge

VERIFICATION

I, J. MICHAEL BROWN, Deputy Attorney General, upon being duly sworn, do hereby swear that I have read the foregoing Verified Complaint for a Declaration of Rights, a Temporary Injunction, and a Permanent Injunction and the factual allegations set out therein are true and correct to the best of my knowledge and belief.

J. Michael Brown

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FRANKLIN)

Subscribed, sworn to and acknowledged before me by this 11 day of April, 2018, by J. Michael Brown.

Notary Public

Printed Name: Abigail R. Hartge

My Commission Expires: March 24, 2021

ABIGAIL R. HARTGE
NOTARY PUBLIC
State At Large, Kentucky
My Commission Expires March 24, 2021

VERIFICATION

I, STEPHANIE WINKLER, President of the Kentucky Education Association, upon being duly sworn, do hereby swear that I have read the foregoing Verified Complaint for a Declaration of Rights, a Temporary Injunction, and a Permanent Injunction and the factual allegations set out therein are true and correct to the best of my knowledge and belief.

Stephanie Winkler

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FRANKLIN)

Subscribed, sworn to and acknowledged before me by Stephanie Winkler this 9th day of April, 2018.

Notary Public #517584

Printed Name: MARY W. RUBLE

My Commission Expires: Aug. 18, 2018

VERIFICATION ON BEHALF OF STATE FOP

I, Berl Perdue, Jr. President of the Kentucky State Fraternal Order of Police, hereby state that I have reviewed the Complaint in this matter and that the factual statements in the Complaint relating to the sworn law enforcement officers, and to the Kentucky State Fraternal Order of Police and its associated Lodges, are true and accurate to the best of my information and belief.

Berl Perdue, Jr.
Berl Perdue, Jr.

Subscribed and sworn to before me by Berl Perdue, Jr., this 11th day of April, 2018.

Joel W Johnson
Notary Public, State at Large, Kentucky

My commission expires: 8-4-2018
556555

Exhibit A

AFFIDAVIT OF JASON BAILEY

Comes the Affiant, after being duly sworn, and states as follows:

1. My name is Jason Bailey. I am a founder and Executive Director of the Kentucky Center for Economic Policy. I have been the Executive Director since 2011.

2. The Kentucky Center for Economic Policy (KCEP) seeks to improve the quality of life for all Kentuckians through research, analysis and education on important policy issues facing the Commonwealth. KCEP produces research on timely issues; promotes public conversation about those issues through media and presentations; and advocates to decision makers on the need for policies that move all Kentuckians forward.

3. In my role I regularly give testimony, issue analysis in the form of reports, issue facts sheets, and give presentations on budget and tax; economic security; education; health care; jobs and economy; and workforce and economic development.

4. KCEP is a member of the State Priorities Partnership, a national network of organizations that work to address state tax and budget issues and their impact on low- and moderate-income families. The State Priorities Partnership is coordinated by the Center on Budget and Policy Priorities. KCEP is also a member of the Working Poor Families Project and the Economic Analysis and Research Network (EARN).

5. Prior to my role as Executive Director of the Kentucky Center for Economic Policy, I was the Policy Director for 8 years at Mountain Association for Community Economic Development.

6. I received my Bachelor's Degree from Carson-Newman College in 1998 and a Master's Degree in Public Administration with a specialization in public finance in 2007 from New York University.

7. My public service work includes appointments to the Governor's Blue Ribbon Commission on Tax Reform and the Kentucky Teachers' Retirement System Funding Work Group.

8. In the scope of my job, I analyzed Senate Bill 151. The legislation, introduced and passed suddenly in the General Assembly on March 29, 2018, moves new teachers into a less secure hybrid cash balance plan and ends the inviolable contract moving forward for them, making their benefits vulnerable to further cuts in the future.

9. Senate Bill 151 also caps the use of sick leave for teacher retirement benefits and weakens the already-modest hybrid cash balance for state and local non-hazardous employees.

