UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION
CASE NO.: 4:26-CV-00435-BJB-HBB
Electronically Filed

STELLAR RENEWABLE POWER, LLC and
HENDERSON COUNTY SOLAR, LLC PLAINTIFFS

VS.

HENDERSON COUNTY, KENTUCKY; et al. DEFENDANTS

DEFENDANTS' MOTION TO DISMISS

Come the Defendants, Henderson County, Kentucky, Henderson County Fiscal Court, Henderson County Codes Department, Henderson County Board of Adjustment, Brad Schneider, Steve Gold, Randy Tasa, and Nick Stallings, by counsel, and pursuant to Fed. R. Civ. P. 12(b)(6), hereby move the Court to dismiss the Complaint filed by Plaintiffs, Stellar Renewable Power, LLC, and Henderson County Solar, LLC, for failure to state a claim upon which relief can be granted. Plaintiffs have failed to exhaust their administrative remedies and, pleading in the alternative, this Court should decline to exercise jurisdiction in this case under the *Burford* abstention doctrine or the *Colorado River* abstention doctrine. *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943); *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976).

In further support of this Motion, the Defendants tender a Memorandum of Law herewith, which is incorporated herein by reference. The Defendants further request that oral arguments on said Motion be scheduled at the convenience of the Court.

/s/ Harold Mac Johns
HAROLD MAC JOHNS
ENGLISH, LUCAS, PRIEST & OWSLEY, LLP
12 Public Square; P.O. Box 746
Elkton, KY 42220
Telephone: (270) 265-2912
Facsimile: (270) 265-2054
Email: mjohns@elpolaw.com
Attorney for the Henderson County Defendants

CERTIFICATE OF SERVICE

This is to certify that on July 14, 2026, a true and accurate copy of the foregoing document was electronically filed via the ECF system, notifying all counsel of record:

Tiffany Harrod
Peckar & Abramson, PC
111 Congress Ave., Suite 1010
Austin, TX 78701
THarrod@pecklaw.com

Andres Barboza
Peckar & Abramson, PC
1717 West Loop S., Suite 1400
Houston, TX 77027
ABarboza@pecklaw.com

Angela D. DiBartolomeo
Manion Stigger, LLP
500 West Jefferson Street, Suite 1610
Louisville, KY 40202
adibartolomeo@manionstigger.com

Eli D. Pierce
Peckar & Abramson, PC
8080 North Central Expressway, Suite 1600, LB65
Dallas, TX 75206
epierce@uplawtx.com

Jean Maron Terry
Manion Stigger, LLP
500 West Jefferson Street, Suite 1610
Louisville, KY 40202
jterry@manionstigger.com
Attorneys for the Plaintiffs

Floyd Keith Brown
Pike Legal Group
1578 Hwy 44, Suite 6; PO Box 369
Shepherdsville, KY 40165-0369
kbrown@pikelegal.com

Tommy Joe (TJ) Fridy
Deitz, Fridy & Freeburger
7106 Main Street; PO Box 468
Sebree, KY 42455
tj@fridylaw.com
Attorneys for Henderson City County Planning Commission

/s/ Harold Mac Johns
HAROLD MAC JOHNS

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DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

Come the Defendants, Henderson County, Kentucky, Henderson County Fiscal Court, Henderson County Codes Department, Henderson County Board of Adjustment, Brad Schneider, Steve Gold, Randy Tasa, and Nick Stallings, by counsel, and tender this Memorandum of Law in Support of their Motion to Dismiss. For the reasons set forth below, Plaintiffs have failed to exhaust their administrative remedies; this Court should abstain from exercising jurisdiction under either the *Burford* or *Colorado River* abstention doctrines; Stellar Renewable Power, LLC, lacks capacity to sue in Kentucky; and the Defendants are entitled to the protection of sovereign and qualified official immunity. Plaintiffs' claims should be dismissed.

FACTUAL BACKGROUND

The facts of this case are largely undisputed. In April of 2021, Community Energy Solar, LLC ("Community Solar"), the predecessor developer of the solar project that is the subject of this litigation, proposed a site plan for its development to the Henderson City-County Planning Commission (the "Planning Commission"). [DN 1, at ¶ 24]. The Planning Commission approved said site plan as a Level 3 solar energy system ("SES"), as recognized by Henderson County's 2019 zoning ordinance. *Id.* Community Solar never developed the project.

