Filed: 2026-CA-0808 10/06/2026
Kate R. Morgan, Clerk
Kentucky Court of Appeals

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 2026-CA-0808

BRYAN BARBER,

Plaintiff-Appellant,

v.

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

Defendant-Appellee.

On Appeal From
Jefferson Circuit Court, Div. 8
Case No. 26-CI-000116
Hon. Judge Jennifer Bryant Wilcox

BRIEF OF PLAINTIFF-APPELLANT BRYAN BARBER

CERTIFICATE OF SERVICE (RAP 30(B))

I hereby certify that a copy of this Brief of Plaintiff-Appellant Bryan Barber was served this 6th day of October, 2026, via electronic service through the Court's automated filing system upon: Travis Mayo and Laura C. Tipton, counsel for Defendant-Appellee Andrew G. Beshear; and, with consent, the Honorable Jennifer Bryant Wilcox, Jefferson Circuit Court Judge. I further certify that five hardcopies were shipped to the Commonwealth of Kentucky Court of Appeals; and two hardcopies were shipped to Travis Mayo and Laura C. Tipton, counsel for Defendant-Appellee Andrew G. Beshear.

CERTIFICATE REGARDING RECORD (RAP 31(C)(1)(c))

I certify that the certified Jefferson Circuit Court record on appeal was not withdrawn by counsel prior to the filing of this Brief.

Dated: October 6, 2026

Respectfully submitted,

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INTRODUCTION

In 2019, Governor Beshear issued Executive Order 2019-003. This executive order automatically and irrevocably restores voting rights to Kentuckians who have completed their sentences for most felonies in Kentucky but categorically denies automatic restoration to all people convicted in other jurisdictions. Now, automatic restoration applies to anyone convicted of one or more Kentucky offenses that are not disqualifying, but a person convicted of the same offense in Tennessee needs to petition the Governor for discretionary restoration. This discriminatory classification—the only one of its kind in the nation—violates the Kentucky Constitution's guarantee of equal protection. Defendant has not proffered any basis for drawing this line, let alone a compelling or even reasonable one.

The Jefferson Circuit Court erred in dismissing Plaintiff Bryan Barber's class-action Complaint. The court's conclusion that it lacks the power to invalidate a discriminatory classification in an executive order governing restoration runs contrary to the precedents on constitutional review of executive clemency. Kentucky courts do not violate the separation of powers by declaring unlawful and enjoining a patently unconstitutional classification in an executive order. As with statutes, policies conferring automatic clemency based on objective criteria, without any individualized decision, must adhere to equal protection. The relief sought would harmonize the Governor's power with Kentucky courts' mandate to protect constitutional rights.

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STATEMENT CONCERNING ORAL ARGUMENT

Appellant respectfully requests oral argument, because this appeal presents a constitutional question of first impression raised by Executive Order 2019-003's discriminatory classification and presents sufficiently complex legal questions.

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ISSUES PRESENTED

I. Whether the Jefferson Circuit Court erred in concluding that it could not grant declaratory and injunctive relief to remedy the equal protection violation caused by Executive Order 2019-003.

II. Whether the Jefferson Circuit Court erred in determining that Plaintiff lacked standing to pursue his equal protection claim on behalf of himself and the Proposed Class.

STATEMENT OF THE CASE

I. Relevant Factual History

This class action challenges Executive Order 2019-003 ("EO 2019-003," "the Executive Order," or "EO"), which, since 2019, has provided automatic, non-discretionary restoration of civil rights to Kentuckians convicted of most Kentucky felony offenses but denies the same to individuals convicted of equivalent offenses in other jurisdictions. Compl. ¶ 1, TR2; *see* EO, TR26–28[1].

Under Sections 77, 145, and 150 of the Kentucky Constitution, the Governor of Kentucky may restore an individual's right to vote and hold office through the grant of a partial pardon. Compl. ¶¶ 12, 16, TR4–5 (citing Ky. Const. §§ 77, 145, 150). Pursuant to that authority, Defendant-Appellee Governor Andrew G. Beshear ("Defendant" or "the Governor") issued EO 2019-003, granting automatic, non-discretionary civil rights restoration to Kentuckians who were convicted of a felony and completed the terms of their sentence. *Id.* ¶ 20, TR6; EO 1–2, TR26–27. However, the Order excluded from automatic restoration individuals convicted of certain Kentucky felonies, felonies in "jurisdictions other than Kentucky," and federal offenses. *Id.* Since its issuance, the Executive Order has

[1] The Executive Order is attached as Exhibit A to Plaintiff's Complaint and can be found in the RAP 32(E) Appendix at TR25–28. Citations to the Executive Order are in the format "EO _, TR_."

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automatically granted voting rights to over 100,000 Kentuckians, Compl. ¶ 1, TR2, but has categorically denied automatic rights restoration to Kentuckians who were convicted of functionally identical offenses in different jurisdictions, *id.* ¶ 24, TR6. Instead, individuals with out-of-state convictions must continue to seek discretionary restoration from the Governor, a process he stated was "unnecessarily time consuming." *Id.* ¶ 62, TR18; EO 1, TR26. To apply for discretionary restoration, applicants must answer a series of questions about previous and current pending charges, as well as provide copies of all convictions and judgments, verifications showing final discharge or expiration, and, if applicable, verifications showing that restitution has been paid in full. Compl. ¶ 26, TR7; *see also* Compl. Ex. D, Ky. Dep't of Corr., Div. of Prob. and Parole, *Form CPP 27-26-01, Application for Restoration of Civil Rights*, at 1 (rev. Mar. 2020), TR37 (listing required documentation to apply for discretionary rights restoration). Kentucky is the only state in the nation that denies automatic civil rights restoration based solely on the jurisdiction in which the individual was convicted.[2] *See* Compl. ¶¶ 2, 70, TR2, TR19.

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Plaintiff-Appellant Bryan Barber ("Plaintiff" or "Mr. Barber") is a United States citizen and a resident of Louisville, Kentucky. *Id.* ¶ 7, TR3. Between 2019 and 2021, he was convicted of three felonies under Indiana law and has since completed his term of incarceration and supervised release. *Id.* ¶¶ 8–9, TR3. Had he been convicted of Kentucky

[2] In Iowa, Executive Order 7 restores the rights of citizenship including voting rights to any person convicted of a felony, except for a violation of chapter 707 of the Iowa Code ("Homicide and Related Crimes"). *See* Compl. Ex. B, Iowa Executive Order Number 7, at 2 (Aug. 5, 2020), TR31. 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.* (emphasis added); *see also* Iowa Off. of the Governor, *Voting Rights Restoration*, https://governor.iowa.gov/services/voting-rights-restoration (last accessed Oct. 5, 2026).

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offenses, he would qualify for automatic restoration of his right to vote under the Executive Order and would be able to vote today. *Id*. ¶¶ 10–11, 29, TR3–4, TR8. However, since Mr. Barber was convicted of his felonies in Indiana, he has not had his right to vote restored and remains disqualified from voting, *id*. ¶ 27, TR8, despite being similar in all material respects to Kentuckians re-enfranchised under the Executive Order, *id.* ¶ 57, TR17.

In his Complaint, Plaintiff alleged that this disparate treatment violates the equal protection guarantees of Sections 1, 2, and 3 of the Kentucky Constitution, because there is neither a compelling interest nor a rational basis that justifies distinguishing between Kentuckians based on the location of their felony conviction. *See id.* ¶ 69, TR19. Plaintiff and the Proposed Class asked the Jefferson Circuit Court to declare this unequal treatment unconstitutional and enjoin Governor Beshear from categorically excluding Plaintiff and members of the Proposed Class from automatic restoration solely because they were convicted in other jurisdictions. *See id.* at 20, Prayer for Relief, TR20.

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II. Procedural History

On January 7, 2026, Plaintiff filed suit on behalf of a Proposed Class, alleging that the Executive Order violated the guarantees of equal protection established in Sections 1, 2, and 3 of the Kentucky Constitution. Compl. ¶¶ 49–72, TR16–19. The Governor filed a motion to dismiss on February 3, 2026. TR215–22. Plaintiff Barber filed his response on February 23, 2026, TR223–44, and the Governor filed his reply on March 5, 2026, TR245–50. Oral argument was held on May 18, 2026, and the Jefferson Circuit Court issued its decision dismissing the lawsuit on June 24, 2026, TR297–306.

Plaintiff Barber appealed the lower court's decision on June 25, 2026. TR307–22.

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STANDARD OF REVIEW

A motion to dismiss under CR 12.02 is "a pure question of law," and "a reviewing court owes no deference to a trial court's determination; instead, an appellate court reviews the issue de novo." *Browne v. Poole*, 680 S.W.3d 810, 812 (Ky. 2023) (quoting *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010)). When reviewing a motion to dismiss, "the pleadings should be liberally construed in the light most favorable to the plaintiff, all allegations being taken as true." *Fox*, 317 S.W.3d at 7 (quoting *Morgan v. Bird*, 289 S.W.3d 222, 226 (Ky. App. 2009)). "Thus, a court should not grant such a motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved." *Deramos v. Anderson Cmtys., Inc.*, 709 S.W.3d 197, 200 (Ky. 2025) (citation modified).

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ARGUMENT

I. Plaintiff and the Proposed Class have stated an equal protection claim against EO 2019-003.

This class action challenges EO 2019-003, which provides automatic, non-discretionary restoration of civil rights to Kentuckians convicted of most Kentucky felony offenses. Although the order has restored civil rights to many individuals, *see* Compl. ¶ 1, TR2, it categorically excludes Kentuckians with out-of-state felony convictions from automatic restoration, *see id.* ¶ 24, TR6. Kentucky is the only state in the nation that denies automatic civil rights restoration based solely on the jurisdiction of the conviction. *See id.* ¶¶ 2, 70, TR2, TR19.

Plaintiff alleges that this disparate treatment violates the equal protection guarantees of Sections 1, 2, and 3 of the Kentucky Constitution, because there is no rational basis for distinguishing between Kentuckians based solely on where they were convicted of a felony. *See id.* ¶ 69, TR19. Defendant's exclusion of individuals with out-of-state

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felony convictions from the automatic rights restoration scheme established by EO 2019-003 creates a classification that is not supported by any "'rational basis' or 'substantial and justifiable reason,'" *see Vision Mining, Inc. v. Gardner*, 364 S.W.3d 455, 466 (Ky. 2011) (citing *Cain v. Lodestar Energy, Inc.*, 302 S.W.3d 39, 43 (Ky. 2009) ("A statute complies with Kentucky equal protection requirements if a 'reasonable basis' or 'substantial and justifiable reason' supports the classifications that it creates."))—let alone a "compelling state interest." *Zuckerman v. Bevin*, 565 S.W.3d 580, 595 (Ky. 2018). Therefore, this classification violates the Kentucky Constitution's equal protection guarantees.

Kentucky's "equal protection provisions are set forth in the Kentucky Constitution at Section 1, Section 2, and Section 3." *Ky. Constables Ass'n, v. Ky. Dep't of Corrs. Crim. Just. Training*, 723 S.W.3d 812, 832 (Ky. App. 2025). 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." Ky. Const. § 1. *See Commonwealth v. Wasson*, 842 S.W.2d 487, 513 (Ky. 1992), *overruled on other grounds by Calloway Cnty. Sheriff's Dep't v. Woodall*, 607 S.W.3d 557 (Ky. 2020) ("Section 1(5) of the Kentucky Constitution is coterminous with the Equal Protection Clause of the Federal Fourteenth Amendment."). Additionally, Section 2 of the Kentucky Constitution guarantees that "[a]bsolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority." Ky. Const. § 2; *Schell v. Young*, 640 S.W.3d 24, 42 (Ky. App. 2021) ("Government entities are enjoined against arbitrariness by § 2 of the Kentucky Constitution, a concept we consider broad enough to embrace both due process and equal protection of the laws, both fundamental fairness and impartiality.") (citation modified); *Bluegrass Tr. for Hist. Pres. v. Lexington*

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Fayette Urb. Cnty. Gov't Plan. Comm'n, 701 S.W.3d 196, 210 (Ky. 2024) ("Whatever is essentially unjust and unequal or exceeds the reasonable and legitimate interests of the people is arbitrary.") (citation modified). Section 3 of the Kentucky Constitution states in relevant part that: "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 . . . ."[3] Ky. Const. § 3; *Wasson*, 842 S.W.2d at 514 ("Section 3 of the Kentucky Constitution is interchangeable with the Equal Protection Clause of the Federal Fourteenth Amendment.").

Kentucky's equal protection provisions "seek to 'keep[ ] governmental decision makers from treating differently persons who are in all relevant respects alike.'" *Calloway Cnty. Sheriff's Dep't*, 607 S.W.3d at 563 (alteration in original) (quoting *Vision Mining, Inc.*, 364 S.W.3d at 465). While classifications are not per se unconstitutional, "'strict scrutiny,' applies when a classification affects a fundamental right or suspect classification, such as race, alienage or ancestry." *Id*. at 564. "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). When a challenged law or action affects a fundamental right, it is "sustainable only if it is suitably tailored to serve a compelling state interest." *Zuckerman*, 565 S.W.3d at 595 (citation modified). 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. Compl. ¶¶ 61–65, TR18. In responding

[3] The protections of Section 3 have existed since the Commonwealth's founding, appearing in all four of Kentucky's Constitutions. *See* Ky. Const. of 1792, art. XII, § 1; Ky. Const. of 1799, art. X, § 1; and Ky. Const. of 1850, art. XIII, § 1.

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to the Complaint, Defendant identified no governmental interest, let alone a compelling one, that would justify this categorical exclusion. Accordingly, EO 2019-003 fails strict scrutiny.

Furthermore, even if rational basis review applies, EO 2019-003 nonetheless violates equal protection. Defendant must, at a minimum, provide a "'rational basis' or 'substantial and justifiable reason'" to support any classification. *Vision Mining, Inc.*, 364 S.W.3d at 466. The rational basis standard encompasses the long-held principle that a "[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 (alterations in original) (quoting *McLaughlin v. Florida*, 379 U.S. 184, 190 (1964)). No rational basis exists to justify treating Plaintiff and Proposed Class members differently from Kentuckians with equivalent in-state felony convictions. *See* Compl. ¶ 69, TR19. It is wholly arbitrary to automatically restore the voting rights of some Kentuckians convicted of certain offenses, while excluding other Kentuckians convicted of the same offenses, simply based on the jurisdiction where the individual was convicted. *See Zuckerman*, 565 S.W.3d at 596 (noting that "[a] statute complies with Kentucky equal protection requirements if a 'rational basis' supports the classifications that it creates" as the government "has the right to make classifications based upon natural and reasonable distinctions, but is without right to exercise the power to classify arbitrarily and without any reasonable basis inherent in the objects of the classification").

Plaintiff's Complaint sufficiently alleged that Governor Beshear violated his and Proposed Class members' equal protection rights in issuing EO 2019-003. Compl. ¶¶ 55,

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68–69, 72, TR17–19. Under the Executive Order, Kentuckians who complete sentences for qualifying state felony convictions automatically regain their rights to vote, *id.* ¶ 21, TR6, while those with equivalent felony convictions from other jurisdictions are relegated to petitioning the Governor for a discretionary grant of restoration, *id.* ¶ 25, TR6–7. This disparate treatment arbitrarily draws a line between similarly situated Kentuckians on the sole basis of the jurisdiction of their convictions—an irrational classification that appears in no other state's election laws. Defendant has not pointed to any rational basis or substantial and justifiable reason that would justify this unequal treatment of Kentuckians with out-of-state felony convictions, *see* Mot. to Dismiss at 3–6, TR217–20; nor did the Circuit Court independently find any basis to justify this distinction, *see* Opinion at 5–9, TR301–05. Instead, the court erroneously concluded that the separation of powers under the Kentucky Constitution rendered it powerless to issue an injunction directed at the Governor's policies governing the issuance of clemency, specifically voting rights restoration. This conclusion was incorrect for the reasons explained below.

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II. Plaintiff's equal protection claim against EO 2019-003's discriminatory classification is justiciable and redressable.

Kentucky's "equal protection provisions are set forth in the Kentucky Constitution at Section 1, Section 2, and Section 3." *Ky. Constables Ass'n*, 723 S.W.3d at 832. Plaintiff Barber and members of the Proposed Class are entitled to those protections, which were violated by the creation of an automatic, non-discretionary system that separated Kentucky residents with functionally identical felony convictions based solely on the jurisdiction of conviction. This Court has jurisdiction to review their claims, as the Governor's pardon power is not immune from this Court's constitutional scrutiny and does not supersede the equal protection rights afforded to all Kentuckians.

