Supreme Court of Kentucky

No. 2021-SC-0126-T
[To Be Heard With No. 2021-SC-0107-T]

ANDY BESHEAR, *et al.* *Defendant-Movants*,

v.

Transfer from Court of Appeals Nos. 2021-CA-0391-I
and Scott Circuit Court No. 21-CI-00128

GOODWOOD BREWING CO., LLC, *et al.*

Plaintiff-Respondents.

BRIEF OF THE NEW CIVIL LIBERTIES ALLIANCE, SOUTHEASTERN LEGAL FOUNDATION, & THE MACKINAC CENTER FOR PUBLIC POLICY, AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-RESPONDENTS

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May 2021, a copy of this brief was served by E-mail and by U.S. Mail on the following: Judge Brian Privett, Scott Circuit Court, Scott County Justice Ctr., 310 Main Street, Georgetown, KY 40361; Amy Cubbage, S. Travis Mayo, Laura Tipton, Taylor Payne, & Marc Farris, Office of the Governor, 700 Capitol Ave., Ste. 106 Frankfort, KY 40601; Wesley Duke & David Lovely, Cabinet for Health & Family Srvcs., 275 East Main St. 5W-A, Frankfort, KY 40621; and Goodwood Brewing Company, LLC d/b/a Louisville Taproom, Frankfort Brewpub, and Lexington Brewpub, Trindy's, LLC, and Kelmargjo, Inc., d/b/a The Dundee Tavern at 4440 PGA Blvd., Suite 307, Palm Beach Gardens, FL 33410

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STATEMENT OF POINTS AND AUTHORITIES

SUMMARY OF ARGUMENT

Faced with a pandemic, the Governor of Kentucky issued a host of orders to address the crisis. This Court held that the Governor had been delegated those powers for just that purpose. *Beshear v. Acree,* 615 S.W.3d 780 (Ky. 2020). In so holding, this Court noted that the legislature, if it disagreed, could respond by withdrawing the power it had delegated to the Governor. The General Assembly did just as democratic theory and this Court's order contemplated. It made judgments about the interests of the people of Kentucky and reined in the Governor's powers so that no emergency decree could last more than 30 days without further authorization or ratification by the legislature.

So far, this is a textbook example of how constitutional governance should work, particularly if it is respond quickly to a crisis, take heed of liberty interests, and enable the people's representatives to control the executive. Now, however, the Governor, like Royal Governors of the colonial period, has determined he does not need to concern himself with the legislature's lawful withdrawal of power. He seeks this Court's blessing of that royal writ. This Court ought to again perform its proper constitutional role and enforce the legislature's limit on executive power, so that the Kentucky Constitution's wise tripartite division of roles can be vindicated.

FACTS AND TIMELINE

This case, like the legislative action at issue, did not emerge *ex nihilo* from a dispute between these parties and the Governor. It was precipitated by a once-a-century pandemic, the Governor's response thereto, and this Court's analysis of that response under then-existing Kentucky law. *Beshear v. Acree,* 615 S.W.3d 780 (Ky. 2020) ("*Beshear III*").[1]

[1] *Commw. ex rel. Beshear v. Bevin*, 498 S.W.3d 355 (Ky. 2016) ["*Beshear I*"]; *Beshear v. Bevin,* 575 S.W.3d 673 (Ky. 2019) ["*Beshear II*"].

As this Court explained, "On March 6, 2020, as the Covid-19 global pandemic reached Kentucky, Governor Andy Beshear declared a state of emergency pursuant to Executive Order 202-215." *Id.* at 786. He then issued many executive orders and emergency decrees to address the virus and its consequences. *Id.* By June 2020, the effects of those orders caused three Kentucky businesses to challenge the Governor's claimed emergency authority, and the Attorney General of Kentucky to intervene on those businesses' behalf. This Court surveyed the Kentucky Constitution, the statutory and constitutional structure for addressing emergencies under Kentucky law, and each government actor's powers. Ultimately, this Court concluded that KRS 39A.100 authorized the Governor's emergency declaration and broadly upheld the Governor's actions and his authority under the then-existing legal regime. *Id.* at 786-87. Crucial to that decision, however, was this Court's frank observation that the legislature had "acknowledged" and "explicitly recognized" the Governor's actions, *id.* at 787, 803 & n.27; had repeatedly approved the Governor's actions and passed bills with knowledge of those orders, *id.* at 800, 813; and that the Governor's powers were time limited. *Id.* at 811-12. This Court also noted the ever-shifting nature of the challenged orders and, crucially, relied on the legislature's ability to revoke powers it had granted the Governor. *Id.* at 788.

