

COMMONWEALTH OF KENTUCKY
JEFFERSON COUNTY CIRCUIT COURT
DIVISION _____
CASE NO. _____

FILED ELECTRONICALLY

BRYAN BARBER,

PLAINTIFF

v.

**ANDREW G. BESHEAR, in his official capacity as
Governor of the Commonwealth of Kentucky,**

DEFENDANT

**SERVE:
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, KY 40601-3449**

CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Bryan Barber (“Plaintiff” or “Mr. Barber”) brings this class action on behalf of himself and other similarly situated individuals with out-of-state felony convictions equivalent to the felony offenses under Kentucky law that are authorized for automatic restoration of the rights to vote and hold public office, pursuant to Executive Order 2019-003 “Relating to the Restoration of Civil Rights for Convicted Felons” (Dec. 12, 2019) (“EO 2019-003”), attached as Exhibit A.¹ For his Complaint for Declaratory and Injunctive Relief, Plaintiff, who is also the Proposed Class Representative, seeks declaratory and injunctive relief pursuant to KRS §§ 418.040 and 418.045, and alleges the following:

¹ “Automatic restoration” is the term used in EO 2019-003 for non-discretionary restoration. Additionally, EO 2019-003 defines “civil rights” as “expressly limited to the right to vote and the right to hold public office denied by judgment of conviction and any prior conviction.” Exhibit A, at 2.

INTRODUCTION

1. This case concerns Defendant Governor Andrew G. Beshear's ("the Governor" or "Defendant") EO 2019-003, which grants automatic, non-discretionary civil rights restoration for Kentuckians convicted of certain Kentucky felony offenses. *See* Exhibit A, EO 2019-003. While EO 2019-003 has granted automatic rights restoration to over 100,000 Kentuckians in recent years, it has run afoul of the Kentucky Constitution's equal protection principles by excluding all Kentuckians with out-of-state felony convictions from automatic rights restoration.

2. Kentucky is the only state in the country that categorically denies automatic civil rights restoration to individuals convicted of felonies in other jurisdictions.²

3. Plaintiff and members of the Proposed Class he represents are Kentuckians with out-of-state felony convictions whose rights to vote and run for public office have been withdrawn under Kentucky law. If Mr. Barber and those similarly situated had been convicted of equivalent offenses under Kentucky law, they would be eligible for automatic restoration under EO 2019-003. Plaintiff's and the Proposed Class's out-of-state convictions are not equivalent to any of the offenses that are expressly excluded from automatic restoration under EO 2019-003.

4. There is no rational basis for treating Kentuckians differently based on the location of their conviction. Defendant's exclusion of Plaintiff and the Proposed Class from the automatic rights restoration scheme Defendant established is wholly arbitrary and cannot

² In Iowa, Executive Order 7 restores the rights of citizenship to any person convicted of a felony, except for a violation of chapter 707 of the Iowa Code ("Homicide and Related Crimes"). *See* Exhibit B, Iowa Executive Order Number 7, at 2 (Aug. 5, 2020). It does not discriminate against Iowans with out-of-state convictions and expressly "appl[ies] to convictions of an infamous crime in any jurisdiction, including felony convictions in federal court or the court of another state, to the extent that the conviction has resulted in the forfeiture of citizenship rights in Iowa." *Id.*; *see also* Iowa Off. of the Governor, *Voting Rights Restoration*, <https://governor.iowa.gov/services/voting-rights-restoration> (last accessed Jan. 5, 2026).

withstand scrutiny under the equal protection guarantees of Sections 1, 2, and 3 of the Kentucky Constitution.

5. Therefore, Plaintiff and Proposed Class Members seek declaratory and injunctive relief for himself and all other similarly situated Kentuckians who are injured by Defendant's unequal treatment.

6. Plaintiff and Proposed Class Members respectfully request that this Court declare that Defendant's unequal treatment of Kentuckians with out-of-state convictions is unconstitutional and issue an injunction requiring that the automatic restoration scheme set forth in EO 2019-003 apply equally to Kentuckians regardless of the jurisdiction of their conviction.

PARTIES

Plaintiff

7. Plaintiff Bryan Barber is a United States citizen, 35 years old, and a resident of Louisville, Kentucky. He was convicted of three felonies in the State of Indiana and subsequently lost his right to vote under Kentucky law.

8. Between 2019 and 2021, Mr. Barber was convicted of three Level 6 felonies in Indiana: domestic battery committed in the presence of a child less than 16 years old under Ind. Code § 35-42-2-1.3(b)(2), unlawful possession of a syringe under Ind. Code § 16-42-19-18(a), and possession of methamphetamine under Ind. Code § 35-48-4-6.1(a).

