

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL (FRANKFORT) DIVISION

GARY HOUCHENS :  
AND : CASE NO. :  
MILTON SEYMORE :  
AND : JUDGE : \_\_\_\_\_  
BEN CUNDIFF :  
AND : MAGISTRATE : \_\_\_\_\_  
KATHY GORNIK :  
AND : VERIFIED CIVIL COMPLAINT  
JOE PAPALIA : WITH JURY DEMAND  
AND :  
LAURA TIMBERLAKE :  
AND :  
RICHARD GIMMEL :  
PLAINTIFFS :  
v. :  
ANDY BESHEAR, in his :  
official capacity :  
as Governor of the :  
Commonwealth of Kentucky :  
AND :  
DANIEL CAMERON, ATTORNEY :

GENERAL, in his official :  
as required by Ky. Rev. :  
Stat. § 418.075 :

AND :

HOLLY BLOODWORTH, in her :  
official capacity as a :  
member of the State Board :  
of Education :

AND :

PATRICE McCray, in her :  
official capacity as a :  
member of the State :  
Board of Education :

AND :

MICHAEL BOWLING, in his :  
Official capacity as a :  
member of the State :  
Board of Education :

AND :

SHARON PORTER ROBINSON, :  
in her Official capacity as :  
a member of The State Board :  
of Education :

AND :

LU YOUNG, in his official :  
Capacity as a member of the :  
State Board of Education :

AND :

JOANN ADAMS, in her official :  
Capacity as a member of the :  
State Board of Education :

AND :  
:  
CODY PAULEY JOHNSON, in his :  
official capacity as a :  
member of the State Board :  
of Education :

AND :  
:  
LEE TODD, in his official :  
Capacity as a member of the :  
State Board of Education :

AND :  
:  
DAVID KAREM, in his official :  
capacity as a member of the :  
State Board of Education :

AND :  
:  
CLAIRE BATT, in her official :  
Capacity as a member of the :  
State Board of Education :

AND :  
:  
ALVIS JOHNSON, in his :  
official capacity as a :  
member of the State Board :  
of Education :

DEFENDANTS :

---

Plaintiffs, Gary Houchens, Milton Seymore, Ben Cundiff, Kathy Gornik, Joe Papalia, Laura Timberlake and Richard Gimmel (hereinafter "Plaintiffs" AND "Board Members"), by and through counsel, for their civil complaint, states as follows:

**INTRODUCTION**

1) Plaintiffs are duly appointed members of the Kentucky state Board of Education. Defendant, Governor Andrew Beshear, minutes after taking the oath of office as the 63<sup>rd</sup> Governor of the Commonwealth of Kentucky fulfilled a campaign promise and fired the entire Kentucky Board of Education by issuing Executive Order 2019-002. (Exhibits A) The Governor's actions violate Kentucky law (Ky. Rev. Stat. §§ 63.080, 156.029) plainly stating members of State Board of Education can only be dismissed for cause. Governor Beshear's arbitrary and hostile acts are couched as re-re-organizations permitted under an unconstitutional statute, Ky. Rev. Stat. § 12.028 abrogating the Kentucky Constitution's separation of powers provisions. At no point prior to their firing were the Plaintiffs afforded any procedural or substantive due process or a name clearing as required by law.

**JURISDICTION AND VENUE**

2) This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question) and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

3) Venue is property in this Court under 28 U.S.C. § 1391(b) in that Defendants, state officials have their official offices and conduct business in this district and all of the acts described in this Complaint occurred in this district. The

Central (Frankfort) Division of the Eastern District of Kentucky is the proper jury division under Local Rule 3.2(a)(3)(A) since the Commonwealth of Kentucky's seat of government is located in Franklin County, Kentucky and the events surrounding this action occurred in Franklin County, and its whose jury division is Franklin.

**NATURE OF ACTION**

4) This Verified Complaint for a damages, a declaration of rights and permanent injunction is governed by 28 U.S.C. § 2201, Fed. R.Civ.Pr. 57, and CR 65.