Within a month of that November 12 decision, the first Covid vaccine was approved and began to be deployed. *CDC Advisory Panel Recommends COVID-19 Vaccine for Widespread Use*, Reuters (Dec. 12, 2020), *available at* https://bit.ly/33OziSb.

Less than a month later, on January 5, 2021, the legislature introduced House Bill 1, Senate Bill 1, and Senate Bill 2. JA 821-22, 989-99. These bills put a 30-day time limit on certain emergency actions and allowed businesses to stay open if they "adopt[ed] an

operating plan" that met or exceeded any guidance from the U.S. Centers for Disease Control or the executive branch, whichever was less restrictive. *Id.* at 3-5. The General Assembly passed all three bills on January 9, 2021, overrode the Governor's veto of those bills on February 2, 2021, and thereby cabined the executive powers the Governor relied on in *Beshear III*.

Nevertheless, he persisted. In a case to be considered with this one, the Governor sought and obtained from a court in Franklin County an order enjoining the functioning of HB 1, SB 1 and SB2 as to the Governor's Executive Orders under KRS Chapter 39A and emergency administrative regulations under KRS Chapter 13A (collectively "the Challenged Orders"). *Id.* at 6.

On March 8, 2021, Respondents Goodwood Brewing Company, LLC d/b/a Louisville Taproom, Frankfort Brewpub, and Lexington Brewpub, Trindy's, LLC, and Kelmargjo, Inc., d/b/a The Dundee Tavern, filed a Complaint in Scott Circuit Court against the Movants here, including Governor Andy Beshear, complaining that the Challenged Orders were now unlawful, *inter alia*, because they conflicted with the limiting statutes the legislature passed over veto in response to *Beshear III*.

The Scott Circuit Court ruled in the Plaintiff-Respondents' favor, but the Court of Appeals stayed the Order, recommending that this Court decide the appeal. *Id.*at 11. Scott and Franklin Counties courts, having come to opposite conclusions, leave it for this Court to vindicate the legislature's ultimate constitutional power to grant and to limit the Governor's emergency power in the Commonwealth.

ARGUMENT

I. THE CONSTITUTION OF THE COMMONWEALTH VESTS THE LEGISLATURE WITH THE LAW-MAKING POWER, WHICH THE LEGISLATURE CAN ALWAYS RECLAIM ONCE DELEGATED

The Kentucky Constitution denies the Governor dictatorial power:

> Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.

Ky. Const. § 2. To ensure such power does not develop in any branch, the Kentucky Constitution explicitly separates governmental power:

> 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.

Id. § 27. The Constitution further prohibits each branch from invading the prerogatives of the other branches "except in the instances hereinafter expressly directed or permitted." *Id.* § 28.

The legislative power is vested exclusively "in a House of Representatives and a Senate, which together, shall be styled the 'General Assembly of the Commonwealth of Kentucky.'" *Id.* § 29. One aspect of legislative power is the authority to "suspend laws." The Kentucky Constitution makes this explicit: "No power to suspend laws shall be exercised unless by the General Assembly or its authority." *Id.* § 15.

The Constitution places the executive power in the hands of a Governor, *id.* § 69, who shall "take care that the laws be faithfully executed." Ky. Const. § 81.

This Court has explained the importance of the separation of powers and has recognized that the legislature's prerogative to withdraw any powers it delegates to the Governor is a bulwark of liberty and a guaranty against executive overreach. Take

Legislative Research Council v. Brown, 664 S.W.2d 907 (Ky. 1984) ["*LRC*"], for instance. The General Assembly attempted to grant the LRC, a body made up of members of the General Assembly, certain legislative powers to exercise independently of the Governor while the General Assembly was not in session. *Id.* at 910. This Court provided a master class on the tripartite division of powers upon which the ability of a people to "self-govern" rests:

> President George Washington, in his farewell address, described the problem which is addressed by the separation of powers doctrine when he said:
>
> > The spirit of encroachment [of one branch of government into the functions of another] tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. XIII, *Writings of George Washington,* 277, 306 (Ford ed., N.Y., 1892).
>
> Montesquieu, the father of the doctrine of separation of powers, articulated the concept by writing:
>
> > Here then is the fundamental constitution of the government we are treating of. The legislative body being composed of two parts, they check one another by the mutual privilege of rejecting. They are both restrained by the executive power, as the executive is by the legislative. 1 Montesquieu, *The Spirit of Laws,* Book XI, Chapter VI, 159 (1823).