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A. Kentucky courts have previously found that the Governor's pardon power is constrained by other parts of the Kentucky Constitution.

Under Kentucky law, voting rights restoration is considered a "partial pardon" because it "exonerates the offender from some but not all of the punishment or legal consequences of a crime." *Anderson v. Commonwealth*, 107 S.W.3d 193, 196 (Ky. 2003) (quoting *Black's Law Dictionary* (7th ed. 1999)) (finding Governor may restore civil right to sit on jury by granting partial pardon); *see also* Ky. Const. §§ 77, 145, 150. Crucially, the Supreme Court of Kentucky has held that "the Governor has the power to issue partial pardons *except where to do so violates the Constitution*." *Anderson*, 107 S.W.3d at 196 (emphasis added). "[A] governor's clemency power is not absolute" and is "subject to judicial review if it violates specific constitutional protections." *Stanford v. Commonwealth*, 643 S.W.3d 96, 101 (Ky. App. 2021); *see also Royster v. Brock*, 79 S.W.2d 707, 709 (Ky. 1935) ("[The Governor] has only such powers as the Constitution and Statutes, enacted pursuant thereto, vest in him, and those powers must be exercised in the manner and within the limitations therein prescribed.").

When the Governor violates one part of the Constitution while exercising his powers, courts must enjoin that unconstitutional act. This is because the "judiciary has the ultimate power, and the duty, to apply, interpret, define, construe all words, phrases, sentences, and sections of the Kentucky Constitution as necessitated by the controversies before it." *Graham*, 684 S.W.3d at 681. "[N]o matter how distasteful it may be for the judiciary to review the acts of a co-ordinate branch of the government their duty under their oath of office is imperative." *Fischer v. State Bd. of Elections*, 879 S.W.2d 475, 476 (Ky. 1994) (alteration in original) (quoting *Ragland v. Anderson*, 100 S.W. 865, 867 (Ky. 1907)).

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Pursuant to this obligation, Kentucky courts have historically reviewed pardons and clemency decisions to ensure compliance with due process and equal protection rights. This body of case law demonstrates the Governor's use of the pardon power is not immune from judicial scrutiny. *Anderson*, 107 S.W.3d at 196. As explained in *Commonwealth v. Jones*, there are no circumstances where the Governor may infringe on Kentuckians' constitutional rights:

> There are no implied exceptions to the bill of rights. Every thing in that article is declared to be excepted out of the general powers of government, and is to remain forever inviolate. In construing and harmonizing the different provisions of the constitution, this solemn declaration is never to be lost sight of, and more especially in cases involving the personal rights of the citizen . . . .

73 Ky. 725, 746–47 (1875) (citation omitted); *see also* Ky. Const. § 26. For example, the Supreme Court of Kentucky has reviewed and affirmed the constitutionality of general or blanket pardons, *Fletcher v. Graham*, 192 S.W.3d 350, 365 (Ky. 2006), and has also reviewed and upheld partial and conditional pardons against constitutional challenges, *see Anderson*, 107 S.W.3d at 196; *Commonwealth ex rel. Meredith v. Hall*, 126 S.W.2d 1056, 1059 (Ky. 1939). Even though these cases found that the Governor's conduct had been constitutional, they nonetheless stand for the proposition that Kentucky courts may and must review clemency policies and decisions for unconstitutionality—not to second-guess the Governor's individual denials of clemency but to ensure there are no constitutional violations as a matter of policy.

Indeed, this Court has set limits on the Governor's exercise of the general pardon power under Section 77 of the Kentucky Constitution. In *Adkins v. Commonwealth*, the Supreme Court of Kentucky held that the Governor may not revoke a pardon under any circumstance. 23 S.W.2d 277 (Ky. 1929). Furthermore, Kentucky courts retain the

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authority to invalidate a pardon in certain situations, such as when it has been procured by fraud. *Id*. These decisions are irreconcilable with the Jefferson Circuit Court's conclusion that it may not review and invalidate the Governor's policy categorically excluding an entire class of Kentuckians. Opinion at 5–9, TR301–05.

In *Fletcher v. Graham*, the Supreme Court of Kentucky stated as much when reviewing the constitutionality of a governor's grant of previous pardons, stating "[i]t is the duty of this Court to interpret, uphold, and apply the Constitution and laws of the Commonwealth" and "our sole concern must be the constitutionality—not the prudence—of the Governor's actions." 192 S.W.3d at 365. While the Court ultimately upheld the constitutionality of the granted pardons, the Court did not find that the pardons were unreviewable. Rather, the Court extensively discussed the mechanics required to make a pardon valid and whether the pardons at issue complied with constitutional principles. Nor did the Court engage with any equal protection claims related to the pardon power. Critically, the Court in *Fletcher* assessed and rejected an implied prohibition of pre-indictment pardons, finding there was no explicit language in Section 77 restricting the types of pardons a governor could grant. 192 S.W.3d at 364–65. Unlike in *Fletcher*, Plaintiff has stated an equal protection claim that relies on explicit language in Sections 1, 2, and 3 of the Kentucky Constitution.

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Subsequent decisions confirm and bolster Kentucky courts' power to review the Governor's compliance with constitutional protections when granting individual partial pardons or dictating policies categorically governing voting rights restoration. In *Foley v. Beshear*, the Supreme Court of Kentucky declined to impose specific standards the Governor must follow while granting pardons but premised that holding on the

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presumption that the Governor would adhere to due process requirements. 462 S.W.3d 389, 396 (Ky. 2015). The Court noted that the appellants relied on the mere possibility that the governor could violate due process. *Id*. at 396 (citing *Duvall v. Keating*, 162 F.3d 1058 (10th Cir. 1998)). Similarly, in *Baze v. Thompson*, the Supreme Court of Kentucky rejected the Jefferson Circuit Court's conclusion that clemency proceedings are a purely executive function not subject to due process requirements and found that a minimum amount of procedural due process was indeed required in clemency procedures. 302 S.W.3d 57, 59–60 (Ky. 2010); *see also Anderson*, 107 S.W.3d at 196 ("[T]he Governor has the power to issue partial pardons except where to do so violates the Constitution."); *Stanford*, 643 S.W.3d at 101 ("The point is that the sentences imposed under Section 77 of the Kentucky Constitution are not impervious to judicial oversight when a specific case implicates constitutional safeguards."). These cases stand for the proposition that Kentucky courts may review the Governor's use of the pardon power to ensure compliance with constitutional requirements like the guarantee of equal protection.

Here, the Jefferson Circuit Court adopted the Governor's argument that these cases mean Plaintiff's claims are unreviewable, but this runs directly contrary to the Supreme Court of Kentucky's decisions in this area, as is made plain from the cases cited above. Additionally, in *Foley*, the Court expressly rejected the notion that the Governor's discretion to issue pardons exempted the power from constitutional review: "[N]o one would contend that a Governor could ignore the commands of the Equal Protection Clause and use race, religion, or political affiliation as a standard for granting or denying clemency." 462 S.W.3d at 394 (quoting *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 292 (1998) (Stevens, J., concurring)). Plaintiff has claimed that the Executive Order

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violates equal protection by arbitrarily distinguishing between two similarly situated groups of people—those with in-state felony convictions and those with equivalent out-of-state felony convictions. If this claim is entirely unreviewable by the courts, the Governor could issue pardons based on race, religion, gender, national origin, previous partisan affiliation, or height, and Kentucky's courts would be powerless to remedy such flagrant violations of the constitutional equal protection guarantee. That cannot be. Kentucky's courts must have the power to adjudicate discriminatory classifications unsupported by a rational basis or compelling interest, even if they appear in an executive order concerning clemency.

B. Plaintiff asserts a facial challenge to an executive order's categorical exclusion of a class of Kentuckians from automatic restoration, not a challenge to a governor's denial of discretionary restoration to a particular individual.

Crucially, in this case, Plaintiff has not sought judicial review of the Governor's discretionary denial of an individual's clemency application but rather brought a facial challenge to a policy governing all voting rights restoration in Kentucky. This is, therefore, an even stronger case for the justiciability of constitutional challenges to executive clemency, because the target is the discriminatory, categorical exclusion of the Proposed Class from automatic restoration, not the denial of discretionary restoration to a particular individual. EO 2019-003 is a generally applicable policy the Governor has imposed that causes the automatic restoration of Kentuckians who satisfy certain fixed and objective preconditions; the Governor is not individually granting restoration to these individuals. In this way, it operates like many other states' *statutes* which restore voting rights to people with felony convictions by operation of law at a fixed moment in time such as release from incarceration, *see, e.g.*, Ohio Rev. Code Ann. § 2961.01(A), or the completion of parole or

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probation, *see, e.g.*, N.C. Gen. Stat. Ann. §§ 13-1, 13-2. Properly construed, Plaintiff's claim should be treated as akin to a challenge to a discriminatory statutory classification, *not* as a collateral attack on an executive's decision to grant or deny clemency to a particular individual.

This perspective is consistent with the cases the Jefferson Circuit Court cited, which are principally concerned with judicial second-guessing of *individual* clemency determinations. For instance, in *Chandler v. Patton*, in affirming the dismissal of the plaintiff's action, this Court was reviewing an individual's challenge to the denial of his request for a full pardon. No. 2007-CA-002222-MR, 2008 WL 4952109, at *1 (Ky. Ct. App. Nov. 21, 2008). The lawsuit did not challenge a policy but rather just the treatment and disposition of the plaintiff's clemency application:

> In his complaints, Chandler asserted that Governor Patton violated *his* "Right of Due Course of Kentucky Constitution 2, 3, 10, 11" by not giving Chandler's pardon application a full and fair review. Further, Chandler asserted that Patton violated *his* "Rights of Equal Protection and Procedural Fairness of Kentucky Constitution of 1, 2, 3, and 59" by not giving a full and fair review to Chandler's application for a pardon.

Id. (emphasis added). The Court recognized the plaintiff's right to equal protection and ruled against the claim due to a lack of evidence. *Id*. at *2. Similarly, in *Baze*, the plaintiff argued that "*he* has been denied due process of law by the Department of Corrections in the preparation of his petition for clemency," *not* that a policy governing clemency was unconstitutional on its face. 302 S.W.3d at 58 (emphasis added). The Supreme Court of Kentucky recognized that, while a *particular* clemency decision was not subject to review, some amount of procedural due process is required for clemency as a general, categorical matter. *Id*. at 59. These precedents demonstrate that Kentucky courts may review the constitutionality of clemency policies.

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Only *Foley* facially challenged the arbitrariness and lack of procedure in Kentucky's executive clemency system, rather than the denial of clemency to a particular individual. 462 S.W.3d at 398. However, notably, *Foley* only raised a *federal* due process argument under the Fourteenth Amendment that had largely already been foreclosed by the U.S. Supreme Court. *See Woodard*, 523 U.S. at 288–90 (O'Connor, J., concurring); *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 461–66 (1981). The plaintiff did not assert any violation of Kentucky's equal protection guarantees caused by a discriminatory classification on the face of an executive clemency policy.[4]

With the sole exception of the federal constitutional challenge in *Foley*, the cases cited by the Circuit Court and in the briefing below have *not* concerned judicial review of a global policy that governs all clemency decisions or a particular subset of such decisions. Defendant's discriminatory voting rights restoration scheme is not the kind of individualized clemency decision that is traditionally considered beyond the scope of judicial scrutiny, but rather a categorical exclusion or classification on the face of an executive order governing the exercise of clemency powers that clearly violates the Kentucky Constitution's equal protection guarantees.

Accordingly, judicial review of Plaintiff's facial challenge is squarely within the jurisdiction of the courts, as "a governor's clemency power is not absolute" and is "subject to judicial review if it violates specific constitutional protections." *Stanford*, 643 S.W.3d at 101.

[4] Even *Woodard* and *Dumschat* both found that courts may review clemency procedures to ensure some minimal due process is afforded to petitioners for clemency. *Woodard*, 523 U.S. at 288–90 (O'Connor, J., concurring); *Dumschat*, 452 U.S. at 461–66.

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C. Issuing Plaintiff's requested declaratory and injunctive relief would not violate the separation of powers.

The Jefferson Circuit Court erred in concluding that it "cannot grant the relief Plaintiff requests" and "cannot order the Governor to extend Executive Order 2019-003 to grant a pardon to Plaintiff." Opinion at 5, 8, TR301, TR304. Plaintiff sought a declaratory judgment that the discriminatory classification in EO 2019-003 excluding people with equivalent, out-of-state felony convictions from automatic restoration violated equal protection, as well as injunctive relief to invalidate and block enforcement of this unconstitutional distinction. Compl. at 20, Prayer for Relief, TR20. Because the consequence of such injunctive relief would be to effectuate the restoration of voting rights to the Proposed Class, including Plaintiff—unless the Governor chose to rescind EO 2019-003 during a temporary stay—the Jefferson Circuit Court erroneously believed that it could not grant the requested relief and, therefore, dismissed Plaintiff's claim. Opinion at 9, TR305.

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1. Plaintiff's request for declaratory relief does not violate the separation of powers.

As a threshold matter, the Jefferson Circuit Court failed to address Plaintiff's argument that this case could, at a minimum, proceed on Plaintiff's request for declaratory relief. Declaratory relief is not dependent on the issuance of a corresponding injunction. When a justiciable controversy is presented, "the court may make a binding declaration of rights, whether or not consequential relief is or could be asked" for in the complaint. *See* KRS § 418.040 (noting that plaintiff may "ask for a declaration of rights, either *alone* or with other relief") (emphasis added). A request for a mere declaratory judgment would not disturb the separation of powers. Even when Kentucky courts have found certain orders

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would violate the separation of powers enshrined in Sections 27 and 28 of the Kentucky Constitution, they have nevertheless found that a declaratory judgment action is still permissible. *See, e.g.*, *Commonwealth, Dep't of Alcoholic Beverage Control v. Tapp*, No. 2014-SC-000154-MR, 2014 WL 5410325, at *2 (Ky. Oct. 23, 2014) (holding that "trial court's purported inability to grant the injunctive relief" due to separation of powers "is not fatal to the viability of the overall claim under KRS 418.040"); *see also Burton v. Commonwealth*, 678 S.W.3d 926, 932 (Ky. App. 2023) (holding that even though court's order "overrid[ing] the order granting parole infringe[d]" on separation of powers "the Commonwealth could have challenged th[e parole] decision itself in a declaratory judgment action").

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Regardless of how this Court resolves the question of whether the Circuit Court may issue injunctive relief in this case, that has no bearing on whether the Circuit Court may grant Plaintiff's request for *declaratory* relief. Indeed, Defendant failed to make any argument below that the court could not issue declaratory relief in these circumstances. Therefore, the Jefferson Circuit Court's refusal or failure to consider the availability of declaratory judgment—*even if* separation of powers were to bar injunctive relief—is, on its own, grounds for reversing and remanding the judgment dismissing Plaintiff's case in its entirety.

2. Plaintiff's requested injunction does not violate the separation of powers.

Plaintiff sought both declaratory relief and an injunction to prohibit enforcement of the discriminatory classification in EO 2019-003, thereby removing the unconstitutional disparity between Proposed Class Members and those with in-state convictions. Kentucky's courts are empowered to modify or strike down unconstitutional executive

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pardons or clemency regimes such as EO 2019-003. The Supreme Court of Kentucky has expressly held "that the Governor has the power to issue partial pardons *except where to do so violates the Constitution*." *Anderson*, 107 S.W.3d at 196 (emphasis added). While the *Anderson* Court noted "it [was] outside the power of the courts to alter or expand upon the Governor's order where the executive order itself does not otherwise violate the Constitution," *id*., this reinforces that when an exercise of the pardon power *does* violate the Kentucky Constitution, Kentucky's courts may alter or expand the order to remedy the constitutional violation.

Nevertheless, the Jefferson Circuit Court concluded that it could not grant the requested injunctive relief without violating the separation of powers. In doing so, the court implicitly rejected—without any express discussion—the options Plaintiff presented to harmonize the judicial power and duty of constitutional review with the Governor's discretionary pardon power. Plaintiff suggested to the Jefferson Circuit Court two potential injunctions. Both of these alternatives would reconcile Kentucky courts' duty to issue injunctive relief remedying equal protection violations with the Governor's discretionary executive clemency power to restore voting rights.

