COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 16-CI-738

ANDY BESHEAR, *in his official capacity as Attorney General of the Commonwealth of Kentucky,* **PLAINTIFF**

V.

FINAL JUDGMENT GRANTING DECLARATORY AND INJUNCTIVE RELIEF

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

This action is before the Court for a final decision on the merits following briefing, argument, and an evidentiary hearing. Attorney General Beshear challenges a series of Executive Orders issued by Governor Bevin purporting to "abolish and re-create" the Board of Trustees of the University of Louisville. For reasons more fully stated below, the Court **GRANTS** the Attorney General's request for declaratory relief and a permanent injunction setting aside the Governor's Executive Orders.[1] The Court holds that the Governor's re-organization power under KRS 12.028 does not extend to public universities, which the legislature has placed outside the scope of the organizational structure of the executive branch of government.[2] The Court further holds that the Governor cannot, by unilateral action under

[1] The Executive Orders at issue are: 2016-338 (abolishing and re-creating the University of Louisville Board of Trustees); 2016-339 (establishing an Interim Board of Trustees); 2016-391 (appointing members to the re-constituted Board of Trustees); and 2016-512 (appointing Brian Cromer to replaced Doug Cobb, who declined appointment to the re-constituted Board of Trustees).

[2] The Court must also note that the recent Supreme Court decision in Commonwealth, *ex rel.* Beshear v. Bevin, ___ S.W.3d ___, 2016-SC-272 (Ky. Sept. 22, 2016) (slip opinion) compels the granting of relief to the Attorney General. Although that decision is not yet final, the principles adopted in that case mirror the prior ruling of this Court that public universities, as quasi-independent corporate bodies, are not directly subject to the Governor's executive power in matters of budget and organization, in the same manner as program cabinets, departments, and agencies of state government. Id. slip op. at 45–47. This ruling further reinforces this Court's prior ruling in issuing injunctive relief that the Governor's re-organization power in KRS 12.028 does not extend to public universities.

KRS 12.028, circumvent the statutory requirement of KRS 63.080 that Board members "shall not be removed except for cause," and the statutory requirement that any Board member the Governor seeks to remove is entitled to a due process hearing before the Council on Postsecondary Education under KRS 164.821(1)(b).

The Attorney General has also challenged the Governor's actions on constitutional grounds. He argues that the Governor's unilateral executive action usurps the power of the legislature in violation of Sections 27 and 28 of the Kentucky Constitution, that it illegally suspends statutes in violation of Section 15 of the Kentucky Constitution, and that the Executive Orders conflict with the Governor's mandatory duty to faithfully execute the laws of the Commonwealth under Section 81 of the Kentucky Constitution. The Court finds that it is not necessary to reach those constitutional issues, as the Governor's actions are outside the scope of his re-organization power under KRS 12.028 and are in direct conflict with the statutory provisions for removing university board members set forth in KRS 63.080 and KRS 164.821(1)(b).

FACTUAL AND HISTORICAL BACKGROUND

One undisputed fact stands out in analyzing the Governor's executive orders at issue here: there is no legal or historical precedent for the Governor's actions in abolishing and reconstituting the board of trustees of a public university. Never before in Kentucky history has any Governor attempted to invoke KRS 12.028 to re-organize the administration or board of any public university. Governor Bevin's actions purporting to abolish and re-create the University of Louisville's Board of Trustees is entirely without precedent.

The kind of dispute which gave rise to Governor Bevin's actions—a Board of Trustees divided over presidential leadership of a public university—is *not* unprecedented. Prior

Governors, who have not been shy about asserting executive powers, have dealt with these situations by requesting (and obtaining) resignations of board members, or have allowed the disputes to be settled through the normal administrative and judicial processes. See, e.g., Board of Regents of Murray State University v. Curris, 620 S.W.2d 322 (Ky. App. 1981); William E. Ellis, A History of Higher Education in Kentucky 397 (2011). No prior Governor has *ever* attempted to invoke the re-organization power of KRS 12.028 to address problems in the governance of public universities.