5) 28 U.S.C. § 2201 provides this court with authority to "declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such." when a controversy exists. An actual and justiciable controversy regarding violations of the Kentucky Constitution and state laws exist in this action and are outlined herein.

6) Fed.R.Civ.Pr. 65 permits this court, in a final judgment, to issue a permanent injunction which may restrict or mandatorily direct the doing of an act.

7) Plaintiffs request an expedited review. The Governor's executive order causing considerable, ongoing confusion regarding who shall properly sit on the Kentucky Board

of Education. Time is of the essence, and this justiciable controversy presents an immediate concern that must be promptly addressed to permit a lawful board to perform its statutory functions.

8) This is an action brought to declare that Governor Beshear's attempts to seize control of the Kentucky Board of Education via Executive Order 2019-002 under the guise of a "reorganization" are null, void, unconstitutional, and of no effect.

9) This is also an action to enjoin Governor Beshear, Secretary Coleman, and all their agents, attorneys and any other persons in active concert or participation with them, from implementing and enforcing Executive Order 2019-002 and attempting to prevent or interfere with the duly appointed board's service.

10) This is also an action to enjoin the purported abolishment and re-creation of the Board as set forth in Executive Order 2019-002, until this Court determines whether Governor Beshear has that power under the Kentucky Constitution and Kentucky statutes.

8) This is also an action to enjoin the newly appointed members of the state board of education, Defendants, Holly Bloodwort, Patrice McCray, Michael Bowling, Sharon Porter Robinson, Lu Young, Joann Adams, Cody Pauley Johnson, Lee

Todd, David Karem, Claire Batt, and Alvis Johnson, from taking any further actions as board members until such time as this Court determines the constitutionality of the actions taken by Governor.

**IDENTITY OF THE PARTIES**

11) Plaintiffs are duly appointed members of the Kentucky Department of Education. Each member was appointed by former Governor Matthew Bevin.

12) Plaintiff Gary Houchens was re-appointed to the Board on April 16, 2018. A professor at Western Kentucky University, he teaches graduate courses in educational administration, advises graduate students, maintains an active research agenda, and chairs and serves on students' doctoral advisory committees. Previously, he served as a principal, assistant principal and middle school social studies teacher. Houchens holds a doctorate degree in educational leadership from the University of Louisville, a master's degree in teaching from Oakland City University, and a master's degree in history and bachelor's degree in philosophy and religion from Western Kentucky University. His term is due to expire on April 14, 2022. He represents Supreme Court District 2.

13) Plaintiff Milton Seymore was appointed to the Board on May 25, 2016. A retiree of Ford Motor Company and chair of the Jefferson County Judicial Resource Center, Seymore serves as the

Board's Vice Chair. His term is due to expire on April 14, 2020. He is an At-large Member of the Board.

14) Plaintiff Ben Cundiff was re-appointed to the Board on April 16, 2018. A chemical engineer and attorney by trade, Cundiff serves on many community boards in Cadiz, where he lives with his family. His term is due to expire on April 14, 2022. He represents Supreme Court District 1.

15) Plaintiff Richard Gimmel was appointed to the Board on May 25, 2016. As Chairman of Atlas Machine and Supply in Louisville, Gimmel has been active in mentoring inner-city students and helping them to gain workforce training. His term is due to expire on April 14, 2020. He is an At-large Member.

16) Plaintiff Kathy Gornik was appointed to the Board on April 16, 2018. Retired co-founder and president of Thiel Audio, she has served as chairwoman of the Consumer Electronics Association and on the board of National Science and Technology Education Partnership. Her term is due to expire on April 14, 2022. She represents Supreme Court District 5.

17) Plaintiff Joe Papalia was appointed to the Board on April 16, 2018. He lives in Louisville and is an entrepreneur and chief executive officer of Munich Welding and Deposition Technology Innovations. He holds a bachelor's degree in mechanical engineering from the Massachusetts Institute of Technology (MIT) and has served as the institute's Regional

Educational Coordinator. He is an At-large Member of the Board. His term is due to expire on April 14, 2020.