Sometime thereafter, Community Solar was acquired by, merged with, or was otherwise replaced by Plaintiffs, Henderson County Solar, LLC, and Stellar Renewable Power, LLC (Plaintiffs being referred to collectively hereinafter as "Stellar"). On July 23, 2023, Henderson County's Solar Ordinance was amended to eliminate the "Level 3 SES" designation for solar energy systems, leaving Level 1 (smaller, ground-mounted systems) and Level 2 (all other systems) as the only two variations of solar energy system recognized by the County. *See* Henderson County Zoning Ordinance, Article XXX, § 30.01-03, https://ecode360.com/43359635. In mid-2024, Stellar again reapproached the Planning Commission for approval of another site plan, which also purported to be a Level 3 SES, despite such a system no longer existing under Henderson County's zoning scheme. [DN 1, at ¶ 27]. On July 2, 2024, the Planning Commission approved the site plan. [DN 2-1, at p. 59].

In or around November of 2024, Henderson County began to consider the imposition of a moratorium on solar development as the governing bodies of the County evaluated public perception towards, and the long-term effects of, large scale solar energy systems. On February 11, 2025, Henderson County, in accordance with all applicable notice and advertising requirements, enacted a moratorium which temporarily prohibited "the filing, processing, review, and acceptance by the Henderson Fiscal Court, the Henderson City-County Planning Commission, the Henderson County Board of Zoning Adjustment, or any other department, subdivision, agency, board, or commission of Henderson County government of any and all applications for rezoning, conditional use permits, or other types of applications for Level 2 solar energy system installations" (the "Moratorium"). *See* Henderson County Zoning

Ordinance, Article XXX, § 30.04, https://ecode360.com/43359635. By its terms, the Moratorium is immediately effective against all applicable developments in Henderson County.

Under the terms of the 2023 Amendments to the Solar Ordinance, Stellar's site plan approvals from the Planning Commission would last only one year, and if no building permit had been issued at the expiration of one year, Steller's site plan would once again be subject to approval from the Planning Commission. *See id.* at § 30.01. As required by the 2023 Solar Ordinance, and after the passage of the Moratorium, Stellar approached the Planning Commission once more for site plan approval in mid-2025. [DN 1, at ¶ 32]. On July 1, 2025, the Planning Commission again granted approval of the site plan, despite Stellar's continued representations that it was intending to construct a now-nonexistent "Level 3 SES," and without discussion of the applicability of the Moratorium. *Id.*

Throughout 2026, the Public Service Commission's Kentucky State Board on Electric Generation and Transmission Siting (the "Siting Board") was investigating a supposed violation by Stellar of one or more of the mitigation measures prescribed by a previous Order of the Siting Board issued December 22, 2021. On May 29, 2026, Stellar submitted its first building permit application to Randy Tasa – which Stellar had never previously submitted – who promptly informed Stellar that it may be subject to the Moratorium. [DN 2-1, at p. 40]. On June 10, 2026, the Siting Board finally approved Stellar's final site plan and found that Stellar had complied with the additional mitigation measures imposed by the Siting Board. [DN 2-1, at p. 25]. Less than two weeks later, on June 22, 2026, Stellar initiated this litigation. On July 14, 2026, the Henderson County Defendants initiated a declaratory action in

Henderson Circuit Court in an effort to resolve the applicability and enforceability of the Moratorium as it applies to Stellar.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal for "failure to state a claim upon which relief can be granted[.]" To survive a motion to dismiss, a complaint must contain sufficient facts which, taken as true, "state a claim to relief that is plausible on its face." *Ashcraft v. Iqbal*, 556 U.S. 662,678 (2009) (quoting *Bell Al. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)) (internal quotation marks omitted). A claim is plausible if the complaint includes sufficient facts for the court to infer that the defendant is responsible for the alleged conduct. *Id*.

The complaint must "contain either direct or inferential allegations respecting all material elements necessary for recovery under a viable legal theory." *D 'Ambrosio v. Marino*, 747 F.3d 378, 383 (6th Cir. 2014) (quoting *Philadelphia Indem. Ins. Co. v. Youth Alive, Inc.*, 732 F.3d 645, 649 (6th Cir. 2013)) (internal quotation marks omitted). Moreover, the complaint is accepted as true, viewed in the light most favorable to the plaintiff, and all reasonable inferences are drawn in the plaintiff's favor. *Gavitt v. Born*, 835 F.3d 623,640 (6th Cir. 2016) (citing *Jelovsekv. Bredesen*, 545 F.3d 431,434 (6th Cir. 2008)). Despite this overwhelmingly generous standard, Stellar's Complaint fails to state a claim against the Henderson County Defendants upon which relief can be granted.

ARGUMENT

I. Stellar has failed to exhaust its administrative and other mandatory remedies.

The Kentucky Revised Statutes evidence a clear intent of the legislature to establish a state policy for appealing decisions related to planning and zoning. KRS 100.257 provides:

> The board of adjustment shall have the power to hear and decide cases where it is alleged by an applicant that there is error in any order, requirement, decision, grant, or refusal made by an administrative official in the enforcement of the zoning regulation.