The factual context in which these executive orders were issued reveals the depth of the conflict between this unprecedented assertion of executive power, and the statutes that limit the governor's authority to remove and replace board members. The Governor asserts that KRS 63.080 and KRS 164.821(1)(b), requiring due process prior to removal of any university board member, apply only to the removal of *individual* board members, and not to the complete abolition and re-creation of the Board. By this logic, the Governor could abolish an entire Department of state government and lay-off all of its employees without giving any employee the right of appeal to state Personnel Board under KRS Chapter 18A. It is uncontested that the action of the Governor removed *all* non-elected members of the Board of Trustees[3] from office. He took this action unilaterally, without bringing any charges or granting any hearing to the Board members.

Yet an examination of Executive Order 2016-338 reveals that it reads like a Bill of Particulars, charging the Board members with a host of allegations of misconduct, neglect, and malfeasance. It alleges the Board members "acted in a manner that manifests a lack of

[3] Board representatives elected by faculty, staff, and students remained on the Board after the re-organization.

transparency and professionalism"; it alleges the Board members "have become operationally dysfunctional"; and it alleges "certain Trustees" had a "strained relationship" with "University administration, which is seriously damaging the entire University community."

These charges malign the integrity and competence of Board members. Further, the charges were leveled by the Governor with no notice to Board members of the charges, no opportunity to contest their validity, and no recourse whatsoever, solely by the unilateral fiat of the Governor. In adopting the Executive Order, the Governor bypassed the statutory requirements for due process. He served as judge, jury, and executioner of the incumbent Board without any legal process to determine the merits of the charges, which, of necessity, were based on individual actions of board members.

The Governor did not testify in this case, nor did he offer any affidavit to explain his actions. But he did produce correspondence from former President James Ramsey, which was admitted into evidence. That correspondence confirms that Dr. Ramsey offered to submit his resignation as University president conditioned upon the Governor's removal of the Board of Trustees.[4] As the Court noted in its ruling granting a Temporary Injunction, this letter gives rise to the appearance that Dr. Ramsey negotiated his departure as president directly with the Governor in exchange for the Governor's agreement to fire the Board.[5] The Governor has offered no other explanation of his actions. Accordingly, the Court makes a factual finding, based on the only evidence in the record, that the Governor improperly agreed to fire and replace the Board of Trustees as a condition of obtaining Dr. Ramsey's agreement to resign.

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[4] Letter from Dr. James Ramsey to Governor Bevin, June 16, 2016 (Exhibit 11 from Hearing on Temporary Injunction).

[5] "Upon a legal restructure of the Board of Trustees at the University of Louisville, I will immediately offer, to the newly appointed board, my resignation/retirement as President of the University of Louisville." Id.

This action by the Governor violates KRS 164.821, which provides "[t]he government of the University of Louisville is vested in a board of trustees appointed for a term set by law pursuant to Section 23 of the Constitution of Kentucky."

Almost immediately after the meeting between Dr. Ramsey and Governor Bevin, the Governor issued the executive orders that are the subject of this action, and called a press conference to announce Dr. Ramsey's agreement to resign.[6] Thereafter, the Southern Association of Colleges and Schools (SACS), the accrediting agency for the University of Louisville, notified the University that it was undertaking a review of whether those executive orders were in violation of the Universities obligations to maintain accreditation.[7] Following the University's initial response to this letter, SACS President Whelan indicated that the impact of the executive orders on the University's accreditation was still an issue, and would be further reviewed under SACS procedures.[8] It is clear from these letters from SACS that the Governor's actions have placed the University of Louisville in jeopardy of sanctions affecting its accreditation. If the Governor's assertion of unlimited power to abolish and re-create a public university board under KRS 12.028 during the legislative interim is upheld, it is unclear how the University can avoid sanctions. Again, it appears that such unilateral action by a Governor is unprecedented.