LRC v. Brown, 664 S.W.2d at 911. Crucially, the Court proclaimed, our "capacity to self-govern" depends "to a very great extent" on our ability to "successfully resolve the conflict among the three branches of government." *Id.* Unlike the *implicit* separation in the federal Constitution, the separation of powers in the Kentucky Constitution was *explicit* and likely came from the pen of Thomas Jefferson himself. *Id.* at 912-913. *Accord Fletcher v. Commw.*, 163 S.W.3d 852, 860-61 (Ky. 2005) (describing the "unusually forceful command" of Kentucky's separation of powers).

Although the General Assembly can, in certain cases, delegate legislative power, "to be lawful," that delegation "must not include the exercise of discretion as to what the law shall be." *LRC*, 664 S.W.2d at 915. Additionally, "such delegation must have standards controlling the exercise of administrative discretion," and "***the delegating authority must have the right to withdraw the delegation***." *Id.* (emphasis added).

If the legislature has not delegated its power to the Governor, however, that power cannot be exercised at all under the Kentucky Constitution. *Fletcher*, 163 S.W.3d at 863 (Kentucky Constitution creates a "high-wall" to any branch using the powers of the other absent statutory or constitutional warrant). The Governor has no inherent "emergency powers" to direct the payment of money to executive departments that the legislature has not funded, for instance. *Id.* at 870-71. The Court in *Fletcher* quoted Justice Jackson's concurrence in *Youngstown Steel* for a proposition that is applicable here: "[E]mergency powers are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them." *Id.* at 871 (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 652 (1952) (Jackson, J., concurring)).

Governor Beshear's response here mirrors the reaction of the request for unwarranted emergency powers in *Fletcher* where this Court noted that, "[d]espite much hand-wringing and doomsday forecasting by some of the parties to this action at the prospect that we would hold that [the law] means what it unambiguously says, it is not our prerogative to amend the Constitution or enact statutes." *Id.* at 872. So it is here. The Governor asserts, without evidence, that he alone appreciates the dangers of Covid-19 and the effects his decrees have on Kentucky businesses and individuals. He warns that disaster will surely follow if this Court applies the unambiguous legislative acts that restrain his

dictatorial powers. This is no less true here than it was in *Fletcher*. The statutes enacted by the General Assembly withdrew the power at issue in *Beshear III*—just as this Court accepted it might—and it is not this Court's prerogative to amend them. *See id.*

This Court's precedent, including the *Beshear* trilogy of cases, repeatedly confirms this key aspect of the Kentucky Constitution: when the legislature lawfully delegates power under the Kentucky Constitution, it must be able to take back that power. Here it has done just that. The Court should bless that action, which preserves liberty and is the backstop against unconstitutional delegation under this Court's precedent.

In *Beshear I*, this Court determined the Governor did not have the statutory power to reduce University allotments, reasoning:

> The Governor, as the chief executive of this Commonwealth, has only the authority and powers granted to him by the Constitution and the general law. He is the chief executive of the Commonwealth. Ky. Const. § 69. But the Governor, like everyone, is bound by the law. Indeed, the Governor has a special duty with respect to the law, as he is commanded to "take care that the laws be faithfully executed." Ky. Const. § 81.

Id. at 369. Axiomatically, the Governor could not rely on portions of a statute that had been repealed and were "no longer law." *Id.* at 376.

In *Beshear II*, this Court approved the Governor's reorganization of schools during the period the legislature was not in session, done pursuant to a legislative delegation of powers. 575 S.W.3d at 675. The key to this action's being lawful was that the legislature retained the ability to stop such reorganization whenever it was in session and had granted the reorganization pursuant to statute in the first place:

> Ultimately, the General Assembly continues to maintain control of the temporary-reorganization-outside-of-legislative-session mechanism. The General Assembly can put an end to the mechanism. … The General Assembly's continued extensive control over this temporary mechanism precludes this Court at this time from determining that the General

> Assembly has abdicated the lawmaking power of the legislative department and delivered it into the hands of the executive department.