18) Plaintiff Laura Timberlake, of Ashland, appointed April 16, 2018, is chief operating officer for Big Sandy Distribution/Big Sandy Superstores. She also serves as chairwoman of the Foundation for the Tri-State and on the boards of Ashland Alliance and Our Lady of Bellefonte Hospital. Her term is due to expire on April 14, 2022. She represents Supreme Court District 7.

19) Defendant, Governor Andy Beshear, is a duly elected constitutional officer of the Commonwealth of Kentucky, vested with - but limited by - such powers as are afforded him by the Kentucky Constitution and related state laws. The Governor is the chief executive officer of the Commonwealth charged by Section 81 of the Constitution with taking care that the laws of the Commonwealth be "faithfully executed." He is named in his official capacity as Governor.

20) Defendant, Daniel Cameron, Attorney General of the Commonwealth of Kentucky is named and served in his official capacity as required under Ky. Rev. Stat. § 418.075 as this action involves a declaratory action regarding the validity of a state law. He is hereby placed on notice that he may have an opportunity to be heard as the chief law enforcement officer of the Commonwealth.

21) Defendant, Holly Bloodworth, is a natural person and was appointed as a member of the State Board of Education in Executive Order 2019-02. She named in her official capacity. She represents Supreme Court District 1 and her principal address is 304 North 10<sup>th</sup> Street, Murray, Kentucky.

22) Defendant Patrice McCray, is a natural person and was appointed as a member of the State Board of Education in Executive Order 2019-02. She named in her official capacity. She represents Supreme Court District 2 and her principal address is 325 Crestlake Way, Bowling Green, Kentucky.

23) Defendant, Michael Bowling, is a natural person and was appointed as a member of the State Board of Education in Executive Order 2019-02. He named in his official capacity. He represents Supreme Court District 3 and his principal address is 508 Dorhester Avenue, Middlesboro, Kentucky.

24) Defendant, Sharon Porter Robinson, is a natural person and was appointed as a member of the State Board of Education in Executive Order 2019-02. She named in her official capacity. She represents Supreme Court District 4 and her principal address is 12422 Captains Bridge Way, Louisville, Kentucky.

25) Defendant, Lu Young, is a natural person and was appointed as a member of the State Board of Education in Executive Order 2019-02. He named in her official capacity. He

represents Supreme Court District 5 and his principal address is 18 Olde Village Drive Nicholasville, Kentucky.

26) Defendant, Joann Adams, is a natural person and was appointed as a member of the State Board of Education in Executive Order 2019-02. She named in her official capacity. She represents Supreme Court District 1 and her principal address is 304 North 10<sup>th</sup> Street, Murray, Kentucky.

27) Defendant, Cody Pauley Johnson, is a natural person and was appointed as a member of the State Board of Education in Executive Order 2019-02. He is named in her official capacity. He represents Supreme Court District 6 and his principal address is 6085 Castle Highway, Pleasureville, Kentucky.

28) Defendant, Lee Todd, is a natural person and was appointed as a member of the State Board of Education in Executive Order 2019-02. He is named in his official capacity. He represents the state at large and his principal address is 1800 Pascoli Cove Drive, Lexington, Kentucky.

29) Defendant, David Karem, is a natural person and was appointed as a member of the State Board of Education in Executive Order 2019-02. He is named in his official capacity. He represents the state at large and his principal address is 2439 Ransdell Avenue, Louisville, Kentucky.

30) Defendant, Claire Batt, is a natural person and

was appointed as a member of the State Board of Education in Executive Order 2019-02. She named in her official capacity. She represents the state at large and her principal address is 121 N. Martin Luther King Blvd., Unit 406, Lexington, Kentucky.

31) Defendant, Alvis Johnson, is a natural person and was appointed as a member of the State Board of Education in Executive Order 2019-02. He is named in his official capacity. He represents the state at large and his principal address is 771 Allin Drive, Harrodsburg Kentucky.