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[6] See John Gregory, *News of the Week: June 17, 2016*, KET (June 18, 2016, 10:00AM), http://www.ket.org/public-affairs/news-of-the-week-june-17-2016/; *Gov. Matt Bevin Charts Course for Fresh Start at University of Louisville Board*, http://kentucky.gov/Pages/Activity-stream.aspx?n=KentuckyGovernor&prId=104 (last visited Sept. 28, 2016).

[7] Letter from SACS President Belle Whelan to Dr. Ramsey, June 28, 2016 (Commonwealth Exhibit 6, Hearing, 9/15/16).

[8] Letter from SACS President Belle Whelan to Acting President Pinto, August 18, 2016 (Commonwealth Exhibit 7, Hearing 9/15/16).

In response to the Attorney General's motion for injunctive relief, the Governor has also raised an issue regarding the lack of minority representation on the Board, and lack of political party balance on the Board, as required by KRS 164.821(5). The Governor implies that his action in abolishing the Board was justified because the Board did not have enough racial minorities and was not politically balanced. The Governor has not, however, asserted any claim, or counter-claim raising this issue for formal adjudication. Executive Order 2016-338 contains a comprehensive listing of the Governor's findings of problems that justify his abolition of the Board, but it does not list political party and minority representation on the Board as a basis for the executive order abolishing the Board. Moreover, any alleged problem with minority representation can be cured forthwith by the Governor's compliance with his existing commitment to fill existing vacancies on the Board with minority members. See Kentucky Justice Resource Center, Inc. v. Governor Matt Bevin, Franklin Cir. Ct. No. 15-CI-1146 (Settlement Agreement filed of record, March 18, 2016). Likewise, any imbalance in political party representation can be cured, either immediately or over the next appointment cycle, by the filling of Board vacancies with members of the Republican Party.[9]

LEGAL ANALYSIS

The statute governing the University of Louisville provides that "Board members may be removed by the Governor for cause, which shall include neglect of duty or malfeasance in

[9] Republican Governor Ernie Fletcher, when faced with a similar claim of disproportionate appointments of Republican university board members, argued that any such problems must be cured over time with new appointments to bring the boards into balance. Commonwealth, *ex rel.* Stumbo v. Fletcher, Franklin Cir. Ct. No. 07-CI-1456. That case was settled with an agreement between Governor Beshear and Attorney General Conway, providing for the Governor to appoint a disproportionate share of Democrats to university Board vacancies, until the statutory balance between political parties was achieved. The Governor was further required to maintain that balance once it was achieved, an obligation which apparently has remained unenforced. No request for relief concerning political party balance has ever been brought before this Court, either in a motion to re-open the Fletcher case, or in any new proceeding, including this one.

office, after being afforded a hearing with counsel before the Council on Postsecondary Education and a finding of act by the council." KRS 164.821(1)(b). Likewise, KRS 63.080(2) provides that members of the board of trustees of public universities, including the University of Louisville, "shall not be removed except for cause." Here, the Governor removed all appointed members of the Board without cause, and without any hearing or finding of fact, through the exercise of his re-organization power under KRS 12.028. If the Governor's re-organization power under KRS 12.028 gives him the power he asserts here to unilaterally abolish the Board during the legislative interim, and thus remove and replace all Board members, then the protections for Board members explicitly enacted into law in KRS 164.821(1)(b) and KRS 63.080(2) are rendered meaningless.

The Governor relies heavily on the decision of the Court of Appeals in Galloway v. Fletcher, 241 S.W.3d 819 (Ky. App. 2007), which held that the Governor could reject a list of nominees submitted by the Postsecondary Education Nominating Committee for a university board, and require the Committee to submit another list of nominees more acceptable to the Governor. That issue is not presented in this case, but the Governor argues that the holding of Galloway that KRS 12.070 (the statute that allows the Governor to reject lists of nominees) applies to university board *appointments* should be construed to mean that *all* of KRS Chapter 12, including the re-organization powers in KRS 12.028, applies to public universities.