"Appeals to the board may be taken by any person, or entity claiming to be injuriously affected or aggrieved by an official action, order, requirement, interpretation, grant, refusal, or decision of any zoning enforcement officer." KRS 100.261. This administrative remedy is mandatory under Kentucky law, in that "[o]nly after the board's rendered decision would the act be deemed sufficiently final to qualify for judicial review." *Burns v. Peavler*, 721 S.W.2d 715, 717 (Ky. App. 1986). It is clear on the face of Stellar's complaint that it is aware of Kentucky's mandatory remedy contained in KRS 100.257 and KRS 100.261. [DN 1, at ¶ 50]. It is equally clear, however, that Stellar has failed to exhaust this administrative remedy.

The Complaint provides that the Plaintiffs "are pursuing or have pursued that administrative remedy to preserve their rights." *Id.* Indeed, Stellar *is* pursuing an appeal before the Henderson County Board of Zoning Adjustment (the "Board"), and that appeal was submitted just four days prior to Stellar's Complaint in this Court. Before the Board had an opportunity to meet and confer with respect to Stellar's appeal, it had been named as a Defendant in this litigation. According to KRS 100.263, the Board must provide "written notice to the appellant and the administrative official **at least one (1) week** prior to the hearing" of the administrative appeal, and the Board must render a decision "within sixty (60) days." (emphasis added). Thus, even if the Board had scheduled a hearing on Stellar's appeal *immediately* after such appeal was submitted, Stellar's suit came too quickly for the Board to have an opportunity to comply with its statutory notice obligations. The Board has yet to render a decision as to the alleged "constructive denial" of Stellar's building permit application.[1] [DN 1, at ¶ 50]. It is accordingly clear that Stellar failed to wait for "the board's rendered decision," and this failure was violative of the mandatory appeal prescribed by KRS Chapter 100.

Further, the Kentucky legislature has foreseen that in some instances, it may be necessary for an aggrieved party to appeal a decision of the Board of Adjustment and, resultantly, the legislature has propounded an equally mandatory statute governing those appeals, as well. "Any person or entity claiming to be injured or aggrieved by any final action of the board of adjustment… shall appeal from the action to the Circuit Court of the county in which the property that is the subject of the action of the board of adjustment lies." KRS 100.347(1). In Kentucky, "it has been repeatedly held that an appeal from an administrative decision is a matter of legislative grace and not a right. Thus, the failure to follow the statutory guidelines for such an appeal is fatal." *Triad Developmental/Alta Glyne, Inc. v. Gellhaus*, 150 S.W.3d 43, 47 (Ky. 2004). "[W]hen the right of appeal or the trial court's jurisdiction is codified as a statutory procedure, as it is in KRS 100.347, then **the parties are required to strictly follow those procedures.**" *Id.* (emphasis added).

Here, even if Stellar *had* waited for an adverse decision from the Board of Adjustment before suing it, KRS 100.347 makes clear thar such a suit was required to have been brought in Henderson Circuit Court, not this one. Accordingly, by initiating litigation in this Court, Stellar has attempted to circumvent in two distinct respects the mandatory procedures set forth for challenging planning and zoning decisions under Kentucky law. Stellar has failed to

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[1] For clarity, Randy Tasa and/or the Henderson County Codes Department has not yet rendered any formal denial of Stellar's building permit application, pending a decision of the County as to whether the Moratorium is enforceable. Accordingly, it is unclear what "official action, order, … refusal, or decision" Stellar is attempting to appeal. Defendants deny that there has been a "constructive denial" or that any other appealable action has occurred.

exhaust its necessary and well-delineated administrative remedies and failed to thereafter pursue the statutory appeal process. For that reason, Stellar has failed to state a claim before this Court upon which relief can be granted.

II. This Court should decline to exercise jurisdiction pursuant to the *Burford* abstention doctrine.

Even if this Court were to find that Stellar has somehow exhausted its administrative remedies, and complied with state law appeal procedures, this Court should still decline jurisdiction under the *Burford* abstention doctrine. *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). Under *Burford*, federal courts may abstain from exercising even properly invoked jurisdiction where a state's interests are paramount, and the dispute would "best" be adjudicated in a state forum. *See Caudill v. Eubanks Farms*, 301 F.3d 658 (6th Cir. 2002). *Burford* abstention, with its underlying notions of comity and federalism, recognizes that federal courts may defer to state courts when the state system has an interest in maintaining uniformity of treatment of what is an "essentially local problem," and retaining local control over questions of state law bearing on policy problems of substantial public import. *Id.* Essentially, *Burford* abstention allows a federal court to decline to exercise jurisdiction in cases where state law and state courts have a stronger interest in resolving the disputes, where a uniquely state law scheme governs, where the state court is likely to have more familiarity with the law to be applied, and where the federal interest in resolving the dispute is minimal.