9. Mr. Barber has satisfied the sentence of incarceration and/or the terms of supervised release for his felony convictions.

10. If Mr. Barber's felony convictions had been brought under Kentucky law, he would qualify for automatic, non-discretionary restoration of his rights to vote and run for public office.

11. But for Mr. Barber’s disenfranchisement due to his felony convictions in Indiana, he would be eligible to vote and run for public office in Kentucky today.

Defendant

12. Defendant Andrew G. Beshear is the Governor of the Commonwealth of Kentucky. The Governor may “grant reprieves and pardons,” including restoration of civil rights. Ky. Const. §§ 77, 145, 150; *see also Anderson v. Commonwealth*, 107 S.W.3d 193, 195–96 (Ky. 2003) (holding that “partial pardon” granted pursuant to Sections 145 and 150 of Kentucky Constitution “only restored [individual’s] right to vote and to hold office and did not restore his ‘right’ to be a juror”); *Cheatham v. Commonwealth*, 131 S.W.3d 349, 351 (Ky. Ct. App. 2004) (“partial pardon” restoring rights to vote and hold public office did not encompass restoration of right to possess firearms). He is sued in his official capacity.

JURISDICTION AND VENUE

13. This is an actual and justiciable controversy with respect to the enforcement of the state constitution in the Commonwealth of Kentucky, and this Court has subject matter jurisdiction over this action pursuant to KRS §§ 23A.010, 418.040, 418.045, and Kentucky Rule of Civil Procedure 65.01.

14. Plaintiff resides in the Commonwealth of Kentucky, and Defendant’s office exists in Franklin County, Kentucky.

15. Venue is proper in this Court pursuant to KRS § 452.405(2).

FACTS

Kentucky’s Civil Rights Restoration Process

16. Section 145 of the Kentucky Constitution sets forth the rules for voting eligibility and includes a felony disenfranchisement provision providing that the following persons shall not have the right to vote:

1. Persons convicted in any court of competent jurisdiction of treason, or felony, or bribery in an election, or of such high misdemeanor as the General Assembly may declare shall operate as an exclusion from the right of suffrage, but persons hereby excluded may be restored to their civil rights by executive pardon.
2. Persons who, at the time of the election, are in confinement under the judgment of a court for some penal offense.

Ky. Const. § 145.

17. This disenfranchisement provision is incorporated within the Kentucky election code's voting eligibility provision. KRS § 116.025(1). People with felony convictions may not vote prior to the restoration of their civil rights pursuant to Section 145 of the Constitution. *Id.* If a person with a felony conviction registers to vote without having had their rights restored, they are guilty of a Class D felony, punishable by up to five years in prison.³ *Id.* §§ 119.025, 532.020(1)(a).

18. Similarly, Kentuckians who are convicted of a felony are stripped of their right to hold public office unless that right is restored by the Governor. Ky. Const. § 150.

19. People who have been convicted of felonies are authorized to apply for restoration of their civil rights, including the right to vote, upon final discharge or expiration of their sentence. KRS § 196.045(2)(a). Applicants must not be under felony indictment, have any pending warrants, charges, or indictments, or owe any outstanding restitution as ordered by the Court or the Parole Board. *Id.* §§ 196.045(2)(b), (c).

³ As part of the voter registration application, the registrant must attest to the following: "I am not a convicted felon, or if I have been convicted of a felony, my right to vote has been restored following an expungement, Executive Pardon, or Executive Order." *See* Exhibit C, Commonwealth of Kentucky Voter Registration Application, at 1.

20. In December 2019, Governor Beshear issued EO 2019-003, which granted automatic rights restoration for individuals convicted of felonies, with the exclusion of certain Kentucky felonies, felony convictions in “jurisdictions other than Kentucky,” and federal offenses. Exhibit A, at 2–3. Under the Executive Order, Kentuckians convicted of most Kentucky felonies—except those specifically excluded—are currently entitled to automatic restoration of their civil rights upon completing the terms of their sentence including any probation, parole, or supervised release. *Id.* at 2.

21. EO 2019-003 restores the rights to vote and hold public office but does not restore any other civil rights, such as the right to possess a firearm. *Id.*

22. EO 2019-003 excludes an express and limited list of felonies from automatic restoration: (a) treason, (b) bribery in an election,⁴ (c) a violent offense defined in KRS § 439.3401, (d) any offense under KRS Chapter 507 or KRS Chapter 507A, (e) any assault as defined in KRS § 508.020 or KRS § 508.040, (f) any offense under KRS § 508.170, or (g) any offense under KRS § 529.100 (collectively, “the Excluded Kentucky Felonies”). *Id.*

23. A Kentuckian who is subject to automatic restoration under EO 2019-003 must affirm as part of the voter registration application that their “right to vote has been restored following an expungement, Executive Pardon, or Executive Order.” *See* Exhibit C, at 1.

