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FRANKLIN CIRCUIT COURT
AMY FELDMAN, CLERK

COMMONWEALTH OF KENTUCKY
48TH JUDICIAL CIRCUIT
FRANKLIN CIRCUIT COURT
DIVISION F
CIVIL ACTION NO. 16-CI-1252

FILED
NOV 29 2016
FRANKLIN CIRCUIT COURT
AMY FELDMAN, CLERK

RANDY WIECK, BETSY BELL, JANE NORMAN,
ALICE HALL, DR. OLIVER LUCAS, ERIN MOSS,
KATHY FRIES, CYNTHIA SHIROMA, CYNDI YOUNG,
DR. CRAIG DARIF, MARINA GUTIERREZ, MARGARET
MATTINGLY, DR. JOHN PAUL SCHUSTER,
MARK CHADDIC, DAWN LADER, KRIS TATRO,
KRISTIN KESLER, GAIL K. BENEDICT, FRANCOISE
FARMAN, DANIEL MORGAN, ANN BICKEL, GARY
GRAY, MARIANNE RADEMAKER, VIRGINIA DIAZ,
LUANN JOHNSON, MATILDA ERTZ, PEGGY
HEIMERDINGER, CHRIS APPLGATE, LISA WHITE
AND ERICA L. COOPER,

PLAINTIFFS,

VS.

COMPLAINT

MATTHEW GRISWOLD BEVIN, GOVERNOR,
COMMONWEALTH OF KENTUCKY,
Governor's Office
700 Capitol Avenue, Suite 100
State Capitol Building
Frankfort, Kentucky 40601

ROBERT STIVERS,
PRESIDENT OF THE KENTUCKY SENATE
702 Capitol Avenue
Annex Room 236
Frankfort, Kentucky 40601

and

GREG STUMBO, SPEAKER OF THE
KENTUCKY HOUSE OF REPRESENTATIVES,
702 Capitol Avenue
Annex Room 303
Frankfort, Kentucky 40601

DEFENDANTS.

For their Complaint against the defendants, plaintiffs, by counsel, allege as follows:

THE PARTIES

1. The plaintiffs are Randy Wieck, Betsey Bell, Jane Norman, Alice Hall, Dr. Oliver Lucas, Erin Moss, Kathy Fries, Cynthia Shiroma, Cyndi Young, Dr. Craig DaRif, Marina Gutierrez, Margaret Mattingly, Dr. John Paul Schuster, Mark Chaddic, Dawn Lader, Kris Tatro, Kristin Kesler, Gail K. Benedict, Francoise Farman, Daniel Morgan, Ann Bickel, Gary Gray, Marianne Rademaker, Virginia Diaz, LuAnn Johnson, Matilda Ertz, Peggy Heimerdinger, Chris Applegate, Lisa White and Erica L. Cooper;

2. Randy Wieck has an address of 1303 Nightingale Lane, Goshen, Kentucky 40026 and is employed by Jefferson County Public School Systems as a teacher;

3. Betsey Bell has an address of 2030 Murray Avenue, Louisville, Kentucky 40205 and is employed by Jefferson County Public School Systems as a teacher;

4. Jane Norman has an address of 1909 Emerson Avenue, Louisville, Kentucky 40205 and is retired from Jefferson County Public School Systems;

5. Alice Hall has an address of 100 W. Whitney Avenue, Louisville, Kentucky 40214 and is retired from Jefferson County Public School Systems;

6. Dr. Oliver Lucas has an address of 8705 Sanctuary Lane, Louisville, Kentucky 40291 and is employed by Jefferson County Public School Systems as a teacher;

7. Erin Moss has an address of 4305 Woodgate Lane, Louisville, Kentucky 40220 and is employed by Jefferson County Public School Systems as a teacher;

8. Kathy Fries has an address of 5903 Halma Drive, Louisville, Kentucky 40272 and is employed by Jefferson County Public School Systems as a teacher;

9. Cynthia Shiroma has an address of 10103 Headley Hill Road, Louisville, Kentucky 40223 and is employed by Jefferson County Public School Systems as a teacher;

