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Commonwealth of Kentucky
Court of Appeals

NO. 2025-CA-1303-MR

ALLISON BALL, KENTUCKY
AUDITOR OF PUBLIC ACCOUNTS,
IN HER OFFICIAL CAPACITY — APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 25-CI-00412

ANDREW GRAHAM BESHEAR,
GOVERNOR OF THE
COMMONWEALTH OF KENTUCKY,
IN HIS OFFICIAL CAPACITY AND
STEVEN STACK, SECRETARY OF
KENTUCKY'S CABINET FOR
HEALTH AND FAMILY SERVICES — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CETRULO, A. JONES, AND L. JONES, JUDGES.

JONES, A., JUDGE: This appeal arises from a dispute between Kentucky Auditor of Public Accounts Allison Joy Ball ("Auditor Ball") and the Cabinet for Health and Family Services ("Cabinet") concerning the implementation of 2024 Senate

Bill 151, titled "AN ACT relating to relative and fictive kin caregivers," ("SB 151") and Auditor Ball's subsequent investigation into the Cabinet's assertion that it lacked sufficient appropriated funds to implement the legislation. After the Cabinet responded to Auditor Ball's requests for information but declined to provide certain additional information, Auditor Ball filed this declaratory judgment action against the Cabinet[1] and Governor Andrew Graham Beshear ("Governor Beshear").

Auditor Ball sought declarations concerning two related matters. First, she sought a declaration that Governor Beshear and the Cabinet could not rely on the absence of a specific appropriation as a basis for declining to implement SB 151. Second, she sought a declaration requiring the Cabinet to comply with her investigation pursuant to KRS[2] Chapter 43. The Franklin Circuit Court dismissed Governor Beshear from the action and subsequently dismissed Auditor Ball's remaining claims against the Cabinet, concluding she had failed to raise a justiciable controversy.

[1] Auditor Ball originally named Eric Friedlander, then-Secretary of the Cabinet for Health and Family Services, solely in his official capacity. Steven J. Stack subsequently succeeded Friedlander as Secretary and was substituted as a party. Because a suit against a public official in his official capacity is treated as a suit against the governmental entity itself, *Conner v. Patton*, 133 S.W.3d 491, 493 (Ky. App. 2004), we refer to the Cabinet rather than its current or former Secretary throughout this Opinion.

[2] Kentucky Revised Statutes.

The threshold issues before us are whether Auditor Ball has standing to seek judicial review of the nonimplementation of SB 151 and whether the dispute concerning the Cabinet's responses to her investigation presented an actual controversy ripe for judicial resolution against either Governor Beshear or the Cabinet. For the reasons explained below, we conclude that Auditor Ball lacks standing to challenge the nonimplementation of SB 151 and that her claims concerning the Appellees' alleged failure to cooperate with her investigation had not ripened into a justiciable controversy when the circuit court dismissed the action. In reaching this conclusion, however, we disagree with the circuit court insofar as it determined that Auditor Ball was required to issue subpoenas to the Cabinet or its current employees before seeking judicial relief. The Auditor's statutory authority to obtain information is not necessarily dependent upon the exercise of her subpoena power. Nevertheless, the absence of a sufficiently developed, concrete dispute concerning the Appellees' compliance with their statutory obligations precluded judicial resolution of her claims. Accordingly, we affirm the circuit court's dismissal, albeit on grounds that differ somewhat from those articulated by the circuit court.

I. BACKGROUND

A. The Parties

Auditor Ball is Kentucky's duly elected Auditor of Public Accounts, an executive branch officer whose office is established by Section 91 of the Kentucky Constitution. Although a member of the executive branch, the Auditor is independently elected and exercises powers and duties prescribed by the General Assembly. Ky. Const. §§ 91, 93; *Ex parte Auditor of Public Accounts*, 609 S.W.2d 682, 686 (Ky. 1980). The General Assembly has expressly designated the Auditor as an agency independent of the Commonwealth's administrative departments and charged the office with auditing the financial administration and performance of state agencies. KRS 43.050(1). Among other responsibilities, the Auditor is authorized to examine the financial records, expenditures, management, and conduct of state agencies and officers. KRS 43.050(2)-(3). KRS 43.080 further provides the Auditor with access to agency records and authority to compel testimony and the production of information in connection with authorized investigations.[3]

[3] KRS 43.080 provides:

> (1) The Auditor shall have access to and may examine all books, accounts, reports, vouchers, correspondence files, records, money and property of any state agency. Every officer or employee of any such agency having such records or property in his or her possession or under his or her control shall permit access to and examination of them upon the request of the Auditor.

The Cabinet for Health and Family Services is an administrative agency within the executive branch of Kentucky state government. KRS 12.020; KRS 194A.010. The Cabinet is headed by a Secretary appointed by the Governor. KRS 12.040. The Cabinet is responsible for administering various programs and services concerning the health and welfare of Kentucky's citizens, including child welfare and foster care programs administered through its Department for Community Based Services ("DCBS"). KRS 194A.030. The Cabinet is the agency charged with implementing SB 151.