24. EO 2019-003’s automatic civil rights restoration scheme is unavailable “to any person who was convicted under federal law or the laws of a jurisdiction other than Kentucky.” *See* Exhibit A, at 3.

25. As Kentuckians with out-of-state convictions do not qualify for automatic, nondiscretionary rights restoration, they must instead individually petition the Governor under

⁴ The exclusion of treason and bribery from automatic restoration is done without any statutory citation. Presumably these exclusions therefore apply regardless of the U.S. jurisdiction of conviction.

the discretionary rights restoration system—a system described in EO 2019-003 as “unnecessarily time consuming.” *Id.* at 1.

26. Kentuckians with out-of-state felony convictions must petition the Governor for individual rights restoration with a signed application submitted to the Department of Corrections, which conducts the initial review.⁵ Applicants must provide their name, address, phone number, date of birth, and SSN; the counties of their felony convictions; state whether they are currently under felony supervision; and answer whether they have ever been convicted of a federal offense or a “crime in another state.”⁶ For each felony conviction, applicants must submit a copy of the conviction and judgment of final sentence, verification of final discharge or expiration, and, if applicable, verification that restitution has been paid in full.⁷ Applicants must also answer a series of questions regarding whether they have ever been convicted of certain types of crimes and must state whether they have any pending charges, outstanding warrants, indictments, or unpaid restitution.⁸ Upon receiving the application, the Governor has unfettered discretion to decide whether to restore the applicant based on a purely subjective assessment of the applicant’s “worth[iness].” *See* Pls.-Appellants’ Pet. for Reh’g and Reh’g en Banc, Ex. B, Oral Arg. Tr. 22:17–24:03. *Lostutter v. Kentucky*, No. 22-5703 (6th Cir. June 22, 2023), ECF No. 29 (“Under Kentucky law, that is left to each governor who holds the office to ultimately subjectively determine what – who they think is worthy . . .”).

Plaintiff’s Restoration Status

⁵ Restoration applications that meet the threshold eligibility criteria are referred by the Kentucky Department of Corrections’ Division of Probation and Parole to the Governor for a decision. Kentucky law authorizes the Governor to request that the Parole Board investigate and generate a report about any civil rights restoration application under KRS § 439.450. *See* Exhibit D, Ky. Dep’t of Corr., Div. of Prob. and Parole, Application for Restoration of Civil Rights, at 2 (Rev. Mar. 2020).

⁶ *Id.* at 1.

⁷ *Id.*

⁸ *Id.*

27. Mr. Barber has not had his right to vote or right to run for public office in Kentucky restored and, thus, remains disqualified from voting or holding public office in Kentucky.

28. Plaintiff was disenfranchised under Kentucky law, because of three felony convictions he received in Indiana: domestic battery committed in the presence of a child less than 16 years old under Ind. Code § 35-42-2-1.3(b)(2), unlawful possession of a syringe under Ind. Code § 16-42-19-18(a), and possession of methamphetamine under Ind. Code § 35-48-4-6.1(a).

29. None of his felony offenses from Indiana are equivalent to any of the Excluded Kentucky Felonies.

30. All felony drug offenses brought under Kentucky law, including offenses equivalent to the unlawful possession of a syringe (Ind. Code § 16-42-19-18(a)) and possession of methamphetamine (Ind. Code § 35-48-4-6.1(a)), qualify for automatic rights restoration under EO 2019-003.

31. Plaintiff was also convicted of domestic battery committed in the presence of a child less than 16 years old. Ind. Code § 35-42-2-1.3(b)(2). This offense is a Class A misdemeanor, if that person “[k]nowingly or intentionally: (1) touches a family or household member in a rude, insolent, or angry manner; or (2) in a rude, insolent, or angry manner places any bodily fluid or waste on a family or household member.” *Id.* §§ 35-42-2-1.3(a)(1), (2). Plaintiff’s domestic battery misdemeanor was enhanced to a Level 6 felony, because it was committed “in the physical presence of a child less than sixteen (16) years of age, knowing that

the child was present and might be able to see or hear the offense.” *Id.* § 35-42-2-1.3(b)(2). Crucially, injury to the victim is not an element of this Indiana offense.⁹

32. Kentucky’s closest equivalent to Ind. Code § 35-42-2-1.3(b)(2) is found at KRS § 508.030 and KRS § 508.032.

33. KRS § 508.030 (Assault in the fourth degree) is a Class A misdemeanor and, therefore, does not disenfranchise Kentuckians convicted of the offense. “A person is guilty of assault in the fourth degree when: (a) he intentionally or wantonly causes physical injury to another person: or (b) with recklessness he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.” KRS § 508.030.

