

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION ____
CIVIL ACTION NO. 18-CI-_____

COMMONWEALTH OF KENTUCKY
ex rel. ANDY BESHEAR, ATTORNEY GENERAL

and

ANDY BESHEAR, in his Official Capacity as
Attorney General for the Commonwealth of Kentucky

PLAINTIFFS

v.

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

WILLIAM M. LANDRUM III, in his official capacity as
Secretary of the Finance and Administration Cabinet

DEFENDANT

SERVE: Office of the Attorney General
The Capitol Building
700 Capitol Avenue
Frankfort, Kentucky 40601-3449

and

LEGISLATIVE RESEARCH COMMISSION

DEFENDANT

SERVE: David Byerman
Director of the Legislative Research Commission
The Capitol Building, Room 300
700 Capitol Avenue
Frankfort, Kentucky 40601-3449

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Come now the Plaintiffs, Commonwealth of Kentucky, *ex rel.* Andy Beshear, Attorney General, and Andy Beshear, in his official capacity as the duly elected Attorney General for the Commonwealth of Kentucky, by and through counsel, and bring this action for a declaration of rights, a temporary injunction, and a permanent injunction against the Defendants, William M.

Landrum III, in his official capacity as Secretary of the Finance and Administration Cabinet, and the Legislative Research Commission.

INTRODUCTION

The opioid epidemic is the greatest challenge and threat facing the Commonwealth of Kentucky. At least 1,404 Kentuckians lost their lives to drug overdose in 2016—the fifth-highest total in America. In 2017, as part of his continuing efforts to confront the epidemic, the Attorney General sought assistance from outside legal counsel to investigate and litigate claims on behalf of the Commonwealth against the corporations that have profited by unlawfully manufacturing, distributing, and dispensing prescription opioids in Kentucky.

Kentucky Revised Statute 15.100(3) expressly empowers the Attorney General to “... enter into such contracts for legal services as he deems necessary and advisable.” Thus, Kentucky law specifically provides that the Attorney General has the authority to enter into contracts for legal services that in his judgment—and not the judgment of any other state official—are necessary and advisable. Accordingly, the contracts are not subject to all sections of KRS Chapter 45A. As explained below, such an application would render KRS 15.100(3) meaningless, and leave the Attorney General’s power to contract subject to the judgment of the Finance Cabinet Secretary. Such an outcome would be further unconstitutional, as a department headed by a constitutionally elected officer under Section 91 of the Kentucky Constitution is attached to the Executive Branch “solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records ...” of the Office. KRS 12.020; *Brown v. Barkley*, 628 S.W.2d 616, 620 (1982).

Nonetheless, the Office of the Attorney General (“OAG”) has generally followed the requirements of the Model Procurement Code in entering into legal service contracts to ensure transparency in the process of retaining outside counsel, and has submitted those contracts to the Finance and Administration Cabinet (the “Finance Cabinet”) for informational purposes pursuant to KRS 12.020.

To that end, in June 2017 OAG issued a Request for Proposals (“RFP”) from outside law firms. The RFP provided that outside counsel would represent the Commonwealth in suits against opioid companies at no cost to the Commonwealth, and with no expenses borne by taxpayers. Instead, the outside firm would receive compensation only if OAG recovered monetary damages from the opioid manufacturers, on a contingency fee basis. Moreover, the RFP requested that bidders follow the requirements of House Bill (“H.B.”) 281 as the legislature proposed in 2017, which prescribed strict limits on any attorney’s fee award—far below the market rate for contingency fee contracts, and significantly below the rates in other contingency fee contracts the Finance Cabinet has approved. Ultimately, a panel of OAG employees reviewed the proposals, scored them according to Finance Cabinet guidelines, and selected a team of law firms led by Morgan & Morgan, PLLC (“Morgan & Morgan”), which was the only bidder with the necessary experience that also complied with the requirements of proposed H.B. 281. The team included the lead attorney in the BP oil spill litigation, and a nationally recognized attorney with multiple billion dollar verdicts against pharmaceutical companies. The OAG then drafted a contract with Morgan & Morgan (the “Contract”) and submitted it to the Finance Cabinet on September 22, 2017.