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First, the court could have enjoined the offending categorical exclusion in EO 2019-003—specifically, the phrase "or the laws of jurisdictions other than Kentucky," EO 2–3, TR27–28—and issued an immediate but temporary stay of its judgment. The temporary stay would give the Governor time to do one of the following: (a) deliberately let the order go into effect without any further action; (b) affirmatively rescind and reissue EO 2019-003, omitting the unconstitutional categorical exclusion of Kentuckians

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disenfranchised by reason of an out-of-state felony conviction; or (c) rescind EO 2019-003 without replacing it. Resp. to Mot. to Dismiss at 10–11, TR232–33.

Second, in the alternative, the court could have struck down EO 2019-003 as a whole, compelling the Governor to rescind the invalidated Executive Order and either (a) reissue it without the unconstitutional categorical exclusion of Kentuckians disenfranchised by reason of an out-of-state felony conviction or (b) withhold all automatic voting rights restoration in Kentucky for the duration of his term. *Id.* at 11, TR233.

Under either formulation of the requested injunctive relief, a judgment in Plaintiff's favor may enjoin the Governor's unconstitutional acts without immediately effectuating the restoration of civil rights to members of the Proposed Class, including Plaintiff. In opposing the motion to dismiss, Plaintiff conveyed to the Jefferson Circuit Court that, if it chose the first proposed injunction, he would request that the court stay its own order and judgment for at least 14 days to give the Governor an opportunity to let the judgment go into effect, reissue EO 2019-003 without the invalidated classification, or rescind EO 2019-003 without replacing it. *Id.* at 10–11, TR232–33. The last option, rescission without replacement, would of course remain subject to the court's judgment that any subsequent replacement executive order the Governor or any future governor issued would need to omit the unconstitutional classification. And the second proposed injunction would simply invalidate EO 2019-003 in full, leaving it purely up to the Governor whether to reissue an executive order on voting rights restoration without the unconstitutional classification or not.

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Accordingly, the Jefferson Circuit Court could easily structure its injunction such that it ultimately would be *the Governor's* choices and actions—and not solely the judicial

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order—that would bring EO 2019-003 into compliance with the Kentucky Constitution's equal protection guarantees. And for any such choice that caused the automatic restoration of Proposed Class Members with equivalent, out-of-state felony convictions, it ultimately would be the Governor's conscious actions and choices that would effectuate the restoration of civil rights to members of the Proposed Class, avoiding any infringement of the separation of powers.

Indeed, these alternative proposals would balance this Court's power of judicial review and duty to enforce constitutional rights with the Governor's constitutional prerogative to restore civil rights. Such relief would not usurp or even impinge upon the Governor's pardon power. Judicial relief like this is also common in election law. For example, in redistricting litigation, Kentucky courts typically enjoin unconstitutional maps but leave it to the legislature to redraw constitutionally compliant maps. *See Legis. Rsch. Comm'n v. Fischer*, 366 S.W.3d 905, 918 (Ky. 2012) (finding redistricting plan unconstitutional and remanding without instructions for the lower court to develop a new map); *Brown v. Legis. Rsch. Comm'n*, 966 F. Supp. 2d 709, 725–26 (E.D. Ky. 2013) (assessing constitutional challenge to legislature's failure to pass new redistricting map following *Fischer*, issuing injunction prohibiting continued use of 2002 electoral districts, and stating "the most desirable outcome of this case for all parties is for the Kentucky General Assembly to enact a constitutional plan for state legislative reapportionment").

The Circuit Court was not bound to the specific format of relief requested but rather has broad equitable power to fashion the remedy in such a way that harmonizes the necessary judicial vindication of equal protection rights with the Governor's constitutional prerogative to restore voting rights on a discretionary basis. The Prayer for Relief in

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Plaintiff's Complaint in part conveyed the *effect* of invalidating the unconstitutional classification—it would functionally restore Proposed Class Members' right to vote. *See* Compl. at 20, TR20 ("Grant a permanent injunction requiring Defendant to extend EO 2019-003's grant of automatic civil rights restoration . . . ."). Though perhaps drafted in a blunt way, the upshot of the requested permanent injunctive relief was to strike down the unconstitutional classification, thereby effectuating that class-wide restoration of voting rights. Nevertheless, the Circuit Court remains free to adopt the more specific, tailored alternatives outlined above, regardless of the specific language Plaintiff used in its Prayer for Relief. The Complaint adequately apprised Defendant that Plaintiff sought to enjoin the discriminatory treatment of Plaintiff and the Proposed Class by striking down the classification.

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Indeed, Kentucky Rule of Civil Procedure 54.03(2) provides that "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." The power and decision of what remedy to grant lies solely with the courts. KRS § 418.055 ("Further relief, based on a declaratory judgment, order or decree, may be granted whenever necessary or proper."). Thus, this Court may issue appropriate relief that is tailored to the constitutional violation balanced against the separation of powers, even if that varies in form, if not function, from the initial request in the Complaint's Prayer for Relief. Plaintiff also requested that the court "[a]ward all such other and further relief as the Court deems to be just and equitable." Compl. at 20, Prayer for Relief, TR20. And Defendant was put on notice that Plaintiff sought equalization of the Proposed Class and those already

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automatically restored, which is most easily and narrowly accomplished by specifically enjoining the unconstitutional statutory classification.[5]

For the reasons recounted above, Plaintiff has rightly sought both declaratory relief and a permanent injunction against EO 2019-003's unconstitutional classification. Were this Court not empowered to invalidate discriminatory uses of the pardon power, Kentucky's governors would be able to establish an automatic restoration system based on any suspect classification. According to Defendant, the courts would be powerless to issue injunctive relief against that executive action. And given the irrevocability of clemency, *see Adkins*, 23 S.W.2d at 280, the Governor could irreversibly accomplish such automatic restoration only for individuals of a certain race, gender, national origin, or even a certain height or hair color and could never be forced to remedy that unequal treatment. This is patently illogical and flies in the face of the power of judicial review for violations of constitutional rights. Necessarily, it must be within Kentucky courts' power to strike down such flagrantly unconstitutional uses of executive clemency powers when an equal protection violation is established. As the Supreme Court of Kentucky has noted, "no one would contend that a Governor could ignore the commands of the Equal Protection Clause and use race, religion, or political affiliation as a standard for granting or denying clemency." *Foley*, 462 S.W.3d at 394 (quoting *Woodard*, 523 U.S. at 292 (Stevens, J., concurring)).

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[5] Plaintiff communicated to the Circuit Court that it did not believe any amendment of the Complaint was necessary to issue the specific, refined forms of injunctive relief requested. Resp. to Mot. to Dismiss at 12 n.4, TR234. Nevertheless, Plaintiff stated that "should this Court prefer that to better align with the more specific remedial options requested herein, Plaintiff would respectfully request leave from this Court to file a First Amended Complaint." *Id*. The Circuit Court implicitly declined this request.

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Accordingly, with respect, the Circuit Court erred in concluding it lacked the power to enjoin EO 2019-003's unconstitutional classification directly, or EO 2019-003 as a whole.

3. The requested injunctive relief will have no impact on Kentuckians who have previously had their voting rights restored under EO 2019-003.

Finally, striking down EO 2019-003 in whole or in part will not and cannot revoke the voting rights of those Kentuckians who have been automatically restored under the order. The Governor has no power to revoke a pardon once granted. *See Adkins*, 23 S.W.2d at 280 ("It has been uniformly held, as stated, that the Governor cannot revoke a pardon."). Accordingly, previously restored Kentuckians would not suddenly lose their rights if this Governor or a successive governor decided to withdraw the Executive Order. This is because a pardon, once granted, creates vested rights for the grantees. *Royster*, 79 S.W.2d at 711 (noting prior cases finding "beneficiary of the pardon, had acquired vested rights"). Indeed, the irrevocability of partial pardons automatically bestowed by EO 2019-003 strongly supports the first version of the injunction Plaintiff has proposed, which would result in uniform automatic restoration regardless of where these qualifying Kentuckians were convicted.

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D. The "political question" doctrine does not bar review of Plaintiff's equal protection claim.

The Jefferson Circuit Court also erroneously invoked the political question doctrine to find it had no power to grant relief to Plaintiff. Opinion at 7, TR303. The political question doctrine instructs courts to "not interfere in the exercise by another department of a discretion that is committed by a textually demonstrable provision of the Constitution to the other department," or "seek to resolve an issue for which it lacks judicially discoverable

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and manageable standards." *Bevin v. Commonwealth ex rel. Beshear*, 563 S.W.3d 74, 81 (Ky. 2018) (quoting *Fletcher v. Commonwealth*, 163 S.W.3d 852, 860 (Ky. 2005); citing *Vieth v. Jubelirer*, 541 U.S. 267, 276 (2004)). However, the political question doctrine does not instruct courts to blindly allow a coordinate branch of government to violate the constitutional rights of individuals. After all, "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177–78 (1803). In rejecting an argument to apply the political question doctrine, the Supreme Court of Kentucky has reaffirmed the power of constitutional review, stating that "[j]ust as this court will not infringe upon the independence of the legislature, we will not cast a blind eye to our own duty to interpret the Constitution and declare the law." *Bevin*, 563 S.W.3d at 82 (quoting *Stephenson v. Woodard*, 182 S.W.3d 162, 174 (Ky. 2005)).

Kentucky's courts regularly review the actions of coordinate branches for compliance with the Kentucky Constitution without running afoul of the political question doctrine. *See e.g.*, *Graham*, 684 S.W.3d at 679 (reviewing legislature's compliance with equal protection during redistricting and stating "a claim that an act of government is unconstitutional presents a purely *judicial* question appropriate for resolution by the judiciary") (alteration in original); *Bevin*, 563 S.W.3d at 82 (assessing legislature's compliance with Section 46 of the Kentucky Constitution and noting that "Section 46 is not a rule of the General Assembly to be defined, interpreted, and applied exclusively by the General Assembly"); *Stephenson*, 182 S.W.3d at 174 (assessing whether legislative candidate was constitutionally qualified to take office and noting that it "is the primary and fundamental responsibility of this Court to ensure that the Constitution of this Commonwealth is respected").

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Kentucky courts have recognized six factors to consider when deciding whether to defer resolution of an issue based upon the political question doctrine: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving it; (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; (4) the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; (5) an unusual need for unquestioning adherence to a political decision already made; or (6) the potentiality of embarrassment from multifarious pronouncements by various departments on one question. *Philpot v. Haviland*, 880 S.W.2d 550, 553 (Ky. 1994) (citing *Baker v. Carr*, 369 U.S. 186, 216 (1962)).

None of these factors weigh in favor of non-justiciability under the political question doctrine. There is no "textually demonstrable constitutional commitment" assigning to the Governor the authority to determine his own compliance with the Kentucky Constitution's equal protection guarantees. While the Jefferson Circuit Court found that the text of Section 77 grants the Governor sole and unfettered discretion to grant pardons without any constitutional constraints, that finding is belied by the extensive judicial review of pardons discussed above. Courts have found time and time again that use of the pardon power must be balanced with the requirements of the Kentucky Constitution. *See supra* Section II.A. After all, "[t]he Governor has only such powers as are vested in him by the Constitution and the statutes enacted pursuant thereto." *Ky. Emps. Ret. Sys. v. Seven Cntys. Servs., Inc.*, 580 S.W.3d 530, 539 (Ky. 2019) (alteration in original) (quoting *Martin v. Chandler*, 318 S.W.2d 40, 44 (Ky. 1958)). The issue in this

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case is best articulated as whether the Governor complied with his constitutional obligations when he created an automatic, forward-looking, non-discretionary rights restoration procedure that distinguished between categories of people with felony convictions. Assessment of that issue is squarely within the bounds of judicial authority.

Equal protection claims are frequently litigated and have judicially ascertainable and manageable standards, which counsels against application of the political question doctrine. *See Zuckerman*, 565 S.W.3d at 594–96 (detailing judicial standards governing equal protection claims). Claims challenging allegedly discriminatory classifications unsupported by a compelling interest or even a rational basis are bread-and-butter constitutional claims that can be resolved under ordinary rules of constitutional interpretation.

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Assessment of the Governor's compliance with equal protection requirements does not rest on any policy determination unfit for judicial discretion, as "the Kentucky Constitution and the constitutions of the United States and virtually all states vest the ultimate authority for discerning the meaning of constitutional provisions in the judicial branch." *Bevin*, 563 S.W.3d at 83. Critically, the Executive Order should be viewed as creating two classes of people for all future rights restoration: those who merit automatic restoration because they were convicted in Kentucky, and those who do not because they were convicted outside of Kentucky of an equivalent felony. Plaintiff does not challenge the wisdom of the decision to grant any individual voting rights restoration, but instead challenges the unconstitutional discrepancy embedded within the Executive Order's arbitrary line-drawing based on the jurisdiction in which the restoration applicant was convicted. Such a challenge is clearly reviewable by the courts. *See Fletcher v. Graham*,

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192 S.W.3d at 365 ("[O]ur sole concern must be the constitutionality—not the prudence—of the Governor's actions.").

As for the remaining three factors, the Circuit Court would not show any lack of respect for the Governor by ordering compliance with the obligations of the Kentucky Constitution. *See Bevin*, 563 S.W.3d at 83–84 (noting that undertaking normal rules of constitutional construction does not convey a lack of respect for the legislature). There is no unusual need for unquestioning adherence to a political decision already made because the Governor's political decisions must be made in compliance with the other parts of the Kentucky Constitution. *Fletcher v. Commonwealth*, 163 S.W.3d at 860 ("The issue presented by this case is a constitutional issue, not a political one; thus, it is justiciable."). Finally, there is no potential for embarrassment from multifarious pronouncements on the constitutionality of the Executive Order, as the "judiciary has the ultimate power, and the duty, to apply, interpret, define, construe all words, phrases, sentences, and sections of the Kentucky Constitution as necessitated by the controversies before it." *Graham*, 684 S.W.3d at 681; *see also Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 209 (Ky. 1989) ("To allow the General Assembly (or, in point of fact, the Executive) to decide whether its actions are constitutional is literally unthinkable.").

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For these reasons, the Circuit Court erred in finding the political question doctrine barred review of Plaintiff's equal protection claim.

III. Plaintiff has standing to challenge the issuance of the Executive Order because the violation of equal protection rights is cognizable, justiciable, and redressable.

The Jefferson Circuit Court's standing analysis and conclusions are duplicative of the analyses and legal conclusions addressed above. A "plaintiff must allege personal

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injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Ky. Constables Ass'n*, 723 S.W.3d at 823 (quoting *City of Pikeville v. Ky. Concealed Carry Coal., Inc.*, 671 S.W.3d 258, 264 (Ky. 2023)).

As to the injury prong, Plaintiff has not argued that he and members of the Proposed Class have a per se right to voting rights restoration. Rather, they claim the Governor has violated their right to equal protection by arbitrarily making a distinction in EO 2019-003 between Kentuckians who were convicted of out-of-state felonies and Kentuckians convicted of equivalent in-state felonies. Compl. ¶¶ 3–6, 49–72, TR2–3, TR16–19. It is beyond dispute that Plaintiff remains disenfranchised because of EO 2019-003's categorical exclusion of the Proposed Class with equivalent, out-of-state felony convictions. Although no one is entitled to a partial pardon, all Kentuckians have a right to equal protection. A policy that affords automatic restoration to some but not others without providing any compelling or rational justification violates that right. Even within the realm of executive clemency, once the Governor adopts a mandatory, criteria-based automatic restoration scheme, the Kentucky Constitution requires that automatic restoration be conferred consistently to all similarly situated individuals, absent some compelling state interest or rational basis to justify any unequal treatment.

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Furthermore, the equal protection violation is directly traceable to the Governor's issuance of EO 2019-003, and Plaintiff has already established this violation's redressability through declaratory and injunctive relief. *See supra* Section II.C.

Ultimately, Defendant's arguments regarding whether Plaintiff has standing, therefore, are coextensive and coterminous with the arguments on justiciability and redressability. Having established that the equal protection violation is cognizable,

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justiciable, and redressable, standing is per se established. Because Plaintiff's equal protection challenge to EO 2019-003's facially discriminatory classification is justiciable, and this claimed equal protection violation is redressable via the requested declaratory and injunctive relief, Plaintiff has standing to bring this lawsuit.

CONCLUSION

Respectfully, Plaintiff requests that this Court reverse the Jefferson Circuit Court's judgment dismissing the Complaint and remand this case for further proceedings.

