

We, the undersigned members of the Kentucky Board of Education, are filing a lawsuit today against Governor Beshear, challenging his attempt to remove the entire board before their terms have expired. We believe the Governor's executive order violates Kentucky law. It also politicizes the governance of the Kentucky Department of Education in an unprecedented way that threatens the agency's stability, independence, and orderly operation.

The Kentucky Supreme Court has upheld the right of governors to reorganize state boards. But Kentucky law also explicitly carves out protections for members of the Kentucky Board of Education and the Council for Post-Secondary Education, stipulating that members of these boards may not be removed prior to the ends of their terms without cause.

These laws, and the other statutes that establish the Kentucky Board of Education and the qualifications and terms of its members, were part of an education reform initiated a generation ago. In its wisdom, the General Assembly established a modest but meaningful buffer between the Kentucky Department of Education and the more brutal elements of partisan politics. It did so by setting terms for board members, establishing that board members may not be removed from office prior to the end of their terms without cause, and making the Commissioner of Education a direct employee of the board itself.

We are not naive and would never suggest that politics plays no role in the governance of our education system. State board members are appointees of governors who are elected in partisan races. Governors naturally appoint members who share many - though rarely all - of their values and goals. But because under the law they serve staggered terms and cannot be removed without cause, board members are not beholden to the governor who appoints them. And should not be.

We do not serve this governor, just as we did not serve the governor who appointed us. We serve the people of the Commonwealth and especially the 650,000 students in our public schools. The Commissioner of Education serves those same students through the support and endorsement of the board, not the governor. This framework ensures that board members are not subject to the partisan political gamesmanship of governors who may not like the specific policy views of the commissioner or individual members of KBE.

Some states have different models. Elsewhere, the chief state school officer may be directly appointed by the governor or even elected by the people. Some states choose to select state board members by election, too. Kentucky, in its wisdom, has opted for a system that emphasizes a much greater level of independence and stability for its education system. And that independence and stability is now threatened like never before.

To our knowledge, the only rationale Governor Beshear has given for our removal is that many of us believe Kentucky should join 44 other states and the District of Columbia in giving some families the option of sending their children to a public charter school if that is the best fit for them. This rationale does not constitute legal cause for removal. And while it is true that

many of us do believe all families, including those of modest means, should have options in who educates their children, charter schools have hardly been a major focus of this board.

We invite the Governor and the public to review our actual accomplishments as a board since April 2018. We have adopted new graduation requirements, new education standards, and a new school accountability system, all of which were initiated under a previous state board majority and a previous commissioner but which have come to full fruition under the current board and new department leadership. Additionally, since this board majority was appointed, the Kentucky Department of Education has placed a much greater and needed emphasis on career and technical education, established a vitally important partnership with the Jefferson County Public Schools to address that district's long-standing improvement goals, and made a strong focus on innovation and giving school and district leaders greater flexibility in meeting the unique needs of their local students. Our 2020 legislative agenda includes a call for full funding for kindergarten, more support for career and technical education, and a greater investment in early reading intervention.

All of these accomplishments are threatened by the governor's illegal order and the subsequent instability that would follow in the Department of Education if it were not contested. These accomplishments also reflect the unwavering commitment of this board to improving educational outcomes for all Kentucky students. We certainly have pushed the education system to improve and find new approaches to closing achievement gaps, but we have also repeatedly demonstrated our willingness to listen to stakeholders, provide support, call for more resources, and find new policy solutions that will help us achieve this goal.

Let us be clear. No previous governor has ever tried to remove Kentucky Board of Education members prior to the ends of their terms in this fashion. If Governor Beshear wants to appoint new board members when current members' terms expire, that is of course his prerogative and the legal pathway followed by Governor Bevin and Governor Steve Beshear before him and every governor since the enactment of the Kentucky Education Reform Act. And if those new board members, then constituting a majority, want to remove the Commissioner of Education and find a new one, that is also their prerogative. But governors do not, and should not, have legal authority to simply fire board members appointed by their predecessors and seize total control of the Department of Education.

We look forward to making that legal argument in a court of law, and that philosophical argument in the court of public opinion.

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