Despite the urgency of the subject matter, the Finance Cabinet took nearly three months to finally approve the contract. After the initial submission, the Finance Cabinet—without

justification or explanation—took more than five weeks to reject the contract, a much longer time period than for any prior contracts OAG had submitted to the Finance Cabinet. When it responded and rejected the contract, the Finance Cabinet insisted on changes that had never before been requested or required in a contingency fee contract. After resubmission, the Finance Cabinet waited over four weeks, and then rejected the contract again because it did not like, and wanted to revise, the changes it had sought in the first rejection. Still, OAG made every change to the Contract that the Finance Cabinet requested and, ultimately, the Finance Cabinet approved the revised Contract on December 21, 2017. The Contract became effective on December 22, 2017, and OAG and Morgan & Morgan have begun investigation of and litigation against opioid manufacturers, distributors, and retailers.

Subsequently, the Finance Cabinet improperly sent the Contract to the Legislative Research Commission Government Contract Review Committee (“Committee”) for review. Contingency fee contracts are not subject to Committee review, because “[p]ersonal service contracts in aggregate amounts of ten thousand dollars (\$10,000) or less during any one (1) fiscal year shall be exempt from routine review by the committee.” KRS 45A.700(1). As with any contingency fee contract, the aggregate amount could be zero dollars (\$0.00) if there is no recovery, and the Contract listed the nominal amount of \$1.00. Overstepping this limitation on its jurisdiction, the Committee asked representatives of OAG to appear at its January 9, 2018 meeting to answer questions and provide information about the Contract.

For informational purposes, OAG representatives voluntarily appeared. During the meeting, the Committee failed to meaningfully review the Contract, and in evaluating the Contract the Committee improperly applied criteria not found in the Model Procurement Code or KRS 45A.705. In only his second statement on the Contract, and after the first OAG response to

a question, Committee Co-Chairman Senator Stephen Meredith made a motion to disapprove the Contract. Without authority to act on the Contract, the Committee improperly voted to disapprove the Contract and issued written notification of its disapproval on January 10, 2018. The written notification did not contain the requisite criteria for disapproving a contract under KRS 45A.705(5).

The Finance Cabinet, specifically, Defendant, Secretary Landrum, may now attempt to reverse course and seek to cancel the Contract based on the Committee's flawed decision, which resulted from a flawed and inapplicable process. Any attempt to cancel or otherwise interfere with the Contract would be improper, as the Finance Cabinet lacks authority to act on the Contract, and the Contract did not qualify for review by the Committee. Even if the Finance Cabinet and the Committee had such power, they abused it by acting arbitrarily and capriciously, and failing to follow the Model Procurement Code.

Finally, only the Attorney General has the standing to bring claims against the opioid companies on behalf of all Kentuckians. Indeed, every state that has brought suit against or entered into discussions with opioid companies has done so through its attorney general. If Secretary Landrum cancels the Contract, he will impede and obstruct the Commonwealth's opportunity to fight this drug epidemic and recover against the opioid manufacturers, distributors, and retailers who have harmed so many Kentuckians. Kentucky would then miss out on recovering funds that other states have received or may receive, funds that that would be vital to battling the opioid epidemic.

As a result, the Attorney General must seek expedited relief from this Court. The litigation against opioid manufacturers, distributors, and retailers is urgent and time-sensitive, and because litigation has already commenced, the unlawful acts of the Finance Cabinet and the

Committee threaten its continuation. The Attorney General requests that the Court enter an order declaring that: (1) the Attorney General's contracts for legal services are exempt from cancelation by the Finance Cabinet and LRC Government Contract Review Committee, pursuant to KRS 15.100(3), KRS 45A.700(1), and the Kentucky Constitution; (2) the Committee's disapproval of the Contract is null and void; (3) any attempt by Secretary Landrum to cancel or otherwise interfere with the Contract would be null and void; and (4) in the alternative, the review of the Contract was arbitrary and capricious, in violation of the Model Procurement Code. The Attorney General further requests that the Court issue a restraining order, temporary injunction, and permanent injunction: (1) enjoining Secretary Landrum and all his agents, attorneys, representatives, and any other persons in active concert or participation with him from canceling or otherwise interfering with the Contract between OAG and Morgan & Morgan; (2) permanently enjoining the Committee from preventing payment on the Contract because of its unlawful disapproval under 1 KAR 2:010 Section 3; (3) permanently enjoining Secretary Landrum from acting on or otherwise interfering with any contract for legal services the Attorney General deems necessary and advisable to enter into pursuant to KRS 15.100(3); and (4) permanently enjoining the Committee from acting on or otherwise interfering with any contract for legal services the Attorney General deems necessary and advisable to enter into pursuant to KRS 15.100(3).

