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# Kentucky Supreme Court: Determining the Constitutionality of GOP-crafted Pension Bill

*September 21, 2018*

**“Kentucky Supreme Court: Determining the Constitutionality of GOP-crafted Pension Bill”**

**Blog Post | 107 KY. L. J. ONLINE | September 20, 2018**

**Summer R. Bablitz**<sup>[1]</sup>

This summer Kentuckians watched Attorney General Andy Beshear and Governor Matt Bevin go head-to-head in a series of challenges to SB 151, a pension bill passed by Kentucky’s legislature and signed by Bevin.

SB 151 began as an 11-page bill related to sewers but was stripped of all language pertaining to sewers and replaced with a “massive 291-page overhaul of Kentucky’s public pension systems.”<sup>[2]</sup> Beshear spoke on behalf of 200,000 public employees who were outraged about the bill’s passage, including many of Kentucky’s teachers.<sup>[3]</sup> Beginning in 2019, teachers hired



## Contact Us

620 S. Limestone  
40508 Lexington, Kentucky

[editors@kentuckylawjournal.org](mailto:editors@kentuckylawjournal.org)

(859) 257-1678



would be placed “in a hybrid cash-balance plan, which is similar to a 401(k)” and would be required to work longer in order to be eligible for retirement.[4]

Judge Shepherd ultimately found that the pension reform law violated Kentucky’s Constitution because the General Assembly did not comply with the three-readings requirement and the majority-vote requirement of Section 46.[5]

Shepherd reasoned that there needed to be an additional three readings after the sewer bill was substituted for a pension bill.[6] Though SB 151 was read three times on three separate days, as Section 46 requires, the readings occurred when it was a bill pertaining to sewers.[7] The General Assembly passed the changed SB 151 even though no readings of the bill occurred in the Senate and only one reading occurred in the House.[8] Shepherd afforded great weight to the intent of the drafters of Kentucky’s Constitution and noted that they were “greatly concerned with ‘the fraudulent substitution of bills’ that had so frequently occurred in the past and hoped to prevent similar abuses in the future.”[9]

Additionally, Shepherd reasoned that SB 151 was a bill for the appropriation of money; therefore, “the votes of a majority of all the members elected to each House” was necessary for the bill to pass.[10] SB 151 fell short and only received 49 votes, instead of the necessary 51 votes, in the House of Representatives.[11] Shepherd explained that the drafter’s purpose for such a requirement was to “prevent the representatives of the people from putting their hands into the treasury without proper authority and due reflection.”[12]

Bevin maintained that there is no requirement that the bill’s content be unchanged when it receives those three readings.[13] In fact, he contended that the House’s own rules and customs support his belief that a “committee substitute, when passed, becomes the original bill, and that a bill only need receive the three readings at some point during the legislative process.”[14] Moreover, the Governor claimed that only a simple majority of votes was needed to pass SB 151 because the bill does not authorize appropriations, as evidenced by its lack of line items to fund the retirement system.[15] The Governor argued ruling SB 151 unconstitutional puts decades of passed bills at risk of being invalidated.[16]

After the pension law was deemed unconstitutional, Bevin’s lawyers bypassed the state Court of Appeals and were successful in getting the Supreme Court to review Shepherd’s ruling.[17] Republicans saw Judge Shepherd’s ruling as a loss[18] and this appeal to the Kentucky Supreme Court gives the GOP an opportunity to remedy that. All eyes are now on the Kentucky Supreme Court.

[1] Staff Editor, *Kentucky Law Journal*, Volume 107; J.D. Candidate, The University of Kentucky College of Law (2020); B.A., University of South Florida (2015).

[2] Verified Complaint for a Declaration of Rights, a Temporary Injunction, and a Permanent Injunction at 3, Commonwealth ex rel. Andy Beshear v. Matthew Bevin, No. 18-CI-00379 (Ky. Apr. 11, 2018).

[3] Jack Brammer, *In Courtroom Packed with Teachers, Judge Says He Hopes to Rule Soon in Pension Case*, LEXINGTON HERALD LEADER (June 7, 2018, 1:10 PM), <https://www.kentucky.com/news/politics-government/article212736934.html>.

[4] *Id.*

[5] *Judge Says Pension Reform Law is Unconstitutional, State Cannot Enforce SB 151*, WKYT (June 20, 2018, 1:02 PM), <https://www.wkyt.com/content/news/Judge-says-pension-reform-law-is-unconstitutional-state-cannot-enforce-SB-151-486049901.html>.

[6] Opinion & Order at 19–20, Commonwealth ex rel. Andy Beshear v. Matthew Bevin, No. 18-CI-00379, (Ky. June 20, 2018).

[7] *Id.* at 20.

[8] *Id.*

[9] *Id.* at 21.

[10] *Id.* at 23.

[11] *Id.* at 23.

[12] *Id.* at 25.

[13] Combined Memorandum in Support of Motion for Summary Judgment and Response to Plaintiff’s Motion for Summary Judgment at 67, Commonwealth ex rel. Andy Beshear v. Matthew Bevin, No. 18-CI-00379 (Ky. May 23, 2018).

[14] *Id.*

[15] *Id.*

[16] Emilie Arroyo, *Gov. Bevin Files New 40-page Approach to Pension Lawsuit Battle with AG Beshear*, WKYT (June 14, 2018, 4:58 PM), <https://www.wkyt.com/content/news/Gov-Bevin-files-new-40-page-approach-in-pension-lawsuit-battle-with-AG-Beshear-485609741.html>.

[17] Jack Brammer, *KY Supreme Court Moves Swiftly to Hear Pension Suit After Bevin's Last-minute Appeal*, LEXINGTON HERALD LEADER (Aug. 10, 2018, 1:57 PM), <https://www.kentucky.com/news/politics-government/article216447185.html>.

[18] Lawrence Smith, *GOP Lawmakers Say Court Ruling Puts Kentucky's Pensions in Danger*, WDRB (June 25, 2018, 5:30 PM), <http://www.wdrb.com/story/38504552/gop-lawmakers-say-court-ruling-puts-kentuckys-pensions-in-danger>.

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