34. Under KRS § 508.032 (Assault of family member or member of an unmarried couple—enhancement of penalty), “[i]f a person commits a third or subsequent offense of assault in the fourth degree under KRS 508.030 within five (5) years, and the relationship between the perpetrator and the victim in each of the offenses meets the definition of family member or member of an unmarried couple, as defined in KRS 403.720, then the person may be convicted of a Class D felony.” KRS § 508.032(1).

35. KRS § 508.032 is not enumerated as a violent offense under KRS § 439.3401 and is, therefore, not among the Excluded Kentucky Felonies under EO 2019-003. As a result, if Plaintiff had been convicted under Kentucky law and served his full sentence, he would be

⁹ Domestic battery where the victim suffers an injury is charged under separate Indiana statutes. A domestic battery offense that “results in moderate bodily injury to a family or household member” is charged as a Level 6 felony under Ind. Code § 35-42-2-1.3(b)(3). Domestic battery that “results in serious bodily injury to a family or household member” is charged as a Level 5 felony under Ind. Code § 35-42-2-1.3(c)(1). *See also* Ind. Code § 35-42-2-1.3(c)(3) (Level 5 felony when injury to a pregnant family or household member); *Id.* § 35-42-2-1.3(c)(2) (Level 5 felony when offense committed with deadly weapon); *Id.* § 35-42-2-1.3(d) (Level 4 felony when serious bodily injury to an endangered adult); *Id.* § 35-42-2-1.3(e) (Level 3 felony when serious bodily injury to family or household member less than 14 years old).

entitled to the automatic, non-discretionary restoration of his rights to vote and hold public office under EO 2019-003.¹⁰

36. Nevertheless, EO 2019-003 requires that Mr. Barber submit an application for civil rights restoration on an individual basis through Defendant's discretionary restoration process.

37. Following the submission of a rights restoration application, restoration is by no means guaranteed for Plaintiff or Proposed Class members. Instead, as the Kentucky civil rights restoration application conveys, the Governor has sole and unfettered discretion over civil rights restoration: "It is the prerogative of the Governor afforded him or her under the Kentucky Constitution to restore these rights."¹¹

38. As a result of this unequal treatment, Plaintiff and Proposed Class Members are subject to a wholly discretionary process and are not guaranteed to secure restoration, unlike Kentuckians with comparable in-state offenses who are guaranteed automatic civil rights restoration under EO 2019-003.

39. By contrast to EO 2019-003, in 2020, the Governor of Iowa similarly granted automatic, nondiscretionary rights restoration via Executive Order 7, which restored the rights of most Iowans and excluded from coverage only those convicted of certain Iowa felonies. Exhibit B, at 2. Unlike Defendant's EO 2019-003, Iowa's Executive Order 7 specifically restored the rights of people with felonies in other jurisdictions. *Id.*; *see also* Iowa Off. of the Governor, *Voting Rights Restoration*, <https://governor.iowa.gov/services/voting-rights-restoration> (last accessed Jan. 5, 2026).

¹⁰ Based on the Kentucky statutes, Plaintiff's conviction would be a Class A misdemeanor and not a felony, as his offense lacks the repeated conduct necessary to enhance the charge under KRS § 508.032. However, he would be entitled to automatic restoration even if he was convicted of a Class D felony under KRS § 508.032.

¹¹ *See* Exhibit D, at 2.

Class Action Allegations

40. Plaintiff brings Count I of this action for himself, and all others similarly situated pursuant to Kentucky Rules of Civil Procedure 23.01 and 23.02. The Proposed Class is defined as: *All U.S. citizens residing in Kentucky who (1) would otherwise be qualified to vote and run for public office under Kentucky law but for their disenfranchisement due to a felony conviction, (2) were convicted of felonies in jurisdictions other than Kentucky, and (3) whose felony convictions in those other jurisdictions are not equivalent to any of the Kentucky felonies that are excluded from automatic civil rights restoration under Executive Order 2019-003.*

41. Plaintiff is a member of the Proposed Class and represents the Proposed Class pursuant to Kentucky Rules of Civil Procedure 23.01 and 23.02.