**FACTUAL BACKGROUND**

32) Plaintiffs are current members of the Kentucky Board of Education (the "Board") who were fired by Governor Beshear before their terms ended.

33) During his gubernatorial campaign, Beshear repeatedly stated he would use the prior (yet distinguishable) legal holding in to disband the entire Board "on day one" after his inauguration, and expect the new board to meet immediately to vote on the ouster of Commissioner of Education Dr. Wayne D. Lewis, Jr. *Gov.-Elect Beshear's Board of Education Overhaul Would be Unprecedented*, WFPL, December 9, 2019.

34) As mandated by Kentucky law, the Board develops and adopts the regulations that govern Kentucky's 172 public school districts and the actions of the Kentucky Department of Education. The Kentucky Department of Education underwent a

major overhaul in 1990 when the state legislature adopted the Kentucky Education Reform Act of 1990 (KERA) after the Kentucky Supreme Court ruled in *Rose v. Council for Better Education* that the "entire system" of common schools in the Commonwealth was unconstitutional. One purpose of KERA was to provide stability and consistency at the state level by adopting an 11-member governing board that exemplified the geographic and ethnic diversity of the state and could not be used as a political tool capable of being changed on a whim by a newly-appointed chief executive. To ensure this, the Kentucky General Assembly required the political appointments of all 11 members to occur on staggered terms. Only after two years does a newly appointed governor have the opportunity to appoint a majority of the Board Members.

35) Governor Beshear knew, or at least should have known he could not legally make good on his campaign promise because that holding did not affect the statutes at issue here.

**I. Executive Order 2019-002.**

36) On December 10, 2019, Governor Beshear issued Executive Order 2019-002, citing Ky. Rev. Stat. §§ 12.028 and 12.029 as his authority.

37) In Executive Order 2019-002, the Governor abolished the Kentucky Board of Education and ended the terms of all its members in a midnight purge. The order states: "The Kentucky

Board of Education as created by KRS 156.029 is hereby abolished." *Executive Order 2019-002*.

38) Based on the order, no trustee was given "cause" for his or her removal. The Order does not cite to either of the two Kentucky statutes that require that cause be given to remove a Board member under Ky. Rev. Stat. §§ 63.080, 156.029.

39) The Governor then "recreated" an illegal board to oversee Kentucky's elementary and secondary education system.

40) While this action violates numerous laws and has numerous consequences for Kentucky's elementary and secondary education system as discussed herein, there is nothing accomplished by the firing of board other than a wholesale purge of the duly appointed board members in the middle of their statutory terms and less than a month before the Kentucky General Assembly convenes.

41) Executive Order 2019-002 therefore suspends, ignores, and effectively rewrites Ky. Rev. Stat. §§ 12.028, 63.080 and 156.029.

## **II. The Law.**

42) Defendant, Governor Beshear, must prove that to change a board "between sessions of the General Assembly," the purported change must need to be accomplished "as rapidly as

possible" and to achieve "greater economy, efficiency, and improved administration." Ky. Rev. Stat. § 12.028(2).

43) Further, the change must be for the "grouping" of "related functions of organizational units and administrative bodies[.]" Ky. Rev. Stat. § 12.028(1).

44) The Kentucky General Assembly is now convened for Regular Session after the issuance of Executive Order 2019-002.

45) Upon information and belief, the House of Representatives and State Senate are not likely to confirm the Defendant appointees of the State Board of Education.

46) The Board meets every other month. The Board held its last regular meeting on December 4, 2019, and is set to hold its next meeting on February 4, 2020.

47) No reason exists to fire and terminate the entire Board "as rapidly as possible," less than a month before the General Assembly convenes for Regular Session or prior to the Board's next scheduled meeting, nor does the firing the Board achieve "greater economy, efficiency, and improved administration," as is required by the provisions of Ky. Rev. Stat. § 12.028(1).