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Dated: October 6, 2026

Respectfully submitted,

/s/ Jon Sherman

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WORD COUNT CERTIFICATE

This brief complies with the word limit of 8,750 under RAP 31(G)(2)(a) because, excluding the parts of the brief exempted by RAP 15(D) and 31(G)(5), this brief contains 8,286 words.

/s/ Jon Sherman

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RAP 32(E) APPENDIX

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3	Ky. Exec. Order No. 2019-003 (Dec. 12, 2019) (filed January 7, 2026 as Exhibit A to Complaint)	Vol. I	TR25–28
4	Iowa Exec. Order No. 7 (Aug. 5, 2020) (filed January 7, 2026 as Exhibit B to Complaint)	Vol. I	TR29–32
5	Commonwealth of Ky. State Bd. of Elections, *Form SBE 01*, *Commonwealth of Kentucky Voter Registration Application* (Apr. 2024) (filed January 7, 2026 as Exhibit C to Complaint)	Vol. I	TR33–35
6	Ky. Dep't of Corr., Div. of Prob. and Parole, *Form CPP 27-26-01*, *Application for Restoration of Civil Rights* (rev. Mar. 2020) (filed January 7, 2026 as Exhibit D to Complaint)	Vol. I	TR36–38
7	Defendant's Motion to Dismiss (filed February 3, 2026)	Vol. II	TR215–22
8	Plaintiff's Response in Opposition to Defendant's Motion to Dismiss (filed February 23, 2026)	Vol. II	TR223–44
9	*Chandler v. Patton*, No. 2007-CA-002222-MR, 2008 WL 4952109 (Ky. Ct. App. Nov. 21, 2008)	n/a	n/a

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Tab	Description	Record Volume	Record Page Numbers
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RAP 32(E) APPENDIX

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Tab	Description	Record Volume	Record Page Numbers
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NO. 26-CI-000116 JEFFERSON CIRCUIT COURT

DIVISION EIGHT (8)

JUDGE JENNIFER BRYANT WILCOX

BRYAN BARBER PLAINTIFF

vs. **OPINION AND ORDER**

ANDY BESHEAR, in his official
Capacity as Governor of the Commonwealth of Kentucky DEFENDANT

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This matter is before the Court on the Motion to Dismiss filed by Defendant Andy Beshear, in his official capacity as Governor of the Commonwealth of Kentucky, under Kentucky Rule of Civil Procedure ("CR") 12.02(a) and (f) for lack of jurisdiction and failure to state a claim upon which relief can be granted filed on February 3, 2026. Plaintiff responded on February 23, 2026. Defendant replied on March 5, 2026. Oral arguments were held on May 20, 2026. This matter now stands submitted for a ruling.

STANDARD

A court lacks jurisdiction to decide non-justiciable controversies. *See Commonwealth, Bd. of Nursing v. Sullivan Univ. Sys., Inc.*, 433 S.W.3d 341, 343-44 (Ky. 2014). Under CR 12.02(a), dismissal is appropriate when a court lacks jurisdiction over the subject matter of the suit. A plaintiff must demonstrate standing to sue a defendant to invoke a court's jurisdiction.

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Commonwealth Cabinet for Health and Family Servs., Dep't for Medicaid Servs. v. Sexton by and through Appalachian Regional Healthcare, Inc., 556 S.W.3d 185, 195 (Ky. 2018).

A motion to dismiss under CR 12.02(f) for failure to state a claim upon which relief can be granted should not be granted "unless it appears that the pleading party would not be entitled to relief under any set of facts which would be proved in support of his claim." *Brown v. Poole*, 680 S.W.3d 810, 812 (Ky. 2023) (citing *Pari-Mutuel Clerks' Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977)).

In ruling on a motion to dismiss, the court should liberally construe the pleadings in the light most favorable to the plaintiff, taking all the plaintiff's allegations as true. *Id.* (citing *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010)). The court ***must*** dismiss a non-justiciable case. *Berger Family Real Estate, LLC v. City of Covington*, 464 S.W.3d 160, 166 (Ky. App. 2015).

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FINDINGS OF FACT

1. Plaintiff Bryan Barber filed this action on January 7, 2026, as a 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). (Complaint, p. 1.)

2. In his Complaint for Declaratory and Injunctive Relief, Plaintiff, who is also the

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Proposed Class Representative, seeks declaratory and injunctive relief under KRS §§ 418.040 and 418.045. (*Id.*)

3. Between 2019 and 2021, Plaintiff 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). Plaintiff has satisfied the sentence of incarceration and/or the terms of supervised release for his felony convictions. (*Id.*, p. 3.)

4. On December 12, 2019, Defendant Governor Andy Beshear issued Executive Order 2019-003, titled "Relating to the Restoration of Civil Rights for Convicted Felons," granting automatic restoration of certain civil rights to individuals who had been convicted of certain felonies in Kentucky, excluding certain Kentucky felonies and convictions in other jurisdictions and federal convictions. *(Id.*, pp. 2, 6.)

5. Executive Order 2019-003 excludes the following felonies from automatic restoration under the executive order: (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 KRS508.170, and (g) any offense under KRS 529.100. (*Id.*, p. 6.)

6. Plaintiff claims in his Complaint that Defendant Governor Andy Beshear, in his official capacity, violated equal protection under Sections 1, 2 and 3 of the Kentucky Constitution in Executive Order 2019-003 by not granting individuals automatic restoration of

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rights who were convicted of felonies in jurisdictions other than the Commonwealth of Kentucky. He asks this Court to extend Executive Order 2019-003 to grant him automatic civil rights restoration[.]" (*Id.*, pp. 16-19.)

7. 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." (*Id.*, p. 16.)

8. 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.*)

9. 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." (*Id.*)

10. Under Section 77 of the Kentucky Constitution, the Governor has the power to grant reprieves and pardons. (*Id.*, p. 4.)

11. Under Section 145 of the Kentucky Constitution, the Governor has the power to restore by executive pardon the right to vote to an individual convicted of treason, or felony, or bribery in an election, of such high misdemeanor as the General Assembly may declare shall operate as an exclusion from the right suffrage. (*See id.*; KY. CONST. § 145)

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12. Under Section 150 of the Kentucky Constitution, the Governor has the power to remove by pardon an individual's disability of being excluded from office because of a conviction for a felony, or of such high misdemeanor as may be prescribed by law. (*See id.*; KY. CONST. § 150.)

13. On February 3, 2026, the Governor filed a Motion to Dismiss under CR 12.02(a) and (f). On February 23, 2026, Plaintiff filed his response to the Motion. On March 5, 2026, the Governor filed his reply in support of the Motion. The Court heard oral argument on the Motion on May 18, 2026.

OPINION AND ORDER AND CONCLUSIONS OF LAW

Liberally construing the pleadings in the light most favorable to Plaintiff and accepting all of Plaintiff's allegations as true, this Court finds that Plaintiff would not be entitled to relief under any set of facts which would be proved in support of his claim, and dismissal of Plaintiffs' Complaint, with prejudice, is warranted under CR 12.02(a) and (f).

This Court cannot grant the relief Plaintiff requests. This Court interfering with the Governor's unfettered pardon power to force him to extend Executive Order 2019-003 would violate the separation of powers in the Kentucky Constitution. Therefore, Plaintiff fails to state a claim upon which relief can be granted. Furthermore, the Court is without subject matter over Plaintiff's claims because Plaintiff lacks standing.

No individual has a right to a pardon. *Connecticut Board of Pardons v. Dumschat*, 452

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U.S. 458, 464 (1981) (holding that "an inmate has 'no constitutional or inherent right' to commutation of his sentence[.]" 452 U.S. 458, 464 (1981). A pardon "is simply a unilateral hope." *Id*. at 465 (citations omitted).

Section 77 of the Kentucky Constitution states that the Governor:

… shall have power to remit fines and forfeitures, commute sentences, grant reprieves and pardons, except in case of impeachment, and he shall file with each application therefor a statement of the reasons for his decision thereon, which application and statement shall always be open to public inspection.

Kentucky courts have consistently interpreted this provision to reserve the pardon power exclusively to the unfettered discretion of the Governor. *Foley v. Beshear*, 462 S.W.3d 389, 392 (Ky. 2015); *Baze v. Thompson*, 302 S.W.3d 57, 60 (Ky. 2010).

Under Section 145 of the Kentucky Constitution, the Governor has the power to grant partial pardons to restore the voting rights of a person convicted of treason, or felony, or bribery in an election, of such high misdemeanor as the General Assembly may declare shall operate as an exclusion from the right suffrage. Under Section 150 of the Kentucky Constitution, the Governor has the power to restore the right to hold office to an individual convicted of a felony, or of such high misdemeanor as may be prescribed by law.

Thus, the Governor has the sole and unfettered constitutional discretion to restore or not restore the ability to vote for persons convicted of certain crimes through his pardon power. *See* KY. CONST. §§ 77, 145 and 150. *See also Foley v. Beshear*, 462 S.W.3d 389, 392 (Ky. 2015) (citing *Baze v. Thompson*, 302 S.W.3d 57, 60 (Ky. 2010), *cert. denied*, 136 S.Ct. 797 (U.S. Jan.

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11, 2016); *Lostutter v. Kentucky*, 2023 WL 4636868, at *1 (6th Cir. July 20 2023) (recognizing the Governor has complete discretion in granting or denying a request for restoration of civil rights), *cert. denied*, 144 S.Ct. 809 (U.S. Feb. 20, 2024)).

The Kentucky Constitution contains express provisions that, on one hand, mandate separation among the three branches of government, and on the other hand, specifically prohibit incursion of one branch of government into the powers and functions of the other." *Legislative Research Comm'n By and Through Prather v. Brown,* 664 S.W.2d 907, 912 (Ky. 1984); *See also* KY. CONST. §§ 27-28. The political question doctrine recognizes that the judicial branch "should not interfere in the exercise by another department of a discretion that is committed by a textually demonstrable provision of the Constitution to the other department," *Fletcher v. Commonwealth*, 163 S.W.3d 852, 860 (Ky. 2005), "or seek to resolve an issue which it lacks judicially discoverable and manageable standards," *Bevin v. Commonwealth ex rel. Beshear*, 563 S.W.3d 74, 81 (Ky. 2018) (citation omitted). This doctrine imposes on courts an "***obligation*** to refrain from interfering with the internal processes and internal rules by which the other branches perform their constitutional functions." *Id*. (emphasis added).

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The pardon power is committed to the executive and the separation of powers in the Kentucky Constitution prohibits the courts from ordering the Governor to pardon any individual. *Jackson v. Rose*, 3 S.W.2d 641, 643 (Ky. 1928) ("No court has the power to review the action of the executive in granting a pardon, for that would be the exercise of the pardoning power in part, and any attempt of the courts to interfere with the Executive in the exercise of the pardoning

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power would be a manifest usurpation of authority." (citation omitted)). *See also Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981) (holding that "pardon and commutation decisions have not traditionally been the business of courts; as such, they are rarely, if ever, appropriate subjects for judicial review."); *Chandler v. Patton*, 2008 WL 4952109, *2 (Ky. App. Nov. 21, 2008) (holding a court passing on the wisdom behind a pardon decision would be a brazen violation of the separation of powers).

This Court cannot order the Governor to extend Executive Order 2019-003 to grant a pardon to Plaintiff. The Kentucky Constitution reserves for the Governor and the Governor alone the pardon power, including partial pardons, which he has complete and unfettered discretion to exercise. Ordering the Governor to extend Executive Order 2019-003 would encroach on the Governor's constitutional power and violate the separation of powers. This Court does not have the jurisdiction to grant Plaintiff's requested relief.

Neither does this Court have jurisdiction to hold Executive Order 2019-003 invalid. As stated in the Governor's Reply in Support of his Motion to Dismiss and at oral argument, the cases Plaintiff cites in his Response are distinguishable from this case. None of thosecases support a finding that a court may review a pardon to determine whether it violates equal protection and then potentially either invalidate the pardon or extend it to others. The Court thus dismisses Plaintiff's Complaint under CR 12.02(f).

Plaintiff also lacks standing and leaves this Court without subject matter jurisdiction. To sue in Kentucky, a plaintiff must establish constitutional standing. *Overstreet v. Mayberry*, 603 S.W.3d 244, 252 (Ky. 2020). Standing requires an injury, causation, and redressability. *Id*. The

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injury must be "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Id*. (citations omitted).

Here, Plaintiff cannot demonstrate any concrete or particularized injury as a result of Executive Order 2019-003. Again, no individual has any right to a pardon. *Dumschat*, 452 U.S. at 464. *See also Chandler v. Patton*, 2008 WL 4952109, *2 (Ky. App. Nov. 21, 2008). This includes any right guaranteed under equal protection.

In addition, the restoration of others' civil rights does not cause Plaintiff any injury. *McCord v. Ford*, 398 F. Supp. 750, 754-55 (D.D.C. 1975) (convicted Watergate burglar lacked standing to challenge pardon of former President Nixon). Executive Order 2019-003 also does not deny Barber an opportunity to receive a restoration of his civil rights in the future, as he remains eligible to receive a partial pardon restoring his rights by the current Governor or any future governor.

Even if Executive Order 2019-003 were viewed as a denial of Plaintiff's restoration of rights, which this Court finds it is not, Plaintiff cannot demonstrate any injury resulting from such a denial because Kentucky courts do not recognize any substantive right to a pardon. Additionally, any injury alleged by Plaintiff is not redressable by this Court because it cannot extend Executive Order 2019-003 to Plaintiff for the reasons outlined herein. Accordingly, Plaintiff lacks standing to pursue his equal protection claim, leaving this Court without subject matter jurisdiction.

IT IS THEREFORE ORDERED that Plaintiff's Complaint is **DISMISSED, with prejudice**, under CR 12.02(a) and CR 12.02(f).

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This Order is final and appealable and there is no just cause for delay.

SO ORDERED this _____ day of _____, 2026.

/s/ JUDGE JENNIFER BRYANT WILCOX
electronically signed
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JUDGE JENNIFER BRYANT WILCOX

Jefferson Circuit Court Division Eight (8)

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Tab 2

Class Action Complaint for Declaratory and Injunctive Relief (filed January 7, 2026)	Vol. I	TR1–22

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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.

Presiding Judge: HON. JENNIFER BRYANT WILCOX (630455)
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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).

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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.

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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

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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).

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[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.

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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.*

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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

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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).

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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.

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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.

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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-%2011-2022.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.

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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;

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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

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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.

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[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).

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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

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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).

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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*

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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.

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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

Jackson C. Cooper
Kentucky Bar No. 94297
Jackson Cooper Law, PLLC
517 W Ormsby Ave.
Louisville, KY 40203
jackson@jacksoncooperlaw.com
Phone: (502) 888-0423

Jon Sherman*
DC Bar No. 998271
Beauregard William Patterson*
WI State Bar No. 1102842
Zoe Ginsberg*
MD Bar No. 2411071003
Fair Elections Center
1825 K St. NW, Suite 701
Washington, DC 20006
jsherman@fairelectionscenter.org
bpatterson@fairelectionscenter.org
zginsberg@fairelectionscenter.org
Phone: (202) 331-0114

**Application for Pro Hac Vice Admission Forthcoming*

Counsel for Plaintiff and Proposed Class

Presiding Judge: HON. JENNIFER BRYANT WILCOX (630455)
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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

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26-CI-000116 01/06/2026 Clerk, Kentucky Court of Appeals

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Tab 3

Ky. Exec. Order No. 2019-003 (Dec. 12, 2019) (filed January 7, 2026 as Exhibit A to Complaint)	Vol. I	TR25–28

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Exhibit A

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ANDY BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort, Kentucky

2019-003
December 12, 2019

RELATING TO THE RESTORATION OF CIVIL RIGHTS FOR CONVICTED FELONS

WHEREAS, the right to vote is the foundation of a representative government; and

WHEREAS, under the Constitution of the Commonwealth of Kentucky, an individual convicted of a felony is denied the right to vote or hold public office; and

WHEREAS, these restrictions may continue long after a sentence has been fully served; and

WHEREAS, according to media reports, an estimated more than 140,000 Kentuckians have already completed their sentences for non-violent felonies but remain disenfranchised and cannot vote; and

WHEREAS, research indicates that people who have completed their sentences and who vote are less likely to re-offend and return to prison; and

WHEREAS, restoration of the right to vote is an important aspect of promoting rehabilitation and reintegration into society to become law-abiding and productive citizens; and

WHEREAS, Kentucky is one of only two states that does not currently provide an automatic process for restoring voting rights for citizens upon final discharge of their sentences; and

WHEREAS, the current means by which Kentuckians who have completed their sentences seek to have their rights restored is unnecessarily time consuming; and

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ANDY BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort, Kentucky

2019-003
December 12, 2019

WHEREAS, pursuant to Sections 145 and 150 of the Constitution of the Commonwealth of Kentucky, the Governor is authorized and empowered to restore the civil rights of any citizen that are forfeited by reason of a felony conviction:

NOW, THEREFORE, in consideration of the foregoing and by virtue of the authority vested in me by Sections 69, 145, and 150 of the Constitution of the Commonwealth of Kentucky, I, Andy Beshear, Governor of the Commonwealth of Kentucky, do hereby Order and Direct the following:

1. The civil rights, hereby expressly limited to the right to vote and the right to hold public office denied by judgment of conviction and any prior conviction, are hereby restored to all offenders convicted of crimes under Kentucky state law who have satisfied the terms of their probation, parole, or service of sentence (hereinafter collectively referred to for purposes of this Order as "Final Discharge"), exclusive of restitution, fines, and any other court-ordered monetary conditions.