Id. at 684. There was no separation-of-powers violation because the legislature retained its ability to take back the temporary delegation of its "suspension of laws" power. *Id.* at 679-80. In this case, the legislature has taken back some of its delegated power, as was its prerogative. This Court should affirm this action, which, according to precedent, is a key to making such delegations constitutionally licit in the first place.

Nowhere is this principle clearer than in *Beshear III*. In that case, the Court as already noted, *supra.* pp. 2-3, affirmed the Governor's emergency powers by explicitly citing to the General Assembly's ability to revoke those powers. That opinion recognized the "tripod structure erected for the Kentucky government," *id.* at 805 n.30, and noted that "making laws for the Commonwealth is the prerogative of legislature." *Id.* at 809. The legislative power is "the authority under the constitution to make the laws, and to alter and amend them." *Id.* (citing *Beshear I*, 575 S.W.3d at 682). Delegations of authority are justified *only* "if the law delegating that authority provides 'safeguards, procedural and otherwise, which prevent an abuse of discretion,' thereby 'protecting against unnecessary and uncontrolled discretionary power.'" *Id.* (citing *Beshear I*, 575 S.W.3d at 683). One factor that allowed powers to be delegable was that "the delegating authority retains the right to revoke the power." *Id.* at 810 (citing *Commw. v. Associated Indus. of Ky.*, 370 S.W.2d 584, 588 (Ky. 1963)). Another factor was the time-limited duration of the emergency that triggered the delegated authority. *Id.* at 812 (reasoning that "the time limit on the duration of the emergency and accompanying powers" combined with other limiting factors made the delegation constitutionally permissible).

The General Assembly has taken this Court at its word and rescinded power it

previously granted to the Governor. This Court, in keeping with it prior precedent and its role in the constitutional order of Kentucky, should restrict the Governor to the powers the legislature has delegated.

II. THE "TILT" TOWARD EXECUTIVE POWER MUST NOT BE ALLOWED TO TOPPLE THE CONSTITUTIONAL STRUCTURE

One aspect of *Beshear III* that must not be extended further is this Court's conclusion that the Kentucky Constitution "tilts" toward the executive in an emergency. First, in determining that KRS Chapter 39A was a constitutional delegation, the Court stated that "our Constitution, which provides for a part-time legislature incapable of convening itself, tilts toward emergency powers in the executive branch." *Id.* at 787. This "implied tilt" was "not surprising," the Court reasoned, "given our government's tripartite structure with a legislature that is not in continuous session." *Id.* at 806; *see also id.* at 808 (noting that "the Constitution impliedly tilts to authority in the full-time executive branch to act" in response to "an obvious emergency").

By choosing a part-time legislature, the people of Kentucky were preserving liberty from constant government intrusion.[2] Apparently, an unintended consequence of that decision was loading unknown emergency power upon the Governor, but that implicit tilt threatens to topple over the "tripod structure erected for the Kentucky government" if this Court allows unenumerated executive power to prevent the legislature from reclaiming its power once it is back in session. Given the "unusually forceful" constitutional command that the powers be separated, *Fletcher*, 163 S.W.3d at 860-61, and the principles behind

[2] "No man's life, liberty, or property are safe while the legislature is in session." Judge Gideon J. Tucker, 1 REPORTS OF CASES ARGUED AND DETERMINED IN THE SURROGATE'S COURT OF THE COUNTY OF NEW YORK 247-49 (New York 1866).

this Court's separation-of-powers jurisprudence, the General Assembly's withdrawal of its delegation must rule the day.

Beshear III considered what the Governor could do with power delegated by statute during an emergency while the legislature was not in session. The Court did not concern itself with subsequent legislative action, except for the legislation the General Assembly had passed, confirming the Governor's actions before it retired *sine die*. *E.g.*, *Beshear III*, 615 S.W.3d at 787 ("Notably, the General Assembly, in 2020 Senate Bill 150, recognized the Governor's use of the KRS Chapter 39A emergency powers, directed him to declare in writing when the COVID-19 emergency 'has ceased' and … [directed that if the Governor did not declare the end of the emergency then the General Assembly could do so at its next session]."). Now, the General Assembly has explicitly required, *inter alia*, that any such decrees cannot last more than 30 days unless approved and extended by the legislature and that businesses may remain open so long as they operate under a plan consistent with health guidelines. The dispositive features of the law at issue in *Beshear III* are no longer present.

