

JOHN K. BUSH, Circuit Judge, dissenting. I would accept the Attorney General's tendered petition for rehearing en banc for the reasons stated in my dissent from the denial of the Attorney General's motion to intervene. I also note that, notwithstanding the Panel's rejection of his petition today, the Attorney General may have further recourse in this case should he decide to pursue it. It appears that he has independent authority under Kentucky law to file a petition for certiorari as Secretary Friedlander's counsel, despite Governor Beshear's objections. *Cf. Perdue v. Baker*, 586 S.E.2d 606, 610-16 (Ga. 2003) (holding that the Georgia Attorney General had independent authority under Georgia law to represent the State before the U.S. Supreme Court despite the Governor's objections). As I noted in my earlier dissent, Attorney General Cameron has broad, independent authority under Kentucky state law to defend the Commonwealth's statutes. He must "enter his appearance in all cases, hearings, and proceedings . . . and attend to all litigation and legal business in or out of the state required of him by law, or in which the Commonwealth has an interest." KRS 15.020. The Supreme Court of Kentucky has recognized that it is a "bedrock principle[]" of Kentucky law that the Attorney General possesses "broad powers to initiate and defend actions on behalf of the people of the Commonwealth." *Commw. ex rel. Conway v. Thompson*, 300 S.W.3d 152, 173 (Ky. 2009). "There is no question," Kentucky's highest court has emphasized, "as to the right of the Attorney General to appear and be heard in a suit brought by someone else in which the constitutionality of a statute is involved." *Commw. ex rel. Hancock v. Paxton*, 516 S.W.2d 865, 868 (Ky. 1974). Because Attorney General Cameron appears to have independent authority under Kentucky law to file a petition for certiorari as Secretary Friedlander's counsel, this case need not be over quite yet.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

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Re: Case No. 19-5516, *EMW Women's Surgical Center, et al v. Eric Friedlander, et al*
Originating Case No.: 3:18-cv-00224

Dear Mr. Dunn,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Mr. Andrew Beck
Ms. Meagan Burrows
Mr. Daniel J. Cameron
Mr. Benjamin Michael Flowers
Ms. Heather Lynn Gatnarek
Ms. Michele D. Henry
Ms. Roxann E. Henry
Mr. Carmine Gennaro Iaccarino
Ms. Alexa Kolbi-Molinas
Mr. Matthew Franklin Kuhn
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Ms. Kimberly A. Parker

Mr. Mark Stephen Pitt
Ms. Alexandra Preece
Ms. Elizabeth Watson
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Enclosure