2. This Order shall not apply to any person presently convicted of:

   a) Treason,
   b) Bribery in an election,
   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.

3. The provisions of this Order, as mentioned above, only restore the right to vote and the right to hold public office and do not restore any other civil right.

4. Kentuckians convicted of crimes under Kentucky state law not meeting the criteria for automatic restoration as set forth in this Order, as well as Kentuckians convicted of crimes under federal law or the laws of jurisdictions other than Kentucky, may still make application for restoration of civil rights under guidelines provided by the Governor and the provisions of KRS 196.045.

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ANDY BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort, Kentucky

2019-003
December 12, 2019

5. This Executive Order, and all future restorations of civil rights issued pursuant hereto, shall not be construed as a full pardon under Section 77 of the Constitution of the Commonwealth of Kentucky, or as a remission of guilt or forgiveness of the offense; shall not relieve any obligation to pay restitution, fines, or any other court-ordered monetary conditions; and shall not operate as a bar to greater penalties for second offenses or a subsequent conviction as a habitual criminal.

6. In addition to the above, no civil rights shall be restored pursuant to this Order to any person who has at the time of Final Discharge any pending felony charges or arrests, nor to any person who was convicted under federal law or the laws of a jurisdiction other than Kentucky. The Department of Corrections shall take all reasonable steps necessary to effectuate compliance with the mandates and criteria set forth in this Order.

7. The Department of Corrections, including the Division of Probation and Parole within the Office of Community Services and Facilities, shall provide the information regarding any Kentuckian who meets the criteria as set forth in this Order to the necessary election officials.

8. Any Kentuckian who has received a Final Discharge prior to the effective date of this Order and who meets the criteria for automatic restoration of civil rights as set forth herein shall be eligible to request verification from the Department of Corrections of the restoration of their civil rights.

9. The provisions of this Order shall be effective as of December 12, 2019, and shall have both prospective and retroactive application.

10. The Justice and Public Safety Cabinet and all other Kentucky state agencies are hereby directed to comply with the provisions of this Order.

11. The provisions of Executive Order 2015-052, dated December 22, 2015, be and are hereby rescinded, declared null and void, and are no longer in effect.

ANDY BESHEAR, GOVERNOR
Commonwealth of Kentucky

ALISON LUNDERGRAN GRIMES
Secretary of State

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Tab 4

Iowa Exec. Order No. 7 (Aug. 5, 2020) (filed January 7, 2026 as Exhibit B to Complaint)	Vol. I	TR29–32

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Exhibit B

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State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER SEVEN

WHEREAS, the Bill of Rights set forth in Article I of the Constitution of the State of Iowa recognizes that the political power of the State of Iowa is inherent in the people, and the government is instituted for the protection, security, and benefit of its people; and

WHEREAS, the Constitution of the State of Iowa demonstrates the significance of the right to vote by devoting all of Article II to protecting the right of suffrage; and

WHEREAS, a person convicted of any infamous crime forfeits the right to vote and hold office pursuant to Article II, section 5, of the Constitution of the State of Iowa; and

WHEREAS, the Iowa Supreme Court has interpreted infamous crime to mean a felony criminal conviction; and

WHEREAS, Article IV, section 16, of the Constitution of the State of Iowa grants the Governor of the State of Iowa the power to restore the rights of citizenship that were forfeited by such a conviction; and

WHEREAS, restoring the right to vote of Iowans who have discharged their felony sentences will make our communities safer because those who are welcomed back as full members of society are less likely to recidivate; and

WHEREAS, restoring the right to vote of Iowans who have discharged their felony sentences recognizes that path to redemption following a felony conviction necessarily includes reintegration into our political process; and

WHEREAS, restoring the right to vote of Iowans who have discharged their felony sentence will reduce unnecessary burdens on Iowans who wish to obtain their rights back and conserve limited taxpayer resources currently used to review applications for restoration of voting rights; and

WHEREAS, two years ago in my Condition of the State address, I proposed an amendment to the Constitution of the State of Iowa to ensure that Iowans who have completed their felony sentences have their right to vote restored without relying on the discretion of the Governor of the State of Iowa; and

WHEREAS, a constitutional amendment continues to be the only permanent solution to this issue, but the process for proposing and ratifying such an amendment will likely take several additional years during which time Iowans would be deprived of these advantages; and

WHEREAS, the people of Iowa will benefit now from the restoration of the right to vote for Iowans who have completed their sentences and a clear and consistent process that continues to restore the right to vote immediately to Iowans who discharge their sentences.

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261-CA-000026 Lisa R. Morgan, Clerk, Kentucky Court of Appeals

Filed

NOW, THEREFORE, I, Kim Reynolds, Governor of the State of Iowa, do hereby restore the rights of citizenship, including that of voting and qualification to hold public office, to any person who forfeited those rights by conviction of an infamous crime, except for a violation of chapter 707 of the Iowa Code, and who has discharged his or her sentence on or before August 5, 2020. I further order the following:

I. **Discharge of sentence.** For purposes of this Executive Order, a person has discharged his or her sentence upon completion of any term of confinement, parole, probation, or other supervised release for all felony convictions, and completion of any special sentence imposed pursuant to chapter 903B.

II. **Convictions in other jurisdictions.** This restoration of citizenship rights shall apply 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.

III. **Limitations of restoration.** The provisions of this Executive Order do not restore rights with respect to firearms as provided in chapter 724 of the Iowa Code, do not grant an absolute pardon, do not relieve an individual from paying fines, costs, restitution, or other monetary obligations resulting from a criminal conviction, and do not operate as a bar to greater penalties for second offenses, subsequent convictions, or conviction as a habitual offender. This Executive Order does not restore the rights of citizenship in another jurisdiction unless the other jurisdiction requires the restoration of citizenship rights in Iowa because of a person's Iowa felony conviction.

IV. **Ongoing restoration.** I will restore the rights of citizenship, including that of voting and qualification to hold public office, to any person who has forfeited those rights by conviction of an infamous crime, except for a violation of chapter 707 of the Iowa Code, and who discharges his or his sentence, on a daily basis beginning on August 6, 2020. Such restorations shall be effective immediately upon the discharge of a person's sentence.

V. **Proof of restoration.** This Executive Order shall serve as serve as evidence of the restoration of citizenship rights for any person who forfeited those rights by conviction of an infamous crime, except for a violation of chapter 707 of the Iowa Code, and who has discharged his or her sentence, as defined above, on or before August 5, 2020. The certificate of restoration of citizenship issued daily, and available from the Office of the Governor, shall serve as evidence of the restoration of citizenship rights for any such person who discharges his or her sentence after August 5, 2020.

VI. **Records of discharge of sentence.** The Iowa Department of Corrections shall provide the Iowa Secretary of State records necessary to assist in updating the database of disqualified persons to reflect the restoration of citizenship rights in this Executive Order. The Department shall also continue to provide a record of all additional persons convicted of a felony, except for a violation of chapter 707 of the Iowa Code, in Iowa court who discharge their sentences directly from prison or after completing a term of parole or probation to the Iowa Secretary of State on at least a weekly basis.

VII. **Registration and exercise of the right to vote.** I strongly encourage all Iowans whose citizenship rights are restored by the Executive Order or who are otherwise eligible to vote in this state, to register to vote by submitting a voter registration form to their county auditor or completing the online voter registration. And I strongly encourage all these Iowans to begin participating fully as a citizen in our local, state, and national elections.

VIII. **Applications for restoration of citizenship rights.** Nothing in this Executive Order prohibits an Iowan from submitting an application for restoration of citizenship rights to the Office of the Governor.

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IX. **Interpretation and severability.** This Executive Order shall be interpreted in accordance with all applicable laws and regulations and shall not supersede any laws or regulations in place as of its effective date. The provisions of paragraphs III through X of this Executive Order do not create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the State of Iowa, its departments, agencies, or political subdivisions, or its officers, employees, agents, or any other persons. If any provision of this Executive Order is found to be invalid, unenforceable, or otherwise contrary to applicable law, then the remaining provisions of this Executive Order, as applied to any person or circumstance, in shall continue in full force and effect and shall not be affected by such finding of invalidity or unenforceability.

X. **Effective date and expiration.** This Executive Order shall apply prospectively only as of its effective date and it shall expire upon the ratification of any future amendment to Article II, section 5, of the Constitution of the State of Iowa. The expiration of this Executive Order shall not affect the validity of any restoration of citizenship rights granted while this Executive Order is in effect.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND CAUSED THE GREAT SEAL OF IOWA TO BE AFFIXED TO THIS EXECUTIVE ORDER. DONE IN DES MOINES, IOWA THIS 5TH DAY OF AUGUST IN THE YEAR OF OUR LORD TWO THOUSAND AND TWENTY.

Kim Reynolds

KIM REYNOLDS
GOVERNOR OF IOWA

ATTEST:

Paul D. Pate

PAUL D. PATE
SECRETARY OF STATE

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Presiding Judge: HON. JENNIFER BRYANT WILCOX (630455)

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Tab 5

Commonwealth of Ky. State Bd. of Elections, *Form SBE 01*, *Commonwealth of Kentucky Voter Registration Application* (Apr. 2024) (filed January 7, 2026 as Exhibit C to Complaint)	Vol. I	TR33–35

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Exhibit C

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26-CI-000116 01/07/2026 Lisa R. Morgan, Clerk, Kentucky Court of Appeals

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Commonwealth of Kentucky Voter Registration Application

For Clerk Use Only			
Precinct Code	Precinct Name	Town	Other Code

Print your name
Use blue or black ink only

1 Last: First:
Middle: ☐ Jr ☐ Sr ☐ II. ☐ III. ☐ IV (circle if applicable)

Eligibility
If you answer "No" to either question, you cannot register to vote.

2 Are you a citizen of the United States? ☐ YES ☐ NO
Will you be 18 years of age or older on or before Election Day? ☐ YES ☐ NO

Reason

3 ☐ New Registration ☐ Address Change ☐ Party Change ☐ Name Change

About You
Phone and email are optional and may be used to contact you about important information.

4 Gender: ☐ Female ☐ Male
Birthdate (MM/DD/YYYY): Social Security Number:
Phone Number: Email Address:

Your address
If you are homeless and lack an established and fixed residence of regular return, you may list a location with a fixed address as your place of habitation

5 Address where you live (no P.O. Box): Apt.:
City/Town: County: State: KY Zip:
Address where you get mail (if different than above): Apt.:
City/Town: County: State: Zip:

Political party
You may change your political affiliation at any time on or before December 31st to remain eligible to vote in the following primary election.

6 ☐ Democratic Party ☐ Republican Party ☐ Independent ☐ Other
To vote in a primary, you must register with either the Democratic or Republican party. If you select "Independent" or "Other" as your affiliation, you are eligible to vote for only nonpartisan offices in any primary election. You may vote for any candidate in all general or special elections. Only persons timely registered shall have the right to vote.

Signature

7 *WARNING: Per KRS 119.025, any person who causes himself to be registered when he is not legally entitled to register, shall be subject to penalties including fines and/or a term of imprisonment not less than one (1) year nor more than (5) years.*

Voter Declaration – read and sign
I swear or affirm that:
- I am a U.S. Citizen.
- I am a current resident of Kentucky.
- I will be at least 18 years of age on or before the next general election.
- 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.
- I have not been judged "mentally incompetent" in a court of law.
- I do not claim the right to vote anywhere outside Kentucky.

Voter sign here:
X
Date (MM/DD/YYYY):

Optional

8 ☐ I would like to be contacted by my County Clerk about becoming a poll worker in Kentucky

☐ I authorize the Kentucky State Board of Elections to send the information contained on this form to the appropriate voter registration officer who shall have my authorization to CANCEL my voter registration from my former state of residence:

Address where you were previously registered: Apt.:
City/Town: County: State: Zip:

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Postage Required. Post Office will not deliver without proper postage

OFFICIAL ELECTION MAIL
Authorized by the U.S. Postal Service

OFFICIAL VOTER REGISTRATION FORM

BOARD OF ELECTIONS
140 WALNUT ST
FRANKFORT KY 40601-3236

FROM DEMOCRACYDOCKET.CO

To maintain your privacy, fold application in half with return address facing the outside, secure with tape and mail

COMMONWEALTH OF KENTUCKY
MAIL-IN VOTER REGISTRATION FORM INSTRUCTIONS

You can use this form to: register to vote, change your name, change your address, register with a party or change parties.

Party Registration:
Kentucky has closed party primary elections, which means you must register as a Democrat or Republican to vote in that party's primary election. If you select "Other" as your party registration, you are eligible to vote in nonpartisan city and judicial primary elections ONLY. All eligible registered voters may vote for any candidate regardless of party registration in general or special elections. Only persons timely registered to vote shall have the right to vote.

NOTE:
- You must mail or return the completed voter registration to your local county clerk at least 29 days prior to the election.
- A listing of county clerk contact information is available on the State Board of Elections website, www.elect.ky.gov.
- If you are already registered to vote, you may change your political party registration at any time on or before December 31st to remain eligible to vote in the following primary election.
- If you want to check your voter registration record, the Voter Information Center (VIC) is available on the State Board of Elections website, www.elect.ky.gov. VIC includes the address of your voting precinct, a map with driving directions, and your current party registration.

Questions? Contact Your Local County Clerk OR

State Board of Elections
140 Walnut Street
Frankfort, KY
(502) 573-7100
www.elect.ky.gov

Deaf and Hard of Hearing persons with TDD: call (502) 573-7100

Presiding Judge: HON. JENNIFER BRYANT WILCOX (630455)
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Tab 6

Ky. Dep't of Corr., Div. of Prob. and Parole, *Form CPP 27-26-01*, *Application for Restoration of Civil Rights* (rev. Mar. 2020) (filed January 7, 2026 as Exhibit D to Complaint)	Vol. I	TR36–38

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Exhibit D

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Presiding Judge: HON. JENNIFER BRYANT WILCOX (630455)
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Attachment CPP 27-26-01
Rev. March 2020

DIVISION OF PROBATION AND PAROLE
APPLICATION FOR RESTORATION OF CIVIL RIGHTS

Answer every question that applies to you:

1. Name: _____ Phone: (_____) _____ - _____

   Name Used at Time of Conviction, if different: _____

2. Current Address: _____

   City/State: _____Zip: _____ County: _____

3. Date of Birth: _____/_____/_____ Social Security Number: _____-_____-_____

4. Please list the county/counties of felony conviction. (***Submit a copy of the conviction and judgement of final sentence, verification of final discharge or expiration and if applicable verification that restitution has been paid in full)***. _____

_____

5. Are you currently under felony supervision? Yes ☐ No ☐Explain: _____

_____

6. Have you ever been convicted of a federal crime or crime in another state? Yes ☐ No ☐Explain: _____

_____

7. Have you ever been convicted of the following?

   Violent Offense (KRS 439.3401) Yes ☐ No ☐Explain: _____

   _____

   Murder, Manslaughter, or Reckless Homicide (KRS Chapter 507) Yes ☐ No ☐Explain: _____

   _____

   Fetal Homicide (KRS Chapter 507A) Yes ☐ No ☐Explain: _____

   _____

   Assault 2nd Degree (KRS 508.020) Yes ☐ No ☐Explain: _____

   _____

   Assault Under Extreme Emotional Disturbance (KRS 508.040) Yes ☐ No ☐Explain: _____

   _____

   Strangulation 1st Degree (KRS 508.170) Yes ☐ No ☐Explain: _____

   _____

   Human Trafficking (KRS 529.100) Yes ☐ No ☐Explain: _____

   _____

   Treason or Bribery in an Election Yes ☐ No ☐Explain: _____

   _____

8. Do you currently have any pending charges, outstanding warrants, or indictments? Yes ☐ No ☐Explain: _____

9. Do you have any unpaid restitution? Yes ☐ No ☐Explain:_____

Restoration of Civil Rights DOES NOT give a convicted felon the right to purchase, own or have in possession a firearm or other weapon.