The "tilt" toward the executive identified by the Court in *Beshear III* cannot be so great as to overturn extensive history and precedent. Such withdrawals of power from the executive by the legislature are precisely what allow this Court's nondelegation jurisprudence to operate and what preserve the avoidance of tyranny and the people's control of the executive. To side with the Governor in this action would imbue him with extra-constitutional powers that cannot be rescinded by the legislature even when, as here, it has had time to reflect and to review the facts and experience with both the emergency and the Governor's responses to it.

The intervening legislative session that placed the restraints on the Governor's emergency authority brings this case closer to the case in Michigan that this Court considered in *Beshear III*. In distinguishing the Michigan precedent, the reasons this Court articulated for why it approved the delegation of emergency power in *Beshear III* equally explain why the Governor cannot continue to claim such power in this case:

> Our case differs from the Michigan case in several important ways but most notably our Governor does not have emergency powers of indefinite duration, 2020 S.B. 150, § 3, and our legislature is not continuously in session, ready to accept the handoff of responsibility for providing the government's response to an emergency such as the current global pandemic. Moreover, with the breadth of potential emergencies identified in KRS 39A.010, the standards of protection of life, property, peace, health, safety and welfare (along with the "necessary" qualifier in KRS 39A.100(j)) are sufficiently specific to guide discretion while appropriately flexible to address a myriad of real-world events. While the authority exercised by the Governor in accordance with KRS Chapter 39A is necessarily broad, the checks on that authority are the same as those identified in Chief Justice McCormack's dissenting opinion: judicial challenges to the existence of an emergency or to the content of a particular order or regulation; **legislative amendment or revocation of the emergency powers granted the Governor**; and finally the "ultimate check" of citizens holding the Governor accountable at the ballot box.

Id. at 812-813 (emphasis added) (citing *In re Certified Questions from U.S. Dist. Court, W. Dist. of Mich., S. Div.*, 958 N.W.2d 1, 51 (Mich. 2020) (McCormack, C.J., concurring in part) (emphasis added).

Following *Beshear III*, and with full knowledge of this Court's reasoning in that decision, the General Assembly came back into session and changed the law. The legislature was, of course, also fully aware that only the Governor can call a special session when it crafted the new restraints on the Governor's emergency power. The import of these restraints, along with the limited legislative session, helped tilt power back toward the people and their voice in the part-time legislature. If the Governor takes further

emergency action, there is a 30-day limitation on that action unless the Governor calls a special session for the General Assembly to affirm or reject his emergency measures. This partial withdrawal of delegated authority—a compromise of sorts—allows the Governor to take swift emergency action when necessary, but reclaims some legislative control for the General Assembly consistent with the constitutional design. Having approved the Michigan concurrence's acknowledgement of the legislative power to withdraw power from the Governor, the Court should approve the Kentucky legislature's actions here.

In another recently decided case that supplies persuasive authority here, the Wisconsin Supreme Court disavowed its Governor's attempt to escape 60-day limits on his Covid-19 related decrees. *Fabick v. Evers*, 396 Wis.2d 231 (Wis. 2021) (upholding duration limits to Governor's executive orders and preventing end runs around the legislature by declaring new "emergencies"). The Court there was faced with similar durational statutes as are before the Court here:

> This brings us to the duration-related limitations in Wis. Stat. § 323.10. The statute provides that a state of emergency "may be revoked at the discretion of either the governor by executive order or the legislature by joint resolution," and a "state of emergency shall not exceed 60 days, unless the state of emergency is extended by joint resolution of the legislature." § 323.10. These directives can be distilled into three statutory commands. First, the initial duration of a state of emergency is determined by the governor, but it "shall not exceed" 60 days. Second, a state of emergency may be cut shorter than the initial duration by either the governor through executive order or by the legislature through joint resolution. Finally, a state of emergency may be extended longer than 60 days by the legislature alone.

Id. at 864. In this case, the General Assembly has similarly required that no emergency action by the Governor may exceed 30 days unless he confers with and obtains approval of the legislature. The Supreme Court of Wisconsin noted that any other interpretation

would allow the executive to simply keep up a perpetual state of emergency without any statutory authorization. *Id.* at 865.