> (2) The Auditor shall have access at all times to the papers, books, and records of the asylums, prisons, institutions for the intellectually disabled and eleemosynary institutions, and public works that he or she is authorized to examine, and of any county officer who receives or disburses county funds.
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> (3) The Auditor may require information on oath from any person touching any matters relative to any account or matter that the Auditor is required or authorized to state, audit, investigate, review, or settle. The Auditor may administer the oath, or have it done by any officer authorized to administer an oath.
>
> (4) The Auditor may issue process and compel the attendance of witnesses and administer oaths and compel witnesses to testify in any of the audits, reviews, or investigations the Auditor is authorized to make.
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> (5) Every state agency shall provide at no cost to the Auditor any software and access rights that the Auditor deems advisable to view and retrieve any information subject to this section. Any cost that may be incurred by providing the Auditor with software and access rights shall be borne by the state agency.
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> (6) As used in this section, "Auditor" includes:
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> (a) The Auditor's authorized agents;
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> (b) The deputy auditor; and
>
> (c) The ombudsman.

Governor Beshear is Kentucky's duly elected Governor, in whom the Constitution vests the Commonwealth's supreme executive power. Ky. Const. § 69. The Governor is constitutionally charged with taking care that the laws are faithfully executed. Ky. Const. § 81.

B. Enactment and Initial Nonimplementation of SB 151

During its 2024 Regular Session, the General Assembly unanimously enacted SB 151, which amended KRS 620.142. As pertinent to this appeal, the amendment extended the period during which a relative or fictive kin caregiver may elect to become a foster parent for a child placed in the caregiver's care. Previously, the Cabinet's policy required a caregiver to make that election within ten days.[4] Governor Beshear signed SB 151 into law on April 5, 2024. Record ("R.") at 33.

The distinction between a relative or fictive kin caregiver and a relative or fictive kin foster parent has financial consequences for the Commonwealth. As the Cabinet explains, relative and fictive kin foster parents are entitled to a significant monthly subsidy that relative and fictive kin caregivers do not receive. Additionally, when a caregiver elects to become a foster parent, the

[4] As amended, KRS 620.142(3) provides: "Within one hundred twenty (120) days of a placement made by the cabinet due to a cabinet finding that a child is abused, neglected, dependent, or a status offender, or upon a qualifying event as established in administrative regulation, a relative or fictive kin caregiver may apply to become a relative or fictive kin foster parent for the child in his or her care."

Cabinet must obtain custody of the child and then place the child with the caregiver as a foster-care placement. The Cabinet anticipated that extending the election period from ten to 120 days would result in substantially more caregivers electing foster-parent status, thereby increasing both the number of children in state custody and the Cabinet's corresponding financial and administrative obligations. Among other things, the Cabinet anticipated the need for additional staff to manage the increased caseload. It estimated that implementation of SB 151 would cost more than $19 million even if only half of eligible relative and fictive kin caregivers elected to become foster parents.

Five days after signing SB 151, Governor Beshear sent a letter to members of the General Assembly concerning approximately two dozen bills, including SB 151, enacted during the 2024 Regular Session. R. at 36-37. The Governor explained that, although the bills had become law, the General Assembly had not appropriated the additional funds the Executive Branch believed necessary to implement them. Citing *Fletcher v. Commonwealth*, 163 S.W.3d 852 (Ky. 2005), Governor Beshear urged the General Assembly, while it remained in session, to appropriate the funds necessary for implementation. A spreadsheet accompanying the letter identified the Cabinet's estimated additional cost of implementing SB 151 as approximately $19.7 million. R. at 38. The General Assembly did not make an appropriation specifically for implementation of SB 151

before the conclusion of the 2024 legislative session, and the Cabinet did not immediately implement the amendment.

C. Auditor Ball's Initial Investigation

Auditor Ball began her investigation on October 23, 2024. On November 8, 2024, her office sent the Cabinet what it termed an "initial request for information and documentation" as part of a "preliminary assessment." R. at 91-93. The request sought, among other things, information concerning the Cabinet's budget request for DCBS; documents supporting the Cabinet's calculation of the fiscal impact of SB 151; communications within the Cabinet and with the Governor's Office, State Budget Director, General Assembly, and others concerning SB 151; and information concerning DCBS revenues, expenditures, fund balances, and financial obligations.

The Cabinet timely responded on November 21, 2024. R. at 94. Among other things, it produced its approximately 165-page biennial budget request, fiscal impact statements concerning SB 151 and related communications, and information concerning DCBS's restricted and unrestricted funds. The Cabinet further advised Auditor Ball that it was continuing to determine whether it possessed additional documents responsive to her requests. No additional production followed. R. at 95.

On April 4, 2025, Auditor Ball sent the Cabinet an engagement letter advising that her office was conducting a limited-scope special examination covering the period from November 1, 2023, through April 1, 2025. The letter included a follow-up request for information and documentation that the Auditor maintained had not been received in response to the November request.[5] The Auditor also requested several additional categories of information.[6] The letter also indicated that the Auditor's office would be reaching out to schedule interviews with Cabinet and DCBS employees.