The Court finds Galloway inapplicable for the following reasons. First, public universities were removed from the organizational structure of the executive branch of state government in 1952. 1952 Ky. Acts, c. 41, Section 1. After the 1952 legislation removing state universities from the executive branch's organizational structure, the Governor retained the power to appoint university board members. Thus, the holding of Galloway, stipulating

that the Governor is not required to appoint nominees from the initial list submitted to him by the Postsecondary Education Nominating Committee, in no way implies that the Governor has the right to abolish a university board or to re-organize a university to board to replace all members under a different statute, KRS 12.028. Kentucky law has long recognized that "the power of removal . . . is not an incident to the power of appointment. . . ." Voeteler v. Fields, 23 S.W.2d 588 (Ky. 1926). Nor is the power to re-organize "an incident to the power of appointment." In short, the fact that the Governor retains one power related to public universities does not bring those institutions within the scope of KRS Chapter 12 for all purposes.

KRS 12.070(3) simply provides that "[w]here appointments to administrative boards and commissions are made from lists submitted to him, the Governor may reject the list and require that other lists be submitted." KRS 12.070(3). The application of this statute on gubernatorial *appointments* does not in any way alter the restrictions on the Governor's power to *remove* board members under KRS 63.080 and KRS 164.821, nor does it bring university board within the scope of the organizational structure subject to KRS 12.028. No one disputes that the Governor has the power to appoint board members, but Galloway stands only for the proposition that the Governor has the same power to reject nomination lists for university boards that he has for all other administrative boards.

Moreover, a careful reading of Galloway demonstrates that it was decided on the *assumption* that the application of KRS 12.070 was "immediately obvious" without any consideration of the statutory history that demonstrates the separation of state universities from the organizational structure of the executive branch in 1952. Galloway, 241 S.W.3d at 822–23. Galloway stands for nothing more than the proposition that when the legislature requires

the Governor to make appointments from a list submitted by a nominating group, the Governor can reject a list that fails to include names suitable to the Governor. This has been the law in Kentucky for almost seventy years. Elrod v. Willis, 203 S.W.2d 18 (Ky. 1947); see also Kentucky Ass'n of Realtors, Inc. v. Musselman, 817 S.W.2d 213 (Ky. 1991).[10] It has no bearing whatsoever on the Governor's re-organization power.

The Governor's assertion of unlimited power, during the legislative interim, to abolish a Board, composed of members who can only be removed for cause, would completely defeat the protection of Board members from partisan political interference for discharging their fiduciary duties. The unlimited power to "abolish and re-create" this Board is wholly inconsistent with the statutes that explicitly limit the Governor's power to remove university board members. Such control would establish a dangerous precedent that invites the abuse of power.

This Court does not doubt Governor Bevin's good intentions in adopting these executive orders. But if the Court adopts his interpretation of the re-organization statute, there would be nothing to stop a future governor from employing it to destroy a university board as a means of political retaliation, or to extort some economic advantage, or for other motives that are not in the public interest. The concept of unchecked political power asserted by the Governor is wholly inconsistent with our statutory framework for university boards. Such unlimited and unilateral power is also flatly inconsistent with our constitutional system of checks and balances that requires executive power to be checked by statutory limitations.

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[10] Musselman held, without reference to KRS 12.070, that "the Governor may reject all the names on the listed provided by the Association and forego making an appointment until provided with a list that includes a person whom the Governor deems suitable for appointment to the office." Id. at 214. Accordingly, the law in Kentucky seems clear that the Governor has the right to reject nominations lists regardless of KRS 12.070 or any other provision of KRS Chapter 12.

Here, the legislature, as a part of sweeping higher education reforms, placed limits on the power of the Governor to remove university board members. 1997 (1st Extra. Sess.) Ky. Acts, ch. 1, sec. 41, sec. 125. The Governor cannot circumvent these limits by use of his re-organization power.

