25-CI-00412

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

CIVIL ACTION No. 25-CI-412

ALLISON BALL **PLAINTIFF**

vs.

ANDY BESHEAR, *ET AL*. **DEFENDANTS**

ORDER

This matter is before the Court upon Defendants', Andy Beshear, in his official capacity as Governor, and Eric Friedlander, in his official capacity as Secretary of the Cabinet for Health and Family Services, *Motion to Dismiss*. This matter was called before the Court on Wednesday, July 30, 2025 during the Court's regular civil motion hour. Upon review of the parties' briefs and papers, and after being sufficiently advised, this Court hereby **GRANTS** Defendants' *Motion to Dismiss*.

STATEMENT OF FACTS

The General Assembly passed Senate Bill 151 ("SB 151"), titled "AN ACT relating to relative and fictive kin caregivers" on March 27, 2024. On April 5, 2024, Governor Andy Beshear signed SB 151 into law.

The bill purports to do two things: (1) require a child that is to be placed with an adult relative or fictive kin, if able, to provide a list to CHFS of possible persons to be considered, and (2) it permits a relative or fictive kin caregiver to apply to become a relative or fictive kin foster parent for the child placed in their care within 120 days of placement. SB 151, Section 1(1)(c) and 2(3). Kinship caregivers are raising an estimated 55,000

children in Kentucky. The Cabinet for Health and Family Services ("CHFS") policy provides that, when CHFS comes to a prospective kinship caregiver's doorstep with a child in need, that caregiver has ten working days to decide on the custodial path to take to care for that child. That decision often comes down to choosing one of two paths: 1) choosing to take temporary custody of the child; or 2) choosing to become a kinship care foster parent for that child. Kinship care advocates and the General Assembly found the ten-day window of time to be insufficient to make that decision, and the General Assembly unanimously passed SB 151, giving prospective kinship caregivers 120 days to decide whether to become a kinship care foster parent.

On April 10, 2024, the Governor informed the General Assembly that it failed to appropriate any money, either in the bill itself or the biennial budget bill, for a number of bills it passed in the 2024 Regular Session, including SB 151, which CHFS estimated to cost $19.1 million. In that letter, the Governor requested appropriations for these bills in the last remaining days of the session. "The estimated costs of these policies and programs were known and communicated, and there is still time in this legislative session to add appropriations in the last two legislative days to rectify the omissions." Complaint, Exhibit 3.

Acting under KRS 43.050, Auditor Ball began an investigation to determine if execution of SB 151 would cost the projected $19.1 million, and whether CHFS had funds to execute it, and whether the Governor could be part of a "collaborative effort" to carry out SB 151. On November 8, 2024, the Auditor made her first request for documentation. On November 21, the CHFS Secretary responded by letter, providing responsive documents.

On April 4, 2025, the Auditor contacted CHFS to obtain information, including:

1. all communications associated with DCBS's budget request,
2. internal CHFS communications and external communications between CHFS and the Governor's Office, CHFS and the office of State Budget Director, CHFS and the General Assembly, CHFS and the federal government, and CHFS and any other part pertaining to the execution of SB 151,
3. All information pertaining to CHFS and the Governor's Office's execution of SB 151,
4. All documentation, including communications, pertaining to and showing itemized accounts of DCBS expenditures
5. All documentation, including communications, pertaining to and showing DCBS's decision-making for when, how much, for what purpose, and why certain unrestricted funds became obligated in fiscal year 2025
6. DCBS's organizational chart
7. A list of every DCBS officer and employe and their salary, status, title, organizational unit, and job duties
8. All active DCBS's contracts with vendors
9. All information regarding new programs DCBS created during fiscal year 2025.

On April 11, 2025, CHFS responded, providing answers and objecting to the request for a list of every DCBS officer and employee and his or her salary, status, title, organizational unit, and job duties, explaining that to provide such a list would be unduly burdensome as the request is overly broad due to DCBS employing roughly 5,000 full-time employees at the time of the request.