To the best of my knowledge the above information is correct.

Applicant Signature;_____

Date;_____

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Presiding Judge: HON. JENNIFER BRYANT WILCOX (630455)

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Attachment CPP 27-26-01
Rev March 2020

All persons who have been convicted of a felony in any court in this or any other state loses the right to vote and to hold public office. It is the prerogative of the Governor afforded him or her under the Kentucky Constitution to restore these rights.

Per Executive Order 2019-003 issued on December 12, 2019, the right to vote and the right to hold public office are automatically restored for certain felony offenders upon receipt of final discharge or expiration of sentence.

- **Automatic Restoration of Civil Rights:**
  Department of Corrections will automatically review discharged offenders to determine if eligible for automatic restoration of civil rights. Inquiries on qualifications for automatic restoration can be submitted to civilrights.restoration@ky.gov.

  The following are excluded from automatic restoration of civil rights:

  - ✓ Certain felony convictions under KRS 439.3401, KRS Chapter 507, KRS Chapter 507A, KRS 508.020, KRS 508.040, KRS 508.170, KRS 529.100, bribery in an election or treason.
  - ✓ Federal convictions or convictions occurring in other states.

- **If not qualifying for Automatic Restoration, procedures to submit Application for Restoration of Civil Rights:**
  Offenders who do not meet criteria for automatic restoration may submit this application for restoration of civil rights for consideration by the Governor's Office pursuant to KRS 196.045.

  To apply for Restoration of Civil Rights under KRS 196.045, applicants shall meet the following eligibility criteria:
  - ✓ Received a final discharge or expiration of sentence.
  - ✓ Not have any pending charges, outstanding warrants, or indictments,
  - ✓ Not owe any outstanding restitution.

- **Federal or Out-of-State Convictions:**
  If convicted in a federal or court outside of the Commonwealth of Kentucky, provide a copy of the conviction/judgment of final sentence, verification of final discharge or expiration, and, if applicable, verification that restitution has been paid in full.

Registering to vote **prior** to receiving restoration of civil rights is a violation of the law. This violation may impose a maximum penalty of five (5) years in prison.

Submit the completed application to civilrights.restoration@ky.gov or by mail to:

Department of Corrections
Division of Probation & Parole
P.O. Box 2400
Frankfort, KY 40602-2400
Attn: Restoration of Civil Rights

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Tab 7

Defendant's Motion to Dismiss (filed February 3, 2026)	Vol. II	TR215–22

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COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT
DIVISION 8
NO. 26-CI-00116
Electronically Filed

BRYAN BARBER, **PLAINTIFF**

v.

ANDY BESHEAR, in his official capacity as Governor of the Commonwealth of Kentucky, **DEFENDANT**

A

MOTION TO DISMISS

Defendant Andy Beshear, in his official capacity as Governor of the Commonwealth of Kentucky, by and through counsel, moves this Court to dismiss Plaintiff's Complaint under and pursuant to Kentucky Rule of Civil Procedure ("CR") 12.02(a) and (f) for lack of jurisdiction and failure to state a claim upon which relief can be granted. A memorandum of law in support follows, and a Proposed Order is attached.

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MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

Plaintiff Bryan Barber requests relief from this Court that it cannot grant: a judicially-ordered pardon for himself and others. For more than two centuries, the Kentucky Constitution has vested the Governor with the sole discretion to restore or not restore the ability to vote for persons convicted of certain crimes through the power of a pardon. *See* KY. CONST. § 77. That discretion is complete and unfettered. *See Foley v. Beshear*, 462 S.W.3d 389, 392 (Ky. 2015) (citing *Baze v. Thompson*, 302 S.W.3d 57, 60 (Ky. 2010), *cert. denied*, 136 S.Ct. 797 (U.S. Jan. 11, 2016); *Lostutter v. Kentucky*, 2023 WL 4636868, at *1 (6th Cir. July 20 2023) (recognizing the Governor has complete discretion in granting or denying a request for restoration of civil rights), *cert. denied*, 144 S.Ct. 809 (U.S. Feb. 20, 2024). In 2019, Governor Andy Beshear used that power to issue Executive Order 2019-003 ("EO 2019-003") to restore the voting rights of

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more than 140,000 people convicted of non-violent and non-sexual crimes in Kentucky.[1] Barber argues that the equal protection guarantees in the Kentucky Constitution required the Governor to pardon even more people, including himself, and now require this Court to order the Governor to do so. His theory has no basis in law.

Because this Court lacks any authority to pardon or order the executive pardon of Barber or others, and because Barber has not established standing to pursue this claim, this Court should dismiss the Complaint for lack of jurisdiction and failure to state a claim for relief.

I. BACKGROUND

Section 145 of the Kentucky Constitution disenfranchises persons convicted in any court "of treason, or felony, or bribery in an election, or of such high misdemeanor as the General Assembly may declare[.]" Section 150 of the Kentucky Constitution similarly prevents such persons from holding public office. Both civil rights may be restored by executive pardon. KY. CONST. §§ 145, 150.

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In his first days in office in 2019, Governor Beshear issued Executive Order 2019-003. (Complaint, ¶ 20.) That order restored the civil right to vote and hold public office for persons who satisfied the terms of their probation, parole, or sentence for a Kentucky conviction and were not convicted of treason, bribery in an election, or violent or sexual offenses as defined by specific statutes. (*Id*. at ¶ 22.)

Around this same time, Barber was convicted of three felonies in Indiana: domestic battery in the presence of a child less than 16 years old; unlawful possession of a syringe, and possession of methamphetamine. (*Id.* at ¶ 8.) Though he is not entitled to the civil rights restoration under EO 2019-003, Barber has not been denied the opportunity to have his rights

[1] As of January 2026, the Governor's executive order had automatically restored the voting rights of 199,783 people.

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restored through the application process in KRS 196.045.[2] However, the Office of the Governor has not received an application from Barber for the restoration of his civil rights. Rather than apply for restoration, Barber filed the instant action asking this Court to order his executive pardon. Because this Court cannot grant Barber such relief, it should dismiss his Complaint for failure to state a claim. Furthermore, because Barber cannot show an injury resulting from the Governor's restoration of others' civil rights or the ability for this Court to redress his alleged injury, he lacks standing to pursue his claim. Therefore, the Court should also dismiss his Complaint for lack of jurisdiction.

II. LEGAL STANDARD

In ruling on a motion to dismiss, the Court should liberally construe the pleadings in the light most favorable to the plaintiff, taking all the plaintiff's allegations as true. *Morgan v. Bird*, 289 S.W.3d 222, 226 (Ky. App. 2009) (citation omitted). The Court should not grant the motion "unless it appears that the pleading party would not be entitled to relief under any set of facts which would be proved in support of his claim." *Pari-Mutuel Clerks' Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977).

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III. ARGUMENT

This Court should dismiss Barber's Complaint for two reasons. First, the Court lacks authority to grant him the relief he requested: an extension of EO 2019-003 to pardon himself and others. Second, Barber cannot demonstrate he has standing to challenge EO 2019-003, leaving the Court without jurisdiction.

[2] Restoration of Civil Rights for the Justice-Involved Population, available at https://civilrightsrestoration.ky.gov/Pages/application.aspx (last visited Feb. 3, 2026) (explaining that for those individuals who did not qualify for restoration under EO 2019-003, they may still apply for restoration, and providing the application with instructions for submission).

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A. The Judicial Branch Lacks Any Authority To Order The Governor To Pardon A Person Or Class Of Persons.

Section 77 of the Kentucky Constitution states that the Governor:

> … shall have power to remit fines and forfeitures, commute sentences, grant reprieves and pardons, except in case of impeachment, and he shall file with each application therefor a statement of the reasons for his decision thereon, which application and statement shall always be open to public inspection.

Kentucky courts have consistently interpreted this provision to reserve the pardon power exclusively to the unfettered discretion of the Governor. *Foley v. Beshear*, 462 S.W.3d 389, 392 (Ky. 2015); *Baze v. Thompson*, 302 S.W.3d 57, 60 (Ky. 2010).

The Kentucky Constitution also contains explicit provisions that, on one hand, mandate separation among the three branches of government, and on the other hand, specifically prohibit incursion of one branch of government into the powers and functions of the other." *Legislative Research Comm'n By and Through Prather v. Brown,* 664 S.W.2d 907, 912 (Ky. 1984); *See also* KY. CONST. §§ 27-28. As a power committed to the executive, our separation of powers prohibits the courts from ordering the Governor to pardon an individual. *Jackson v. Rose*, 3 S.W.2d 641, 643 (Ky. 1928) ("No court has the power to review the action of the executive in granting a pardon, for that would be the exercise of the pardoning power in part, and any attempt of the courts to interfere with the Executive in the exercise of the pardoning power would be a manifest usurpation of authority." (citation omitted)). *See also Chandler v. Patton*, 2007-CA-002222-MR, 2008 WL 4952109, *2 (Ky. App. Nov. 21, 2008) (holding a court passing on the wisdom behind a pardon decision would be a brazen violation of the separation of powers).

Here, Barber requests that this Court require the Governor "to extend EO 2019-003's grant of automatic civil rights restoration[.]" (Complaint, p. 20.) This Court has no power to

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order a pardon, and if it did so, it would violate the separation of powers. Because this Court cannot afford Barber the relief he requests, it should dismiss his Complaint under CR 12.02(f).

B. Barber Lacks Standing.

Kentucky courts do not recognize any legally cognizable right to a pardon. *Chandler*, 2008 WL 4952109, at *1. This includes any right protected by the guarantees of equal protection. *Id*. As our highest court summarized, other than Section 77, "[n]o other constitutional provision or statute establishes specific procedures to be followed or imposes standards or criteria for the clemency decision. In short, the decision to grant clemency is left to the unfettered discretion of the Governor." *Baze*, 302 S.W.3d at 60.

Federal courts agree. In *Connecticut Board of Pardons v. Dumschat*, the United States Supreme Court held that "an inmate has 'no constitutional or inherent right' to commutation of his sentence[.]" 452 U.S. 458, 464 (1981). But the U.S. Supreme Court has gone even further, noting that "pardon and commutation decisions have not traditionally been the business of courts; as such, they are rarely, if ever, appropriate subjects for judicial review." *Id*. A pardon "is simply a unilateral hope." *Id*. at 465 (citations omitted). *See also Foley*, 462 S.W.3d at 392 (adopting the reasoning of *Dumschat*).

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Without any legally cognizable right to a pardon, standing to challenge a pardon is, in this case, an insurmountable burden. To sue in Kentucky, a plaintiff must establish constitutional standing. *Overstreet v. Mayberry*, 603 S.W.3d 244, 252 (Ky. 2020). Standing requires an injury, causation, and redressability. *Id*. The injury must be "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Id*. (citations omitted).

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Barber cannot demonstrate any concrete or particularized injury as a result of EO 2019-003. Indeed, the restoration of others' civil rights does not cause Barber an injury. *McCord v. Ford*, 398 F. Supp. 750, 754-55 (D.D.C. 1975) (convicted Watergate burglar lacked standing to challenge pardon of former President Nixon). The issuance of EO 2019-003 also did not deny Barber an opportunity to receive a restoration of his civil rights in the future. Barber remains eligible to receive a pardon restoring his rights by Governor Beshear or any future governor. *See El-Amin v. McDonnell*, 3:12-cv-00538-JAG, 2013 WL 1193357, *5 (E.D. Va. Mar. 22, 2013) (a convicted felon is not injured by Governor's procedures for restoration unless the felon has applied and been denied).

Even if EO 2019-003 were viewed as a denial of Barber's restoration of rights, Barber cannot demonstrate any injury resulting from such a denial because Kentucky courts do not recognize any substantive right to a pardon. *Chandler*, 2008 WL 4952109, at *1. And even if he were injured, any injury alleged by Barber is not redressable by the Court because it cannot extend EO 2019-003 to Barber for the reasons addressed above. For these reasons, Barber lacks standing to pursue his equal protection claim and this Court lacks jurisdiction, warranting dismissal under CR 12.02(a).

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CONCLUSION

For the foregoing reasons, the Governor respectfully asks the Court to dismiss Plaintiff's Complaint, with prejudice.

Respectfully submitted,

/s/ *Taylor Payne*
Travis Mayo
General Counsel
Taylor Payne
Chief Deputy General Counsel
Laura C. Tipton
Deputy General Counsel
Office of the Governor

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Counsel for Governor Andy Beshear

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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2026, I electronically filed the foregoing Notice via the Court's electronic filing system, causing counsel of record to be served and also sent a hard copy via U.S. Regular Mail to Jon Sherman, Beauregard William Patterson, and Zoe Ginsberg at Fair Elections Center, 1825 K. St. NW, Suite 701, Washington, D.C. 20006 and by email to jsherman@fairelectionscenter.org; bpatterson@fairelectionscenter.org; and zginsberg@fairelectionscenter.org, as counsel with pending motions for pro hac vice admission.

/s/ *Taylor Payne*
Taylor Payne

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Tab 8

Plaintiff's Response in Opposition to Defendant's Motion to Dismiss (filed February 23, 2026)	Vol. II	TR223–44

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COMMONWEALTH OF KENTUCKY
JEFFERSON COUNTY CIRCUIT COURT
DIVISION 8
CASE NO. 26-CI-000116
FILED ELECTRONICALLY

BRYAN BARBER, **PLAINTIFF**

v.

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

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

ORAL ARGUMENT REQUESTED

Plaintiff and Proposed Class Representative Bryan Barber ("Plaintiff" or "Mr. Barber") respectfully submits the following response to Defendant Governor Andrew Beshear's ("Defendant" or "the Governor") Motion to Dismiss the Complaint pursuant to Kentucky Rules of Civil Procedure 12.02(a) and 12.02(f). Defendant argues that this Court lacks jurisdiction over Plaintiff's claim and that Plaintiff has failed to state a claim upon which relief can be granted. For the reasons discussed below, Defendant's motion should be denied.

Plaintiff also respectfully requests oral argument on this Motion to Dismiss.

I. INTRODUCTION

Under Sections 145 and 150 of the Kentucky Constitution, the Governor has the power to grant or deny Kentuckians' applications for restoration of their civil rights, including the rights to vote and to hold office. Contrary to Defendant's representations, this case does not seek to disturb those provisions. Instead, this limited action seeks to challenge an unconstitutional distinction created by Executive Order 2019-003 ("EO 2019-003") between Kentuckians with

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in-state felony convictions and Kentuckians with out-of-state felony convictions. Plaintiff brought this case on behalf of a putative class, *see* Br. in Support of Mot. for Class Cert. at 2, because the Governor's creation of a distinct class of Kentuckians—those with out-of-state felony convictions—does not withstand constitutional scrutiny under Kentucky's equal protection guarantees. Indeed, the Governor makes no argument in his Motion to Dismiss that this unequal treatment satisfies equal protection. Rather, his motion solely challenges the Court's authority to review and enjoin this constitutional violation as well as Plaintiff's standing to bring his claim. *See* Mot. to Dismiss at 3.

However, this Court is empowered to review the constitutionality of EO 2019-003 and issue declaratory and injunctive relief to redress any violations of Kentuckians' constitutional rights. While the Governor does possess the power to pardon, that power is not immune from this Court's constitutional scrutiny and does not supersede the equal protection rights afforded to all Kentucky citizens. In a case considering the Governor's voting rights restoration authority, the Supreme Court of Kentucky has held that "the Governor has the power to issue partial pardons *except where to do so violates the Constitution*." *Anderson v. Commonwealth*, 107 S.W.3d 193, 196 (Ky. 2003) (emphasis added). Therefore, this Court has both the power and the duty to decide whether EO 2019-003 violates the Kentucky Constitution's equal protection guarantees and to grant relief to remedy any such constitutional violation.

Moreover, as a member of the class that was created by EO 2019-003's unconstitutional classification, Mr. Barber has standing to assert his equal protection claim and request declaratory and injunctive relief from this Court.