10. Cyndi Young has an address of 501 Fairlawn Road, Louisville, Kentucky 40207 and is employed by Jefferson County Public School Systems as a teacher;

11. Dr. Craig DaRif has an address of 1800 Woodbourne Avenue, Louisville, Kentucky 40205 and is retired from Jefferson County Public School Systems;

12. Marina Gutierrez has an address of 6615 Duroc Avenue, Prospect, Kentucky 40059 and is employed by Jefferson County Public School Systems as a teacher;

13. Margaret Mattingly has an address of 130 Bonner Avenue, Louisville, Kentucky 40207 and is employed by Jefferson County Public School Systems as a teacher;

14. Dr. John Paul Schuster has an address of 8901 Del Cristo Drive, Louisville, Kentucky 40299 and is employed by Jefferson County Public School Systems as a teacher;

15. Mark Chaddic has an address of 17523 Curry Branch Road, Louisville, Kentucky 40245 and is employed by Jefferson County Public School Systems as an ECE;

16. Dawn Lader has an address of 3706 Plymouth Road, Louisville, Kentucky 40207 and is employed by Jefferson County Public School Systems as a teacher;

17. Kris Tatro has an address of 205 Roundstone Court, Louisville, Kentucky 40223 and is employed by Jefferson County Public School Systems as a teacher;

18. Kristin Kesler has an address of 3320 Hidden Lake Court, Fisherville, Kentucky 40023 and is retired from Jefferson County Public School Systems;

19. Gail K. Benedict has an address of 2205 Bonnycastle, Louisville, Kentucky 40205 and is employed by Jefferson County Public School Systems as a teacher;

20. Francoise Farman has an address of 225 Eastern Wood Court, Louisville, Kentucky 40243 and is retired from Jefferson County Public School Systems;

21. Daniel Morgan has an address of 2911 Aspendale Court, Louisville, Kentucky 40241 and is employed by Jefferson County Public School Systems as a teacher;

22. Ann Bickel has an address of 2212 Dearing Court, Louisville, Kentucky 40204 and is retired from Jefferson County Public School Systems;

23. Gary Gray has an address of 8422 Oxford Woods Court, Louisville, Kentucky 40222 and is employed by Jefferson County Public School Systems as an ECE;

24. Marianne Rademaker has an address of 6429 Regency Lane, Louisville, Kentucky 40207 and is retired from Jefferson County Public School Systems;

25. Virginia Diaz has an address of 3218 Orchard Manor Circle, Apt. 2, Louisville, Kentucky 40220 and is employed by Jefferson County Public School Systems as a teacher;

26. LuAnn Johnson has an address of 3114 Kipling Way, Louisville, Kentucky 40205 and is retired from Jefferson County Public School Systems;

27. Matilda Ertz has an address of 943 Parkway Drive, Louisville, Kentucky 40217 and is employed by Jefferson County Public School Systems as a teacher;

28. Peggy Heimerdinger has an address of 521 Belgravia Court, Louisville, Kentucky 40208 and is retired from Jefferson County Public School Systems;

29. Chris Applegate has an address of 1124 Fischer Avenue, Louisville, Kentucky 40204 and is employed by Jefferson County Public School Systems as a teacher;

30. Lisa White has an address of 2140 Clarendon Avenue, Louisville, Kentucky 40205 and is employed by Jefferson County Public School Systems as a teacher;

31. Erica L. Cooper has an address of 149 N. Bellaire Avenue, Louisville, Kentucky 40206 and is employed by Jefferson County Public School Systems as a teacher;

32. All of the aforesaid plaintiffs are citizens, taxpayers and residents of the Commonwealth of Kentucky, and all of them are currently teachers and or retired teachers from and in the public schools of the Commonwealth of Kentucky. Further, each of the plaintiffs and the annuitant members belong to the Kentucky Teachers Retirement System (KTRS);