42. This action has been brought and may properly be maintained as a class action because there is a well-defined community of interest in the litigation, and the Proposed Class is clearly ascertainable.¹²

43. *Numerosity:* Although Plaintiff does not know the exact number of members within the Proposed Class, upon information and belief, there are thousands of Kentuckians who are members of the Proposed Class. As a threshold matter, at least 50 individuals, who fall within the class definition, have submitted rights restoration applications to Defendant since 2020. This number by itself is sufficient to support class certification. Moreover, on information and belief, the size of the Proposed Class is much larger because thousands of individuals with out-of-state convictions relocate to Kentucky each year. Based on yearly data from the Kentucky Department of Corrections and the Interstate Compact for Adult Offender Supervision, Kentucky on average has supervised between 2,000 and 2,500 probationers and parolees with out-of-state convictions

¹² This case does not concern individual damages for class members. The class is ascertainable because this Court can issue injunctive relief that will sufficiently remedy Defendant's equal protection violation.

each year since 2010.¹³ This volume makes bringing the claims of each individual member of the Proposed Class before this Court impracticable. Furthermore, the Proposed Class is likely geographically dispersed across the Commonwealth. The size and geographical dispersion of the Proposed Class consequently create significant challenges for identifying each of its members, determining their addresses, and making service on them for joinder to this litigation. For all these reasons, joinder of all the members of the Proposed Class is impracticable. Finally, the identities of the members of the Proposed Class will be determined from both Defendant's records and Defendant's access to interstate compacts, such as the Interstate Compact Offender

¹³ Interstate Comm'n for Adult Offender Supervision, *2024 Annual Report*, "Year by the Numbers," <https://interstatecompact.org/about/annual-reports/2024#year-by-the-numbers>; Interstate Comm'n for Adult Offender Supervision; *see also* *2023 Annual Report*, "FY2023 by the Numbers," <https://interstatecompact.org/about/annual-reports/2023/fy2023-by-the-numbers>; Ky. Dep't of Corrs., *2022 Annual Report*, 38, <https://corrections.ky.gov/public-information/researchandstats/Documents/Annual%20Reports/FINAL%202022%20Annual%20Report.pdf>; Ky. Dep't of Corrs., *2021 Annual Report*, 34, <https://corrections.ky.gov/public-information/researchandstats/Documents/Annual%20Reports/2021%20Annual%20Report%20-%202011-2022.pdf>; Ky. Dep't of Corrs., *2020 Annual Report*, 30, <https://corrections.ky.gov/public-information/researchandstats/Documents/Annual%20Reports/2020%20Annual%20report.pdf>; Ky. Dep't of Corrs., *2019 Annual Report*, 33, <https://corrections.ky.gov/public-information/researchandstats/Documents/Annual%20Reports/2019%20Annual%20report.pdf>; Ky. Dep't of Corrs., *2018 Annual Report*, 32, <https://corrections.ky.gov/public-information/researchandstats/Documents/Annual%20Reports/2018%20Annual%20Report.pdf>; Ky. Dep't of Corrs., *2017 Annual Report*, 24, <https://corrections.ky.gov/public-information/researchandstats/Documents/Annual%20Reports/2017%20Annual%20Report.pdf>; Ky. Dep't of Corrs., *2016 Annual Report*, 24, <https://corrections.ky.gov/public-information/researchandstats/Documents/Annual%20Reports/2016%20Annual%20Report%20APPROVED.pdf>; Ky. Dep't of Corrs., *2015 Annual Report*, 24, <https://corrections.ky.gov/public-information/researchandstats/Documents/Annual%20Reports/2015%20Annual%20Report.pdf>; Ky. Dep't of Corrs., *2014 Annual Report*, 25, <https://corrections.ky.gov/public-information/researchandstats/Documents/Annual%20Reports/2014%20Annual%20Report.pdf>; Ky. Dep't of Corrs., *2013 Annual Report*, 26, <https://corrections.ky.gov/public-information/researchandstats/Documents/Annual%20Reports/2013%20Annual%20Report.pdf>; Ky. Dep't of Corrs., *2012 Annual Report*, 26, <https://corrections.ky.gov/public-information/researchandstats/Documents/Annual%20Reports/2012%20Annual%20Report.pdf>; Ky. Dep't of Corrs., *2011 Annual Report*, 99, <https://corrections.ky.gov/public-information/researchandstats/Documents/Annual%20Reports/2011%20Annual%20Report.pdf>; Ky. Dep't of Corrs., *2010 Annual Report*, 101, <https://corrections.ky.gov/public-information/researchandstats/Documents/Annual%20Reports/2010%20Annual%20Report.pdf>.