The Cabinet responded to the individual requests on April 11, 2025. R. at 51-52. Its responses varied. As to communications associated with the DCBS budget request, the Cabinet stated that the requested documents had already been provided in November 2024. As to communications concerning execution of

[5] This included: 1) all communications associated with DCBS's budget request and the creation of its budget; 2) all internal Cabinet communications and external communications between the Cabinet and the Governor's Office, the Cabinet and the office of State Budget Director, the Cabinet and the General Assembly, the Cabinet and the federal government, and the Cabinet and any other party pertaining to the execution of SB 151, including documents exchanged in the course of those communications; 3) all information pertaining to the Cabinet's and the Governor Office's execution of SB 151; 4) all documentation, including communications, pertaining to and showing itemized accounts of Cabinet expenditures; and 5) all documentation, including communications pertaining to and showing the Cabinet's decision-making for when, how much, for what purpose, and why certain unrestricted funds became obligated in fiscal year 2025. R. at 42.

[6] This included: 1) the Cabinet's organizational chart; 2) a list of every Cabinet officer and employee and his or her salary, status, title, organizational unit, and job duties; 3) all active Cabinet contracts with vendors; and 4) all information regarding new programs the Cabinet created during fiscal year 2025. *Id.*

SB 151, the Cabinet stated that because it had not implemented the legislation, no additional responsive documents existed, although it provided correspondence concerning guidance it had sought from federal officials. In response to a request concerning DCBS's financial obligations, the Cabinet directed the Auditor to information available to her through the Commonwealth's eMARS system. It similarly directed the Auditor to publicly available sources for DCBS's organizational chart and vendor contracts. The Cabinet objected to the Auditor's request for a list of every DCBS officer and employee, together with each employee's salary, status, title, organizational unit, and job duties, as overly broad and unduly burdensome. It explained that DCBS employed nearly 5,000 full-time employees and that responding would require a manual review of individual personnel files. Finally, as to certain other requests, the Cabinet represented that it possessed no responsive documents or additional information.

The parties disagreed about the significance of the Cabinet's response. Auditor Ball alleged that the April 11 letter demonstrated that the Cabinet had "no intention of cooperating with or participating in any further investigation" concerning whether Governor Beshear and the Cabinet could execute SB 151. She further maintained that the Cabinet was relying upon the Governor's interpretation of *Fletcher* not only to justify its nonimplementation of SB 151 but also to

challenge her authority to investigate the Cabinet's asserted financial inability to implement it.

D. The Circuit Court Action

On May 15, 2025, Auditor Ball filed this action in Franklin Circuit Court against Governor Beshear and the Cabinet. Invoking the Kentucky Declaratory Judgment Act, KRS 418.005 *et seq*., she alleged that Governor Beshear and the Cabinet had refused to execute SB 151 and that the Cabinet was obstructing her statutory authority under KRS Chapter 43 to investigate the financial basis for that decision. Auditor Ball explained that she sought to use her investigatory authority to "figure out who is right and create a path forward for Governor Beshear and [the Cabinet] to carry out SB 151." She further stated that she brought the action to ask the circuit court to "remind Governor Beshear and [the Cabinet] of their constitutional duty to execute and obey the law."

In her prayer for relief, Auditor Ball requested the following:

> A. A declaration that neither *Fletcher v. Commonwealth*, 163 S.W.3d 852 (Ky. 2005), nor any other source of authority allows Governor Andrew Graham Beshear and the Cabinet for Health and Family Services to refuse to execute, follow, and abide by the General Assembly's duly enacted laws, including 2024 Senate Bill 151 and KRS Chapter 43;
>
> B. A declaration that, to abide by their constitutional duty to execute the law, Governor Beshear and [the Cabinet] must do what it takes to execute all of the General Assembly's laws using the funding they have;

> C. A declaration that neither *Fletcher* nor any other source of authority allows Governor Beshear and [the Cabinet] to refuse to participate in and defy the APA's audit, examination, and investigatory authority;
>
> D. A declaration that Governor Beshear and [the Cabinet] must give the APA what it asks for—whatever documentation, information, and interviews it needs to complete its audits, examinations, and investigations.
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> E. Injunctive relief effectuating all of the aforementioned declarations, namely, injunctive relief (1) forcing Governor Beshear and [the Cabinet] to execute, follow, and abide by the General Assembly's laws, including SB 151 and KRS Chapter 43; (2) prohibiting Governor Beshear and [the Cabinet] from refusing to participate in and defy the APA's audit, examination, and investigatory authority; and (3) requiring Governor Beshear and [the Cabinet] to give the APA what it asks for—whatever documentation, information, and interviews it needs to complete its audits, examinations, and investigations.
>
> F. All fees and costs associated with this lawsuit; and
>
> G. Any other relief to which the Auditor of Public Accounts is entitled.

R. at 20-21.

Governor Beshear and the Cabinet moved to dismiss the complaint pursuant to CR[7] 12.02(a)[8] and (f).[9] Among other grounds, they argued that Auditor

[7] Kentucky Rules of Civil Procedure.

[8] Lack of jurisdiction over the subject matter.

[9] Failure to state a claim upon which relief can be granted.

