COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
2016-SC-000272-TG
2016-SC-000273-TG

COMMONWEALTH OF KENTUCKY
ex rel. ANDY BESHEAR, ATTORNEY GENERAL;

&

REPRESENTATIVES JIM WAYNE,
DARRYL OWENS; and MARY LOU MARZIAN APPELLANTS

V. **APPEAL FROM FRANKLIN CIRCUIT COURT, DIVISION II**
CASE NO. 16-CI-00389

MATTHEW G. BEVIN, *in his official capacity as Governor of the Commonwealth of Kentucky;*
WILLIAM M. LANDRUM, *in his official capacity as Secretary of the Kentucky Finance & Administration Cabinet;*
JOHN CHILTON, *in his official capacity as State Budget Director of the Commonwealth of Kentucky;*
ALLISON BALL, *in her official capacity as Treasurer of the Commonwealth of Kentucky* APPELLEES

BRIEF FOR APPELLEE TREASURER ALLISON BALL

Noah R. Friend
General Counsel
Kentucky State Treasurer, Allison Ball
1050 U.S. Hwy. 127 S., Suite 100
Frankfort, KY 40601
Phone. 502.564.4722
Mobile. 606.369.7030
Email. noah.friend@ky.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief was served via U.S. Mail and electronic mail, upon the following: M. Stephen Pitt, S. Chad Meredith, Michael T. Alexander, Office of the Governor, 700 Capitol Ave, Suite 101, Frankfort, KY 40601; Pierce Whites, Office of the Speaker of the House, Capitol Annex, Room 303, 702 Capitol Avenue, Frankfort, KY 40601; Andy Beshear, Mitchel Denham, J. Michael Brown, Joseph A. Newberg, II, Office of the Attorney General, 700 Capitol Ave, Suite 118, Frankfort, KY 40601, on this the 8th day of August, 2016.

Noah Friend
Noah R. Friend
Counsel for Appellee

STATEMENT CONCERNING ORAL ARGUMENT

This Honorable Court has scheduled oral argument to take place on Thursday, August 18, 2016, at 10:00 a.m. The Appellee respectfully requests sufficient time during said argument to be heard on all issues addressed herein.

COUNTERSTATEMENT OF POINTS AND AUTHORITIES

COUNTERSTATEMENT OF THE CASE

There can be little dispute over the facts of this case, which were accurately and succinctly summarized by the Trial Court in the Opinion and Order issued on May 18, 2016. Opinion & Order, pp. 2-3. A copy of the Order and Opinion is appended to the Appellant-Attorney General's Brief as Appendix 4.

The general outline set forth in the Appellants' briefs, minus any editorializing regarding the legality of the Governor's actions, sets forth the basic issues presented herein. In sum, the questions presented in this appeal are: first, whether the Appellants have standing to challenge the Governor's downward revision of the budgetary allotments for the universities; and, second, whether the Governor's downward revision of the budgetary allotments is permitted by law.

The Appellee Treasurer contends that the Appellants are not the real parties in interest to this matter, and that the universities are the proper parties to have brought any challenge to the Governor's actions. Further, to the extent that a ruling on the merits is warranted, the Appellee would urge this Honorable Court to adopt the well-reasoned opinion of the Trial Court.

ARGUMENT

I. THE APPELLANTS LACK STANDING TO BRING SUIT

The Franklin Circuit Court correctly determined that the Governor acted in accordance with Kentucky law, and that the Appellants' suit failed as a matter of law. However, this case should never have left the proverbial starting gate because the Appellants lack standing to bring suit.

Any party seeking redress in the courts of the Commonwealth must have standing to do so. The separation of powers doctrine, which is relied upon so strongly by the Appellants herein, is a core consideration in the vigorous enforcement of the standing doctrine. A leading constitutional scholar, noting the prescient words of the late-Justice Antonin Scalia, has opined that "the standing doctrine promotes separation of powers by restricting the ability of judicial review." Chemerinsky, Federal Jurisdiction, p. 57 4th ed. (Aspen 2003) citing Antonin Scalia, The Doctrine of Standing as an Essential Element of the Separation of Powers, 17 Suffolk L. Rev. 881 (1983) ("disregard [of the standing doctrine] will inevitably produce – as it has during the past few decades – an overjudicialization of the processes of self-governance.").