NATURE OF ACTION

1. This Verified Complaint for a Declaration of Rights and a Permanent Injunction is governed by the Kentucky Declaratory Judgment Act, KRS 418.010, *et seq.*, Kentucky Rule of Civil Procedure ("CR") 57, and CR 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, in a final judgment, to issue 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. The litigation contemplated by the contract between OAG and Morgan & Morgan has already commenced, as the Commonwealth has issued Civil Investigative Demands (“CIDs”) to opioid companies and Morgan & Morgan has performed work under the Contract. Moreover, time is of the essence because delay may impair the Commonwealth’s ability to recover damages in full. Importantly, the litigation is urgent because of the severity of the opioid epidemic in Kentucky, as overdoses claim, on average, the lives of 27 Kentuckians every day. For these reasons, this justiciable controversy presents an immediate concern that the Court must promptly resolve.

PARTIES

5. 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, General Beshear is the chief law officer of the Commonwealth and all of its departments, commissions, agencies, and political subdivisions.

6. Defendant, William M. Landrum III, is the Secretary of the Commonwealth of Kentucky’s Finance and Administration Cabinet, and is named in his official capacity.

7. Defendant, Legislative Research Commission, is an independent agency in the legislative branch of state government. The Legislative Research Commission Government Contract Review Committee is a permanent committee of the Legislative Research Commission composed of members of the Senate and House of Representatives, pursuant to KRS 45A.705.

JURISDICTION AND VENUE

8. 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.

9. 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.

10. Pursuant to KRS 418.040, *et seq.*, this Court may properly exercise *in personam* jurisdiction over the Defendants.

FACTUAL BACKGROUND

The RFP and Contract

11. In June 2017, the OAG issued a Request for Proposals (“RFP”) seeking outside counsel to assist OAG in investigating and litigating potential violations of state consumer protection, Medicaid, antitrust, and/or other statutes in the manufacturing, distribution, and/or dispensing of prescription opioid products within the Commonwealth. The OAG issued the RFP consistent with Finance and Administration Cabinet Policy FAP 111-43-00.

12. The RFP sought only proposals for contingency fee contracts, pursuant to which the successful bidder would not be paid anything unless OAG recovered on behalf of the Commonwealth.

13. The RFP further requested that bidders comply with the contingency fee payment limits that were proposed in House Bill 281 during the General Assembly's 2017 Regular Session. Specifically, the RFP requested that bidders limit their contingency fee proposals to a maximum of: Twenty percent (20%) of the amount recovered up to ten million dollars (\$10,000,000); Fifteen percent (15%) of the amount recovered between ten million one dollars (\$10,000,001) and fifteen million dollars (\$15,000,000); Ten percent (10%) of the amount recovered for any amount between fifteen million one dollars (\$15,000,001) and twenty million dollars (\$20,000,000); and five percent (5%) of the amount recovered for any amount in excess of twenty million dollars (\$20,000,000).

14. Seventeen (17) law firms submitted proposals in response to the RFP. *See* Jan. 16, 2018 Affidavit of Holly McCoy-Johnson, attached hereto as Ex. 1, ¶ 15; Transcript of LRC Gov't Contract Review Committee Meeting, Jan. 9, 2018, attached hereto as Ex. 2, at 23:3-4. Of the top ten (10) firms, only three submitted proposals that complied with the contingency fee limits in the RFP. Ex. 1, ¶ 15; Ex. 2, 23:11-19. The other bidders sought contingency fees in excess of the structure set forth in the RFP. Ex. 1, ¶ 15; Ex. 2, 23:19-24.

15. In accordance with Finance Cabinet guidance, OAG convened a review panel of four employees—two merit and two non-merit—to review and score the ten proposals that complied with the RFP. Ex. 2, 23:4-11, 25:19-26:6. These employees were members of the OAG's Office of Consumer Protection and the Office of Medicaid Fraud and Abuse Control, and thus had experience relevant to the opioid lawsuits. *Id.*, 26:14-17.