Especially appropriate for the case at bar, the 6th Circuit has maintained that "absent unusual circumstances, a district court should abstain under the *Burford* doctrine from exercising its jurisdiction in cases arising solely out of state or local zoning or land use law,

despite attempts to disguise those issues as federal claims." *MacDonald v. Village of Northport*, 164 F.3d 964, 969 (6th Cir. 1999) (emphasis added). In other words:

> [C]ases involving questions of state and local land use and zoning law are a classic example of situations in which the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of public concern. We can conceive of few matters of public concern more substantial than zoning and land use laws.

Id. (quoting *Pomponio v. Fauquier County Board of Supervisors*, 21 F.3d 1319, 1327 (4th Cir. 1994) (internal quotations omitted). Here, each of Stellar's claims, including those purporting to arise under federal law, must be decided through the lens of Kentucky state law and policy; that is, all Stellar's claims are dependent upon the validity and enforceability of the Moratorium as against Stellar.

Stellar asserts in Counts IV and V of its Complaint that it has been denied procedural and substantive due process because it possesses "constitutionally protected property interest in the Project approvals" and because the conduct of the Defendants is allegedly "arbitrary, capricious, irrational, and unrelated to any legitimate [] objective" [DN 1, at ¶ 90, 98-101]. However, if the Moratorium was validly enacted under Kentucky law, and if it is decided under Kentucky law that Stellar is subject to said Moratorium – that is, that Stellar has failed to establish a preexisting nonconforming use – Stellar's federal claims evaporate. It is logically impossible for Stellar to have a protected property interest in the Project approvals *and* to be subject to the very Moratorium that prohibits those approvals from being granted. It is likewise impossible that any County officials acted arbitrarily or capriciously if they lawfully enforced a Moratorium directly applicable to the Project; these scenarios are mutually exclusive.

Stellar further asserts that its equal protection rights have been violated because it has been "intentionally treated differently from similarly situated applicants" because of "political pressure, fear of litigation, hostility to the Project, or disagreement with solar development…" [DN 1, at ¶ 106, 110]. On the contrary, if the Moratorium is enforceable against Stellar, then the Defendants have taken no action other than mere compliance with their obligations under the law.[2]

As its final federal claim, Stellar alleges in Count VII that Henderson County's enforcement of the Moratorium has "deprived Plaintiffs of economically beneficial use of the Project site" to work as an unconstitutional taking. [DN 1, at ¶ 114-15]. While the Defendants deny that Stellar holds any vested property rights capable of being unlawfully "taken," it is beyond dispute that if the Moratorium was validly enforceable (in essence, that Stellar had not established a nonconforming use prior to the effective date of the Moratorium), there has been no actionable taking for the purposes of the United States Constitution.

Like the "federal" claims at issue in *MacDonald*, "all of the [Plaintiffs'] claims, including the takings claim under the United States Constitution, address the **<u>land use question</u>**…" *MacDonald*, 164 F.3d at 969 (emphasis added). Because Stellar's federal claims are "really state law claims because it is either the zoning or land use decisions, decisional processes, or laws that are the basis for the plaintiffs' federal claims," the *Burford* abstention doctrine is directly applicable, and this Court should decline to exercise jurisdiction. *Id.*

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[2] To clarify the County Defendants' obligations, KRS 100.271, the Kentucky statute granting authority to an administrative official to issue building permits, clarifies that such an official does "not have the power to permit any construction, or to permit any use… which does not conform to **<u>the literal terms of the zoning regulation.</u>**" (emphasis added).

III. In the alternative, this Court should decline to exercise jurisdiction over this litigation pursuant to the *Colorado River* abstention doctrine.

If this Court should find that neither Plaintiffs' failure to exhaust their administrative remedies nor the *Burford* abstention doctrine should be applied to effectuate a dismissal of Stellar's claims, this Court should still abstain from exercising jurisdiction over these claims under the *Colorado River* abstention doctrine, and allow the state court case to proceed uninhibited. "The *Colorado River* abstention doctrine is premised on 'considerations of judicial economy and federal-state comity.'" *Healthcare Co. v. Upward Mobility, Inc.*, 784 Fed. Appx. 390, 393 (6th Cir. 2019) (quoting *Romine v. Compuserve Corp.*, 160 F.3d 337, 339 (6th Cir. 1998)). This doctrine "recognizes that although federal courts have a 'virtually unflagging obligation… to exercise the jurisdiction given them, considerations of judicial economy and federal-state comity may justify abstention in situations involving the contemporaneous exercise of jurisdiction by state and federal courts.'" *Id.* (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). The doctrine necessitates the analysis of two factors: (i) "whether the state and federal proceedings are parallel" and, if so, the Court must (ii) "weigh the eight *Colorado River* factors to determine whether abstention is merited." *Id.*