Tracking System (“ICOTS”). As such, a class action is a reasonable and practical means of resolving these claims. To require individual actions would prejudice the Proposed Class Members and burden Defendant. The disposition of the claims in this class action will provide substantial benefit to the parties and the Court by avoiding a multiplicity of identical lawsuits.

44. *Commonality*: There are questions of law and fact in common between Plaintiff and the Proposed Class Members that predominate over any questions affecting only individual Proposed Class Members. Such common questions of law and fact include, *inter alia*:

- a. Whether Defendant’s policy of excluding the members of the Proposed Class from automatic civil rights restoration violates equal protection under Sections 1, 2, and 3 of the Kentucky Constitution;
- b. Whether Plaintiff, the Proposed Class Representative, and Proposed Class Members are entitled to a declaratory judgment; and
- c. Whether Plaintiff and Proposed Class Members are entitled to injunctive relief.

45. *Typicality*: Plaintiff’s claims are typical of the claims of the Proposed Class. Defendant’s unconstitutional treatment of Kentuckians with felony convictions in other jurisdictions has caused Plaintiff to suffer the same equal protection violation as members of the Proposed Class. Plaintiff and Proposed Class Members have suffered injury under the same theory of law. The relief necessary to remedy the constitutional violations claimed by Plaintiff is the same as that necessary to remedy the claims of Proposed Class Members. This relief includes:

- a. a judgment declaring Defendant in violation of Plaintiff’s and Proposed Class Members’ equal protection rights;

- b. an injunction requiring Defendant to extend EO 2019-003's grant of automatic rights restoration to all residents of Kentucky who (1) would otherwise be qualified to vote and run for public office under Kentucky law but for their disenfranchisement due to a felony conviction, (2) were convicted of felonies in jurisdictions other than Kentucky, and (3) whose felony convictions in those other jurisdictions are not equivalent to any of the Kentucky felonies that are excluded from automatic civil rights restoration under Executive Order 2019-003; and
- c. attorneys' costs, fees, and expenses.

Plaintiff's claims are thereby, not only representative of, but co-extensive with the claims of the Proposed Class.

46. *Adequacy of Representation*: Plaintiff is capable of fairly and adequately protecting the interests of the Proposed Class. Mr. Barber is a member of the Proposed Class, does not have any conflicts of interest with other Proposed Class Members, and will prosecute the case vigorously on behalf of the Proposed Class. Plaintiff and Proposed Class Members seek the same remedy: equal treatment under EO 2019-003 and the subsequent restoration of their civil rights following a declaration and injunction issued by this Court. Further, Plaintiff has retained counsel sufficiently qualified, experienced, and able to conduct this litigation and meet the time and fiscal demands required to litigate an equal protection class action of this size and complexity. Plaintiff's counsel is experienced in litigating complex rights restoration and equal

protection cases.¹⁴ Thus, Plaintiff will fairly and adequately represent and protect the interests of the Proposed Class Members.

47. *Superiority of Class Action:* A class action is superior to other available means for the fair and efficient adjudication of this controversy. For the reasons described above, the individual joinder of all Proposed Class Members is not practicable. Furthermore, the Proposed Class's common questions of law and fact including, but not limited to, the common issues identified above—predominate over any questions affecting only individual members of the Proposed Class. Each Proposed Class Member is entitled to relief from Defendant's unlawful policy of treating Kentuckians with out-of-state convictions differently than those with equivalent in-state convictions. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Thousands of duplicative lawsuits to resolve the common issue among Proposed Class Members would create a substantial burden on the time and resources of Defendant and would waste limited judicial resources. Accordingly, a class action is the superior mechanism for bringing finality to this case.

48. Furthermore, the Proposed Class may be certified because the prosecution of separate actions by the individual Proposed Class Members would create a risk of inconsistent or varying judgments, thereby risking incompatible standards of conduct for Defendant.