33. These plaintiffs bring this suit individually and as representatives of the class of all similarly situated teachers covered by KTRS. Said class is so numerous that joinder of all members is impractical and said class exceeds 146,000 persons. There are questions of law and fact common to the class, and the claims of the respective parties are typical of the claims of the class. The representative parties will fairly and adequately protect the interest of the class. The class of persons represented herein by plaintiffs is also broader than the membership of KTRS, namely all retired members of KTRS and other persons such as survivors and inactive employees entitled to KTRS benefits, but not yet receiving them who are or would be entitled to receive an annuity based upon the laws presently existing;

34. Defendant, Matthew Griswold Bevin, is the Governor of Kentucky. He is required by oath to enforce the Constitutions of the United States of America and of Kentucky. Section 81 of the Kentucky Constitution requires him to see that "the laws be faithfully executed." Section 79 of the Kentucky Constitution requires the Governor to "give

to the General Assembly information of the State of the Commonwealth and recommend to their consideration such measures as he may deem expedient.” Governor Bevin is named as a defendant in his official capacity as Governor of the Commonwealth of Kentucky. His address: Governor’s Office, 700 Capitol Avenue, Suite 100, State Capitol Building, Frankfort, Kentucky 40601;

35. Defendant, Robert Stivers, is Senate President. Defendant, Greg Stumbo, is Speaker of Kentucky’s House of Representatives. These defendants are the presiding officers and representative of their respective legislative bodies. They are named in their official capacities as Senate President and Speaker of the Kentucky House of Representatives, respectively. Rose v. Council for Better Education, 790 S.W.2d 186 (Ky. 1989). The address of Robert Stivers, Senate President, is: 702 Capitol Avenue, Annex Room 236, Frankfort, Kentucky 40601 and 207 Main Street, Manchester, Kentucky 40962. The address of Greg Stumbo, Speaker of Kentucky’s House of Representatives is: 702 Capitol Avenue, Annex Room 303, Frankfort, Kentucky 40601 and P.O. Box 1473, 108 Kassidy Drive, Prestonburg, Kentucky 41653;

CONTROLLING AUTHORITY

36. The Fourteenth Amendment to the Constitution of the United States of America provides that “No person shall be...deprived of life, liberty, or property”;

37. Section 14 of the Constitution of Kentucky provides a judicial remedy for injury to every person. “...done to him in his lands, goods, person or reputation, shall have remedy by due course of law, and right until justice administered without sale, denial or delay.”

38. Article I, Section 10, of the United States Constitution provides that “No State shall...pass any...Law impairing the Obligation of Contracts”;

39. Section 19 of the Constitution of Kentucky provides that “No ex post facto law, nor any law impairing the obligation of contracts, shall be enacted.”;

40. KRS 161.420. Funds of retirement system, provides:
“All of the assets of the retirement system are for the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system. The board of trustees shall be the trustee of all funds of the system and shall have full power and responsibility for administering the funds. It is hereby declared that the restrictions and rights provided herein shall not be subject to reduction or impairment by alteration, amendment or repeal.”;

41. KRS 161.714. Inviolable contract - Exception, provides:
“It is hereby declared that in consideration of the contributions by members and in further consideration of benefits received by the state from the member’s employment, KRS 161.220 to 161.710 shall constitute, except as provided in KRS 6.696, an inviolable contract of the Commonwealth, and the benefits provided herein shall, except as provided in KRS 6.696, not be subject to reduction or impairment by alteration, amendment, or repeal.”;

COUNT I

42. Plaintiffs seek declaratory judgment based upon the cited authority hereinabove of constitutional law, both federal and state, and statutes, governing contractual obligations of the Commonwealth of Kentucky, which sets forth and protects the rights to retirement

benefits of plaintiffs, Kentucky public school teachers and retired teachers which have been impaired, reduced and/or altered contrary to KRS 161.420 and 161.714;

43. Prior governors and the General Assembly have consistently failed to adequately fund the Kentucky Teachers Retirement System (KTRS) resulting in an unfunded liability in excess of \$24.43 billion dollars ending in the fiscal year June 30, 2015, thus creating a decline in KTRS's funded ratio of less than 42% or reflecting that KTRS merely has less than 42 cents on hand for every dollar of pension benefits it owes to its members; and since said date, the figures cited herein and the financial corresponding condition of KTRS have become and are becoming more dire, onerous and impaired;