A. Proceedings in the state and federal cases are parallel.

The 6th Circuit has maintained that, for the purposes of *Colorado River* abstention, "exact parallelism is not required; [i]t is enough if the two proceedings are substantially similar." *Romine*, 160 F.3d at 340. Here, Stellar filed both its Complaint [DN 1] and its Motion for Temporary Restraining Order [DN 2] on June 22, 2026, each of which request that this Court "compel[] Henderson County, the Codes Department, and the Fiscal Court to issue, or cause issuance of, the building permit." [DN 1, at ¶ 77]; *see* [DN 2, at p. 3]. This, of course, is Stellar's ultimate goal. However, the building permit Stellar seeks can only be issued following a determination that Stellar is not bound by the Moratorium. As set forth above, the answer to this question settles all Stellar's claims. Despite its attempts to convince this Court of the existence of a concrete "case or controversy," especially seeing as Stellar's building permit application has not to this point been denied, what Stellar is *actually* asking of this Court is to render an advisory opinion as to the enforceability of the Moratorium, which this Court is not authorized to do. *See George Fischer Foundry Sys. v. Adolph H. Hottinger Maschinenbau GmbH*, 55 F.3d 1206 (6th Cir. 1995) (quoting *Bigelow v. Michigan Dep't of Natural Resources*, 970 F.2d 154, 157 (6th Cir. 1992)) ("The jurisdiction of federal courts is limited by Article III of the United States Constitution to consideration of actual cases and controversies, therefore federal courts are not permitted to render advisory opinions.").[3] State courts are not as strictly restrained by the Constitution's Article III – and the question of the Moratorium's enforceability is precisely the issue that the Defendants are seeking to have answered in the Henderson Circuit Court. *See Fialka-Feldman v. Oakland Univ. Bd. of Trs.*, 639 F.3d 711 (6th Cir. 2011). Resultantly, Henderson County's declaratory judgment action in Henderson Circuit Court is, in fact, parallel to the case at bar, and this parallelism works in favor of this Court's abstention under *Colorado River*.

[3] The *George Fischer* Court proceeded to hold that because a Swiss arbitration panel overseeing antitrust issues in that case had not yet decided what law it would apply, the case was not ripe for review, and that what Plaintiff actually sought was an advisory opinion from a federal court. In a similar vein, Stellar's building permit has not yet been denied, and the Board of Adjustment has not rendered an adverse decision on Stellar's administrative appeal. This case is equally unripe for review, and what Stellar truly seeks is an impermissible advisory opinion on the enforceability of local legislation.

B. The Eight-Factor Test.

Under the 6th Circuit's interpretation of the *Colorado River* abstention doctrine, the eight factors to be considered are "(1) whether the state court has assumed jurisdiction over any res or property; (2) whether the federal forum is less convenient to the parties; (3) avoidance of piecemeal litigation… (4) the order in which jurisdiction was obtained… (5) whether the source of governing law is state or federal; (6) the adequacy of the state court action to protect the federal plaintiff's rights; (7) the relative progress of the state and federal proceedings; and (8) the presence or absence of concurrent jurisdiction." *Upward Mobility*, 784 Fed. Appx. at 395. Importantly, "[t]hese factors do not constitute a mechanical checklist… Rather, courts should carefully balance… the important factors as they apply in a given case…" *Id.* (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983) (internal quotations omitted). Here, although Stellar's federal action was filed roughly three weeks prior to Henderson County's state action, and despite the fact that both the state and federal cases are merely in their infancy, the bulk of the *Colorado River* factors and, indeed, the most pertinent of them, weigh heavily towards abstention.

i. Avoidance of Piecemeal Litigation.

Like in *Romine*, the federal and state cases here at issue "depend on resolution of the exact same issue[.]" 160 F.3d at 341. As set forth above, each of Stellar's claims is dependent upon the enforceability of the Moratorium, which is exactly what the Henderson County Defendants' state court action seeks to clarify. This reality presents a substantial risk of competing or conflicting outcomes if these claims were allowed to proceed through both the state and federal venues. Accordingly, "[t]he threat of piecemeal results is… especially high[,]" and this factor, which was "paramount in *Colorado River* itself," weighs heavily in favor of abstention. *Id.*

ii. Source of Governing Law.