As noted in the Governor's brief, courts have a duty to construe statutes in harmony so that interpretations that create conflicts between statutes are avoided. The Supreme Court recently reiterated this principle in the University budget cut case: "It is unquestionable 'that where two statutes are in apparent conflict, their inconsistencies should be reconciled if possible.'"[11] Here, the most logical way to interpret the re-organization statute (KRS 12.028) to be in harmony with the higher education statutes that prohibit removal of university board members except for cause (KRS 63.080), and after a due process hearing (KRS 164.821(1)(b)), is to hold that the re-organization statute does not apply to public universities.

A close examination of the statutory history of Kentucky's public universities reveals that this is the correct interpretation of KRS 12.028. The simple reason no other governor has ever invoked the re-organization power of KRS 12.028 in connection with public universities is that these institutions of higher education, since 1952, have been recognized as "public corporations, having a separate existence from the main body of state government"[12] separated from the organizational structure of the executive branch of state government. 1952 Ky. Acts,

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[11] Commonwealth, *ex rel.* Beshear v. Bevin, *supra*, note 2, at 39.
[12] Id. at 45.

ch. 41, Section 1.[13] It is clear that public universities were removed from the organizational structure of the executive branch of state government by the General Assembly.[14]

A careful reading of the definitions set forth in KRS 12.010 finds that there is absolutely no mention of public universities as organizational units that are subject to KRS Chapter 12, which is entitled "Administrative Organization." KRS 12.020 contains an exhaustive list of every division, department, board, agency, and cabinet in state government. It contains no mention of public universities. It does state that the enumeration of all such agencies "is not intended . . . to be all inclusive" but KRS 12.015 clarifies that Chapter 12 applies only to administrative bodies within the organizational structure of state government, not quasi-independent public institutions such as public universities. As explained in KRS 12.015, "each administrative body established by statute or statutorily authorized executive action shall be included for administrative purposes in an existing department or program cabinet." Public universities, since 1952, have not been "included for administrative purposes in an existing department or program cabinet," and thus are outside the purview of the Governor's re-organization power in KRS 12.028.

A close examination of the applicable statutes fully supports this legal conclusion. Public universities simply do not fall within the definitions of KRS 12.010 and KRS 12.015, nor are they listed in the organizational chart enacted in KRS 12.020. Public universities are

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[13] Prior to the enactment of Senate Bill 113 in 1952, all state universities were listed in the organizational structure of the executive branch of state government as divisions of the Department of Education under KRS 156.010(3) (Carroll's Kentucky Statutes 1934-52). See also, Public Higher Education in Kentucky, 117 Research Publication 25, Legislative Research Commission (1951). Findings of Fact, ##20-22, Temporary Injunction, July 29, 2016.

[14] A contemporaneous Legislative Research Commission report demonstrates that the immediate reason for the removal of universities from the organizational structure of the executive branch in 1952 was that the salary limitations on state government employees were incompatible with the need for universities to hire qualified professors, officers and employees. *See* "Public Higher Education in Kentucky", p. 117. Research Publication #25, Legislative Research Commission (1951).

institutions of a different kind and class than operational units of the executive branch of government such as Cabinets, Departments, Divisions, Boards and Commissions. Thus, public universities are excluded from the scope of KRS 12.028 by the rule of statutory construction that "the meaning of general words ordinarily will be presumed to be restricted by the particular designation, and to include only things or persons of the same kind, class or nature as those specifically mentioned." Steinfield v. Jefferson County Fiscal Court, 229 S.W.2d 319, 320 (Ky. 1950). In the definitions section of KRS Chapter 12, there is no mention of any organizational unit that includes a public university. KRS 12.010. The next section of Chapter 12 stipulates that all "administrative bodies" must be included in a Department or Cabinet, which universities clearly are not. KRS 12.015. In the actual statutory enumeration of administrative bodies subject to KRS Chapter 12, there is no mention of public universities. KRS 12.020. It is abundantly clear from the statute itself that public universities are institutions of a different kind, class, and nature than the operational units of state government subject to KRS Chapter 12.

