

COMMONWEALTH OF KENTUCKY  
SUPREME COURT OF KENTUCKY  
2018-SC-419  
2018-SC-421

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SUPREME COURT

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

APPELLANT

V.

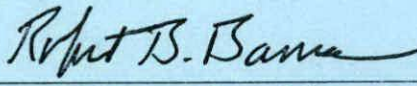
FRANKLIN CIRCUIT COURT  
NO. 18-CI-379, 18-CI-414

COMMONWEALTH OF KENTUCKY *ex rel.*  
ANDY BESHEAR, ATTORNEY GENERAL, *et al.*

APPELLEES


BRIEF FOR APPELLEE – BOARD OF TRUSTEES  
TEACHERS' RETIREMENT SYSTEM OF THE  
STATE OF KENTUCKY

Respectfully submitted,

By:   
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that copies of this Brief were served upon the following named individuals by mailing same, postage prepaid, on this the 10th day of September 2018: Hon. Sam Givens, Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601; Hon. Phillip J. Shepherd, Judge, 222 St. Clair Street, Frankfort, KY 40601; M. Stephen Pitt, S. Chad Meredith and Matthew F. Kuhn, Office of the Governor, 700 Capital Avenue, Suite 101, Frankfort, KY 40601; Hon. Andy Beshear, J. Michael Brown, La Tasha Buckner, S. Travis Mayo, Marc G. Farris, and Samuel Flynn, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, KY 40601; Jeffrey Walther and Victoria Dickson, Walther, Gay & Mack, 163 E. Main Street, Suite 200, Lexington, KY 40588; David Leightty and Alison Messer, Priddy, Cutler, Naake, Meade, 2303 River Road, Suite 300, Louisville, KY 40206; David Fleenor and Vaughn Murphy, Office of the Senate President, Capital Annex, Room 236, Frankfort, KY 40601; Eric Lycan, Office of the Speaker, Capital Annex, Room 332, Frankfort, KY 40601; Mark Blackwell, Katherine Rupinen, and Joseph Bowman, Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, KY 40601.

  
Robert B. Barnes

## **I. STATEMENT CONCERNING ORAL ARGUMENT**

The Board of Trustees of Teachers' Retirement System of the State of Kentucky [hereinafter referred to as "TRS"] shall engage in oral argument if the Court believes it would be helpful to this Court in deciding the issues presented.

**II. COUNTERSTATEMENT OF POINTS AND AUTHORITIES**

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### III. COUNTERSTATEMENT OF THE CASE

After review of the Appellant's Statement of the Case, Teachers' Retirement System of the State of Kentucky (TRS) provides the following select counterstatements without commenting on each statement made by the appellant regarding how pension systems operate:

The Appellant's brief on pages 7 through 9 begins a discussion of the "creation and history" of TRS with legislation passed in 1978. While the statutory inviolable contract is correctly identified as having been enacted that year, the history of TRS begins with its enactment by the Kentucky General Assembly in 1938 and operations beginning in 1940.

Page 16 of the Appellant's brief references "level-dollar funding (analogous to a mortgage payment) over a 30-Year amortization period starting in 2021 is established..." The legislation at issue begins level-dollar funding in 2021, but it also resets the 30-year amortization period to begin July 1, 2018.

The Appellant states on pages 8 and 9 that benefits provided to members of the retirement system have been reduced or eliminated, citing, in part, the repeal of KRS 161.705. While KRS 161.705 was repealed in 1992, the contents of that statute were moved at the same time to KRS 161.420(7), which still is in statute.

On page 20, the Appellant asserts that "SB 151 does not affect the inviolable contract rights of a single public school teacher in Kentucky." This is correct because no public school district presently offers service credit under KRS 161.623 to its retiring TRS members; instead, salary credit under KRS 161.155 is given. As such, Executive Secretary Gary L. Harbin said in his affidavit that Senate Bill 151's amendment to KRS 161.623 currently does not affect any employees of public school districts. [Appendix, Exhibit A]

Prospectively, it should be noted that while it is recognized that the benefits of KRS 161.155 are excluded from KRS 161.714's Inviolable Contract, eliminating the ability for employers to offer the benefits under KRS 161.623 is within the range of statutes covered by KRS 161.714 (*i.e.*, "KRS 161.220 to KRS 161.710") and is for this Court to determine whether such a cap on sick leave as service credit violates the Inviolable Contract.