Ball lacked standing to seek judicial enforcement of SB 151, that her complaint failed to present a justiciable controversy, and that her claims concerning the Cabinet's compliance with her investigation were not ripe for judicial resolution. They further maintained that the relief sought would require the circuit court to resolve political questions concerning executive budgeting and to render an advisory opinion concerning the application of *Fletcher*.

Following briefing and argument, the circuit court entered separate orders dismissing Auditor Ball's claims. In its first order entered August 4, 2025, the circuit court dismissed Governor Beshear from the action. R. at 192-97. It reasoned that Governor Beshear was not a proper defendant because:

> The Governor plays no role in the enforcement of SB 151, and is named only for his general powers under Sections 69 and 81 of the Kentucky Constitution. Neither Section 69 nor 81 require the Governor to directly enforce SB 151. The Auditor fails to point to any action of the Governor that is obstructing her investigation, or causing her any injury. The April 10, [2024] letter from Governor Beshear to the General Assembly does not equate to an obstruction of Auditor Ball's investigation into [the Cabinet]. In fact, the letter suggests that the General Assembly add appropriations in the last days [of the 2024 session] to rectify the omissions.
>
> The Auditor lacks standing to sue the Governor on this matter, and fails to state a claim for which this Court could grant relief from the Governor.

R. at 196-97.

Thereafter, on September 15, 2025, the circuit court entered a second order dismissing the remaining claims against the Cabinet. R. at 198-205. While the circuit court recognized Auditor Ball's investigative authority, it determined that her complaint did not present a justiciable controversy because the Cabinet had not refused to comply with her investigation and she had not yet exhausted her administrative means to obtain documents given that she had not issued any subpoenas pursuant to KRS 43.080(4).

Auditor Ball appealed both rulings.[10] Governor Beshear and the Cabinet filed separate appellee briefs. Broadly stated, Auditor Ball maintains that the circuit court erred by concluding that she could not obtain declaratory relief concerning the Executive Branch's nonimplementation of SB 151 and by dismissing her claims concerning the Cabinet's alleged interference with her statutory investigatory authority. Governor Beshear responds that Auditor Ball lacks standing to litigate the Executive Branch's implementation of SB 151 and that no actual controversy existed between him and the Auditor. The Cabinet likewise maintains that Auditor Ball lacks standing to compel implementation of

[10] The latter order rendered the earlier interlocutory order final and appealable. CR 54.02(1) ("When the remaining claim or claims in a multiple claim action are disposed of by judgment, that judgment shall be deemed to readjudicate finally as of that date and in the same terms all prior interlocutory orders and judgments determining claims which are not specifically disposed of in such final judgment.").

SB 151 and argues that her claims concerning its responses to her investigation had not ripened into an actual controversy when the circuit court dismissed the action.

E. Post-Appeal Developments

Following dismissal of this action, Auditor Ball continued her investigation and eventually issued subpoenas. On December 29, 2025, the Cabinet initiated a separate action in Franklin Circuit Court, No. 25-CI-01200, seeking to quash the subpoenas and obtain a protective order. According to the parties, the circuit court did not grant the requested relief, and the Auditor subsequently conducted interviews of the subpoenaed witnesses. Auditor Ball has requested that this Court take judicial notice of the subsequent action and the Cabinet's complaint filed therein. Although we may take judicial notice of the existence of these publicly available court records, we emphasize that these subsequent proceedings were not before the circuit court when it dismissed the present action.

Additionally, during the pendency of this appeal, the General Assembly enacted 2026 House Bill 500, which appropriated funds for SB 151's implementation.[11] With the appropriation of these additional funds, the Cabinet

[11] The bill provided a $6 million appropriation for relative and fictive kin caregivers. We may take judicial notice of subsequent legislative enactments occurring while an appeal is pending. *See Bradshaw v. Ball*, 487 S.W.2d 294, 296-97 (Ky. 1972) (considering legislation enacted after entry of the judgment and while the appeal was pending and explaining that the subsequent enactment "cannot be ignored in the disposition of this appeal").

began implementing SB 151 effective July 15, 2026. https://manuals-sp-chfs.ky.gov/C8/Pages/C8.1.2-Reconsideration-of-Relative-and-Fictive-Kin-Foster-Placement.aspx (last visited Oct. 8, 2026). Considering this subsequent legislative action, by order entered October 8, 2026, this Court directed the parties to submit supplemental briefs addressing whether the appeal had become moot.

All parties filed supplemental briefs on October 19, 2026. Governor Beshear and the Cabinet for Health and Family Services maintain that the appeal is moot because the General Assembly has provided the necessary funding and the Cabinet began implementing Senate Bill 151 on July 1, 2026. The Governor further maintains that the Auditor never presented a justiciable controversy against him. Auditor Ball, however, contends that the appeal remains justiciable because the Governor and Cabinet have not committed to fully implementing Senate Bill 151, including providing benefits to individuals who became eligible before implementation began and continuing benefits if appropriated funds are exhausted. She further asserts that the appellees' continued refusal to provide requested information presents an independent, ongoing controversy under KRS 43.080.[12]

[12] Auditor Ball attached numerous documents to her supplemental brief, including correspondence between her office and Governor Beshear and the Cabinet concerning implementation of Senate Bill 151, the availability and allocation of funding, and the Cabinet's responses to requests for information. These materials include, among other things, the Auditor's October 21, 2025, letter to the Governor, her December 22, 2025, comments concerning proposed administrative regulations, and correspondence exchanged with the Cabinet in April 2026. None of these documents was before the circuit court when it dismissed the underlying action, and most concern events occurring many months after entry of the circuit

Alternatively, Auditor Ball urges this Court to apply the public interest exception to the mootness doctrine.