16. The panel scored Morgan & Morgan, which had partnered with three other law firms for its bid—Motley Rice, The Lanier Law Firm, Ransdell Roach & Royse—as having the highest technical score based on Finance Cabinet criteria. Indeed, when the proposals were scored, Morgan & Morgan received the highest technical score. *Id.*, 23:24-24:2, 24:23-25:6. The bidders with the second through fifth highest technical scores sought higher fees than Morgan & Morgan, and the sixth sought the same fee schedule as Morgan & Morgan. *Id.*, 23:24-24:2. Thus, of the top bidders, Morgan & Morgan received the highest technical score and provided the lowest bid. *Id.*

17. The Morgan & Morgan team was the only bidder that complied with the House Bill 281 contingency fee requirements and also had the requisite experience to manage the complex litigation against opioid manufacturers. Among the lawyers in these firms are W. Mark Lanier, who successfully represented hundreds of Gulf Coast residents in suits against BP after the Deepwater Horizon spill; Joe Rice, who also represented victims of the Deepwater Horizon spill, as well as family members of terrorism victims in suits against banks that financed terrorism; Linda Singer, the former Attorney General for Washington, D.C., who has already brought multiple lawsuits against opioid manufacturers on behalf of local governments; and former Kentucky Supreme Court Justice John C. Roach.

The Finance Cabinet Arbitrarily Requests Changes to the Contract

18. OAG prepared a contract with Morgan & Morgan. On September 21, 2017, OAG submitted the first contract to the Finance Cabinet. Ex. 1, ¶ 3.

19. More than five weeks later, on October 31, 2017, the Finance Cabinet rejected the contract, claiming that it should list only Morgan & Morgan and not other law firms working with it, and requiring the contract to include additional language providing that pursuant to KRS

48.005(3) and (4), any fees recovered would be paid first to the State Treasurer before legal fees were remitted to counsel and that any costs must be approved by the Secretary of Finance. *See id.* ¶¶ 6-7 & Ex. A thereto. The Finance Cabinet's stated reasons for rejecting the contract did not comport with its previous procedures, which a Finance Cabinet employee later admitted. *Id.* ¶¶ 7-9. ("I apologize that the procedures seem to have changed but going forward this information is required to be included.")). Moreover, the Finance Cabinet did not explain why the review took so long. According to Finance Cabinet guidelines, review of personal services contracts may take a maximum of three weeks. *Id.* ¶ 4. In the experience of OAG's Executive Director of the Office of Administrative Services, Finance Cabinet's initial review of OAG contingency fee legal services contracts had never previously taken longer than three days. *Id.* ¶ 5.

20. On November 2, 2017, the Finance Cabinet proposed language addressing KRS 48.005(3) and (4). *Id.* ¶ 7.

21. The OAG revised the Contract according to the Finance Cabinet's directions, and incorporated the Finance Cabinet's proposed language. *Id.* ¶¶ 8-10. The OAG resubmitted the Contract for review on November 14, 2017. *Id.*

22. The Finance Cabinet refused to act on the contract for nearly one month, during which time OAG sent repeated e-mails to Finance Cabinet employees. *Id.* ¶ 11 & Ex. A thereto. Those e-mails went unanswered. *Id.* ¶ 11 & Ex. A thereto. Finally, on December 13, 2017, the Finance Cabinet rejected the contract for the second time. *Id.* ¶ 12 & Ex. A thereto. This time, the Finance Cabinet stated that it rejected the contract because it required that *different* language be added to the contract concerning KRS 48.005(3)—despite the fact that OAG had already

included the language that Finance Cabinet had suggested in its November 13, 2017 e-mail. *Id.*

¶ 12-13 & Ex. A thereto.

23. Nonetheless, OAG made the changes to the contract requested by the Finance Cabinet and resubmitted the contract on December 21, 2017. *Id.* ¶ 12-13. As OAG's representative explained in an e-mail to the Finance Cabinet, OAG complied with the Finance Cabinet's arbitrary directives because the need to act to combat the opioid epidemic represented "too great an issue." *Id.* ¶ 13 & Ex. A thereto.

24. On or about December 21, 2017, nearly three months after the OAG first submitted the contract, the Finance Cabinet approved the Contract. *Id.* ¶ 14.

25. The Contract took effect on December 22, 2017. Pursuant to the Contract, Morgan & Morgan and its partners began their investigation into potential claims against opioid manufacturers. *Id.* & Ex. C thereto. To assist in those investigations, the OAG has issued at least 16 CIDs to 12 potential defendants, seeking information relating to the marketing, distribution, and sale of opioids within the Commonwealth.