On May 15, 2025, the Auditor filed this lawsuit, setting forth one claim for declaratory and injunctive relief. The Auditor asserts she launched an investigation into Governor Beshear and CHFS's refusal to execute SB 151. She requests Governor Beshear and CHFS to use what the General Assembly has given them to "execute duly enacted laws like SB 151." Complaint ¶ 98

STANDARD OF REVIEW

Under Kentucky law, when a court considers a motion to dismiss under Civil Rule 12.02, "the pleadings should be liberally construed in a light most favorable to the plaintiff

and all allegations taken in the complaint to be true." *Gall v. Scroggy*, 725 S.W.2d 867, 869 (Ky. Ct. App. 1987) *citing Ewell v. Central City,* 340 S.W.2d 479 (Ky. 1960). "The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Mims v. W.S. Agency, Inc.*, 226 S.W.3d 833, 835 (Ky. Ct. App. 2007) *quoting James v. Wilson*, 95

S.W.3d 875, 883-84 (Ky. Ct. App. 2002). In *D.F.Bailey, Inc. v. GRW Engineers Inc.*, 350 S.W.3d 818 (Ky. Ct. App. 2011), the Kentucky Court of Appeals discussed a trial court's standard of review when ruling on a motion to dismiss. "[T]he question is purely a matter of law. […] Further, it is true that in reviewing a motion to dismiss, the trial court is not required to make any factual findings, and it may properly consider matters outside of the pleadings in making its decision." *Id*. at 820 (internal citations omitted).

ANALYSIS

"The U.S. Supreme Court has identified five major justiciability doctrines: (1) the prohibition against advisory opinions, (2) standing, (3) ripeness, (4) mootness, and (5) the political-question doctrine." *Commonwealth Cabinet for Health and Family Servs., Dep't for Medicaid Servs. v. Sexton by and through Appalachian Regional Healthcare, Inc*., 556 S.W.3d 185, 193 (Ky. 2018). A court lacks jurisdiction to decide non-justiciable controversies. *Commonwealth, bd. Of Nursing v. Sullivan Univ. Sys., Inc.*, 433 S.W.3d 341, 343-44 (Ky. 2014). At present, Auditor Ball is pursuing an unripe controversy. The Auditor presents a list of actions that are characterized as obstructions to assert that the claim is ripe for review, however, this Court disagrees and declines to issue an unripe advisory opinion and must dismiss.

"Ripeness is a justiciability doctrine designed … 'to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" *National Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 807-08 (2003) (internal citations omitted). "The basic rationale of the ripeness requirement is to prevent the courts, through the avoidance of premature adjudication, from entangling themselves in abstract disagreements." *W.B. v. Cabinet for Health and Family Services*, 388 S.W.3d 108 IKy. 2012). (internal citations omitted). The principle upon which the Supreme Court of Kentucky relied upon in *W.B.* stated: "Generally, the ripeness doctrine is viewed as being both constitutionally required and judicially prudent. 'The prudential restrictions result from the fact that most courts would rather avoid speculative cases, defer to finders of fact with greater subject matter expertise, decide cases with fully-developed records, and avoid overly broad opinions, even if these courts might constitutionally hear a dispute.'" *W.B.*, 388 S.W.3d at 114 (citing *Matherne v. Gray Ins. Co*., 661 So.2d 432, 435-36 (La. 1995)). "Ripeness involves weighing two factors: (1) the hardship to the parties of withholding court consideration; and (2) the fitness of the issues for judicial review." *Id*. Presently, the Court does not find evidence in the record to support the notion that it would be a hardship to the Auditor, should it withhold court consideration.