48) Further, Executive Order 2019-002 does not recognize the necessity for "grouping related functions" or the "transfer of functions, personnel, funds, equipment, facilities, and

records from one (1) organizational unit or administrative body to another” as is required by the provisions of KRS 12.028(1).

49) Ky. Rev. Stat. § 156.029 states that pursuant to Ky. Rev. Stat. § 63.080, a member of the Kentucky Board of Education “shall not be removed except for cause.” Ky. Rev. Stat. § 156.029(2).

50) Ky. Rev. Stat. § 63.080 states: “Members of the Kentucky Board of Education ... shall not be removed except for cause.” Ky. Rev. Stat. § 63.080(2)(b).

51) Ky. Rev. Stat. § 63.080 further states: “For the purposes of this subsection, a member may be removed for cause for conduct including but not limited to malfeasance, misfeasance, incompetence, or gross neglect of duty.” KRS 63.080(2)(d).

52) Executive Order 2019-002 does not include any charge for cause and none of the Board Members engaged in “malfeasance, misfeasance, incompetence, or gross neglect of duty.”

**FIRST CAUSE OF ACTION**

**VIOLATION OF PROCEDURAL DUE PROCESS AND DAMAGES BY GOVERNOR  
ANDREW BESHEAR BY FIRING PLAINTIFF STATE SCHOOL BOARD MEMBERS  
WITHOUT CAUSE  
Section 1983 Claim**

53) Plaintiffs incorporates by reference the allegations in Paragraphs 1-52 of this Complaint as if fully re-written herein.

54) Under 42 U.S.C.S. § 1983, the Governor's actions violate the Due Process Clause of the 14<sup>th</sup> Amendment to the United States Constitution.

55) Ky. Rev. Stat. § 63.080(2)(a) titled, "Officers appointed by Governor may be removed without cause -- Exceptions -- Removal of university or KCTCS board members for cause or to comply with proportional representation requirements" plainly states, "*(b) Members of the Kentucky Board of Education and the Council on Postsecondary Education shall not be removed except for cause...*" (emphasis added).

56) Ky. Rev. Stat. § 156.029(2), a section of Chapter 156 that specifically enumerates the powers of the State Board of Education, again plainly relates back to Ky. Rev. Stat. § 63.080 and re-states the following: "**Appointments shall be made without reference to occupation, political affiliation, or similar consideration. No member at the time of his appointment or during the term of his service shall be engaged as a professional educator Pursuant to KRS 63.080, a member shall not be removed except for cause,**" (emphasis added).

57) The primary function of the Board is to develop and adopt policies and administrative regulations, with the advice of the Local Superintendents Advisory Council, by which the Department of Education shall govern in planning, coordinating,

administering, supervising, operating, and evaluating the educational programs, services, and activities within the Department of Education that are within the jurisdiction of the Board.

58) As mandated by Kentucky law, the Board develops and adopts the regulations that govern Kentucky's 172 public school districts and the actions of the Kentucky Department of Education.

59) The Board consists of eleven (11) members appointed by the Governor and confirmed by the Senate and the House of Representatives of the General Assembly, with the president of the Council on Postsecondary Education serving as an *ex officio* non-voting member. Seven (7) members shall represent each of the Supreme Court districts as established by KRS 21A.010, and four (4) members shall represent the state at large. Each of the appointed members shall serve for a four (4)-year term.

60) Plaintiffs as members of the State Board of Education are employees of the Commonwealth of Kentucky.

61) The General Assembly specifically categorizes each and every member of the Board of Education as an employee who can only be removed for cause from their position.

62) Defendant Beshear, is fully aware of the status of the state school board members as "for cause" employees. He zealously defended similarly situated members of the University

of Louisville Board of Trustees when former Governor Matthew Bevin abolished the Board of Trustees and prior to the expiration of their terms. Beshear successfully defended the same actions he has attempted but against the state board of education.

63) Prior to their termination, Governor Beshear and Lieutenant Governor Coleman failed to provide a pre-termination hearing, a name clearing hearing, or any procedural due process afforded to Plaintiffs as employees and officials of the Commonwealth who are subject to dismissal only for cause.

