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Neither Toothless Nor Rigid: Kentucky’s Nondelegation Doctrine as Applied to Governor Beshear’s Emergency Response to COVID-19

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Neither Toothless Nor Rigid: Kentucky’s Nondelegation Doctrine as Applied to Governor Beshear’s Emergency Response to COVID-19

By: JP Stilz



Over six months ago, this publication (https://www.kentuckylawjournal.org/blog/kentucky-business-closures-help-flatten-the-curve-but-are-they-constitutional) considered Kentucky’s COVID-19 crisis in its infancy, noting that “[f]or some . . . businesses, complying with [Governor] Beshear’s orders means complete closure until further notice, which could lead to bankruptcy.”[1] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn1) Therein, Robert Hudson considered the fundamental issue of whether the Commonwealth had the power to take such extreme actions to combat the spread of the virus as an exercise of its inherent police powers.[2] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn2) Six months later, ending the spread of COVID-19 seems no closer in sight, and Kentucky businesses have begun to resist the strictures imposed upon them by Beshear’s emergency actions. While these businesses have not contested the fundamental nature of the police power itself, they have challenged the means by which Governor Beshear has sought to exercise this power.[3] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn3)

On September 17, 2020, the Kentucky Supreme Court heard oral arguments from attorneys representing Governor Andy Beshear and various Kentucky businesses regarding Governor Beshear’s use of emergency power to combat the spread of COVID-19 in Kentucky.[4] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn4) The action before the Court involves two cases over which the Court has assumed control after trial judges issued orders temporarily enjoining Governor Beshear from enforcing certain aspects of his COVID-19 emergency orders.[5] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn5) Previously, recognizing the importance to the public of these issues and “that the Kentucky legislature has expressly given the Governor broad executive powers in a public health emergency,”[6] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn6) the Kentucky Supreme Court had already taken, as of July 17, 2020, the extraordinary step of not only staying the injunctive orders but also directing that any lower court order enjoining the Governor’s COVID-19 related emergency actions be immediately referred to the Supreme Court for consideration.[7] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn7)

In their complaints filed at the trial level, the businesses alleged various issues with the constitutionality of the Governor’s actions, including violations of Kentucky’s Administrative Procedures Act,[8] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn8) violations of Section 2 of the Kentucky Constitution’s protections of life, liberty, and property against absolute and arbitrary power,[9] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn9) and violations

of Kentucky's separation of powers doctrine.[10]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn10) Various political opponents of Governor Beshear, including Attorney General Daniel Cameron and Commissioner of Agriculture Ryan Quarles, have joined the suits in their official capacities.[11]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn11) As acknowledged by an advocate for the businesses, these issues "really touch[] on the extent of executive power in the Commonwealth." [12]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn12) Therefore, this post will focus on the arguments that Governor Beshear's emergency actions violate Kentucky's constitutional separation of powers doctrine.

Separation of Powers

While similar to the federal government's tripartite separation of powers, Kentucky's Constitution goes to a further extreme in its zeal to confine the exercise of governmental powers to each corresponding branch. Section 27 of Kentucky's Constitution provides that "[t]he 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 . . . legislative . . . executive . . . and . . . judicial." [13]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn13) Section 28 adds to the rigidity of this provision by specifying that the branches of Kentucky's government shall not "exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted." [14]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn14)

Kentucky's Supreme Court has interpreted these provisions, together, as creating a separation of powers doctrine that "is more 'restrictive of powers granted' than the federal Constitution" to the point of being "unsurpassed by any state in the Union." [15]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn15) The two provisions of the constitution create a "double-barreled, positive-negative approach" that simultaneously positively grant power to each branch while they negatively restrict them from sharing their respective powers.[16]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn16) In order to interpret this separation of powers doctrine, Kentucky case law is of even greater than usual importance as "federal decisions do not have 'the usual persuasive force' when it comes to delegation issues" as "the federal Constitution does not have a 'provision expressly forbidding the Congress to delegate its legislative powers.'" [17]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn17)

Nondelegation Doctrine

Many of the powers used by Governor Beshear to combat the spread of COVID-19 are legislative in nature. For instance, in the immediate outbreak of the virus, Beshear issued an executive order suspending statutes that regulate insurance cost-sharing measures pertaining to COVID-19 testing.[18]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn18) However, Section 15 of the Kentucky Constitution reserves the power to suspend laws to the General Assembly.[19]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn19) Therefore, Attorney General Cameron asserts that the constitutionality of the Governor's use of legislative powers depends upon whether these powers are granted to him subject to "policies and establish[ed] standards" promulgated by the General Assembly.[20]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn20)