The record before the Court illustrates that CHFS did not outright refuse to cooperate in the Auditor's investigation. CHFS responded to the requests and provided answers, information and records in those responses, except for two requests. First, CHFS objected to the request for "All documentation, including communications, pertaining to and showing DCBS's decision-making for when, how much, for what purpose, and why

certain unrestricted funds became obligated in fiscal year 2025.," stating it sought information outside of the functions of the Auditor's office, and information related to the internal policy making process of CHFS and DCBS. CHFS also asserted that the Auditor's request for "A list of every DCBS office and employee, and his or her salary, status, title, organization unit, and job duties was overly broad and unduly burdensome as it would require DCBS and its limited resources to manually review each individual personnel file of the thousands of employees during an unidentified period of time, with DCBS having nearly 5,000 full-time employees. (Complaint, Exhibit 7.)

"An exhibit, if in conflict with the allegations of a pleading, cannot aid the pleading, but may render it bad; and if an exhibit referred to and filed contradicts an allegation of the pleading, the exhibit will control the allegation, unless the exhibit be expressly impeached or explained by the facts stated in the pleading." *Durham v. Elliott*, 203 S.W. 539, 540 (Ky. 1918). Accordingly, the Court agrees with Defendants that the Complaint's allegation that CHFS has no intention of cooperating with the investigation is unsupported by the record and exhibits attached to the Complaint. The CHFS's first response to the November 2024 request provided 165 pages of documents, responding with answers, information, and records regarding the Auditor's investigation. This indicates a willingness by CHFS to cooperate with the investigation, contrary to the Auditor's assertion that CHFS has no intention of cooperating with or participating in any further investigation. Complaint at ¶56.

The Auditor likens the claim to that of *Lassiter v. Landrum*, 610 S.W.3d 242 (Ky. 2020). In *Lassiter*, Congress had enacted the Patient Protection and Affordable Care Act during Lassiter's tenure as Executive Director of the Office of Administrative Technology

Services. Following the passage of the act, Kentucky developed "Kynect." During the building process of Kynect, the Commonwealth and Deloitte entered into a contract, allowing Deloitte to use subcontractors to develop Kynect, with Deloitte eventually subcontracting SAS Institute, Inc. to develop fraud analytics for Kynect. The Secretary of the Finance and Administration Cabinet, William Landrum, began an investigation into the award of no-bid contracts to SAS Institute, Inc.. The Secretary sought Lassiter's cooperation, believing that Lassiter was a witness with valuable information; Lassiter refused to cooperate with the investigation and subsequent subpoena duces tecum. Lassiter argued that the Secretary did not have the requisite authority to issue it to him. The Woodford Circuit Court denied the motion to compel compliance, the Court of Appeals reversed, holding that the subpoena power did extend to a potential KMPC violation, and the Supreme Court of Kentucky affirmed the Court of Appeals.

CHFS has not failed to respond and has not refused to comply to the same degree as that found in *Lassiter*. No subpoenas have been sought, CHFS has complied with many of the Auditor's requests, and, finally, CHFS has asserted that the Auditor "need only provide a name and CHFS will set up an interview just as it always has[.]" Reply in Support of Defendant's Motion to Dismiss, pg. 3.

A case that is not justiciable should be dismissed. *Berger Family Real Estate, LLC v. City of Covington*, 464 S.W.3d 160, 166 (Ky. App. 2015). The Auditor has not yet exhausted administrative means to obtain documents and the matter has not yet ripened into a concrete dispute. *See Bingham Greenbaum Doll, LLP v. Lawrence*, 567 S.W.3d 127, 129 (Ky. 2018).

CONCLUSION

WHEREFORE, Defendants' *Motion to Dismiss* is **GRANTED**.

The Auditor has failed to raise a justiciable controversy before this Court and did not state a claim for which this Court is able to grant relief against Eric Friedlander in his official capacity as Secretary of the Cabinet for Health and Family Services. The claim of Plaintiff is hereby dismissed.

This order is final and appealable and there is no just cause for delay.

SO ORDERED, this ___ day of September, 2025.

/s/ JUDGE THOMAS DAWSON WINGATE
electronically signed
9/15/2025 10:53:49 AM ET

THOMAS D. WINGATE
Judge, Franklin Circuit Court