II. STANDARD OF REVIEW

We review a circuit court's dismissal of a complaint pursuant to CR 12.02 *de novo*. *MGG Investment Group LP v. Bemak N.V., Ltd.*, 671 S.W.3d 76, 82 (Ky. 2023). In reviewing a dismissal for failure to state a claim, we accept the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *Id.* Dismissal is appropriate only when the plaintiff is not entitled to relief under any set of facts that could be proved in support of the claim. *Id.* (citing *Marshall v. Montaplast of N. Am., Inc.*, 575 S.W.3d 650, 651 (Ky. 2019)).

III. ANALYSIS

A. Auditor Ball Lacks Standing to Compel Implementation of SB 151

We begin with Auditor Ball's request for a declaration that neither *Fletcher v. Commonwealth*, 163 S.W.3d 852 (Ky. 2005), nor any other authority permits Governor Beshear and the Cabinet to refuse to implement SB 151. More broadly, she seeks a declaration that Governor Beshear and the Cabinet must

court's order. Although these materials may provide context concerning subsequent developments and the parties' respective positions on mootness, they are not part of the record upon which the circuit court rendered its decision and are not relevant to our review of the merits of that decision.

execute all laws enacted by the General Assembly using the funds available to them. R. at 19-21. Before addressing the merits of those claims, however, we must determine whether Auditor Ball has standing to assert them.

In *Commonwealth Cabinet for Health and Family Services, Department for Medicaid Services v. Sexton by and through Appalachian Regional Healthcare, Inc.*, 566 S.W.3d 185, 196 (Ky. 2018), our Supreme Court adopted the federal standing requirements articulated in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), as the constitutional standard governing standing in Kentucky courts. Under that standard, a plaintiff must establish three elements: injury, causation, and redressability. *Sexton*, 566 S.W.3d at 196. The alleged injury must be concrete and particularized, either actual or imminent, and fairly traceable to the defendant's challenged conduct. *Id.* A generalized grievance concerning the government's failure to comply with the law is insufficient. *Id.* at 196-97; *see also Lexington Retail Beverage Dealers Ass'n v. Department of Alcoholic Beverage Control Board*, 303 S.W.2d 268, 269-70 (Ky. 1957) (explaining that a public wrong or breach of a public duty cannot be redressed by a plaintiff whose interest does not differ from that of the public generally).

These requirements apply equally to actions seeking declaratory relief. *HealthAmerica Corp. of Kentucky v. Humana Health Plan, Inc.*, 697 S.W.2d 946, 947-48 (Ky. 1985). The Declaratory Judgment Act does not authorize

courts to resolve abstract disagreements concerning the proper interpretation or enforcement of the law at the request of a plaintiff who has not demonstrated a judicially cognizable interest in the controversy. *Id.*; *Fontaine v. Dep't of Finance*, 249 S.W.2d 799 (Ky. 1952).

In *Kasey v. Beshear*, 626 S.W.3d 204 (Ky. App. 2021), this Court considered a similar attempt to compel the Governor and other public officials to enforce legislation related to animal shelters. There, the plaintiffs alleged that state and local officials had failed to enforce the animal shelter statutes and sought declaratory and mandatory relief requiring compliance with those laws. Although the plaintiffs maintained that they had a right, as citizens and taxpayers, to the enforcement of Kentucky law, we rejected that argument, explaining that "the failure to enforce Kentucky laws" was not the type of concrete and particularized injury required to establish standing. *Id.* at 208. We further concluded that the plaintiffs' voluntary expenditure of time and resources in caring for abandoned animals did not supply the requisite injury. *Id.*

The same principle governs Auditor Ball's attempt to compel implementation of SB 151. Like the plaintiffs in *Kasey*, Auditor Ball seeks a judicial declaration requiring executive officials to carry out their statutory responsibilities. Her status as an independently elected constitutional officer distinguishes her from the private citizens in *Kasey*, but it does not eliminate the

requirement that she demonstrate a concrete, particularized injury arising from the challenged conduct. Although Auditor Ball possesses statutory authority to investigate the Cabinet's financial administration, she has not identified an injury to her own legally protected interests resulting from the nonimplementation of SB 151, apart from the alleged interference with her investigation, which we address separately below. Indeed, our Supreme Court has rejected an expansive view of a public official's standing to litigate matters purportedly affecting the prerogatives of the official's office. *Commonwealth ex rel. Beshear v. Commonwealth Office of the Governor ex rel. Bevin*, 498 S.W.3d 355, 367 (Ky. 2016).