II. BACKGROUND

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This class action challenges EO 2019-003, which provides automatic, non-discretionary restoration of civil rights to Kentuckians convicted of most Kentucky felony offenses. Although the order has restored rights to more than 100,000 individuals, *see* Compl. 1, it categorically excludes Kentuckians with out-of-state felony convictions from automatic restoration, *see id.* 24. Kentucky is the only state that denies automatic civil rights restoration based solely on the jurisdiction of the conviction. *See id.* ¶¶ 2, 70.

Plaintiff alleges that this disparate treatment violates the equal protection guarantees of Sections 1, 2, and 3 of the Kentucky Constitution, because there is no rational basis for distinguishing between Kentuckians based *solely* on where they were convicted. *See id.* 69. The exclusion of individuals with out-of-state convictions from the automatic restoration scheme is, therefore, arbitrary and unconstitutional. Accordingly, Plaintiff and the Proposed Class[1] request that this Court declare this unequal treatment unconstitutional and enjoin Governor Beshear from excluding Plaintiff and members of the Proposed Class from automatic restoration solely because they were convicted in other jurisdictions. *See id*. at 20, Prayer for Relief.

III. LEGAL STANDARD

On a motion to dismiss for failure to state a claim, the court must ask whether the plaintiff is entitled to relief if the facts alleged in the complaint can be proved. *Skeens v. Univ. of Louisville*, 565 S.W.3d 159, 160 (Ky. App. 2018) (quoting *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010)) ("Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?"). The court should not dismiss the claim "unless it appears the pleading party would not be entitled to relief under any set of facts which could be

[1] Defendant has failed to respond to Plaintiff's Motion for Class Certification and has not sought any extension of the deadline.

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proved[.]" *Browne v. Poole*, 680 S.W.3d 810, 812 (Ky. 2023) (quoting *Pari-Mutuel Clerks' Union of Ky., Loc. 541 v. Ky. Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977)).

In considering a motion to dismiss a complaint, "the question presented to the court is not whether the plaintiff will ultimately prevail. Rather, such a motion challenges the sufficiency of the complaint and the court is called on to determine whether the complaint states a cause of action for declaratory relief." *Bank One Ky. NA v. Woodfield Fin. Consortium LP*, 957 S.W.2d 276, 278 (Ky. App. 1997). Therefore, "[w]hen the court is faced with a motion to dismiss, the complaint is construed in the light most favorable to the plaintiff and all allegations are taken as true." *Whittington v. Whittington*, 766 S.W.2d 73, 74 (Ky. App. 1989) (alteration in original); *Parking Auth. of River City, Inc. v. Bridgefield Cas. Ins. Co.*, 477 S.W.3d 598, 599 (Ky. App. 2015) ("The pleadings should be liberally construed so that all allegations are taken as true.").

IV. ARGUMENT

A. Plaintiff has stated an equal protection claim.

Plaintiff Bryan Barber and members of the Proposed Class are entitled to equal protection under Sections 1, 2, and 3 of the Kentucky Constitution. Plaintiff alleges that Defendant's exclusion of individuals with out-of-state felony convictions from the automatic rights restoration scheme established by EO 2019-003 creates a classification that is not supported by any "'rational basis' or 'substantial and justifiable reason,'" *see Vision Mining, Inc. v. Gardner*, 364 S.W.3d 455, 466 (Ky. 2011) (citing *Cain v. Lodestar Energy, Inc.*, 302 S.W.3d 39, 43 (Ky. 2009) ("A statute complies with Kentucky equal protection requirements if a 'reasonable basis' or 'substantial and justifiable reason' supports the classifications that it creates."))—let alone a "compelling state interest." *Zuckerman v. Bevin*, 565 S.W.3d 580, 595 (Ky. 2018). Therefore, this classification violates the Kentucky Constitution's equal protection guarantees. Plaintiff rightly

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asserts his equal protection rights before this Court. Kentucky's "equal protection provisions are set forth in the Kentucky Constitution at Section 1, Section 2, and Section 3." *Ky. Constables Ass'n, v. Ky. Dep't of Corrs. Crim. Just. Training*, 723 S.W.3d 812, 832 (Ky. App. 2025).

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." Ky. Const. § 1. *See Commonwealth v. Wasson*, 842 S.W.2d 487, 513 (Ky. 1992), *overruled on other grounds by Calloway Cnty. Sheriff's Dep't v. Woodall*, 607 S.W.3d 557 (Ky. 2020) ("Section 1(5) of the Kentucky Constitution is coterminous with the Equal Protection Clause of the Federal Fourteenth Amendment."). Additionally, Section 2 of the Kentucky Constitution guarantees that "[a]bsolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority." Ky. Const. § 2; *Schell v. Young*, 640 S.W.3d 24, 42 (Ky. App. 2021) ("Government entities are enjoined against arbitrariness by § 2 of the [Kentucky] Constitution, a concept we consider broad enough to embrace both due process and equal protection of the laws, both fundamental fairness and impartiality."); *Bluegrass Tr. for Historic Pres. v. Lexington Fayette Urb. Cnty. Gov't Plan. Comm'n*, 701 S.W.3d 196, 210 (Ky. 2024) ("[W]hatever is essentially unjust and unequal or exceeds the reasonable and legitimate interests of the people is arbitrary."). Finally, Section 3 of the Kentucky Constitution states in relevant part that: "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 . . . ."[2] Ky. Const. § 3; *Wasson*, 842 S.W.2d at 514 ("Section 3 of the Kentucky Constitution is interchangeable with the Equal Protection Clause of the Federal Fourteenth Amendment.").

[2] The protections of Section 3 have existed since the Commonwealth's founding, appearing in all four of Kentucky's Constitutions. *See* Ky. Const. of 1792, art. XII, § 1; Ky. Const. of 1799, art. X, § 1; and Ky. Const. of 1850, art. XIII, § 1.

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Kentucky's equal protection provisions "seek to 'keep[ ] governmental decision makers from treating differently persons who are in all relevant respects alike.'" *Calloway Cnty. Sheriff's Dep't*, 607 S.W.3d at 563 (alteration in original) (quoting *Vision Mining, Inc.*, 364 S.W.3d at 465). While classifications are not per se unconstitutional, "'strict scrutiny,' applies when a classification affects a fundamental right or suspect classification, such as race, alienage or ancestry." *Id*. at 564. Here, the fundamental right impacted by EO 2019-003 is the right to vote. "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). When a challenged law or action affects a fundamental right, it is "sustainable only if it is suitably tailored to serve a compelling state interest." *Zuckerman*, 565 S.W.3d at 595 (cleaned up). 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. *See* Compl. ¶¶ 61–65.

Furthermore, even if rational basis review applies, EO 2019-003 nonetheless violates equal protection. Defendant must provide a "'rational basis' or 'substantial and justifiable reason'" to support any classification. *Vision Mining, Inc.*, 364 S.W.3d at 466. 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 (alterations in original) (quoting *McLaughlin v. Florida*, 379 U.S. 184, 190 (1964)). No rational basis exists to justify treating Plaintiff and Proposed Class members differently from Kentuckians with equivalent in-state felony convictions. *See* Compl. 69. It is wholly arbitrary

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to automatically restore the rights of some Kentuckians convicted of certain offenses, while excluding other Kentuckians convicted of the same type of offenses, simply based on the jurisdiction where the individual was convicted.

Plaintiff has sufficiently alleged that Governor Beshear violated Plaintiff's and Proposed Class members' equal protection rights in issuing EO 2019-003. Compl. ¶¶ 55, 68–69, 72. Under this executive order, Kentuckians who complete sentences for qualifying state felony convictions automatically regain their rights to vote and hold public office, *id.* 21, while those with equivalent felony convictions from other jurisdictions are relegated to petitioning the Governor for a discretionary grant of restoration, *id.* 25. This disparate treatment arbitrarily draws a line between similarly situated Kentuckians on the sole basis of the jurisdiction of their convictions. And unsurprisingly, the Governor makes no argument whatsoever that this unequal treatment of Kentuckians with out-of-state felony convictions satisfies the requirements of equal protection doctrine. *See* Mot. to Dismiss at 3–6.

Rather, the Governor disregards Plaintiff's and Proposed Class members' constitutional right to equal protection and wrongly asserts that this Court is powerless to enjoin his unconstitutional use of the pardon power.

B. This Court may issue injunctive relief against Defendant's unconstitutional classification in EO 2019-003.

1. This Court has both the duty and the power to review unconstitutional executive actions, including uses of the pardon power.

No act of the Governor is above the constitutional scrutiny of Kentucky's courts. The Supreme Court of Kentucky has long held that "[t]he Governor has only such powers as are vested in him by the Constitution and the statutes enacted pursuant thereto." *Ky. Emps. Ret. Sys. v. Seven Cntys. Servs., Inc.*, 580 S.W.3d 530, 539 (Ky. 2019) (alteration in original) (quoting

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Martin v. Chandler, 318 S.W.2d 40, 44 (Ky. 1958)); *see also Royster v. Brock*, 258 Ky. 146, 79 S.W.2d 707, 709 (1935) ("[The governor] has only such powers as the Constitution and Statutes, enacted pursuant thereto, vest in him, and those powers must be exercised in the manner and within the limitations therein prescribed."). The Governor cannot infringe upon the rights of the people, including the right to equal protection. Ky. Const. § 26.

When the Governor exceeds the constitutional and statutory limits of his office, it is the Court's duty to invalidate and enjoin his unconstitutional acts. "[N]o matter how distasteful it may be for the judiciary to review the acts of a co-ordinate branch of the government their duty under their oath of office is imperative." *Fischer v. State Bd. of Elections*, 879 S.W.2d 475, 476 (Ky. 1994) (alteration in original) (quoting *Ragland v. Anderson*, 100 S.W. 865, 867 (Ky. 1907); *see also Bevin v. Commonwealth ex rel. Beshear*, 563 S.W.3d 74, 83 (Ky. 2018) ("The Court's power, indeed, its duty, to declare the meaning of constitutional provisions is a primary function of the judicial branch . . . . [and] is an integral and indispensable piece of the separation of powers doctrine."). To that end, this Court possesses the authority and discretion to order whatever relief is necessary and proper to remedy violations of a litigant's rights. KRS § 418.055 ("Further relief, based on a declaratory judgment, order or decree, may be granted whenever necessary or proper."); Ky. R. Civ. P. 65.01 ("A party may obtain injunctive relief in the circuit court by (a) restraining order, (b) temporary injunction, or (c) permanent injunction in a final judgment."); *Maupin v. Stansbury*, 575 S.W.2d 695, 697–98 (Ky. App. 1978) ("injunctive relief is basically addressed to the sound discretion of the trial court.").

Similarly, this Court has the power and the duty to review and invalidate unconstitutional uses of the pardon power. The Governor's use of the pardon power is not immune from judicial

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scrutiny, *Anderson*, 107 S.W.3d at 196, as there are no circumstances where the Governor may infringe on Kentuckians' constitutional rights:

> There are no implied exceptions to the bill of rights. Every thing in that article is declared to be excepted out of the general powers of government, and is to remain forever inviolate. In construing and harmonizing the different provisions of the constitution, this solemn declaration is never to be lost sight of, and more especially in cases involving the personal rights of the citizen . . . .

Commonwealth v. Jones, 73 Ky. 725, 746–47 (1875) (citations omitted); Ky. Const. § 26.

This is so even when the Governor exercises the pardon power vested in his office. While "in Kentucky, the Governor is vested with a broad and virtually unfettered discretion to pardon," *Fletcher v. Graham*, 192 S.W.3d 350, 365 (Ky. 2006), "[h]istorically, Kentucky courts have also examined the validity of executive pardons." *Id.* at 384 (Graves, J., concurring). This includes examining the constitutional bounds of the pardon power. For example, the Supreme Court of Kentucky has reviewed and affirmed the constitutionality of general or blanket pardons, *id.*, and has also reviewed and upheld partial and conditional pardons against a constitutional challenge. *See Anderson*, 107 S.W.3d at 196; *Commonwealth ex rel. Meredith v. Hall*, 277 Ky. 612, 126 S.W.2d 1056 (1939). This Court has also recognized limits on the Governor's general pardon power under Section 77 of the Kentucky Constitution, holding that the Governor may not revoke a pardon under any circumstance. *Adkins v. Commonwealth*, 232 Ky. 312, 23 S.W.2d 277 (1929). Moreover, Kentucky courts retain the authority to invalidate a pardon in limited situations, such as when it was procured by fraud. *Id*.

Put simply, "a governor's clemency power is not absolute" and is "subject to judicial review if it violates specific constitutional protections." *Stanford v. Commonwealth*, 643 S.W.3d 96, 101 (Ky. App. 2021); *see also Taylor v. Beckham*, 108 Ky. 278, 56 S.W. 177, 187 (1900) ("If the constitution limited [the Governor's] power of pardon to specific cases and inhibited its

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exercise in others, the courts would declare a pardon of one of the forbidden offenses void."). When examining the validity of an executive pardon, "[i]t is the duty of th[e] Court to interpret, uphold, and apply the Constitution and laws of the Commonwealth." *Fletcher*, 192 S.W.3d at 365.

2. ***If this Court agrees that EO 2019-003 violates equal protection, then the law compels an injunction against this executive order's unconstitutional classification.***

The upshot of Defendant's Motion to Dismiss is the assertion that this Court may not issue an injunction striking down the classification in EO 2019-003 that excludes Plaintiff and members of the Proposed Class from automatic civil rights restoration. Defendant does not oppose Plaintiff's request for a declaratory judgment that the classification at issue violates Sections 1, 2, and 3 of the Kentucky Constitution. *See* Mot. to Dismiss at 4–5. Instead, Defendant contends that this Court cannot grant *injunctive* relief for the alleged equal protection violation without encroaching on his executive clemency powers under Section 77 of the Kentucky Constitution,[3] as invalidating the challenged classification would effectively restore civil rights to Plaintiff and the Proposed Class. *Id.* However, the Governor misconstrues this Court's powers and ignores an obvious way to harmonize this Court's power of constitutional review with the Governor's pardon power in issuing an injunction.

First, this Court can issue injunctive relief without usurping or even impinging on the Governor's pardon power. If this Court decides to rule in Plaintiff's favor, then its judgment may enjoin the Governor's unconstitutional acts without immediately effectuating the restoration of

[3] In actuality, the Governor's power to restore a person's voting rights and right to run for public office, via "partial pardon," stems from Sections 145 and 150 of the Kentucky Constitution. Ky. Const. §§ 145, 150; *Anderson*, 107 S.W.3d at 195 ("[T]he order's reliance on the Governor's authority under Sections 145 and 150 of the Kentucky Constitution reinforces the conclusion that the rights restored under this order are limited to the right to vote and the right to hold office."); *id*. at 196 (referring to such rights restoration orders as "partial pardons").

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civil rights to Plaintiff and members of the Proposed Class. In requesting a favorable judgment on the merits, Plaintiff would ask this Court to stay its order and judgment for 14 days to give the Governor an opportunity to eliminate EO 2019-003's equal protection violation as he sees fit. This Court, for instance, may order the Governor to choose one of the following options. By the end of this proposed 14-day stay, Defendant could choose to rescind, revise, and reissue the executive order without the unconstitutional classification based on the jurisdiction of conviction. Alternatively, Defendant could rescind EO 2019-003, subject to this Court's judgment that any subsequent replacement executive order he issues in the future must omit the unconstitutional classification. Finally, Defendant could deliberately choose to let this Court's injunction go into effect, thus striking the unconstitutional, exclusionary classification in EO 2019-003. Accordingly, this Court may easily structure its injunction such that Governor Beshear's action would bring EO 2019-003 into compliance with the Kentucky Constitution's equal protection guarantees, and, thereby, only Governor Beshear would effectuate the restoration of civil rights to members of the Proposed Class.

This proposal would harmonize this Court's power of judicial review and duty to enforce constitutional rights with the Governor's constitutional prerogative to restore civil rights. Such relief would not usurp or even impinge upon the Governor's pardon power. Judicial relief like this is also common in election law. For example, in redistricting litigation, Kentucky courts typically enjoin unconstitutional maps while leaving it to the legislature to redraw constitutionally compliant maps. *See Legis. Rsch. Comm'n v. Fischer*, 366 S.W.3d 905, 908 (Ky. 2012).