The Government Contract Review Committee Disapproves the Contract

26. Under KRS 45A.700(1), "Personal service contracts in aggregate amounts of ten thousand dollars (\$10,000) or less during any one (1) fiscal year shall be exempt from routine review by the [C]ommittee and shall be filed with the [C]ommittee not more than thirty (30) days after their effective date for informational purposes only." The Contract is a personal services contract for legal services that reflects an amount of \$1.00 because, as a contingency fee contract, it does not require the Commonwealth to expend any funds unless and until the Commonwealth obtains a recovery. The Contract is therefore exempt from routine review, and should have been filed with the Committee for informational purposes only.

27. Despite the fact that the Contract was exempt from review under KRS 45A.700(1), the Finance Cabinet sent the Contract to the Committee, and the Committee pulled the Contract for additional review at its January 9, 2018 meeting.

28. OAG representatives voluntarily attended the meeting for informational purposes. *See generally* Ex. 2.

29. During the meeting, Committee members voiced a host of purported concerns about the Contract, very few of which, if any, had any bearing on the Committee's statutory authority to disapprove or object to contracts. Specifically, KRS 45A.705(4) directs the Committee, for all personal services contracts, to:

- (a) Examine the stated need for the service or benefit to the Commonwealth of the motion picture or entertainment production;
- (b) Examine whether the service could or should be performed by state personnel, for personal service contracts and memoranda of agreement;
- (c) Examine the amount and duration of the contract or agreement; and
- (d) Examine the appropriateness of any exchange of resources or responsibilities.

KRS 45A.705(4). Certain Committee members claimed to oppose the Contract because, among other purported justifications, there is "too much litigation," and because there were "several [other] options" for contractors and the contract could be re-bid to seek lower rates, notwithstanding that Morgan & Morgan had submitted the lowest bid in a competitive bidding process. Ex. 2, 29:3-5, 21:13-19, 22:18-15, 24:10-16.

30. At the conclusion of the meeting, the Committee voted to disapprove the contract—upon a motion that Senator and Co-Chairman Stephen Meredith made in reply to the very first response OAG provided at the meeting. *Id.*, 11:7-8. In doing so, one of the members, Senator Julie Raque Adams expressly noted that she was "playing catch-up" in learning about the Contract. *Id.*, 22:15-16, 30:13-14. She added that she voted to disapprove the contract "in deference to [her] colleague," Co-Chairman Senator Meredith, and that she was only doing so

based on the understanding that Secretary Landrum was not obligated to follow the Committee's recommendation. *Id.*, 22:15-18, 30:12-21.

31. On January 10, 2018, the Committee transmitted its Notice of Government Contract Review Committee Action to Secretary Landrum and OAG. *See* January 10, 2018 Committee Letter, attached hereto as Ex. 3. In its Letter, the Committee stated its reasoning as follows: "The committee is concerned, in consideration of the enormity of the potential financial settlement resulting from litigation, a more favorable contingency fee schedule has not been extended to the Commonwealth and there is no cap on the total amount of fees to be paid to the contractor. By disapproving this contract, the committee was merely exercising its statutory oversight duties in an attempt to protect taxpayer dollars." *Id.*

32. The Committee's review of the Contract was flawed because it was based on a misunderstanding of the competitive bidding process, and the comments from Committee members reveal that their decision to vote to disapprove the Contract was not based on a review of the facts and circumstances surrounding the Contract, as required under the Model Procurement Code.

33. Secretary Landrum lacks authority to cancel or interfere with a contract for legal services entered into by the Attorney General. Even if Secretary Landrum had the authority to review the Contract, he may not rely on the Committee's flawed disapproval of the Contract, because he has already approved the Contract and has previously approved contingency fee contracts with much higher fees. Specifically, the Finance Cabinet has repeatedly approved contracts with law firms where the contingency fee is as high as 33%. *See* Personal Services Contract for Legal Services Between the Commonwealth of Kentucky, Justice and Public Safety Cabinet and Hurt, Deckard and May PLLC, dated July 1, 2016, attached hereto as Ex. 4;

Personal Services Contract for Legal Services Between the Commonwealth of Kentucky, Finance & Administration Cabinet, and McBrayer McGinnis Leslie & Kirkland, PLLC, dated July 1, 2016, attached hereto as Ex. 5; Personal Service Contract for Pinnacle Action Between the Commonwealth of Kentucky, Finance & Administration Cabinet, and VanAntwerp Attorneys, dated July 1, 2016, attached hereto as Ex. 6.