The Governor's primary power with regard to public universities is the power of appointment of board members. Unlike administrative bodies of state government, the Governor does not hire or fire, or even approve the hiring or firing, of administrators, professors, staff or other personnel. Unlike the executive branch of state government, the Governor does not control university budgeting, purchasing, or capital construction.[15] The governance of public universities has been carefully structured to insulate institutions of higher

[15] See KRS 164A.555 to .630, which provide for internal financial management of public universities, separate from the normal financial management requirements of KRS Chapters 45 and 45A for the executive branch of state government. See also, Commonwealth, *ex rel.* Beshear v. Bevin, *supra,* note 2, at 39–41.

education from the direct influence of partisan politics. The Governor's assertion of the right to unilaterally abolish and re-create the Board of Trustees during the interim between legislative sessions is wholly inconsistent with the statutory framework of higher education in Kentucky, and specifically with KRS 63.080 and KRS 164.821(1)(b).

The Governor has also argued that Executive Orders are immune from judicial review because "the Governor's authority to reorganize an administrative body pursuant to KRS 12.028 is a 'purely . . . executive function' when exercised in the interim between legislative sessions,"[16] citing Legislative Research Com'n By and Through Prather v. Brown, 664 S.W.2d 907 (Ky. 1984). While re-organization of administrative bodies may be an executive function, all executive action is subject to judicial review for compliance with statutory mandates. Brown held that executive orders are not subject to a *legislative* veto. It did not hold they were beyond the scope of judicial review. To the contrary, the Court in Brown squarely held that that the review of executive actions for compliance with statutory authority was a *judicial* and not a *legislative* function: "It requires no citation of authority to state unequivocally that such a determination is a judicial matter and is within the purview of the judiciary, the Court of Justice." Id. at 919.[17]

To the extent that the Governor has attempted to raise the issue of lack of minority and political party representation on the incumbent Board of Trustees as a basis to deny declaratory and injunctive relief, the Court finds that the public interest requires that the Board of Trustees of the University of Louisville must continue to function as the governing body of

[16] Defendant's Post-Trial Brief, Sept. 21, 2016, at 1.
[17] This holding of Brown was adopted in reference to the legislature's attempt to review administrative regulations promulgated by the executive branch for compliance with statutory authority. The same principle is clearly controlling with regard to judicial review of executive orders.

the University as required under KRS 164.821. Any non-compliance with the statutory requirements for minority representation, or political party representation, can and should be cured by the Governor himself through exercising his appointment power. He currently has the ability to name minority members of the Board that would achieve the requirements of KRS 164.821(5). He currently has the power to name up to four, or perhaps five, Republican members of the Board that would substantially cure any existing problem with political party representation, and to complete this process by appointing additional Republican members over the next appointment cycle.

The Governor has failed to cite any statute or other legal grounds to support any argument that the current Board lacks full legal authority to discharge its statutory duties. Until the Governor has fulfilled his own duty to make appointments consistent with KRS 164.821(5), he is equitably estopped from asserting this issue as a defense to the Attorney General's claims. He is currently under a legal obligation, which he has not fulfilled, to appoint additional minority members of the University of Louisville Board of Trustees.[18] A time honored maxim of the law of equity is "he who seeks equity must do equity." Gabbard v. Truett, 283 S.W.2d 833, 835 (Ky. 1955). The Governor has an adequate remedy at law for any non-compliance with the minority and political party representation requirements on the University of Louisville Board of Trustees. All he needs to do is to exercise his power of appointment to bring the Board into compliance. He has the authority to bring the Board into compliance on minority members immediately.[19]

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[18] Kentucky Justice Resource Center, Inc. v. Governor Matthew Bevin, Franklin Cir. Ct., No. 15-CI-1146, Settlement Agreement dated March 18, 2016.