Justice Scalia's exhortation from three decades ago makes one wonder whether this was more prophecy than premonition. Though it is unlikely that he was able to conjure up a portal to the future, through which he could gaze upon the Kentucky political and legal landscape in which we now stand, his fears of "overjudicialization" have fully materialized. The newsreels' near-constant focus on the Franklin Circuit Court during the past eight months are a short-term preview of

the future of our Commonwealth if the standing requirement is not strenuously enforced. A system where the Attorney General and individual state legislators can file suit over any perceived misstep by the Governor is to invite an endless stream of speculative and politically-driven litigation. Indeed, if the Appellants' standing in this matter is accepted, then the political theatre will invariably extend its reach to the judicial branch on every occasion possible. Any Attorney General or Legislator whose political fortunes would benefit from filing suit will be compelled to bring their complaints to court, lest they are accused of "not doing enough" to protect their constituents. Fortunately, this Honorable Court can rein in this overly broad interpretation of standing to assure that the constitution's standing requirement can stop such litigation before it consumes value time and resources.

A. STANDING IN KENTUCKY

Our courts were not established to issue theoretical opinions, but to resolve actual, concrete legal disputes between interested parties. This Honorable Court has noted that courts should not take actions "unless the alleged controverted questions are justiciable ones, and which do not include abstract legal questions designed merely to furnish information to the inquirer." Commonwealth v. Crow, 263 Ky. 322, 325 (Ky. 1936). When discussing the similar "cases and controversies" requirement contained in Article III of the United States Constitution, the Supreme Court stated:

> Article III of the Constitution limits the power of federal courts to deciding "cases" and "controversies." This requirement ensures the presence of the "concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Baker v. Carr, 369 U.S. 186, 204 (1962). *The presence of a disagreement, however sharp and acrimonious it may be, is insufficient by itself to meet Art. III's*

> *requirements*. This Court consistently has required, in addition, that the party seeking judicial resolution of a dispute "show that he *personally* has suffered some actual or threatened injury as a result of the putatively illegal conduct" of the other party. Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 99 (1979); *see also* Warth v. Seldin, 422 U.S. 490, 501 (1975).

Diamond v. Charles, 476 U.S. 54, 61-62 (1986) (emphasis added). Kentucky's court system is no different, and our Constitution limits access to the courts to those who have suffered an "injury," Ky. Const. § 14, and further limits the jurisdiction of the circuit courts to "justiciable causes" Ky. Const. § 112(5). The "justiciable causes" language of Section 112, combined with the "injury" requirement of Section 14, provides the constitutional basis for the standing requirement in Kentucky courts.

At the outset, this discussion is not meant, in any way, to imply that the Governor's actions cannot be challenged in court. Quite the opposite is true. However, our system wisely requires that the suit must be brought by a real party in interest, rather than parties whose interest is political or speculative. In the present case, there is no question that that universities impacted by the Governor's actions would have had standing to seek a declaratory judgment in Franklin Circuit Court. The rationale for the universities being the proper parties to this suit is clear: first, they have an actual, financial, interest in the outcome of the litigation; second, they have the best access and knowledge of all of their institutional budget information, and could best expound upon the impact, or lack thereof, of the Governor's actions; and, third, they have their own highly qualified legal teams, who are abundantly able to analyze the applicable statutes and regulations, and determine whether they believe the Governor has overstepped his authority. As highlighted in the opinion below, as

well as the Attorney General's brief, the universities were aware of the Governor's actions and, therefore, had every opportunity to file suit if they believed the actions were impermissible. *Opinion and Order*, at 5, 20 (May 18, 2016); Appellant-Attorney General's Brief, at 6.

In the context of declaratory judgments, this Honorable Court has affirmed that "declaratory judgment statutes are available to resolve 'only rights and duties about which there is a *present actual controversy presented by adversary parties*.'" Appalachian Racing, LLC v. Family Trust Found. Of Ky., Inc., 423 S.W.3d 726, 734 (Ky. 2014) *citing* Black v. Elkhorn Coal Corp., 26 S.W.2d 481, 483 (Ky. 1930) (emphasis in original). The fact that there may be a "controversy" to be litigated in this matter cannot serve to obliterate the standing requirement. The Appellants have no more right to litigate this case on behalf of the universities than the universities have to prosecute cases on behalf of the Commonwealth or to pass legislation.

For sake of clarity, the failure of the Appellants to meet the standing requirement will be addressed separately for the Attorney General and the legislators.