Finally, with regard to the process by which SB 151 was enacted, TRS implements the policies that are set forth in statute and does not address how those statutes are created beyond the statutory duty to obtain an evaluation from the independent actuary as directed by legislative staff.

TRS received a copy of the House Committee Substitute 1 to SB 151 via an email sent at approximately 3:40 p.m. on March 29, 2018. However, it was a few hours later that TRS became aware of the receipt of the email. Upon becoming aware of the email, TRS forwarded it to the independent actuary to complete an actuarial analysis. TRS received the actuarial analysis performed by the independent actuary on April 13, 2018 and forwarded it to the Legislative Research Commission that same day. [Appendix, Exhibit B]

#### **IV. ARGUMENT**

While TRS continues to review SB 151 for its potential impact on active, contributing members, the legislation does not change the benefits of members of TRS who are currently receiving a retirement annuity. The impact on current, active, contributing members of TRS is as follows:

1. SB 151 limits both the use of unused sick leave as service credit under KRS 161.623 and the use of unused sick leave as salary credit under KRS 161.155 to the amount accumulated as of December 31, 2018.

2. SB 151 prohibits beginning a second retirement account for members who retire and are re-employed on or after January 1, 2019.

3. SB 151 allows current members with less than five (5) years of service at the time approval from the Internal Revenue Service is obtained to opt voluntarily into the cash balance plan.

The change in benefits that SB 151 makes for current, active members that is a subject of this appeal is the amendment of KRS 161.623 to cap the amount of sick leave that may be utilized as service credit for retirement calculation purposes.

This appeal is based, in part, on allegations regarding the validity of the process by which SB 151 was enacted. These allegations are questions of law for this Court to decide. This appeal also includes allegations that SB 151 violates Section 19 of the Kentucky Constitution and the TRS statutory inviolable contract set forth in KRS 161.714. TRS admitted in its Answer to the Complaint, and this Court may note, that KRS 161.623 is within the range of statutes covered by KRS 161.714 (*i.e.*, “KRS 161.220 to KRS 161.710”). Whether a cap on sick leave as service credit is a violation of Section 19 of the Kentucky Constitution and the inviolable contract is a question of law for this Court to decide. TRS has consistently taken the position that, pursuant to KRS 161.250(1), the retirement system is mandated to implement KRS 161.155 and 161.220 through 161.714, inclusive of any amendments made to these statutory provisions via SB 151 unless otherwise ordered by a court of competent jurisdiction. TRS’s position is supported by Kentucky law, as it is well established that duly adopted legislation is entitled to a presumption of validity. Hayes v. State Property and Buildings Commission, 731 S.W.2d 797, 799 (Ky. 1987) *See also* Federal Communications Commission v. Beach Communications, Inc., 508 U.S. 307, 113 S.Ct. 2096, 124 L.Ed.2d 211, 61 U.S.L.W. 4526 (1993). Further, in Kentucky, a statute carries with it the presumption of constitutionality.

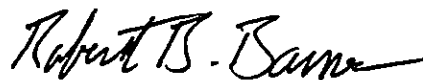
Walters v. Bindner, 435 S.W.2d 464, 467 (Ky. 1968); American Trucking Association, Inc. v. Commonwealth, Transportation Cabinet, 676 S.W.2d 785, 789 (Ky. 1984). In light of the foregoing legal precedents, TRS continues to prepare to implement the statutes as amended by SB 151; however, TRS awaits this Court's determination whether the implementation is to take effect.

### CONCLUSION

The Board of Trustees of the Teachers' Retirement System of the State of Kentucky, in accordance with KRS 161.250(1), is charged with implementing and carrying out the provisions of KRS 161.155 and 161.220 through 161.714, inclusive of any amendments made to these statutory provisions by Senate Bill 151. The Board of Trustees of the Teachers' Retirement System of the State of Kentucky shall await this Court's order before implementing the provisions of Senate Bill 151.

Respectfully submitted,

COMMONWEALTH OF KENTUCKY  
TEACHERS' RETIREMENT SYSTEM  
OF THE STATE OF KENTUCKY



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