¹⁴ Recent examples include: *Mi Familia Vota v. Fontes*, 129 F.4th 691 (9th Cir. 2025); *Hawkins v. Youngkin*, 149 F.4th 433 (4th Cir. 2025); *Lostutter v. Kentucky*, No. 22-5703, 2023 WL 4636868 (6th Cir. July 20, 2023), *cert. denied sub nom. Aleman v. Beshear*, 144 S. Ct. 809 (2024); *Hand v. DeSantis*, 946 F.3d 1272 (11th Cir. 2020); *Hand v. Scott*, 888 F.3d 1206 (11th Cir. 2018); *Democracy N. Carolina v. N. Carolina State Bd. of Elections*, No. 1:20CV457, 2020 WL 4484063 (M.D.N.C. Aug. 4, 2020), *reconsideration denied*, No. 1:20CV457, 2020 WL 6591396 (M.D.N.C. Sep. 30, 2020); *VAYLA New Orleans v. Schedler*, No. 3:16-cv-00305 (M.D. La., June 7, 2016) (dismissed as moot following repeal of challenged law); *Pa. All. for Retired Ams. v. Lancaster Cnty. Bd. of Elections*, No. CI-24-03992 (Pa. Commw. Ct. Jun. 7, 2024); *Petro v. Beshear*, No. 21-CV-00443 (Ky. Cir. Ct. Jun. 2, 2021).

COUNT ONE
VIOLATION OF EQUAL PROTECTION
Ky. Const. §§ 1, 2, 3

49. Plaintiff incorporates by reference, as if set forth fully herein, the allegations of the preceding paragraphs of the Complaint.

50. The Kentucky Constitution guarantees equal protection of the law in Sections 1, 2, and 3.

51. Section 1 of the Kentucky Constitution states in relevant part: “All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: First: The right of enjoying and defending their lives and liberties.” Ky. Const. § 1.

52. Section 2 of the Kentucky Constitution states: “Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.” *Id.* § 2. “Section 2 is broad enough to embrace the traditional concepts of both due process of law and equal protection of the law.” *Ky. Milk Mktg. & Antimonopoly Comm’n v. Kroger Co.*, 691 S.W.2d 893, 899 (Ky. 1985).

53. Section 3 of the Kentucky Constitution states: “All men, when they form a social compact, are equal; and no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services; but no property shall be exempt from taxation except as provided in this Constitution, and every grant of a franchise, privilege or exemption, shall remain subject to revocation, alteration or amendment.” Ky. Const. § 3.

54. In Kentucky, “equal protection guarantees, both under the federal and state constitutions, seek to keep[] governmental decision makers from treating differently persons

who are in all relevant respects alike.” *Calloway Cnty. Sheriff’s Dep’t v. Woodall*, 607 S.W.3d 557, 563 (Ky. 2020) (citation and internal quotation marks omitted).

55. Defendant violated these equal protection principles by excluding Mr. Barber and the Proposed Class Members that he represents from automatic rights restoration under EO 2019-003 simply on the basis that they were convicted of felonies in other jurisdictions.

56. Mr. Barber and Proposed Class Members were convicted of felonies in other jurisdictions that are not equivalent to any of the Excluded Kentucky Felonies under EO 2019-003.

57. Therefore, Mr. Barber and the Proposed Class are in all relevant respects like Kentuckians convicted of Kentucky offenses that are not among the Excluded Kentucky Felonies under EO 2019-003.

58. Nevertheless, Defendant arbitrarily treats Plaintiff and the Proposed Class differently than other Kentuckians because they were convicted of felonies in other jurisdictions. Defendant’s actions are wholly arbitrary and cannot withstand strict scrutiny under the equal protection guarantees of Sections 1, 2, and 3 of the Kentucky Constitution.

59. “Statutes that substantially affect the exercise of a fundamental right, including the right to vote, are subject to strict scrutiny when challenged on equal protection grounds.” *Graham v. Sec’y of State Michael Adams*, 684 S.W.3d 663, 687 (Ky. 2023); *Mobley v. Armstrong*, 978 S.W.2d 307, 309 (Ky. 1998).

60. When a statute affects a fundamental right, a statute is “sustainable only if [it] is suitably tailored to serve a ‘compelling state interest.’” *Zuckerman v. Bevin*, 565 S.W.3d 580, 595 (Ky. 2018) (citation omitted).

61. Defendant's decision to exclude all Kentuckians with out-of-state felony convictions from automatic rights restoration is not suitably tailored to serve a compelling state interest and, therefore, EO 2019-003 fails strict scrutiny.

62. As stated in EO 2019-003, the Executive Order was issued in part because the rights restoration application process was "unnecessarily time consuming." Exhibit A, at 1.

63. EO 2019-003 restored the rights of Kentuckians convicted of many Kentucky offenses, but excluded certain Kentucky felonies, felonies in other jurisdictions, and federal offenses.

64. Defendant could have easily structured EO 2019-003 so that Kentuckians with felony convictions in other jurisdictions would have their rights automatically restored and would not therefore be subjected to an "unnecessarily time consuming" and purely discretionary process.