KRS Chapter 39A

Kentucky's Statewide Emergency Management Programs[21]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn21) establish a clear legislative intent to confer broad emergency powers upon the Governor to prepare, respond, and recover from "threats to public safety and the harmful effects or destruction resulting from . . . biological, etiological, radiological, environmental, industrial, or agricultural hazards; or other disaster or emergency occurrences." [22]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn22) The statute authorizes the governor, upon declaring a state of emergency, [23]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn23) "to perform and exercise other functions, powers, and duties deemed necessary to promote and secure the safety and protection of the civilian population." [24]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn24) These orders, during the emergency period, have the full effect of law and supersede "[a]ll existing laws, ordinances, and administrative regulations inconsistent" with them. [25]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn25)

Attorney General Cameron argues that Kentucky's Statewide Emergency Management Programs lack the "policies and established standards" necessary for the General Assembly to delegate these powers to the Governor. [26]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn26) In fact, Attorney General Cameron goes so far as to argue that "KRS Chapter 39A, as interpreted and implemented by Governor Beshear . . . contains none of the constitutionally required 'policies' and 'standards'" (emphasis added). [27]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn27)

This goes too far. While Kentucky's nondelegation doctrine "has not been as toothless as the [federal government's] 'intelligible-principle' rule," [28]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn28) "[t]he purpose of the nondelegation doctrine should no[] longer be either to prevent delegation or to require statutory standards; the purpose should be the much deeper one of protecting against unnecessary and uncontrolled discretionary power." [29]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn29) Last year, the Kentucky Supreme Court decided a challenge, by then Attorney General Andy Beshear, against an executive order issued by then Governor Matt Bevin that reorganized elements of the Council on Postsecondary Education, the Kentucky Board of Education, and other administrative boards. [30]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn30)

The statute at issue, KRS 12.028(2), allowed the governor broad power to temporarily reorganize the state government structure "between sessions of the General Assembly." [31]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn31) While the

court acknowledged that the statute “allows the Governor to change the law” and is “an exercise of legislative power,”[32] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn32) it nonetheless found that neither the executive order nor the statute “constitutes an unconstitutional delegation of legislative power.”[33] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn33)

In reaching this conclusion, the court acknowledged that the nondelegation doctrine is more permissive than Attorney General Cameron implies. Rather than insisting that “Kentucky law mandates that ‘the legislature must lay down policies and establish standards’ whenever it delegates legislative power to the executive branch,”[34]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn34) the court acknowledged that “[t]he General Assembly may validly vest legislative . . . authority in [another branch] if the law delegating that authority provides ‘safeguards, procedural and otherwise, which prevent an abuse of discretion by the agency’” (emphasis added).[35]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn35) The court found the necessary procedural safeguards in the General Assembly’s ability to alter the Governor’s reorganization plans once back in session,[36]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn36) to “put an end to the mechanism” of reorganization by executive action,[37]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn37) and to “exempt certain boards from the executive’s reorganization power.”[38]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn38)

These three procedural safeguards are equally present in the General Assembly’s grant of emergency powers to the Governor under KRS Chapter 39A. Kentucky’s General Assembly could alter aspects of the Chapter or do away with it altogether. Moreover, the statute explicitly exempts certain laws from being superseded by the Governor’s emergency powers.[39]

(file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_edn39) Just as Governor Bevin’s executive orders wielded legislative power subject to procedural safeguards, so to do Governor Beshear’s COVID-19 emergency actions wield legislative power subject to procedural checks by the Kentucky General Assembly.

Conclusion

While Attorney General Cameron’s challenge to Governor Beshear’s executive orders in response to COVID-19 raise serious issues of Kentucky constitutional law, the Kentucky Supreme Court should uphold the orders. In so doing, the Court could validly uphold Kentucky’s uniquely stringent separation of powers doctrine while acknowledging that procedural safeguards are an appropriate mechanism to constrain the Governor’s use of legislative power in the exceptional circumstances of a once in a generation outbreak of disease.

Citations

[1] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref1) Robert Hudson, *Kentucky Business Closures Help “Flatten the Curve,” But Are They Constitutional?*, Ky. L. J. Online: Blog (Mar. 26, 2020), <https://www.kentuckylawjournal.org/blog/kentucky-business-closures-help-flatten-the-curve-but-are-they-constitutional>.