64) Furthermore, the Plaintiff have been deprived of a property interest in their continuing employment as members of the state board of education.

65) And the Plaintiffs were deprived of an opportunity for a name-clearing hearing as Governor Beshear brought their reputations in a negative light by unfounded allegations in Executive Order 2019-002. Governor Beshear made the following unsubstantiated statements, "members of the current Board of Education have conflicting relationships, lack experience in public education, failed to conduct a nationwide search before appointing the Commissioner of Education, and accepted plan tickets, hotel rooms, and conference fees from an organization closely tied to registered lobbyists of both the Kentucky

Department of Education and the Kentucky Board of Education.”

(Ex. B)

66) The above statements in Paragraph 66 are false.

67) Governor Beshear’s actions were arbitrary and that afforded Plaintiffs no due process before their termination.

68) The Plaintiffs have been damaged as a result of Governor Beshear’s failure to extend one scintilla of due process to these civically minded board of education members.

69) Plaintiffs and others similarly situated fired state board of education members will continue to suffer and incur compensatory damages as a proximate cause of the actions pled herein.

**SECOND CAUSE OF ACTION**

**SUBSTANTIVE DUE PROCESS VIOLATIONS BY GOVERNOR ANDREW BESHEAR BY  
TERMINATING STATE BOARD OF EDUCATION MEMBERS**

**Section 1983 Claim**

70) Plaintiff incorporates by reference the allegations in Paragraphs 1-69 of this claim as if fully re-written herein in their entirety.

71) Defendant, Governor Andrew Beshear, acted in a manner that must not take place no matter the procedural protections and his conduct shocks the conscience of the reasonable person. A chief magistrate is not above the law and is not granted the power to act arbitrarily.

72) It was clearly offensive to the community standards to blatantly disregard state law requirements when firing the board of education members without a legitimate purpose and without protections required by law. Midnight purges must not occur within the confines of our system of ordered liberty.

73) The Plaintiffs have been damaged as a result of the Governor's failure to extend substantive due process to this group of state employees, namely the state board of education members.

74) Plaintiff and others similarly situated will continue to suffer compensatory damages as a proximate cause of the actions pled herein.

**PENDENT STATE LAW CLAIMS**

**THIRD CAUSE OF ACTION**

**DECLARATION OF THE CONSTITUTIONALITY OF KY. REV. STAT. § 12.028 AND WHETHER IT VIOLATES THE SEPARATION OF POWERS OUTLINED IN THE 1891 KENTUCKY CONSTITUTION**

75) Plaintiffs incorporates by reference the allegations in of this complaint as if fully re-written herein in their entirety.

76) This Court under Fed.R.Civ.Pr.57 has the authority and inherent power to issue a declaration of rights as to the

constitutionality of Ky. Rev. Stat. § 12.028. And Fed.R.Civ.Pr. 65 gives this Court the power to permanently enjoin the enforcement of an unconstitutional statute.

77) **Ky. Rev. Stat. § 12.028(1)** states as follows:

Recognizing the necessity for grouping related functions of organizational units and administrative bodies in order to promote greater economy, efficiency and improved administration, the Governor, the Kentucky Economic Development Partnership as created in KRS 154.10-010, and other elected state executive officers may propose to the General Assembly, for its approval, changes in the state government organizational structure which may include the creation, alteration or abolition of any organizational unit or administrative body and the transfer of functions, personnel, funds, equipment, facilities, and records from one (1) organizational unit or administrative body to another.

78) **Ky. Rev. Stat. § 12.028(2)** states as follows:

Recognizing that changes in the state government organizational structure may need to be made as rapidly as possible to achieve greater economy, efficiency, and improved administration as the needs of government dictate, the Governor, the Kentucky Economic Development Partnership as created in KRS 154.10-010, and other elected state executive officers may, between sessions of the General Assembly, temporarily effect a change in the state government organizational structure as described in subsection (1) of this section if such temporary reorganization plan is first reviewed by the interim joint legislative committee with appropriate jurisdiction.