Further, and likewise of substantial importance, the "source of governing law" in the federal and state claims involved in this matter is nearly exclusively the law of the Commonwealth of Kentucky. As discussed in much greater detail hereinabove, all Stellar's federal claims are dependent upon an analysis of state law. Particularly, the question of whether the Moratorium is enforceable against Stellar depends upon a determination under Kentucky law whether Stellar has met the requisite requirements to establish its Project as a preexisting, nonconforming use – otherwise, it is prohibited by the plain language of the Moratorium from moving forward with the Project. This question is best left to the courts of Henderson County to decide, as supported by KRS 100.347, which further favors this Court's abstention.

iii. Remaining Factors.

While not quite as pertinent as avoiding piecemeal litigation and the source of governing law, the remaining *Colorado River* factors help to solidify the necessity of abstention. This litigation does not concern "property," per se, but it does raise an important question as to the *use* of property, and as has already been established, "questions of state and local land use and zoning law are a classic example of situations in which the exercise of federal review… would be disruptive of state efforts to establish a coherent policy with respect to a matter of public concern[.]" *MacDonald*, 164 F.3d at 969.

Additionally, it is beyond dispute that Henderson County is the more convenient forum for litigation of these claims. While the physical proximity of Henderson and Owensboro is not a massive barrier to this Court's exercise of jurisdiction, all the Defendants in this litigation are located in Henderson, and many of them work in a building directly across the street from where the state court action is to be heard. Thus, the federal forum is indeed less convenient for the purposes of this litigation.

Finally, it is clear the Henderson Circuit Court is capable of exercising jurisdiction over the claims here at issue. Even if Stellar's federal claims were not dependent upon the same question of the Moratorium's validity, state circuit courts are courts of general jurisdiction, and they are presumed competent to – and regularly do – handle due process, equal protection, takings clause, and innumerable other constitutional claims closely aligned with those asserted by Stellar. *See* KRS 23A.010. The case at bar presents no claim over which this Court is vested with exclusive jurisdiction. It is clear, therefore, that the Henderson Circuit Court is equally capable of crafting appropriate relief among the parties.

For each of the foregoing reasons, most of the *Colorado River* factors weigh heavily in favor of abstention, and this Court should stay or dismiss these federal proceedings to allow the Henderson Circuit Court action to proceed unimpeded.

IV. Stellar Renewable Power, LLC lacks standing to sue in the Courts of the Commonwealth of Kentucky.

Stellar maintains in its Complaint that it is a "limited liability company organized and existing under the laws of the State of Delaware and having its principal place of business located at 14643 Dallas Parkway, Suite 250, Dallas, TX 75254." [DN 1, at ¶ 1]. After a diligent search by the undersigned of the records of the Kentucky Secretary of State, however, it appears that Stellar is not registered to transact business in the Commonwealth of Kentucky, which is fatal to its claims.

As a limited liability company, Stellar falls squarely under Federal Rule of Civil Procedure 17(b)(3), which provides that Stellar's capacity to sue is determined "by the law of the state where the court is located…." Thus, Stellar's capacity to sue is restricted by Kentucky law, which clearly provides that "[a] foreign entity transacting business in this Commonwealth without a certificate of authority may not maintain a proceeding in any court in this Commonwealth until it obtains a certificate of authority." KRS 14A.9-020. This statute has been interpreted on multiple occasions by this Court's sister judiciaries in the Eastern District of Kentucky to apply as a bar to a limited liability company's ability to sue within the confines of the Commonwealth. *See Oak 44 Prop. Mgmt., LLC v. Maddix*, No. 5:24-CV-63-KKC, 2025 U.S. Dist. LEXIS 10957, at *7 (E.D. Ky. Jan. 22, 2025); *see also MMCPM Logistics, LLC v. Clarity Retail, LLC*, No. 2:21-CV-15 (WOB-CJS), 2022 U.S. Dist. LEXIS 65767, at *4 (E.D. Ky. Apr. 8, 2022). While some courts have maintained that this sort of "door-closing" statute does not preclude a non-registered entity from availing itself of a federal court's jurisdiction where federal question jurisdiction is property asserted,[4] and as is well-established herein, Stellar's federal claims are merely state law claims disguised as issues of federal law. Thus, Kentucky's "door-closing" statute, KRS 14A.9-020, necessarily applies to the case at bar to prohibit Stellar, which has failed to register to transact business in this state, from asserting claims in this Court.