[2] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref2) *Id.*

[3] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref3) Intervening Complaint for Declaration of Rights and Injunctive Relief at 33–34, *Quarles v. Beshear*, Civ. Action No. 20-CI-00376 (Ky. Cir. Ct. Scott Cty.) (on file with author).

[4] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref4) Deborah Yetter, *Kentucky Supreme Court Hears Challenge to Beshear Emergency COVID-19 Orders*, *Louisville Courier J.* (Sept. 17, 2020), <https://www.courier-journal.com/story/news/2020/09/17/kentucky-supreme-court-hears-challenge-beshear-emergency-coronavirus-orders/5816025002/>.

[5] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref5) *Id.* Order at 10–11, *Florence Speedway, Inc. v. N. Ky. Indep. Health Dist.*, Civ. Action No. 20-CI-00678 (Ky. Cir. Ct. Boone Cty. July 2, 2020) (on file with author).

[6] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref6) Order at 2, *Beshear v. Acree*, 2020-SC-000313-OA (Ky. July 17, 2020) (on file with author).

[7] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref7) *Id.* at 3.

[8] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref8) Complaint at 14–17, *Quarles v. Beshear*, Civ. Action No. 20-CI-00376 (Ky. Cir. Ct. Scott Cty.) (on file with author).

[9] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref9) *Id.* at 17–18.

[10] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref10) *Id.* at 18–19.

[11] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref11) Attorney General Daniel Cameron’s Motion to Intervene on Behalf of the Commonwealth of Kentucky at 1, *Quarles v. Beshear*, Civ. Action No. 20-CI-00376 (Ky. Cir. Ct. Scott Cty.) (on file with author).

[12] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(31)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref12) Yetter, *supra* note 4.

[13] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref13) Ky. Const. § 27; Intervening Complaint, *supra* note 3, at 22.

[14] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref14) Ky. Const. § 28; Intervening Complaint, *supra* note 3, at 22.

[15] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref15) Bd. of Trs. of the Judicial Form Ret. Sys. v. Attorney General, 132 S.W.3d 770, 782 (Ky. 2003) (quoting *Bloemer v. Turner*, 137 S.W.2d 387, 390–91 (Ky. 1939)); Complaint, *supra* note 8, at 18–19.

[16] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref16) Legislative Research Com. v. Brown, 664 S.W.2d 907, 912 (Ky. 1984); Intervening Complaint, *supra* note 3, at 22.

[17] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref17) Bd. of Trs. of the Judicial Form Ret. Sys., 132 S.W.3d at 782; Intervening Complaint, *supra* note 3, at 23.

[18] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref18) Ky. Exec. Order No. 2020-220 (Mar. 9, 2020).

[19] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref19) Ky. Const. § 15; Intervening Complaint, *supra* note 3, at 23.

[20] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref20) Bd. of Trs. of the Judicial Form Ret. Sys., 132 S.W.3d at 782.

[21] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref21) Ky. Rev. Stat. Ann. §§ 39A.010-990.

[22] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref22) *Id.* at § 39A.010; Order, *supra* note 6, at 2 (“Given the need for a clear and consistent statewide health policy and recognizing that the Kentucky legislature has expressly given the Governor broad executive powers in a public health emergency.”).

[23] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref23) Ky. Rev. Stat. Ann. § 39A.100(1).

[24] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref24) *Id.* at § 39A.100(1)(j).

[25] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref25) *Id.* at § 39A.180(2).

[26] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref26) Intervening Complaint, *supra* note 3, at 24.

[27] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref27) *Id.*

[28] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref28) Bd. of Trs. of the Judicial Form Ret. Sys., 132 S.W.3d at 782.

[29] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref29) Commonwealth v. Bevin, 575 S.W.3d 673, 682 (Ky. 2019) (quoting *Miller v. Covington Dev. Auth.*, 539 S.W.2d 1, 5 n.9 (Ky. 1976)).

[30] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref30) *Id.* at 676.

[31] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref31) *Id.*

[32] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref32) *Id.* at 682.

[33] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref33) *Id.* at 684.


[34] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref34) Intervening Complaint, *supra* note 3, at 24.

[35] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref35) Bevin, 575 S.W.3d at 683.

[36] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref36) *Id.* (“changes made by the temporary reorganization only survive until the General Assembly’s next regular session”).

[37] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref37) *Id.* at 684.

[38] (file:///C:/Users/zlose/Documents/KU/KU%20Vol%20109%20(3L)/Blogs%20and%20Website/Stilz%20Blog%20Post.docx#_ednref38) *Id.*

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