Fabick echoes this Court's jurisprudence in several respects, including its discussion of delegation and the termination of such delegation:

> The statutory language suggests the legislature gave the executive branch expansive, but temporary, authority to respond to emergencies. When the governor employs those powers beyond the time limits imposed by the legislature, or after revocation of those powers by the legislature, he wields authority never given to him by the people or their representatives.

Id. at 867. This rationale is nearly identical to this Court's view of the gubernatorial powers asserted in both *LCR* and *Beshear I*. Kentucky's legislature knows it is in session for only a limited time. Its members, and the General Assembly as an institution, possessed the time and experience to weigh the nature and severity of the pandemic and the efficacy of the Governor's orders concerning it before it passed the laws in question over the Governor's veto. Nonetheless, it determined that these limitations on the Governor's powers were necessary and appropriate. Legislators are no less subject to the check on their powers approved by this court in *Beshear III*, the ballot box. The General Assembly having made its choice, this Court must enforce those statutory and constitutional limitations against the executive, which has no other source of emergency power.

This Court noted that the Wisconsin legislature meets annually, and it appears to have the power to convene itself in an "extraordinary session." *Beshear III*, 615 S.W.3d at 807 n.36. But the General Assembly has now been back in session; after having had nearly a year to contemplate the situation, the legislature reconvened constitutionally and then asserted its legislative power within the "constitutionally mandated constraints on the length of the session." *Id.* at 809 n.38.

Changes in circumstances amidst the ebbs and flows of the pandemic cannot alter the legislature's constitutional power to delegate power to the Executive or withdraw that delegation of power. The Wisconsin Supreme Court identified this argument in *Fabick* and recognized that such a determination would gut all meaning from statutory commands and would do "what a proper consideration of the entire statute does not permit—it [would] read[] the duration limitations right out of the law." *Id.* at 868. As noted in the background section above, efficacious vaccines were developed and made widely and freely available in Kentucky *before* the General Assembly partially withdrew the Governor's emergency authority. It is not a proper use of executive (or judicial) power to ignore that legislative judgment. Doing so would effectively divest the legislature of its powers.

As the Wisconsin Supreme Court explained:

> We recognize that determining when a set of facts gives rise to a unique enabling condition may not always be easy. But here, COVID-19 has been a consistent threat, and no one can suggest this threat has gone away and then reemerged. The threat has ebbed and flowed, but this does not negate the basic reality that COVID-19 has been a significant and constant danger for a year, with no letup. In the words of the statute, the occurrence of an "illness or health condition" caused by a "novel ... biological agent" has remained, unabated.

Id. at 868. What is true in Wisconsin is true in Kentucky. The ebb and flow of the pandemic was well known to the General Assembly when it decided to limit the Governor's emergency powers. Here, the General Assembly had every ability to gauge the nature of the pandemic and the effects of the Governor's orders before it decided to act. There is no indication that the length of the legislative session had any effect on the laws the legislature enacted. No implicit "tilt" to the executive can overcome the Constitution's explicit separation of powers and the plain and explicit language of the actual legislative actions

taken to reclaim some of the power the General Assembly had previously delegated to the Governor.

This Court acknowledged that the legislature could abolish all the Governor's powers under KRS Chapter 39A. Were it not so, the delegation of such power, including the power to suspend laws under § 15 of our Constitution could not stand. It follows, then, that this lesser withdrawal of delegated power is just as effective, whether the Kentucky legislature convenes for a year or a day.

The most famous and long lasting "tilt" in architecture required earnest efforts at stabilization so that the structure could endure and not topple. *The Tilt of the Leaning Tower of Pisa: Why and How?*, The International Information Center for Geotechnical Engineers (Dec. 17, 2020), *available at* https://bit.ly/3hCVjvt. While the Court does not have to engage in the same exertions as medieval Tuscan engineers, it ought not place any more weight on the incline than already exists in *Beshear III*. Even a part-time legislature retains full power to cabin the executive's use of legislative power during an emergency. The Governor must abide by that explicit statutory mandate; he has no power to do otherwise.

CONCLUSION

This Court should conclude that the Scott Circuit Court did not abuse its discretion and affirm that court's order enjoining the Movants from enforcing the Challenged Orders.

May 20, 2021

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