10. By ending the inviolable contract for new teachers, the General Assembly can now also weaken the cash balance benefit at any time in the future. That could include lowering the amount employers credit to teachers' accounts each year (set in the legislation initially at 8 percent of teachers' pay, whereas teachers contribute their current 9.105 percent of pay) or giving them even less of the investment returns.

11. Currently teachers have a legally protected benefit based on when they are hired, providing them with the security of knowing what they will receive when they retire.

12. SB 151 shifts about 1/3 of the cost of the hybrid cash balance plan to school districts, which must contribute 2 percent of new teachers' pay for the benefit. This change will continue the trend of the state backing away from its responsibility to fund K-12 education and asking local schools to bear a larger share of costs. That pattern is creating a growing gap between rich and poor school districts, which is returning to levels that were declared unconstitutional in the 1980s.

13. The bill caps the use of sick leave in calculating retirement benefits for current teachers to the amount of sick leave accrued as of December 31, 2018. This change will also add more costs to local school districts that will have to pay more for substitute teachers as use of sick days increases. The bill raises the retirement eligibility for new teachers to age 65 with 5 years of work experience or at least age 57 and an age plus years of service that equal a minimum of 87. Currently, teachers can retire with full benefits at age 60 with at least 5 years' experience or at any age with 27 years' experience.

14. State and local workers' plans are cut again, and the defined contribution option takes resources from pension plans.

15. The bill weakens the hybrid cash balance plan for state and local non-hazardous employees that was created just five years ago — evidence that ending the teachers' inviolable contract means benefits might be cut further in the future.

16. The state and local non-hazardous plan guaranteed workers a 4 percent rate of return and gave them 75 percent of investment returns above that amount, while the new plan under SB 151 will — like the benefit for new teachers — guarantee

only a 0-percent rate of return and 85 percent of investment returns above that level. That means less in retirement benefits for these workers.

17. What's more, the plan introduces a 401(a) defined contribution (DC) option for state and local non-hazardous employees in which the employer contributes 4 percent of pay (employees put in 5 percent). Workers who choose the DC plan cannot later switch back to the hybrid cash balance plan.

18. The actuary says the DC plan is slightly more expensive than the weakened hybrid cash balance plan, and gives people 100 percent of investment returns rather than 85 percent in the cash balance option. Although DC plans are riskier for employees and will earn lower investment returns over time, the actuary projects that 25 percent of employees will end up in the DC plan.

19. The more employees who contribute to the DC plan instead of paying into the defined benefit/cash balance plan pool, the more the traditional plan is vulnerable to further deterioration. SB 151 allows the Kentucky Retirement Systems (KRS) board to contract with an outside entity to manage the DC investments.

20. The bill also requires KRS employees hired between 2003 and 2008 to pay an additional 1 percent of pay for retiree health care. Kentucky's retiree health plans are currently on a strong growth trajectory under the current law, without the need for additional contributions, with the KERS hazardous health plan 118 percent funded now.

21. The plan ends the ability of current employees to use sick leave service credit for determining retirement eligibility after 2023, and eliminates a $5,000 post-retirement death benefit for those hired starting in 2014.

22. Actuarial analysis of its impact on Kentucky Retirement Systems, which was attached after the bill was passed, shows it does not save money. It fact, it will cost $3.3 billion in debt for the state pension systems and $1.7 billion in debt for the local pension systems over the next 35 years.

23. The added costs are because the plan resets the 30-year period used to pay off the liabilities to start in 2019 rather than 2013, lowering annual payments slightly but resulting in more costs over the entire period. The ability to reset the 30-year period shows that an urgency to pay off unfunded liabilities and repeated claims of imminent insolvency in the plans were unfounded.

Jason Bailey

Jason Bailey, Executive Director
Kentucky Center for Economic Policy

COMMONWEALTH OF KENTUCKY

COUNTY OF Madison

Subscribed, sworn to and acknowledged before me by this 2nd day of April, 2018, by Jason Bailey.