B. THE ATTORNEY GENERAL LACKS STANDING

The powers of the Attorney General are set forth in KRS 15.020. This statute provides, *inter alia*, that the Attorney General "shall exercise all common law duties and authority pertaining to the office of the Attorney General under the common law, except when modified by statutory enactment." KRS 15.020. The "common law duties" of the Attorney General are defined as those duties that existed in England prior to 1607. Commonwealth ex rel. Ferguson v. Gardner, 327 S.W.2d 947 (Ky.

1959). The Attorney General must, therefore, show that he has a right to bring this suit pursuant to either the common law or statutory enactment.

In determining that such standing existed, the Trial Court relied heavily upon this Court's opinion in Commonwealth ex rel. Conway v. Thompson, 300 S.W.3d 152 (Ky. 2009), which found that "the Attorney General has a sufficient personal right in these types of cases by virtue of the office and the duties commensurate with that high office." Id. at 173. The case *sub judice* does not present the type of facts that formed the basis of Thompson, and this Honorable Court should clarify that the rule announced in Thompson does not provide the Attorney General with standing in the case at bar.

Thompson involved the Kentucky Department of Corrections interpretation of the 2008 General Assembly's enactment of HB 406, which "drastically altered the law regarding whether time spent on parole would count toward a prisoner's unexpired sentence." Thompson, at 158. The Department of Corrections chose to interpret HB 406 retroactively, and was releasing hundreds of prisoners from their sentences based on said interpretation. After suit was originally filed in Pulaski Circuit Court by the Commonwealth Attorney for the 28th Judicial Circuit, Attorney General Conway filed suit in Franklin Circuit Court to enjoin the Department of Corrections' actions. Id. at 159. The Franklin Circuit court declined to issue an injunction and stated, *inter alia*, that the Attorney General lacked standing to bring the suit. Id. at 172. In finding that Attorney General Conway had standing to bring suit, the Thompson Court overruled the prior case of Commonwealth ex rel. Cowan v. Wilkinson, 828 S.W.2d 610 (Ky. 1992), to the extent that it required the Attorney

General to have a "personal right." Thompson, at 172. Rather, the Thompson Court found that, in the case presented, the Attorney General had standing "on behalf of the citizens of the Commonwealth." Id.

The Appellee urges this Court to clarify Thompson, to make clear that the Attorney General does not have limitless authority to usurp the rights of real, identifiable parties in interest. The "injury" suffered in Thompson was a generalized injury to the citizenry, posed by the potential early release of large numbers of convicted criminals. On the facts presented in Thompson, it is not abundantly clear who, other than the Attorney General, would have been better suited to seek relief, as the Attorney General has a particular interest in the prosecution of crimes. It is possible to imagine that certain victims of the convicted criminals could have claimed standing, but such claims would likely have been seen as tenuous and unsupported by a particularized factual basis. Further, to require individual citizens to shoulder the financial burden of litigating the legal issues presented in Thompson would have been unduly onerous and unjust to place upon one citizen, particularly since the risk of harm applied to the public at large.

The situation in the case at bar is starkly different. Unlike the generalized harm presented in Thompson, there are a discrete number of sophisticated legal entities who are allegedly injured as a result of the Governor's actions herein. These entities have budgets which run into the hundreds of millions of dollars, and who employ highly qualified legal teams to assist in managing operations and litigation. There is simply no reason to presume that these entities are financially or logistically incapable of defending their own interests in court. Indeed, KRS 15.020 indicates that

agencies have the authority to obtain counsel separate from the Attorney General. When entities such as the universities involved herein have their own counsel, and the injury alleged in the suit is particularized to those entities, the common law and KRS 15.020 do not provide the Attorney General with the authority to file suit.

The Trial Court used the logic of Thompson to find that the Attorney General's actions in this case were designed to "defend the rights of the public, ensuring that the Governor does not act beyond his power and authority." *Opinion and Order*, at 7-8. This stretches the logic of Thompson past its breaking point, and completely obliterates the standing requirement as it has been developed. Returning to the fears of "overjudicialization" enunciated by Justice Scalia, the Trial Court's interpretation would permit the Attorney General to file suit to "defend the public" any time that the Governor has a dispute with any executive branch agency, or any other entity for that matter, who is represented by separate counsel. This power appears to be within the sole and complete discretion of the Attorney General who could, presumably, file suit against the express wishes of an agency and that agency's counsel. This would run counter not only to common sense, but to the decision in Johnson v. Commonwealth ex rel. Meredith, 165 S.W.2d 820 (Ky. 1942), which upheld the right of the Legislature to "authorize the employment of other counsel for the departments and officers of the state to perform them." Id. at 844; *see also* Kentucky State Bd. of Dental Examiners v. Payne, 281 S.W. 188, 189 (Ky. 1926) (recognizing "the right of the legislature to lodge the authority to bring such suits with whatever governmental agency it sees proper").