V. The County Defendants are entitled to sovereign immunity.

Henderson County, Kentucky, the Henderson County Fiscal Court, the Henderson County Codes Department, the Henderson County Board of Adjustment, and each of the

[4] *See Beamon v. Brown*, 125 F.3d 965 (6th Cir. 1997).

individual Henderson County Defendants are entitled to the protection of sovereign immunity in their official capacities. "Sovereign immunity is an inherent attribute of a sovereign state that precludes the maintaining of any suit against the state unless the state has given its consent or otherwise waived its immunity." *Greene v. Commonwealth*, 349 S.W.3d 892, 898 (Ky. 2011). "A county is a political subdivision of the Commonwealth… and as such is an arm of the state government. It, too, is clothed with the same sovereign immunity…" *Jewish Hospital Healthcare Services, Inc. v. Louisville/Jefferson County Metro Government*, 270 S.W.3d 904, 907 (Ky. App. 2008) (internal quotations omitted). "The absolute immunity afforded to the state also extends to public officials sued in their representative (official) capacities, when the state is the real party against which relief is sought." *Yanero v. Davis*, 65 S.W.3d 510, 518 (Ky. 2001). The rationale for this flavor of immunity "is not to protect those individuals from liability for their own unjustifiable conduct, but to protect their offices against the deterrent effect of a threat of suit alleging improper motives where **there has been no more than a mistake or a disagreement on the part of the complaining party with the decision made**." *Id.* (emphasis added).

Here, Stellar's claims against the County Defendants assume the unenforceability of the 2023 Ordinance and the Moratorium. *See* [DN 1, at ¶ 76 ("Plaintiffs have a clear legal right to issuance of the permit…"]. It is under this assumption Stellar asserts that the Codes Administrator is liable for non-issuance of a building permit, that the County Engineer is liable for not pointing out material defects in Stellar's construction plans, that the Fiscal Court is liable for not ensuring that these tasks were completed, and so on. [DN 1, at ¶ 11, 12]. Once again, as discussed ad nauseam herein, the entirety of these claims is dependent upon the enforceability of the 2023 Ordinance and Moratorium and, further, there has not to this point been any "official" action or decision made as to Stellar's building permit, which raises substantial uncertainty as to precisely what Stellar alleges the County Defendants have done wrong. Nonetheless, to the extent that there has been any sort of adverse official action taken against Stellar, sovereign immunity protects the County Defendants against liability arising from "a disagreement on the part of the complaining party with the decision made." *Yanero*, 65 S.W.3d at 518. Accordingly, Defendants are entitled to "protection against the costs of trial and the burdens of broad-reaching discovery that are particularly disruptive of effective government." *Lexington-Fayette Urban County Government v. Smolcic*, 142 S.W.3d 128, 135 (Ky. 2004).

VI. Qualified official immunity bars Stellar's claims against the County Defendants in their individual capacities.

Stellar asserts a number of tort claims against the Henderson County Attorney, Codes Administrator, Engineer, and Judge Executive in their individual capacities. *See generally* [DN 1]. However, "when sued in their individual capacities, public officers and employees enjoy only qualified official immunity, which affords protection from damages liability for good faith judgment calls made in a legally uncertain environment." *Yanero*, 65 S.W.3d at 522. "Qualified official immunity applies to the negligent performance by a public officer or employee of (1) discretionary acts or functions, *i.e.*, those involving the exercise of discretion and judgment, or personal deliberation, decision, and judgment… (2) in good faith; and (3) within the scope of the employee's authority." *Id.* To be clear, the individual County Defendants deny having negligently performed any duties in connection with the 2023 Ordinance, the Moratorium, or in any other way related to Stellar's claims. Irrespective of such denial and in consideration of these elements, however, Stellar's claims against the individual County Defendants are barred by this doctrine.

The essence of Stellar's claims against the individual defendants is that the Henderson County Codes Administrator, Randy Tasa, failed to perform his "ministerial" duty of issuing a building permit, and that the remaining individual defendants are liable for "advis[ing], direct[ing], approv[ing], or ratif[ying]" this conduct. *See generally* [DN 1]; [DN 1, at ¶ 93-94]. According to Stellar, Tasa had a ministerial duty pursuant to Section 6.02(C)(3) of the Henderson County Zoning Ordinance to issue a building permit "if the proposed construction or alteration conforms with all applicable provisions and **all other applicable ordinances, regulations, and codes**…" [DN 2, at p. 9]; *see* Henderson County Zoning Ordinance, Article VI, § 6.02(C)(3), https://ecode360.com/27528993#27528995 (emphasis added). Indeed, the very ordinance quoted by Stellar demands that Tasa refrain from issuing a building permit unless and until it is decided that Stellar has complied with all applicable ordinances set forth under Henderson County's zoning scheme. And, as previously stated, KRS 100.271 delineates Tasa's obligation to "issue building permits… in accordance with the literal terms of the regulation," but Tasa may not "permit any construction… which does not conform to the literal terms of the zoning regulation." Here, Stellar's proposed "Level 3 SES" is not recognized in Henderson County under the 2023 Ordinance, and the Moratorium prohibits Tasa from issuing permits for solar developments. Thus, even if the issuance of a building permit *is* a ministerial act, the interpretation of ordinances is not,[5] and Tasa is prohibited by the "literal terms of the