79) **KY. CONST. §27** states:

"The powers of the government of the Commonwealth of Kentucky shall be divided into three distinct departments, and each of them be confined to a separate body of magistracy, to

wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another." Section 27 of the 1891 Constitution was adopted in its entirety verbatim from the original Kentucky Constitution of 1792 at the 1891 Kentucky Constitutional Convention.

80) **KY. CONST. §28** states:

"No person or collection of persons being of one of those departments shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted." Section 28 of the 1891 Constitution was adopted in its entirety verbatim from the original Kentucky Constitution of 1792 at the 1891 Kentucky Constitutional Convention.

81) **KY. CONST. §29** states:

"The Legislative power shall be vested in a House of Representatives and a Senate, which, together, shall be styled the General Assembly of the Commonwealth of Kentucky." Section 29 of the 1891 Constitution was adopted in its entirety verbatim from the original Kentucky Constitution of 1792 at the 1891 Kentucky Constitutional Convention.

82) Sections 27, 28, and 29 of the Constitution expressly incorporate a separation of powers doctrine in the Commonwealth that for the entire history of this Commonwealth have been

strictly construed and is unusually forceful as intended and drafted by Thomas Jefferson for the original 1792 Constitution.

83) Ky. Rev. Stat. § 12.028(1), (2) facially violate the provisions of Section 27, 28, and 29 of the Kentucky Constitution.

84) Only the General Assembly has the legislative powers to create inferior state offices outside of those outlined by the State Constitutional officers.

85) The plain language of Ky. Rev. Stat. § 12.028 wherein the General Assembly unconstitutionally relinquished it's sole legislative power permitting the chief executive to "create[e], alterat[ion] or aboli[sh]" a governmental unit or administrative body and the "transfer of functions, personnel, funds, equipment, facilities, and records from one (1) organizational unit or administrative body to another."

86) This illegal relinquishment of powers and sovereignty to the Executive Department of prerogatives solely endowed to the Legislative Department encroaches, breaches, and diminishes the compulsory strict construction of Kentucky's separation of powers doctrine.

87) By issuing Executive Order 2019-002, Governor Beshear violated Sections 27, 28 and 29 of the Kentucky Constitution by invading the province of the General Assembly's legislative power.

88) Plaintiffs seek a declaration of rights and further prospectively enjoin the Governor from acting the under the powers granted to him under Ky. Rev. Stat. § 12.028.

89) Plaintiffs also seek injunctive relief against those "board of education" members illegally appointed in Executive Order 2019-002, awaiting General Assembly confirmation, from taking any actions under the color of state law.

#### **FOURTH CAUSE OF ACTION**

#### **DECLARATION OF THE CONSTITUTIONALITY OF GOVERNOR BESHEAR'S ACTIONS IN SUSPENDING KY. REV. STAT. 156.029 AND KY. REV. STAT. 63.080 WHEN HE FIRED THE PLAINTIFFS WITHOUT CAUSE AS REQUIRED BY THE STATE CONSTITUTION AND KY. CONST. § 15, 23 and § 81**

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

91) KY Const. §15, entitled, "Laws to be suspended only by General Assembly," states, "No power to suspend laws shall be exercised unless by the General Assembly or its authority."

92) KY. CONST. § 23 states: "The General Assembly shall not grant any title of nobility or hereditary distinction, nor create any office the appointment of which shall be for a longer time than a term of years."

93) KY. CONST. § 81, entitled, "Governor to enforce the laws," states, "He shall take care that the laws be faithfully executed."

94) Ky. Rev. Stat. § 156.029 establishes that the Board shall have eleven (11) members appointed by the Governor.

95) Ky. Rev. Stat. § 156.029 states that "Pursuant to KRS 63.080, a member shall not be removed except for cause."