The General Assembly has assigned Auditor Ball substantial responsibilities concerning the financial administration of state government. KRS 43.050 authorizes her to examine the financial records, expenditures, management, and conduct of state agencies and officers. She may investigate the Cabinet's estimate of the cost of implementing SB 151, examine its expenditures and available funds, and report findings that call into question the factual basis for its asserted inability to implement the legislation. Such findings may inform the General Assembly and the public concerning the Cabinet's financial administration and the accuracy of its representations regarding available funding.

That investigatory authority, however, is distinct from authority to determine which laws the Cabinet must prioritize for implementation or to compel

the Governor and the Cabinet to implement a particular statute. Nothing in KRS Chapter 43 assigns the Auditor responsibility for administering SB 151 or grants her general authority to enforce the Governor's constitutional duty to ensure that the laws are faithfully executed. *See* Ky. Const. § 81. We do not question the importance of SB 151's objectives or the potential benefits of its implementation for Kentucky's children and relative and fictive kin caregivers. Nevertheless, the importance of a statute's objectives cannot substitute for the constitutional requirement that a plaintiff demonstrate standing to seek its judicial enforcement.

Our holding is a narrow one. We conclude only that Auditor Ball has not demonstrated a concrete, particularized injury arising from the nonimplementation of SB 151 sufficient to confer standing to seek judicial enforcement of that legislation. We express no opinion on whether another plaintiff whose interests are directly affected by the Cabinet's failure to implement SB 151 would have standing to pursue such a claim. For example, a relative or fictive kin caregiver who was denied the opportunity to apply for foster-parent status twenty days after placement might present a materially different standing question. Whether such a plaintiff would have standing, or ultimately be entitled to relief, is not before us.

Accordingly, the circuit court properly dismissed Auditor Ball's claims insofar as they sought to compel Governor Beshear and the Cabinet to implement SB 151.

B. Auditor Ball Failed to Establish an Actual Controversy with Governor Beshear

We next consider whether Auditor Ball alleged an actual controversy with Governor Beshear concerning the exercise of her statutory investigatory authority. Under KRS 418.040, a declaration of rights is available only when an "actual controversy exists." This requirement is constitutional in origin. Section 112(5) of the Kentucky Constitution limits circuit court jurisdiction to "justiciable causes." As this Court has explained, the question of justiciability ultimately concerns "whether there is a live controversy for the court to decide." *Interactive Gaming Council v. Commonwealth ex rel. Brown*, 425 S.W.3d 107, 112 (Ky. App. 2014).

Although the Governor is constitutionally charged with ensuring that the laws are faithfully executed, Ky. Const. § 81, that general responsibility does not, standing alone, establish a justiciable controversy between him and the Auditor. As the circuit court recognized, Auditor Ball directed her requests for documents and information to the Cabinet, not Governor Beshear. Her complaint does not identify any request for information that Governor Beshear personally refused, nor does it allege that he directed the Cabinet to withhold information or

otherwise obstructed her investigation. The Governor's April 10, 2024, letter expressed his position concerning the need for additional appropriations to implement SB 151 and other legislation. It did not address, much less interfere with, the Auditor's subsequent investigation.

Nor does Governor Beshear's status as the Commonwealth's chief executive officer, in whom the Constitution vests the supreme executive power, independently establish a basis for naming him as a defendant. Ky. Const. § 69. A suit against a state officer in his official capacity is generally treated as a suit against the governmental entity the officer represents. *Yanero v. Davis*, 65 S.W.3d 510, 522 (Ky. 2001). The Cabinet is itself an executive branch agency, and the Auditor's allegations concerning the Cabinet's responses to her investigation are properly directed to that agency through its Secretary in his official capacity. The Governor's ultimate responsibility for the executive branch does not make him a necessary party to every dispute involving the official conduct of an executive agency or its employees. Were we to accept the contrary proposition, virtually any challenge to an executive agency's official conduct could require the Governor's participation merely by virtue of his constitutional office. Such a result would unnecessarily expand litigation involving the Governor without advancing the resolution of the underlying controversy.

Accordingly, even accepting the complaint's factual allegations as true, Auditor Ball failed to establish an actual controversy with Governor Beshear concerning her investigatory authority under KRS Chapter 43. The circuit court therefore properly dismissed the claims against him.

C. Auditor Ball's Claims Concerning the Cabinet's Responses Were Not Ripe for Judicial Resolution

We turn finally to Auditor Ball's contention that the Cabinet unlawfully interfered with her statutory investigatory authority. Unlike her attempt to compel implementation of SB 151, this claim implicates powers expressly conferred upon her office by the General Assembly. Nevertheless, the existence of those powers does not relieve Auditor Ball of the requirement to present an actual controversy appropriate for judicial resolution.