[5] *See Turner v. Nelson*, 342 S.W.3d 866, 874 (Ky. 2011) ("Discretionary acts are, generally speaking, those involving the exercise of discretion and judgment, or personal deliberation, decision, and judgment. It may also be added that discretionary acts or functions are those that necessarily require the exercise of reason in the adaptation of means to an end, and discretion in determining how or whether the act shall be done or the course pursued." (quoting *Yanero*, 65 S.W.3d at 522) (internal citations omitted)).

regulation" from issuing the permit Stellar seeks. The remaining individual defendants accordingly have not unlawfully "advised, directed, approved, or ratified" Tasa's conduct – rather, any act that they have taken, including any advice rendered by County Attorney Gold, has been limited to a discretionary interpretation of the 2023 Ordinance and Moratorium language in an effort to provide legal advice to County government and its officials and employees.

For these reasons, Stellar's claims against the County Defendants in their individual capacities, which all arise out of the same interpretation of the same local legislation, are barred by the doctrine of qualified official immunity, and should accordingly be dismissed.

CONCLUSION

As set forth herein, Stellar has failed to exhaust its administrative and other mandatory remedies and, as a result, its Complaint has failed to state a claim on which relief can be granted. Alternatively, because the claims asserted in this litigation are entirely dependent upon questions of state law and policy, and because the pending declaratory judgment action in Henderson Circuit Court is the more appropriate means of addressing the issues presented, this Court should abstain from exercising jurisdiction pursuant to either of the *Burford* or *Colorado River* abstention doctrines. Finally, Plaintiffs' claims and act of them are barred by sovereign immunity, qualified official immunity, and/or Stellar's lack of capacity to sue in the absence of a Certificate of Authority.

The Henderson County Defendants respectfully request that their Motion to Dismiss be **GRANTED** and that Plaintiffs' Complaint asserted against them be **DISMISSED**.

/s/ Harold Mac Johns
HAROLD MAC JOHNS
ENGLISH, LUCAS, PRIEST & OWSLEY, LLP
12 Public Square; P.O. Box 746
Elkton, KY 42220
Telephone: (270) 265-2912
Facsimile: (270) 265-2054
Email: mjohns@elpolaw.com
Attorney for the Henderson County Defendants

CERTIFICATE OF SERVICE

This is to certify that on July 14, 2026, a true and accurate copy of the foregoing document was electronically filed via the ECF system, notifying all counsel of record:

Tiffany Harrod
Peckar & Abramson, PC
111 Congress Ave., Suite 1010
Austin, TX 78701
THarrod@pecklaw.com

Andres Barboza
Peckar & Abramson, PC
1717 West Loop S., Suite 1400
Houston, TX 77027
ABarboza@pecklaw.com

Angela D. DiBartolomeo
Manion Stigger, LLP
500 West Jefferson Street, Suite 1610
Louisville, KY 40202
adibartolomeo@manionstigger.com

Eli D. Pierce
Peckar & Abramson, PC
8080 North Central Expressway, Suite 1600, LB65
Dallas, TX 75206
epierce@uplawtx.com

Jean Maron Terry
Manion Stigger, LLP
500 West Jefferson Street, Suite 1610
Louisville, KY 40202
jterry@manionstigger.com
Attorneys for the Plaintiffs

Floyd Keith Brown
Pike Legal Group
1578 Hwy 44, Suite 6; PO Box 369
Shepherdsville, KY 40165-0369
kbrown@pikelegal.com

Tommy Joe (TJ) Fridy
Deitz, Fridy & Freeburger
7106 Main Street; PO Box 468
Sebree, KY 42455
tj@fridylaw.com
Attorneys for Henderson City County Planning Commission

/s/ Harold Mac Johns
HAROLD MAC JOHNS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION
CASE NO.: 4:26-CV-00435-BJB-HBB
Electronically Filed

STELLAR RENEWABLE POWER, LLC and
HENDERSON COUNTY SOLAR, LLC PLAINTIFFS

VS.

HENDERSON COUNTY, KENTUCKY; et al. DEFENDANTS

ORDER GRANTING MOTION TO DISMISS PLAINTIFFS' COMPLAINT

This matter is before the Court on motion of the Defendants, Henderson County, Kentucky; Henderson County Fiscal Court; Henderson County Codes Department; Henderson County Board of Adjustment; Brad Schneider; Steve Gold; Randy Tasa; and Nick Stallings, to dismiss the Complaint of Plaintiffs, Stellar Renewable Power, LLC, and Henderson County Solar, LLC. The Court being sufficiently advised, HEREBY ORDERS AND ADJUDGES: Defendants' Motion to Dismiss is **GRANTED.**

SO ORDERED this ___ day of ________________, 2026.