[19] The Settlement Agreement, signed by the Governor, provides that the Governor will appoint two additional minority members of the Board, and that such action "will take place as soon as possible after the [Postsecondary Education Nominating] Committee makes its recommendations to the Governor." This Court denied a motion for a restraining

Finally, the Attorney General has also raised significant questions regarding the constitutionality of the Governor's actions here. The Governor's unilateral re-organization of the University's Board raises important separation of powers issues under Sections 27 and 28 of the Kentucky Constitution, and it also raises issues concerning whether the Governor's actions violated the prohibition against suspension of laws (Section 15), and requiring faithful execution of the laws (Section 81). In light of the Court's ruling that that the re-organization statute does not include public universities within its scope, and that the challenged re-organization violates KRS 63.080 and KRS 164.821(1)(b) regarding the removal of university board members, it is not necessary to adjudicate these constitutional issues. As the Court held in Stephenson v. Woodward, 182 S.W.3d 162 (Ky. 2005), Courts should avoid deciding constitutional issues if a case can be decided solely on statutory grounds. Id. at 168. As Justice Brandeis summarized this rule, "if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter." Ashwander v. TVA, 297 U.S. 288, 347 (1935) (Brandeis, J., concurring). Accordingly, this Court must decline to address the constitutional issues in this case.

CONCLUSION

For the reasons stated above, the Court **GRANTS** the Attorney General's motion for declaratory and injunctive relief under KRS 418.040 and CR 65, and **IT IS ORDERED AND ADJUGED** as follows:

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order under CR 65.03 to restrain the University of Louisville's Board of Trustees from conducting business until Governor Bevin has fulfilled his duty to make the minority appointments to the Board required by the settlement agreement. Opinion and Order, No. 15-CI-1146, Aug. 25, 2015. While those minority appointments should be made forthwith by the Governor, his failure to do so cannot result in institutional gridlock, and the public interest requires that the Board must continue to function until all legal issues in this case are fully resolved.

1. The Governor's Executive Orders, ##2016-338, 2016-339, 2016-391, and 2016-512 are hereby **PERMANENTLY ENJOINED and SET ASIDE**;
2. This Court's Temporary Injunction, issued July 29, 2016, is incorporated by reference, and adopted as part of this Final Judgment to the extent it is not modified herein, pursuant to CR 54.02;
3. The defendant Governor Matthew Bevin, and his agents, employees, and all other persons acting in concert with him, are **PERMANENTLY ENJOINED** from implementation of the Executive Orders that are the subject matter of this action, and are further **PERMANENTLY ENJOINED** from interfering with, or obstructing in any way, the lawful operation and governance of the incumbent University of Louisville Board of Trustees who were duly appointed under the provisions of KRS 164.821 prior to the filing of the Executive Orders that are set aside by this judgment;
4. The Court finds and declares pursuant to KRS 418.040 and CR 57 that public universities, including the University of Louisville, are outside the scope of the Governor's power to re-organize the executive branch of government under KRS 12.028;
5. The Court finds and declares pursuant to KRS 418.040 and CR 57 that the Governor's actions which resulted in the removal of all gubernatorial appointees to University of Louisville Board of Trustees under Executive Order 2016-338 violated the requirements of KRS 63.080 and KRS 164.821(1)(b). The Court finds and declares that university Board members cannot be removed except for cause, and after a due process hearing before the Council on Postsecondary Education.

Accordingly, even if public universities are included within the scope of the Governor's re-organization power under KRS 12.028, that power does not allow the Governor to circumvent the requirements for removal of university trustees under KRS 63.080 and KRS 164.821(1)(b).

6. This is a final and appealable order and there is no just cause for delay in the entry of this judgment.

IT IS SO ORDERED this 28th day of September, 2016.

PHILLIP J. SHEPHERD, JUDGE
FRANKLIN CIRCUIT COURT

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