While there is, undoubtedly, room for the Attorney General to act in defense of the public as was the case in Thompson, his "common law duties" under KRS 15.020 should not be broadened to give him unilateral authority to act on behalf of *any* person, agency or entity, regardless of whether that entity is represented by counsel, and regardless of whether the entity desires to bring suit. This common sense restriction will prevent the sort of speculative and politically-driven litigation that is bound to multiply if the Attorney General is given carte blanche to act outside the traditional bounds of the standing doctrine.

B. THE INDIVIDUAL LEGISLATORS LACK STANDING

The Appellant-Legislators are also wholly devoid of standing to bring the present action.[1] Indeed, the Appellant-Legislators grounds for intervention are so general and omnipresent, that it appears there is no logical end to the purported right of disgruntled legislators to seek legal redress for perceived injuries. This untenable position must be swiftly rejected.

As noted *supra*, the concept of standing promotes the separation of powers doctrine. It is axiomatic that "no state forming a part of the national government of the United States has a constitution whose language more emphatically separates and perpetuates what might be termed the American tripod form of government, than does our Constitution." Sibert v. Garrett, 246 S.W. 455 (Ky. 1922). As such, the standing doctrine should be just as emphatically enforced, so as to avoid diminution of our

[1] For the reasons stated in its Opinion and Order of April 26, 2016, the Trial Court correctly found that the Appellant-Legislators had failed to establish taxpayer standing. *See* Opinion & Order, p. 3-4 (April 26, 2016). The Appellant-Legislators do not appear to argue for taxpayer standing in their briefing before this Honorable Court; as such, the Appellee will not address the matter further.

constitutionally-mandated separation of powers. *Cf.* Raines v. Byrd, 521 U.S. 811, 819-20 (1997) ("[O]ur standing inquiry has been especially rigorous when reaching the merits of the dispute would force us to decide whether an action taken by one of the other two branches of the Federal Government was unconsituttional."). Providing standing for individual legislators to bring suit whenever they deem that an executive action has somehow violated the letter or spirit of enacted legislation is to invite constitutional calamity. This would turn the judiciary into a forum for disgruntled legislators to air grievances that are properly constrained to the committee rooms and floor debates of the General Assembly.

In finding that the Appellant-Legislators have standing to intervene, the Trial Court determined that they had alleged "a real and present invasion and nullification upon their legislative ability." Opinion & Order, p. 4 (April 26, 2016). The three Appellant-Legislators do not purport to act on behalf of the entire Kentucky General Assembly, but only in their "official capacities" as State Representatives. In this capacity, however, the Appellant-Legislators have not suffered any distinct injury; rather, the alleged injury is to the entire General Assembly. The Appellant-Legislators' brief admits as much when it states that they are "members of the *offended branch of government*." Appellant-Legislators' Brief, p. 8 (emphasis added). Because the alleged injury is to the "branch of government," this Honorable Court should formally adopt the position taken by the United States Supreme Court, and

find that individual legislators have no standing to bring suit to challenge an alleged injury to the General Assembly as a whole.[2]

The United States Supreme Court case of Coleman v. Miller, 307 U.S. 433 (1939), sets forth a cogent and effective analysis of cases involving legislative standing. Coleman involved the following facts:

> 20 of Kansas' 40 State Senators voted not to ratify the proposed "Child Labor Amendment" to the Federal Constitution. With the vote deadlocked 20-20, the amendment ordinarily would not have been ratified. However, the State's Lieutenant Governor, the presiding officer of the State Senate, cast a deciding vote in favor of the amendment, and it was deemed ratified (after the State House of Representatives voted to ratify it). The 20 State Senators who had voted against the amendment, joined by a 21st State Senator and three State House Members, filed an action in the Kansas Supreme Court seeking a writ of mandamus that would compel the appropriate state officials to recognize that the legislature had not in fact ratified the amendment.