Ripeness is an essential component of justiciability. *Doe v. Golden & Walters, PLLC*, 173 S.W.3d 260, 270 (Ky. App. 2005). As our Supreme Court has explained, the purpose of the ripeness doctrine is to prevent courts from becoming entangled in abstract disagreements through premature adjudication. *W.B. v. Commonwealth, Cabinet for Health and Family Services*, 388 S.W.3d 108, 114 (Ky. 2012). Courts therefore may not decide questions that are hypothetical, advisory, or dependent upon circumstances that may never arise. *Interactive Gaming Council*, 425 S.W.3d at 112. Although the Declaratory Judgment Act permits judicial resolution of disputes before actual harm occurs, an actual

controversy must nevertheless exist. Such a controversy may arise when a defendant's position would "impair, thwart, obstruct, or defeat plaintiff in his rights." *Revis v. Daugherty*, 287 S.W. 28, 29 (Ky. 1926).

We begin by recognizing the breadth of the Auditor's statutory authority. KRS 43.050 establishes her responsibilities concerning the examination of state agencies and public expenditures. More particularly, KRS 43.080(1) expressly provides that the Auditor "shall have access to and may examine all books, accounts, reports, vouchers, correspondence files, records, money and property of any state agency." The statute further directs that every officer or employee possessing such records or property "shall permit access to and examination of them upon the request of the Auditor." Separately, KRS 43.080(4) authorizes the Auditor to issue process, compel the attendance of witnesses, and require testimony in connection with authorized audits and investigations.

We therefore do not agree with the circuit court's suggestion that Auditor Ball was required to issue subpoenas before seeking judicial relief. The distinction between an investigator's statutory right of access and the power to compel compliance through subpoenas was recognized in *Lassiter v. Landrum*, 610 S.W.3d 242 (Ky. 2020). There, our Supreme Court considered the investigative authority of the Secretary of the Finance and Administration Cabinet under KRS 45.142, which similarly provides both a right of access to governmental records

and the power to issue subpoenas. The Court recognized these as distinct investigative powers. Importantly, *Lassiter* involved a subpoena directed to a former state employee who was no longer subject to the Secretary's statutory right of access to records maintained by governmental budget units.

Here, by contrast, Auditor Ball sought records directly from a state agency. KRS 43.080(1) expressly entitles the Auditor to inspect such records upon request. To require her invariably to issue a subpoena before enforcing that right would render the statute's independent grant of access largely redundant. The subpoena power provides an additional means of obtaining information and testimony; it is not necessarily a prerequisite to judicial enforcement of the Auditor's statutory right of access. Thus, an agency's definitive refusal to provide records to which the Auditor is legally entitled may present an actual controversy even without the issuance of a subpoena.

The difficulty in this case lies elsewhere. Despite the Auditor's suggestion otherwise, the Cabinet did not categorically refuse to participate in Auditor Ball's investigation. It produced substantial information in November 2024 and responded individually to her subsequent requests in April 2025. Some responses represented that the requested documents had already been produced or did not exist. Others directed the Auditor to information available through the Commonwealth's financial system or publicly accessible sources. The Cabinet

also objected to certain requests, including a request for detailed information concerning approximately 5,000 employees, as overly broad and unduly burdensome insomuch at it would require the Cabinet to compile a report instead of simply making already existing information available to Auditor Ball in its current form.

We do not suggest that all of the Cabinet's responses necessarily satisfied its obligations under KRS Chapter 43. The availability of information from another source, or the burden associated with producing it, does not, standing alone, excuse an agency from complying with an otherwise lawful request from the Auditor. Likewise, although the Cabinet's position that it was not obligated to compile information from multiple sources may have some merit, the parties did not sufficiently develop that issue for judicial resolution. Significantly, Auditor Ball's petition for declaratory relief did not identify any particular response by the Cabinet and articulate why that response violated a specific statutory obligation. Rather, the petition characterized the Cabinet's conduct generally as a refusal to cooperate and sought broad relief compelling its cooperation with the investigation as a whole. Thus, to the extent that discrete, justiciable controversies may have existed concerning the adequacy of particular responses, those controversies were neither specifically pleaded nor sufficiently presented to the circuit court for

adjudication. The circuit court was under no obligation to independently identify and formulate claims that Auditor Ball had not asserted.

The Auditor's allegations concerning employee interviews were even less developed. At the time she filed her complaint, Auditor Ball had requested documents and information but had merely advised the Cabinet that her office intended to schedule interviews with Cabinet and DCBS employees. She had not identified particular employees she wished to interview, specified the subjects to be addressed, or proposed the time, place, or manner of any interviews. Consequently, the Cabinet had not refused to make any identified employee available for an interview or otherwise taken a definitive position concerning a particular interview request. Any dispute concerning the Cabinet's obligation to facilitate those interviews remained hypothetical rather than ripe for judicial resolution.

The difficulty with Auditor Ball's complaint is perhaps best illustrated by analogy to civil discovery. A party who believes an opposing party has failed to comply with its discovery obligations may seek relief under CR 37. But a motion asking the circuit court to compel the opposing party to comply generally with CR 26 and the other civil discovery rules, without identifying any particular discovery response or conduct alleged to violate those rules, would present nothing concrete for the court to decide. The same would be true of a motion premised

solely upon an expectation that opposing counsel might resist discovery because counsel had done so in other cases. The discovery rules already impose binding obligations upon litigants. Judicial intervention becomes appropriate when a sufficiently concrete dispute arises concerning compliance with those obligations, not merely because one party anticipates that the other may fail to honor them.

