

**EXHIBIT 1**



**COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION 1  
No. 13-CI-605**

**DAVID ADAMS, ET AL**

**PLAINTIFFS**

**v.**

**OPINION AND ORDER**

**COMMONWEALTH OF KENTUCKY, ET AL**

**DEFENDANTS**

**INTRODUCTION**

This action is before the Court on cross-motions for summary judgment under CR 56. The plaintiff David Adams has brought this action for declaratory and injunctive relief under KRS Chapter 418, as a citizen and taxpayer, to challenge the action of Governor Beshear in expanding Medicaid eligibility to allow Kentucky to receive new and additional federal funding under the the federal Affordable Care Act ("ACA"), 42 U.S.C. 18001, et seq. to provide medical care for indigent citizens. The parties are in agreement that the applicable Kentucky statute, KRS 205.520(3) provides that "it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance."

Plaintiff challenges this statute as an unlawful delegation of power from the legislature to the executive branch in violation of the Kentucky Constitution's provisions for separation of powers. §§27 and 28, Ky. Const. Mr. Adams also argues that the Medicaid statute violates the prohibition against "absolute and arbitrary power" set forth in Ky. Const. §2. There are no disputed factual issues involved in the case, and the Court must address the sole legal question presented: whether KRS 205.520 is unconstitutional. For the reasons stated below, the Court **GRANTS** the motion of the Defendants, and **DENIES** the motion of the Plaintiffs.

### DISCUSSION

The question of whether the policy of automatically expanding Medicaid eligibility to take advantage of "all federal funds that may be available for medical assistance" is one that reasonable people may debate. That question is entrusted by our Constitution to the legislature. The Court's role in this case is to determine if a statute that adopts that policy is constitutional. Our constitutional provisions on separation of powers are extremely explicit. As in the companion case of *Adams v. Commonwealth*, Franklin Circuit Court No. 13-CI-423, also decided on this date, the Governor's position that broad delegations of power to the Executive branch are constitutionally permissible is supported by *Legislative Research Commission v. Brown*, 664 S.W.2d 907 (Ky. 1984).

As the Kentucky Supreme Court explained in *Holsclaw v. Stephens*, 507 S.W.2d 462 (Ky. 1974), "when we say the legislature may not delegate its powers, we mean it may not delegate the exercise of its discretion as to what the law shall be, but not confer discretion in the administration of the law itself." *Id.* at 471. As the Court then explained, "a delegation of discretion is not unlawful if sufficient standards controlling the exercise of that discretion are found in the act." *Id.*

The Plaintiff here has argued that this delegation is too broad, and thus abdicates the legislature's responsibility to decide the question of whether Medicaid should be expanded under the federal Affordable Care Act. Plaintiff argues that KRS 205.520 violates the separation of powers provisions of §§27 and 28 of the Kentucky Constitution. The Court cannot accept this argument in light of the very specific guidelines and standards set forth in KRS 205.520. The Governor's discretion to expand Medicaid eligibility is limited to situations where such an expansion brings additional federal

funding for the use and benefit of the people served by the Medicaid program in Kentucky.

The ACA's provisions for state expansion of Medicaid were partially struck down by the U.S. Supreme Court, but only to the limited extent that the federal government could not penalize states for declining to participate in Medicaid expansion by withholding funds. National Federation of Independent Business v. Sebelius, 567 U.S. \_\_ (2012). The ACA's provisions for providing additional federal funding for Medicaid expansion for states that opted to participate were left in tact. The Supreme Court struck down the "stick" but upheld the "carrot," and this case deals solely with the ability of the state to opt in to the expanded funding for Medicaid provided by the ACA.

The statute in question, KRS 205.520, provides that the state is required to maximize the federal assistance available through the Medicaid program. The Plaintiff also challenges this statute on the grounds that such a blanket directive to expand coverage is wholly arbitrary, and thus in violation of §2 of the Kentucky Constitution. This argument cannot be sustained in light of "the long-established principle that a strong presumption exists in favor of a statute's constitutionality." TECO Mechanical Contractors, Inc. v. Commonwealth, 366 S.W.3d 386, 392 (Ky. 2012). While reasonable people may debate whether it is an appropriate policy to direct expansion of Medicaid whenever federal funding is available, the Court cannot say this directive is arbitrary. The goal of the statute, self-evidently, is to provide for expanded health care benefits for indigent citizens, which is clearly a valid state objective. It is up to the legislature to determine the means by which this goal is to be reached. So long as there is a rational relationship between the legitimate state objective (expanded health care for indigents)

and the means adopted (opting in to any federal grants that will fund such health care benefits), the law is constitutional. Here, there can be no question that the statute meets this test. See Children's Psychiatric Hosp. of Northern Kentucky v. Commonwealth, 989 S.W.2d 583, 587 (Ky. 1999).

The legislature maintains the right to alter the public policy decision of the Governor to expand Medicaid eligibility. But, unless the Governor's decision violates a provision of the Kentucky Constitution, this Court must uphold the action of the Governor. Here, the Court finds that there are adequate safeguards on the exercise of the Governor's discretion, both in the Medicaid statute itself (KRS 205.520), and in the explicit finding of the legislation that it is the best public policy for the state to obtain as much federal funding as possible to meet the pressing need of providing medical care to the indigent population. The Kentucky Supreme Court has held that this legislative power may be delegated to the Executive branch of government in these circumstances, so long as there are standards governing the exercise of discretion, and the legislature retains the authority to withdraw the delegation. Legislative Research Commission v. Brown, *supra* at 915. Those conditions are clearly met here.

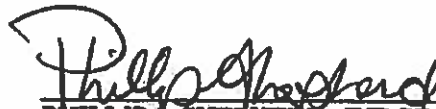
Moreover, the statutory authority for executive action to expand Medicaid eligibility is not limited to KRS 205.520. Specifically, KRS 194A.050(1) provides that the Secretary of Health and Family Services has authority to "promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds." The challenged executive action here falls squarely within this statutory authorization. The General Assembly has the power to enact legislation to override these regulations, or to withdraw the authority

to promulgate the administrative regulations. But this authority requires the enactment of a bill. This Court cannot invalidate the Governor's action by judicial fiat.

**CONCLUSION**

For the reasons stated above, the motion for summary judgment of the Defendants is **GRANTED** and the cross-motion for summary judgment of the Plaintiffs, and their request for injunctive relief, is **DENIED**. This is a final and appealable judgment and there is no just cause for delay in entry of this Order.

Dated: September 3, 2013

  
PHILLIP J. SHEPHERD, JUDGE  
FRANKLIN CIRCUIT COURT  
DIVISION 1

**DISTRIBUTION:**

Mr. David Adams  
121 Nave Place  
Nicholasville, Kentucky 40356

Mark D. Guilfoyle, Esq.  
Patrick R. Hughes, Esq.  
Richard G. Meyer, Esq.  
Dressman Benzinger & LaVelle PSC  
207 Thomas Moore Parkway  
Crestview Hills, Kentucky 42027-2596