Raines v. Byrd, 521 U.S. 811, 822 (1997). In finding that the bloc of legislators had standing to bring suit, the Supreme Court stated that "[t]he twenty senators were not only qualified to vote on the question of ratification but their votes, if the Lieutenant Governor were excluded as not being a part of the legislature for that purpose, would have been decisive in defeating the ratifying resolution." Coleman, 307 U.S. at 441. The Supreme Court has opined that the "holding in Coleman stands (at most…) for the proposition that legislators whose votes would have been sufficient to defeat (or enact) a specific legislative act have standing to sue if that legislative action goes into

---

[2] It should be noted that such a ruling would not prevent individual legislators from bringing suit for a particularized, individual injury. For example, if an individual legislator was being denied compensation as required by Section 42 of the Kentucky Constitution, the legislator could doubtless seek redress in the appropriate court. *Cf.* Powell v. McCormack, 395 U.S. 486 (1969) (individual Member of Congress had standing to challenge his exclusion from the House of Representatives, and consequent loss of salary).

effect (or does not go into effect), on the ground that their votes have been completely nullified." Raines, 521 U.S. at 823.

The Appellant-Legislators herein lack the bloc strength presented in Coleman. Rather, they constitute a small minority of the General Assembly, and are purporting to bring suit to vindicate the rights of the entire legislative body. Unlike the facts in Coleman, this case presents the sort of "abstract dilution of institutional legislative power" that was unsuccessfully pled to the Supreme Court in the case of Raines v. Byrd, 521 U.S. 811 (1997). In Raines, the Supreme Court refused to extend Coleman to a situation where six members of Congress sought to challenge the Line Item Veto Act. The Court refused to grant standing to the six members, finding that "they have alleged no injury to themselves as individuals" and that "the institutional injury they allege is wholly abstract and widely dispersed." Raines, 521 U.S. at 829 (internal citations omitted). The Court also noted that it "attach[ed] some importance to the fact that appellees have not been authorized to represent their respective Houses of Congress in this action." Id.

Appellant-Legislators argue that they would somehow be silenced, and the rights of the Legislature would be irrevocably damaged, if they were denied standing in this case. Nothing could be further from the truth. Legislators, of course, have access to the normal political process to attempt to cure any perceived wrongs committed by the Governor. *Cf.* Raines, 521 U.S. at 829 ("our conclusion neither deprives Members of Congress of an adequate remedy…nor forecloses the Act from constitutional challenge (by someone who suffers judicially cognizable injury as a result of the Act)). The Appellant-Legislators could conceivably promote legislation

to address the concerns presented herein, or assist in efforts to seek a constitutional amendment if necessary. From a more practical standpoint, there is nothing that prohibits the concerned members from seeking to file an *amicus* brief in this action, so that their arguments and position is heard by this Honorable Court. However, the standing requirement has not been diminished so far that a mere desire to be heard is sufficient to confer legal standing to bring suit. The legislators must show more.

In order to assiduously guard the separation of powers doctrine, this Honorable Court should find that the Appellant-Legislators lacked standing to intervene in the present suit.

II. THE TRIAL COURT CORRECTLY DETERMINED THAT THE GOVERNOR HAD AUTHORITY TO REVISE ALLOTMENTS IN THIS CASE

Though the Treasurer argued that this matter could be dismissed without reaching the merits of the underlying complaint, the Trial Court's ruling on the merits of the case was ultimately correct. After addressing the basis of the executive power under Kentucky's Constitution, the Trial Court found that the Governor had sufficient statutory authority to direct budget units within his control to spend less than the fully appropriated amount. The Trial Court likewise found that the Governor did not violate the separation of powers provisions of the Kentucky Constitution.

The Appellants spend a great deal of time and energy addressing a wide range of arguments. However, the Trial Court recognized that a "plain and logical" reading of KRS 48.620(1) establishes that the Governor had the authority to make the downward revision to the scheduled allotments. Said statute reads as follows, in pertinent part:

> Allotments shall be made as provided by the allotment schedule, and may be revised upon the written certification of the Governor, the Chief Justice, and the Legislative Research Commission for their respective branches of government. No revisions of the allotment schedule may provide for an allotment or allotments in excess of the amount appropriated to that budget unit in a branch budget bill, or for expenditure for any other purpose than specified in a branch budget bill.

KRS 48.620(1). The plain language of the statute states that allotments may be revised by the Governor. "Revision" is defined as "[a] reexamination or careful review for correction or improvement." Black's Law Dictionary, 8th Ed. (2004). Every word in a statute must be given effect; the statute therefore, on its face, gives the Governor the authority to revise *allotments*, which is what occurred in the present case. Further, the maxim of *expressio unius est exclusion alterius* instructs that KRS 48.620's prohibition on *upward* revisions indicates that no such prohibition exists on *downward* revisions.