65. As a result, EO 2019-003's wholesale exclusion of Kentuckians with out-of-state convictions from automatic rights restoration does not survive strict scrutiny and runs afoul of Kentucky's equal protection guarantees.

66. Additionally, EO 2019-003 violates equal protection even when scrutinized under the standard of rational basis.

67. Under rational basis review, Defendant must provide a "'rational basis' or 'substantial and justifiable reason'" to support the classifications that it creates. *Vision Mining, Inc. v. Gardner*, 364 S.W.3d 455, 466 (Ky. 2011) (citation omitted).

68. The rational basis standard encompasses the long-held principle that "[c]lassification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made

arbitrarily, and without any such basis.” *Id.* at 469 (quoting *McLaughlin v. State of Fla.*, 379 U.S. 184, 190 (1964)) (emphasis in *Vision Mining*). “[W]hatever is essentially unjust and unequal or exceeds the reasonable and legitimate interests of the people is arbitrary” in violation of Section 2 of the Kentucky Constitution. *Sanitation Dist. No. 1 of Jefferson Cnty. v. City of Louisville*, 213 S.W.2d 995, 1000 (Ky. 1948).

69. No rational basis exists to justify treating Plaintiff and Proposed Class Members differently from Kentuckians with equivalent in-state convictions. It is wholly arbitrary to automatically restore the rights of some Kentuckians convicted of certain offenses, while excluding other Kentuckians convicted of the same type of offense, simply because of the jurisdiction where the individual was convicted.

70. The irrationality of this geographic line-drawing is underscored by the fact that Kentucky is the only state in the country that categorically denies automatic civil rights restoration to individuals convicted of felonies in other jurisdictions.

71. Where a Kentuckian was convicted does not “bear[] a reasonable and just relation to” the underlying reasons for automatically granting rights restoration under EO 2019-003. *Vision Mining*, 364 S.W.3d at 469 (citing *McLaughlin*, 379 U.S. at 190). Therefore, Defendant’s policy of arbitrarily distinguishing between in-state and out-of-state convictions is “essentially unjust and unequal.” *Sanitation Dist. No. 1 of Jefferson Cty.*, 213 S.W.2d at 1000.

72. Accordingly, Defendant’s exclusion of Plaintiff and the Proposed Class from automatic rights restoration under EO 2019-003 violates equal protection principles under the Kentucky Constitution. Plaintiff is a member of the Proposed Class subjected to this arbitrary and unequal treatment. Defendant has therefore violated Plaintiff’s and Proposed Class Members’ rights under Sections 1, 2, and 3 of the Kentucky Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Proposed Class Members respectfully request that this Court order the following relief and remedies:

A. Certify the Proposed Class under the Kentucky Rules of Civil Procedure 23.01, *et seq.*;

B. Declare that EO 2019-003 violates the Kentucky Constitution's guarantee of equal protection by arbitrarily excluding Plaintiff and Proposed Class Members from Kentucky's automatic rights restoration scheme based solely on the jurisdiction of their conviction, without any compelling interest, rational basis, or substantial and justifiable reason;

C. Grant a permanent injunction requiring Defendant to extend EO 2019-003's grant of automatic civil rights restoration to all residents of Kentucky who (1) would otherwise be qualified to vote and run for public office under Kentucky law but for their disenfranchisement due to a felony conviction, (2) were convicted of felonies in jurisdictions other than Kentucky, and (3) whose felony convictions in those other jurisdictions are not equivalent to any of the Kentucky felonies that are excluded from automatic civil rights restoration under Executive Order 2019-003; and

D. Award Plaintiff and the Proposed Class with reasonable attorneys' fees and costs; and

E. Award all such other and further relief as the Court deems to be just and equitable.

Dated: January 7, 2026

Respectfully submitted,

/s/ Jackson C. Cooper

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**Application for Pro Hac Vice Admission
Forthcoming*

Counsel for Plaintiff and Proposed Class

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was electronically filed with the Court pursuant to CR 5.02 and other applicable state and local rules on the 7th day of January, 2026. Service to the following is effectuated via the Kentucky Court of Justice eFiling system and Certified Mail through the United States Postal Service:

1. Governor Andrew Beshear
501 High Street, 2nd Floor
Frankfort, KY 40601

2. Travis Mayo
Taylor Payne
Office of General Counsel
Office of the Governor
700 Capital Avenue, Suite 106
Frankfort, Kentucky 40601

3. Attorney General Russell Coleman
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601

Service has further been made pursuant to CR 4.04(6) to Russell Coleman, Attorney General Of Kentucky at ServetheCommonwealth@ky.gov.

/s/ Jackson C. Cooper