Debra J. Reardon
Notary Public

Printed Name: DEBRA J. REARDON

My Commission Expires: 09/01/2018

Debra J. Reardon
Notary Public, ID No. 516929
State at Large, Kentucky
My Commission Expires on Sept. 1, 2018

Exhibit B

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION ___
CIVIL ACTION NO. 18-CI-________

COMMONWEALTH OF KENTUCKY
ex rel. ANDY BESHEAR, ATTORNEY GENERAL

and

KENTUCKY EDUCATION ASSOCIATION

and

KENTUCKY STATE FRATERNAL ORDER OF POLICE LODGE PLAINTIFFS

v.

MATTHEW G. BEVIN, in his official capacity
as Governor of the Commonwealth of Kentucky, et al. DEFENDANTS

AFFIDAVIT OF STEPHANIE WINKLER

I, Stephanie Winkler, being duly sworn, hereby state as follows:

1. I currently serve as the elected president of the Kentucky Education Association. I have served in this capacity since June 15, 2013. I am also a teacher duly certified in the Commonwealth of Kentucky. Before becoming President of KEA, I taught 4th grade in Madison County Public Schools.

2. KEA is a voluntary membership organization for school employees and represents over 40,000 members throughout Kentucky. KEA is affiliated with the National Education Association, and has local affiliates in every school district in the state. KEA is the largest professional association in Kentucky.

3. KEA represents public school teachers in grades P-12, classified support professional employees, school administrators, Education and Workforce Development Cabinet employees, Kentucky Community and Technical College system employees, college students

preparing to become teachers, and retired educators. We advocate for their employment and professional interests, including wages, school funding, pensions and health insurance.

4. For months, beginning in September/October of 2017 and continuing to the present, KEA and other stakeholders have been advocating against significant structural changes to the public pension systems. We don't believe structural changes are necessary, but instead believe the legislature should fund the systems per the appropriate actuarial calculations. For months affected stakeholder groups, including KEA members, have been contacting their legislators at home and at their offices, making their opinions known on this issue. The pension discussion has garnered a lot of press coverage and has been the primary political topic of interest in Kentucky for months.

5. During the afternoon of March 29, 2018, the House of Representatives State Government committee took SB 151, an act originally dealing with wastewater services, and amended it to include a massive pension reform bill. The bill was rushed to the floor of the House of Representatives, which passed it and sent it to the Senate, which passed it late that night. All these legislative maneuvers took place on the same day, without giving KEA or the public any chance to comment on the provisions of the bill, or even review the bill to be able to understand it.

6. SB 151 was also passed without the legally required actuarial analysis, so neither KEA nor the public has had an opportunity to properly review the actual financial impact of the bill.

7. After months of being publicly insulted by the governor, who asserted that teachers "hoarded" their sick leave and that they were too "unsophisticated" and "ignorant" to understand their own pension system, this secretive and manipulative legislative maneuver to

push through legal changes to the public pension systems that KEA and other stakeholders were vocally opposed to was the final straw. The governor and a majority of the legislature constantly tout transparency and accountability for public education and the public pension systems, but don't hold themselves to that same standard. Teachers were appalled by the process, which they accurately judged to be outrageous and obviously implemented for the sole purpose of keeping educators and the public from having any input. They reacted strongly. Immediately after the passage of SB 151, thousands of teachers across the state called in sick for Friday, March 30. Over twenty school districts were forced to close due to insufficient numbers of teachers and substitute teachers to cover classes and ensure that students were educated and supervised in a safe environment.

8. Although KEA did not call for the sickout action, it has continued intermittently around the state every day since SB151 was passed. Based on posts we see on social media and conversations our members are having with their colleagues, we reasonably believe that teachers and other educational professionals will continue to protest the passage and possible implementation of SB151 by continuing to call in sick, which will result in continued understaffing or school closings.

9. SB 151 irreparably harms teachers and other educational professionals by violating the inviolable contract that they each entered into with the Commonwealth on the day they each began their public employment. SB 151 illegally diminishes or eliminates the benefits that teachers were promised as conditions of their employment as part of that inviolable contract.