Taking a step back from the minutiae of statutory interpretation, the broadest possible view of the present case counsels strongly in favor of affirming the Trial Court's opinion. The Appellants' argument relies upon the fatally flawed premise that the Governor is required to assure that every cent of an appropriation is spent, and that it must constantly be available for spending. This is not the case. Indeed, there is no dispute that the Governor has control over the scheduling of allotments per KRS 48.620, which presumably includes the power to dramatically alter the schedule of allotments. The Appellants' premise is not only fiscally irresponsible, but it is textually indefensible. For example, the first sentence of Part I of the 2014-2016 Executive Branch Budget authorizes the spending of "the following discrete sums, or

so much thereof as may be necessary." 2014 Ky. Acts Ch. 117, Part I § 1(1). This sentence is an express recognition of the fact that "appropriations" are defined as "an authorization by the General Assembly to expend a sum of money *not in excess* of the sum specified. KRS 48.010(3)(a) (emphasis added). The definition of "appropriation" itself recognizes that the sums appropriated are a spending limit, but not a spending mandate.

The key deficiency in the Appellants' position is that it consistently conflates the terms "appropriation" and "allotment." For example, the Appellants cite KRS 48.600 as support for their position. This statute is wholly inapplicable to the case *sub judice* as it relates to reduction of *appropriations*, which has not occurred in this case. A reduction of an actual appropriation may occur in limited circumstances, such as those set forth in KRS 48.600, which requires an actual or projected revenue shortfall. Special care must be taken when someone seeks to reduce an appropriation, which represents the spending "cap" set by the legislature. This is why the statutes provide for limited circumstances in which the appropriation itself can be reduced.

On the other hand, the statutes do not mandate the same extreme circumstances to revise an allotment. The reason for this is self-evident: revision of allotments by the executive branch is an essentially executive function, as it merely involves determining when and how much of the appropriation will be spent. It further allows for ongoing management by the executive over the passage of time. The revision of allotments is provided for in both KRS 48.605 and 48.620, and the statutes do not provide limitations upon the ability to revise allotments. Indeed, the only restriction in KRS 48.620 is that the Governor cannot revise the allotments to

provide for more funds than what was originally provided by the General Assembly. The Appellant-Attorney General's argues that if a revision of allotments results in money being unspent, there has been a de facto appropriation reduction, which he argues is impermissible. The Attorney General's argument proves far too much; essentially, the argument is that if the Governor wants to spend less money than is appropriated, the only vehicle is the budget reduction plan of KRS 48.600. Such a reading makes the allotment revision language of KRS 48.620 mere surplusage.

The Governor's position is supported by both the law, and by common sense governance. Were the Appellants to prevail in this matter, it would require the Governor to abdicate his responsibility to be a faithful steward of public funds, and instead resort to wild, wasteful spending of taxpayer dollars in order to assure that every cent appropriated by the General Assembly is spent. The absurdity of that result underscores the fundamental flaw of the Appellants' case, and displays why the Trial Court's decision should be affirmed.

As noted by the Trial Court, the Governor's action is also permitted by KRS 45.253, which prioritizes the spending of trust and agency funds—e.g., tuition and fees for room and board—over general fund appropriations and provides that "the secretary of the Finance and Administration cabinet may withhold allotment of general fund appropriations to the extent trust and agency funds are available." KRS 45.253(4). The record is uncontroverted that there are trust and agency funds available to the institutions, and the Trial Court correctly recognized the same. *See* Opinion and Order, p. 15. The Trial Court likewise correctly determined that the provisions of KRS Chapter 164A do not change the result herein.

In short, contrary to the protestations of the Appellants, there is nothing in Kentucky statutory or constitutional law that prohibits the Governor from making minor downward revisions in budget allotments. The Appellants' claims that the Governor's actions represent a damaging incursion upon the separation of powers doctrine is simply not supported by the record. Rather, the Governor's constrained revisions herein are in line with the fundamental powers afforded to the executive in our constitutional system.

CONCLUSION

The Appellants lacked standing to bring the present suit, and this Honorable Court should clarify the standing doctrine to assure that future suits are only brought by proper parties. Should the Court determine that one or more of the Appellants has standing, then the Trial Court's decision to grant summary judgment in favor of the Appellees should be affirmed.

Respectfully submitted,

Noah Friend

HON. NOAH R. FRIEND
General Counsel
Kentucky State Treasurer, Allison Ball
1050 U.S. Hwy. 127 S, Suite 100
Frankfort, KY 40601
Phone. 502.564.4722
Mobile. 606.369.7030
Email. noah.friend@ky.gov
Counsel for Appellee