44. The above deficit and contractual breach has been brought about by the failure of defendants to provide the statutory and Actuarial Required Contribution (ARC), KRS 161.430, to the Kentucky Teachers Retirement System, notwithstanding the fact that plaintiffs and annuitants herein have satisfied their obligations by contributing part of every paycheck (now 12.855%) to KTRS in exchange for guaranteed retirement benefits pursuant to the above cited authority and inviolable contract that the Commonwealth and defendants bound itself to fulfill with plaintiffs and annuitants pursuant to the constitutional and statutory provisions cited on pages 6 and 7 herein: Controlling Authority;

45. The defendants have a duty to prevent the collapse or insolvency of KTRS by actuarially funding same through the ARC, KRS 161.430. In that regard, the defendants have violated Article I, Section 10 of the United States Constitution, Section 19 of the Constitution of Kentucky, KRS 161.420 Funds of retirement system, and KRS 161.714 Inviolable contracts;

46. That mandamus issue against the General Assembly and its members, defendants herein, and defendant Governor requiring them to implement such orders and judgments as the Court may render in this action in order to cure the financial deficiency of KTRS for the benefit of plaintiffs and all annuitants and place same on an actuarially sound and healthy financial basis;

COUNT II

47. For Count II of their Complaint, plaintiffs incorporate and reiterate all the allegations contained hereinabove;

48. The contract breach alleged hereinabove deprives plaintiffs of their property, to-wit: retirement benefits without due process of law in violation of the 14th Amendment to the United States Constitution for which plaintiffs are entitled to relief under 42 USC 1983;

COUNT III

49. For Count III of their Complaint, plaintiffs incorporate and reiterate all the allegations contained hereinabove;

50. Plaintiffs are threatened with irreparable injury to their retirement benefits as a result of the contractual breach by defendants of said inviolable contract made with plaintiffs and said annuitants;

51. Defendants should be directed to perform their constitutional and statutory duties to adequately fund KTRS to an actuarially and financially sound and healthy status pursuant to the contract the defendants have enacted and made with plaintiffs and said annuitants;

52. That defendants be permanently enjoined from further impairing the contract with plaintiffs and said annuitants;

WHEREFORE, plaintiffs respectfully pray:

1. That the Court determine that plaintiffs, to-wit: Randy Wieck, Betsey Bell, Jane Norman, Alice Hall, Dr. Oliver Lucas, Erin Moss, Kathy Fries, Cynthia Shiroma, Cyndi Young, Dr. Craig DaRif, Marina Gutierrez, Margaret Mattingly, Dr. John Paul Schuster, Mark Chaddic, Dawn Lader, Kris Tatro, Kristin Kesler, Gail K. Benedict, Francoise Farman, Daniel Morgan, Ann Bickel, Gary Gray, Marianne Rademaker, Virginia Diaz, LuAnn Johnson, Matilda Ertz, Peggy Heimerdinger, Chris Applegate, Lisa White and Erica L. Cooper, be permitted to maintain a class action pursuant KRCF 23.01, 23.02 and 23.03;

2. That the Court declare the respective rights and duties of the parties and enter judgment declaring that the plaintiffs have been and are being denied due process of law in violation of the Constitutions of the United States and the Commonwealth of Kentucky, and the above cited Kentucky Revised Statutes;

3. That mandamus issue against defendants, and each of them, requiring them to cure the financial deficiency of KTRS for the benefit of plaintiffs and all annuitants and issue such other orders and judgments as are appropriate for same;

4. That plaintiffs be awarded nominal damages pursuant to 42 USC 1983, costs and counsel fees pursuant to 42 USC 1988 and applicable Kentucky law;

5. That defendants be directed to perform their constitutional and statutory duties to adequately fund KTRS to an actuarially and financially sound and healthy status pursuant to contract;

6. That defendants be permanently enjoined for further impairing their contract and that of the Commonwealth of Kentucky with plaintiffs;

7. That the Court retain jurisdiction of this case for purposes of enforcing its orders and judgments;

8. For such other and further relief as the Court may deem the plaintiffs to be entitled.

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BY:


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