10. SB 151 irreparably harms teachers, educational professionals, and students in that it will strongly induce teachers to retire earlier than they originally planned. KEA reasonably expects that after the passage of SB 151, teachers who are eligible to do so will retire prior to the

dates that their benefits will be diminished, thereby depriving them of income and the personal fulfillment of teaching. These teachers will also have to significantly accelerate their financial and personal planning for retirement.

11. The retirements will also irreparably harm students and will adversely impact their educations by removing the most experienced and knowledgeable teachers from the classroom.

12. SB 151 irreparably harms the Teacher Retirement System of Kentucky ("TRS") in which certified educators participate, and will also irreparably harm the County Employees' Retirement System ("CERS") in which classified personnel participate. As part of their actuarial analysis, the pension systems project the expected rates of retirement. That rate is the basis for investment decisions and is a factor in calculating the statutory employer and employee contributions to be received from each participant. Early retirements shift participants from active contributors to annuitants earlier than actuarially projected. Cutting off those contributions sooner than expected places an unanticipated financial burden on the systems, decreases the time over which the contributions are invested, and obligates each system to pay out retirees over a longer period of time than originally assumed.

13. SB 151 irreparably harms education by discouraging talented students from entering the education profession. The provisions of SB151 create a hybrid cash balance plan that will apply to new hires after July 1, 2018. This plan shifts the financial risk of retirement entirely onto the employee, who may or may not gather enough savings and investment income during his or her career to retire with adequate income. Currently, teachers are guaranteed a defined benefit in retirement based on a factor determined by their final average wage, age and years of service. Once payout of a defined pension begins, it continues for the entire life of the

retiree. The hybrid cash balance plan may allow a future retiree to purchase a lifetime annuity with the proceeds of his or her accumulated account, but the amount of monthly income the retiree will receive will be utterly unpredictable and will have little relationship to what the individual earned as an active teacher. This scheme injects significant financial risk into choosing public education as a profession in Kentucky. Public employment used to be attractive not for its annual salary, but for the defined benefit pension that could be earned over a career. Given these new developments, college students will be far less inclined to become educators knowing that they will earn less annually than their private sector counterparts and will also not be guaranteed a secure retirement. Furthermore, the provisions of SB151 eliminate the "inviolable contract" for all new hires, meaning that the General Assembly may renege on even these questionable promises at any time

14. SB 151 also irreparably harms teachers and educational professionals by disrespecting them, demeaning their contributions, and devaluing their decades of public service. Throughout the legislative session, many KEA members have complained to KEA that they have been disrespected and disparaged during the legislative process. The illegal violation of the Commonwealth's inviolable contract, and the secretive manner in which the General Assembly rushed it through, demonstrate a willful indifference to the legal rights of teachers and educators, the promises that the Commonwealth has made to its teachers, and the daily sacrifices made by teachers and educators in striving to educate our children. SB 151 is a direct affront to the teaching profession in Kentucky and everyone in it.

15. Finally, and most importantly, the manner by which the legislature passed this bill is an irreparable harm to the democratic process and to all peoples' faith in government. Legislators are elected by the people and are accountable to the people, and are supposed to act

in a manner that creates faith in the deliberative process and confidence in the government and in their leadership. However, all that was utterly undermined by the process used to pass SB151. The legislators involved were deceptive and purposely opaque and their acts were an affront to every thinking, voting citizen of the state. It's worth noting that the rally that occurred in Frankfort on Monday, April 2, 2018 had in attendance not just teachers, but also other public employees, parents, students, and taxpayers. Many of the people who turned out in protest were not directly affected by SB151. They turned out to publicly object to the insulting, disrespectful way the House and Senate behaved toward all citizens.

Further affiant sayeth naught.

Stephanie Winkler

COMMONWEALTH OF KENTUCKY)
) ss.
COUNTY OF Franklin.)

Subscribed and sworn to before me by Stephanie Winkler, Affiant, on this 9th day of April, 2018.

Notary Public

Notary Number: 517584
My commission expires: August 18, 2018