96) Ky. Rev. Stat. § 63.080 states that "Members of the Kentucky Board of Education ... shall not be removed except for cause."

97) Ky. Rev. Stat. § 63.080 defines "cause" as "including but not limited to malfeasance, misfeasance, incompetence, or gross neglect of duty."

98) Executive Order 2019-002 suspends Ky. Rev. Stat. 63.080 and 156.029 because Plaintiffs were dismissed from their positions without cause.

99) By suspending statutes without the authority of the General Assembly, Governor Beshear violated Sections 15, 23, and 81 of the Kentucky Constitution.

100) An actual justiciable controversy exists among the parties as to whether:

A. Governor Beshear violated KY. CONST. §§ 15, 27-29, and 81, and Ky. Rev. Stat. §§ 12.028, 63.080 and 156.029 in enacting Executive Order 2019-002;

B. Executive Order 2019-002 is null and void because it violates the Kentucky Constitution and/or the Kentucky Revised Statutes;

C. The actual, legally constituted Kentucky State Board of Education includes the Plaintiffs *inter alia* and not the following Defendants: Holly Bloodworth, Patrice McCray, Michael Bowling, Sharon Porter Robinson, Lu Young, Joann Adams, Cody Pauley Johnson, Lee Todd, David Karem, Claire Batt, and Alvis Johnson.

101) Plaintiff is entitled to a declaratory judgment that:

A. Governor Beshear has violated KY. CONST. §§ 15, 27-29, and 81, and Ky. Rev. Stat. §§ 12.028, 63.080 and 156.029 in enacting Executive Order No. 1;

B. Executive Order 2019-002 is null and void because it violates the Kentucky Constitution and/or the Kentucky Revised Statutes.

C. The appointments of the Defendants in Executive Order 2020-002 are null and void and the Defendants shall immediately cease and desist any actions made under the color of law as the Kentucky State Board of Education.

**FIFTH CAUSE OF ACTION**

**REQUEST FOR INJUNCTIVE RELIEF UNDER FED.R.CIV.PR. 65**

102) Plaintiff incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

103) As described above, Plaintiffs are entitled to further relief in the form of injunctive relief, both temporary and

permanent, restraining and enjoining the defendants, and all their agents, attorneys and any other persons in active concert or participation with them, from enforcing and implementing Executive Order 2019-002 and attempting to prevent or interfere with the official business of the Board.

104) By reason of the actions and violations described above, the Commonwealth and Plaintiffs has suffered immediate and irreparable injury and will continue to so suffer unless Defendants are immediately restrained and permanently enjoined from such activity by Order of this Court.

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

106) No previous application for a restraining order or an injunction has been refused by this court.

107) 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 their right to amend this Complaint, as necessary, to request any further relief that they are entitled to seek.

WHEREFORE, Plaintiffs demand judgment against Defendants as set forth in their Prayer for Relief below.

**PRAYER FOR RELIEF**

**WHEREFORE,** Plaintiffs demand as follows:

I. A trial by jury of the issues outlined herein;

II. this Court issue a declaration and order that:

A. Ky. Rev. Stat. § 12.028 is unconstitutional and a violation of the separation of powers as outlined and construed in the Kentucky Constitution.

B. Governor Beshear has violated KY. CONST. §§15, 27-29, and 81, and Ky. Rev. Stat. §§ 12.028, 63.080 and 156.029 in enacting Executive Order 2019-002 and by attempting to enforce this Order; and

C. Executive Order 2019-002 is null and void because it violates the Kentucky Constitution and/or the Kentucky Revised Statutes; and

III. That a restraining order, temporary injunction and a permanent injunction be issued by this Court prospectively restraining and enjoining the Defendants, and all their agents, attorneys, representatives, and any other persons in active concert or participation with them, from implementing and enforcing Executive Order 2019-002 and attempting to prevent or interfere with the official business of the Plaintiffs as members of the Kentucky Board of Education; and

IV. Plaintiffs be awarded any and all other relief to which they may appear entitled, including their attorneys' fees and costs.