CLAIMS

Count I Declaratory Judgment KRS 15.100(3)

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

35. KRS 15.100(3) provides, in pertinent part, that "... the Attorney General may enter into such contracts for legal services as he deems necessary and advisable."

36. It is well established under Kentucky law that the Attorney General is an independent constitutional officer, who is not and cannot be placed under the control or supervision of a Cabinet officer. *Brown v. Barkley*, 628 S.W.2d 616, 622 (Ky. 1982).

37. Specifically, under Kentucky Constitution § 91, the Attorney General is elected by the people.

38. Moreover, although the Office of the Attorney General is part of the Executive Branch of state government, KRS 12.020 makes clear that OAG is attached to the executive department "solely for the purpose of dissemination of information and coordination of activities," and the executive department has no "authority over the functions, personnel, funds, equipment, facilities, or records of" OAG.

39. Thus, except for the information duty specified in Kentucky Constitution § 78, the Attorney General is not and cannot be placed under the control or supervision of the Finance Cabinet.

40. KRS 15.100(3) vindicates this separation by confirming that the Attorney General has sole discretion to enter into contracts for legal services.

41. Accordingly, KRS 15.100(3) exempts the Attorney General's contracts for legal services from review by Secretary Landrum and the Committee.

42. The Committee's disapproval of the Contract is therefore null and void.

43. Any attempt by Secretary Landrum to cancel or otherwise interfere with the Contract is also null and void.

Count II
Declaratory Judgment
KRS 45A.700(1)

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

45. KRS 45A.700(1) provides, in pertinent part, that "[p]ersonal service contracts in aggregate amounts of ten thousand dollars (\$10,000) or less during any one (1) fiscal year shall be exempt from routine review by the [Government Contract Review] committee and shall be filed with the committee not more than thirty (30) days after their effective date for information purposes only."

46. The Contract between OAG and Morgan & Morgan is a personal service contract in an aggregate amount of less than \$10,000. Instead, it is a \$1.00 Contract, and Morgan & Morgan will only receive additional compensation if OAG recovers funds on behalf of the Commonwealth.

47. The Contract is thus exempt from the Committee's review.
48. The Committee's disapproval of the Contract is therefore null and void.

Count III
Declaratory Judgment
Violation of Separation of Powers

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

50. The Kentucky Constitution divides the powers of government among the legislative, executive, and judicial departments, providing that one department must not exercise the power belonging to another. KY. CONST. §§ 27-28.

51. The Attorney General "inherently carries the power and the right to represent the state as the sovereign in all its operations, and that cannot be given to anyone else." *Johnson v. Commonwealth ex rel. Meredith*, 165 S.W.2d 820, 826 (Ky. 1942).

52. To the extent that KRS 45A.705 permits a legislative entity, such as the LRC Government Contract Review Committee, to review the Attorney General's contracts for legal services, it infringes on the Attorney General's power to represent the state—a power and right that belongs solely to the Attorney General.

53. The Committee's disapproval of the Contract therefore violates the separation of powers doctrine enshrined in the Kentucky Constitution.

Count IV
Declaratory Judgment
Violation of the Model Procurement Code

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

55. Under Kentucky's Model Procurement Code, "procurement is now a regulated administrative procedure subject to a court challenge if the decision was contrary to law, or arbitrary and capricious." *Pendleton Bros. Vending v. Com. Fin. & Admin. Cabinet*, 758 S.W.2d 24, 25 (Ky. 1988).

56. Determinations made under the Model Procurement Code are invalid if they are clearly erroneous, arbitrary, capricious, or contrary to law. *See* KRS 45A.155(2); KRS 45A.355(2).

57. The Finance Cabinet's shifting positions on the requirements for contingency fee contracts, and its unexplained failure to act on the Contract for weeks at a time, demonstrate that its review of the Contract was arbitrary and capricious from the start.

58. The Committee's disapproval of the Contract was clearly erroneous, arbitrary and capricious, and contrary to law. The Committee's disapproval was the result of a flawed, incomplete process; its purported reasons for disapproving the Contract were not among the reasons permitted under the Model Procurement Code; and the Committee lacked authority to review or disapprove the Contract pursuant to KRS 45A.700(1).