The same distinction applies here. The Cabinet's obligation to comply with the Auditor's lawful exercise of her authority under KRS Chapter 43 exists independently of any judicial declaration. Auditor Ball did not need an order establishing that general proposition. Rather, she needed to identify a concrete dispute concerning whether the Cabinet had failed, or had definitively refused, to fulfill a particular statutory obligation. Yet her complaint did not focus upon any specific response and explain how it violated KRS Chapter 43. Instead, she sought broad declarations that the Cabinet must cooperate with her investigation and provide whatever documents, information, and interviews she requested. Such relief would do little more than restate the Cabinet's existing legal obligations without resolving whether those obligations had been violated in any particular respect.

This distinction does not require the Auditor to establish the merits of her claim as a prerequisite to judicial review. Nor does it mean that declaratory relief is unavailable until an actual statutory violation has occurred. The

Declaratory Judgment Act permits courts to determine rights before harm occurs where the parties have taken sufficiently definite and adverse positions concerning those rights. *Revis*, 287 S.W. at 29. What it does not permit is a declaration of general legal duties untethered to a concrete controversy concerning their application.

Moreover, KRS 418.065 expressly permits a court to decline declaratory relief when a declaration would not resolve the underlying controversy or would not be necessary or proper under the circumstances. As explained in *W.B.*, courts appropriately avoid premature adjudication of disputes that would benefit from further factual development. 388 S.W.3d at 114-15. Here, a declaration concerning the Cabinet's general duty to cooperate would not have resolved whether any particular document request had been lawfully answered or whether the Cabinet was obligated to make particular employees available for interviews.

Nor do the subsequent proceedings concerning the Auditor's subpoenas alter our conclusion. Following dismissal of this action, Auditor Ball issued subpoenas, and the Cabinet initiated a separate action seeking to quash them. Although those proceedings may have presented a concrete dispute concerning the scope of the Auditor's investigatory authority, they did not exist when the circuit court dismissed the present action. The Auditor cannot rely upon

a controversy arising after dismissal to establish retroactively that the circuit court erred in determining that her original claims were not ripe for judicial resolution.

Even if we consider those subsequent developments in evaluating whether a live controversy presently exists, they do not appear to support further relief in this action. According to the parties, the circuit court did not grant the Cabinet's request to quash the subpoenas, and the Auditor subsequently interviewed the witnesses. Thus, it appears that the particular dispute concerning those subpoenas has been resolved. Subsequent events may render an existing controversy moot, and the later subpoena litigation provides no basis on the present record for disturbing the circuit court's dismissal of this action. "The general rule is, and has long been, that 'where, pending an appeal, an event occurs which makes a determination of the question unnecessary or which would render the judgment that might be pronounced ineffectual, the appeal should be dismissed.'" *Morgan v. Getter*, 441 S.W.3d 94, 99 (Ky. 2014) (quoting *Louisville Transit Co. v. Dep't of Motor Transp.*, 286 S.W.2d 536, 538 (Ky. 1956)).

Our conclusion does not diminish the Auditor's statutory authority or insulate the Cabinet's responses from judicial scrutiny. A sufficiently concrete dispute concerning an agency's refusal to provide information or otherwise comply with a lawful investigative demand may warrant judicial intervention. We conclude only that the allegations and relief requested in this action did not present

such a controversy. Accordingly, the circuit court properly dismissed Auditor Ball's claims against the Cabinet.

At oral argument, Auditor Ball suggested that the parties' dispute has evolved and crystallized in the months following the circuit court's dismissal of this action. She therefore urges us to remand the matter to the circuit court so that these disputes may be properly addressed. We agree with Auditor Ball that the General Assembly's subsequent appropriation of funds to implement Senate Bill 151 does not insulate the Cabinet from investigation or render moot any outstanding requests for information. The Auditor's statutory authority to investigate is not contingent upon the availability or absence of funding for the program under examination. Moreover, it may well be that Auditor Ball has legitimate grounds to challenge the adequacy of the Cabinet's responses to particular requests for information. The difficulty, however, is that these more fully developed disputes were not presented to the circuit court in the declaratory judgment action before us. We cannot turn back the hands of time and amend Auditor Ball's petition to encompass controversies that arose or became sufficiently defined only after the circuit court entered its orders. Nor is a remand appropriate merely to afford the parties an opportunity to litigate disputes that were not properly presented in the original action. Our review is confined to the

controversy that was actually pleaded and adjudicated, not the controversy as it may have subsequently evolved or even as it could have been properly pleaded.

Nevertheless, our decision does not foreclose Auditor Ball from seeking judicial relief concerning the Cabinet's present compliance with its statutory obligations. To the extent she believes that the Cabinet continues to withhold information to which her office is lawfully entitled, she remains free to pursue a new action in the circuit court presenting those specific disputes for adjudication.

IV. CONCLUSION

For the foregoing reasons, we conclude that Auditor Ball lacked standing to compel implementation of SB 151 and failed to present a justiciable controversy concerning the exercise of her statutory investigatory authority. Accordingly, we affirm the orders of the Franklin Circuit Court dismissing her complaint.

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