59. Secretary Landrum's approval of contracts with other law firms for greater contingency fees, and the Contract's compliance with the caps proposed in House Bill 281, further demonstrates that any decision to cancel or interfere with the Contract would not be based on reason or evidence.

60. Accordingly, even if the Contract were subject to review by Secretary Landrum, the review of the Contract was clearly erroneous, arbitrary, capricious, and contrary to law, and therefore violated the Model Procurement Code.

Count V
Injunctive Relief

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

62. Plaintiffs are entitled to relief in the form of injunctive relief, both temporary and permanent, restraining and enjoining Secretary Landrum and his agents, attorneys, and any other person in active concert or participation with him from cancelling or otherwise acting upon or interfering with the contingency fee contract for legal services between OAG and Morgan & Morgan, which the Attorney General deemed necessary and advisable pursuant to his express statutory authority.

63. By reason of the actions and violations described above, the Attorney General, his Office, and citizens of the Commonwealth affected by the opioid epidemic have suffered immediate and irreparable injury and will continue to so suffer unless Secretary Landrum is immediately restrained and permanently enjoined from acting upon the contract executed by OAG and Morgan & Morgan, by Order of this Court.

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

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

66. 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 he is 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. the Attorney General's contracts for legal services are exempt from review by the Finance and Administration Cabinet and Government Contract Review Committee, pursuant to KRS 15.100(3), KRS 45A.700(1), and the Kentucky Constitution;
 - B. the Government Contract Review Committee's disapproval of the Contract is null and void;
 - C. any attempt by Secretary Landrum to cancel or otherwise interfere with the Contract is null and void; and
 - D. in the alternative, the review of the Contract was clearly erroneous, arbitrary and capricious, and contrary to law, in violation of the Model Procurement Code.
- II. That the Court issue a restraining order, temporary injunction, and permanent injunction, restraining and enjoining Secretary Landrum and all his agents, attorneys, representatives, and any other persons in active concert or participation with him from acting upon, canceling, revising, or or otherwise interfering with the contract between OAG and Morgan & Morgan.
- III. That the Court issue a permanent injunction, restraining and enjoining the LRC, the LRC Government Contract Review Committee and its members, and all of their agents, attorneys, representatives, and any other persons in active concert or

participation with it from acting upon or otherwise interfering with the contract between OAG and Morgan & Morgan.

- IV. That the Court issue a permanent injunction, restraining and enjoining Secretary Landrum and all his agents, attorneys, representatives, and any other persons in active concert or participation with him from acting upon or or otherwise interfering with any contract for legal services the Attorney General deems necessary and advisable to enter into pursuant to KRS 15.100(3).
- V. That the Court issue a permanent injunction, restraining and enjoining the LRC, the LRC Government Contract Review Committee and its members, and all of their agents, attorneys, representatives, and any other persons in active concert or participation with it from acting upon or otherwise interfering any contract for legal services the Attorney General deems necessary and advisable to enter into pursuant to KRS 15.100(3).
- VI. That Plaintiffs be awarded any and all other relief to which they are is entitled, including attorneys' fees and costs.

DATE: January 16, 2018

Respectfully Submitted,

ANDY BESHEAR
ATTORNEY GENERAL

By: /s/ J. Michael Brown
J. Michael Brown
Deputy Attorney General
La Tasha Buckner
Assistant Deputy Attorney General
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Counsel for the Plaintiffs

VERIFICATION

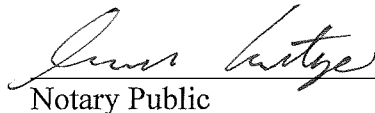
I, J. MICHAEL BROWN, Deputy Attorney General, upon being duly sworn, do hereby swear that I have read the foregoing Verified Complaint for a Declaration of Rights, a Temporary Injunction, and a Permanent Injunction and the factual allegations set out therein are true and correct to the best of my knowledge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


J. Michael Brown

COMMONWEALTH OF KENTUCKY)

COUNTY OF FRANKLIN)

Subscribed, sworn to and acknowledged before me by this 16 day of January, 2018, by J. Michael Brown.


Notary Public

Printed Name: Abigail Hartge

My Commission Expires: March 24, 2021

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