This Court may structure the injunctive relief as described above. The Prayer for Relief in the Complaint does not strictly bind this Court to the specific format of relief requested, and this

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Court may freely adopt the more specific, tailored alternatives outlined above. Indeed, Kentucky Rule of Civil Procedure 54.03(2) provides that "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." The power and decision of what remedy to grant lies solely with the Court. KRS § 418.055 ("Further relief, based on a declaratory judgment, order or decree, may be granted whenever necessary or proper."). Thus, this Court may issue appropriate relief that is tailored to the constitutional violation found, even if that varies from the initial request in the Complaint's Prayer for Relief.[4]

Second, this Court is empowered to alter or strike down unconstitutional executive pardons or clemency regimes such as EO 2019-003. The Supreme Court of Kentucky has expressly held "that the Governor has the power to issue partial pardons *except where to do so violates the Constitution*." *Anderson*, 107 S.W.3d at 196 (emphasis added). While "it is outside the power of the courts to alter or expand upon the Governor's order where the executive order itself does not otherwise violate the Constitution," *id*., this reinforces that when a use of the pardon power *does* violate the Kentucky Constitution, this Court may alter or expand the order to remedy the constitutional violation. As a result, if this Court, in ruling on the merits, finds that EO 2019-003 violates the Kentucky Constitution, it has the power to alter the Governor's order by enjoining the constitutionally infirm language as requested by Plaintiff.

Were this Court not empowered to invalidate a particular use of the pardon power, Kentucky's governors would be able to issue pardons based on race, religion, gender, or national origin without any accountability to Kentucky's constitutional guarantees of equal protection. In such circumstances, according to Defendant, the courts could only declare such discriminatory

[4] Plaintiff does not believe any amendment of the Complaint is necessary, but should this Court prefer that to better align with the more specific remedial options requested herein, Plaintiff would respectfully request leave from this Court to file a First Amended Complaint.

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pardons or pardon regimes unconstitutional but would be powerless to issue injunctive relief blocking the discriminatory executive action. However, it would clearly be within this Court's power to strike down such a flagrantly unconstitutional use of the pardon power for an equal protection violation. As the Supreme Court of Kentucky has noted, "no one would contend that a Governor could ignore the commands of the Equal Protection Clause and use race, religion, or political affiliation as a standard for granting or denying clemency." *Foley v. Beshear*, 462 S.W.3d 389, 394 (Ky. 2015) (quoting *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 292 (1998) (Stevens, J., concurring)).

Finally, even if this Court could not enjoin the unconstitutional language in EO 2019-003, Plaintiff's case would still proceed on his request for declaratory relief. Declaratory relief is not dependent on the issuance of a corresponding injunction. Under KRS § 418.040, when a justiciable controversy is presented, "the court may make a binding declaration of rights, whether or not consequential relief is or could be asked" for in the complaint. KRS § 418.040 (providing that plaintiff need only "ask for a declaration of rights, either *alone* or with other relief") (emphasis added). Because this Court's power to issue an injunction is irrelevant to the question of whether Plaintiff has sufficiently stated a claim on the merits seeking *declaratory* relief and Defendant fails to make any argument that this Court may not issue declaratory relief in these circumstances, this Court may deny Defendant's Motion to Dismiss on that basis alone.

* * *

For all of the reasons recounted above, Plaintiff rightly brings his constitutional challenge and request for declaratory *and* injunctive relief against EO 2019-003's unconstitutional classification before this Court. This Court has the power, not only to declare a governor's use of the pardon power unconstitutional, but to enjoin it as such.

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C. Plaintiff has standing to challenge EO 2019-003.

Kentucky has adopted the following test for determining whether a party has constitutional standing. To pursue a claim in the courts of the Commonwealth:

> [T]he initiating party must have the requisite constitutional standing to do so, defined by three requirements: (1) *injury*, (2) *causation*, and (3) *redressability.* In other words, [a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief. [A] litigant must demonstrate that it has suffered a concrete and particularized injury that is either actual or imminent . . . . The injury must be . . . distinct and palpable, and not abstract or conjectural or hypothetical. The injury must be fairly traceable to the challenged action, and relief from the injury must be likely to follow from a favorable decision.

Ky. Constables Ass'n, 723 S.W.3d at 823 (alterations in original) (quoting *City of Pikeville v. Ky. Concealed Carry Coal., Inc.*, 671 S.W.3d 258, 264 (Ky. 2023)).

1. ***Plaintiff has stated sufficient facts to support his standing to bring an equal protection claim.***

Plaintiff satisfies the test for standing, as he has suffered a constitutional injury. In support of standing, Plaintiff has alleged that Defendant violated his equal protection rights by arbitrarily making a distinction in EO 2019-003 between Kentuckians who were convicted of out-of-state felonies, such as himself, and Kentuckians convicted of in-state felonies. Compl. ¶¶ 3–6, 49–72. Because of this arbitrary exclusion, Mr. Barber is not eligible to be automatically restored, while similarly situated Kentuckians convicted of an equivalent in-state offense are free to vote and hold office without participating in an "unnecessarily time consuming" process that may not result in restoration. *Id.* 25 (quoting EO 2019-003 at 1). If Mr. Barber had been convicted for the same conduct in Kentucky rather than Indiana, he would have been restored by the automatic restoration process established by Defendant in EO 2019-003. *Id.* 35. However,

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in issuing EO 2019-003, the Governor arbitrarily granted or withheld rights restoration based on the jurisdiction of conviction.

Plaintiff is entitled to equal protection under the law. His equal protection rights are protected under Section 1, 2, and 3 of the Kentucky Constitution. *Id.* 50. In particular, the Supreme Court of Kentucky holds that governmental acts "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*, 684 S.W.3d at 687. By creating a non-discretionary, automatic rights restoration scheme and arbitrarily excluding Mr. Barber and members of the Proposed Class from that scheme, the Governor violated the equal protection guarantees of the Kentucky Constitution. Compl. ¶¶ 49–72. Accordingly, Plaintiff has sufficiently alleged an injury.

Contrary to Defendant's mischaracterization, Plaintiff's injury arises, not from the denial of a pardon, but from the unconstitutional classification itself. *See id.* 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."). The Governor used his unfettered discretion over the pardon power to create a non-discretionary rights restoration process. *See id.* 20. This process was established through an executive order, EO 2019-003, and establishes fixed, objective criteria for automatic rights restoration. *See id.* ¶¶ 20–24. Consequently, EO 2019-003 operates as a rule of general applicability instead of a program of individualized clemency decisions. *See id.* ¶¶ 20, 25. This resulting scheme must be administered in a manner consistent with the Kentucky Constitution's guarantees of equal protection and non-arbitrary government action. In light of the specified, objective eligibility requirements for automatic restoration under

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EO 2019-003, Sections 1, 2, and 3 of the Kentucky Constitution operate to constrain the Governor's unfettered discretion in issuing or withholding pardons and require equal treatment of similarly situated persons.

Accordingly, while no individual possesses a freestanding entitlement to civil rights restoration under Sections 145 and 150 of the Kentucky Constitution, individuals who fall within the objectively-defined class created by an automatic restoration executive order such as EO 2019-003 are entitled to equal treatment, absent a compelling state interest, *Zuckerman*, 565 S.W.3d at 595, or, at a minimum, a rational basis, meaning a "substantial and justifiable reason." *Vision Mining, Inc.*, 364 S.W.3d at 466. Defendant cannot exclude a subset of otherwise-qualifying individuals based solely on a wholly arbitrary distinction such as the jurisdiction of conviction, if that distinction bears no rational relationship to the stated purposes of the policy. To hold otherwise would permit the exercise of precisely the type of arbitrary power and unequal treatment that Sections 1, 2, and 3 of the Kentucky Constitution forbid. *See Zuckerman*, 565 S.W.3d at 596 (noting that "[a] statute complies with Kentucky equal protection requirements if a 'rational basis' supports the classifications that it creates" as the government "has the right to make classifications based upon natural and reasonable distinctions, but is without right to exercise the power to classify arbitrarily and without any reasonable basis inherent in the objects of the classification"). Accordingly, even within the realm of executive clemency, once the Governor adopts a mandatory, criteria-based automatic restoration scheme, Kentucky law requires that automatic restoration be conferred consistently to all similarly situated individuals, absent some compelling state interest or rational basis to justify the unequal treatment.

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The traceability and redressability requirements are also satisfied here. Plaintiff has sufficiently pleaded that his injury was directly caused by the Governor's issuance of EO 2019-003. *See* Compl. ¶¶ 20–27, 55–72. The Governor directly caused this injury by creating the unconstitutional, arbitrary classification that excludes any Kentuckian with an out-of-state felony from the non-discretionary, automatic rights restoration scheme established by EO 2019-003. *See id*. No independent action or intervening cause breaks that causal connection. Moreover, Mr. Barber's injuries are also redressable by this Court. As argued in Section B.2 of this brief, *see supra* at 10–13, this Court has the power to remedy this injury by issuing a judgment that: (1) declares EO 2019-003's classification based on the jurisdiction of conviction unconstitutional; and (2) enjoins the continued enforcement of that unconstitutional classification established by the Governor. Such a judgment would remedy Plaintiff's injuries, which are the violations of his equal protection rights as guaranteed under the Kentucky Constitution. *See* Compl. ¶¶ 49–72. And the simple way to harmonize such a judicial remedy with Sections 145 and 150 of the Kentucky Constitution, which gives the Governor exclusive power over civil rights restoration, is for this Court to stay the operation of its injunction. This would put the ball in the Governor's court to rescind EO 2019-003 and reissue the executive order without the unconstitutional classification.

For all these reasons, Plaintiff has sufficiently pleaded facts to support his standing to bring this claim on behalf of himself as well as members of the Proposed Class.

2. Defendant erroneously cites due process standards to challenge Plaintiff's standing to bring an equal protection claim.

The Governor's motion fails to address the equal protection injury alleged by Plaintiff and instead erroneously invokes Kentucky courts' due process standards. Mot. to Dismiss at 5–6. Defendant argues that Mr. Barber lacks a sufficient injury to bring his claim, because he lacks a

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right to a pardon. *See id*. But, once again, Defendant has fundamentally misconstrued Plaintiff's claim: Plaintiff has not argued that he is entitled to a pardon. Rather, Plaintiff's claim is grounded in his constitutionally protected right to equal protection. *See* Compl. ¶¶ 49–72. Therefore, Defendant's invocation of Kentucky's due process standards is wholly inapposite.

In support of this argument, Defendant primarily relies on the unpublished decision—*Chandler v. Patton*, No. 2007-CA-002222-MR, 2008 WL 4952109 (Ky. App. Nov. 21, 2008). In *Chandler*, the Court of Appeals ruled that the plaintiff did not have a life or liberty interest protected by the Due Process Clause, because he had no cognizable right to a pardon. *Chandler*, 2008 WL 4952109, at *2. However, the court recognized the plaintiff's right to equal protection and only ruled against the claim due to a lack of evidence. *Id.* ("While Chandler repeatedly and adamantly asserts that his request was denied because he was black, it is far more likely that the request was denied because Chandler was convicted of first degree murder."). Moreover, this is an unpublished case, and it is "not binding precedent," which is why courts disfavor citation to unpublished decisions such as this.[5] Ky. R. App. P. 41(A).

By contrast, Plaintiff in Section B.2 of this brief cites to numerous published decisions that establish this Court's authority to review Plaintiff's equal protection injury. While the Governor may have unfettered discretion over the pardon power, these powers cannot supersede Mr. Barber's equal protection rights. *Jones*, 73 Ky. at 746 ("There are no implied exceptions to the bill of rights."). Standing in this case is straightforward. EO 2019-003 violates Mr. Barber's equal protection rights by arbitrarily treating Kentuckians with out-of-state convictions, like him, differently from those with equivalent in-state convictions. The Governor has not provided any

[5] Defendant should have noted that this opinion is not binding authority, in keeping with Ky. R. App. P. 41(A)(4).

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justification for this differential treatment, because it is irrational. Thus, Plaintiff has standing to challenge this arbitrary, unequal treatment.

V. CONCLUSION

For the foregoing reasons, respectfully, this Court should deny the Governor's Motion to Dismiss.

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Dated: February 23, 2026

Respectfully submitted,

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**Motion for Pro Hac Vice Admission Pending*

Counsel for Plaintiff and Proposed Class

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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 23rd day of February, 2026, and served counsel of record by email at travis.mayo@ky.gov, taylor.payne@ky.gov and laurac.tipton@ky.gov.

Dated: February 23, 2026

Respectfully submitted,

/s/ Jackson C. Cooper

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Chandler v. Patton,
No. 2007-CA-002222-MR, 2008 WL 4952109
(Ky. Ct. App. Nov. 21, 2008)

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2008 WL 4952109
Only the Westlaw citation is currently available.

Unpublished opinion. See KY ST RAP Rule 41 before citing.

NOT TO BE PUBLISHED
Court of Appeals of Kentucky.

Buster CHANDLER, Appellant
v.
Paul PATTON, Appellee.

No. 2007–CA–002222–MR
|
Nov. 21, 2008.

Synopsis
Background: Inmate, who had been convicted of first-degree murder, filed complaint against former governor, alleging that former governor violated his rights under State Constitution by not giving his pardon application a full and fair review. The Circuit Court, Franklin County, Roger L. Crittenden, J., dismissed complaint for failure to state a claim for which there is a judicial remedy. Inmate appealed.

The Court of Appeals, Caperton, J., held that former governor's alleged failure to give inmate's pardon application a full and fair review did not violate inmate's due process or equal protection rights under State Constitution.

Affirmed.

Appeal from Franklin Circuit Court, Action No. 05–CI–00212; Roger L. Crittenden, Judge.

Attorneys and Law Firms

Buster Chandler, Pro Se, LaGrange, KY, for appellant.

No Brief for appellee.

Before CAPERTON and MOORE, Judges; GUIDUGLI,[1] Senior Judge.

OPINION

CAPERTON, Judge.

***1** Buster Chandler (Chandler), pro se, appeals the August 7, 2007, order of the Franklin Circuit Court dismissing his complaint against former governor Paul Patton for failure to state a claim for which there is a judicial remedy. Having concluded that the trial court correctly dismissed this action, we affirm.

On February 15, 2005, Chandler filed a pro se complaint in the Franklin Circuit Court against Governor Patton in his individual capacity, as well as "All Other Unknown John and Mary Does Defendants" concerning Governor Patton's denial of his July 3, 2002 request pursuant to Section 77 of the Kentucky Constitution for a full pardon of his conviction for first degree murder. Specifically, Chandler asserted that Governor Patton never reviewed his request for a pardon, nor did he contact the Governor of Tennessee or the Knox County Attorney General to discuss the murder for which Chandler was convicted, and which he now asserts took place in Knoxville, Tennessee. Chandler asserts that he was wrongfully convicted, and apparently desires the pardon so that he can be transferred to Tennessee to undergo trial there.

In his complaints, Chandler asserted that Governor Patton violated his "Right of Due Course of Kentucky Constitution 2, 3, 10, 11" by not giving Chandler's pardon application a full and fair review. Further, Chandler asserted that Patton violated his "Rights of Equal Protection and Procedural Fairness of Kentucky Constitution of 1, 2, 3, and 59" by not giving a full and fair review to Chandler's application for a pardon. Chandler further requested $50,000.00 in damages for "violation of his rights". In addition, Chandler requested a trial by jury.

We will reverse a trial court's dismissal of a complaint for failure to state a claim only if it appears that the facts alleged in the complaint were proved, the plaintiff would be entitled to relief. *James v. Wilson*, 95 S.W.3d 875, 883–84 (Ky.App.2002), citing *Pari–Mutuel Clerks' Union v. Kentucky Jockey Club*, 551 S.W.2d 803 (Ky.1977). In answering that question, we turn first to the authority granted to the Governor by the Kentucky Constitution.

Section 77 of the Kentucky Constitution empowers the Governor to pardon or commute a sentence of imprisonment.

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However, that power lies solely within the Governor's discretion. Certainly, the party requesting the pardon has no legally cognizable right to a pardon or commutation of his or her sentence. Section 77 of the Kentucky Constitution in no way establishes specific procedures to be followed, and imposes no standards, criteria, or factors that the Governor need consider in exercising his power. *In re Sapp,* 118 F.3d 460 (6th Cir.1997). As the *Sapp* court correctly noted, there exists no precedent in our law that the grantor of clemency need do anything at all with the request. That case provided clearly that the governor may agonize over every petition; he may glance at one or all such petitions and toss them away, or he may direct his staff as to the means for considering them.

***2** While Chandler asserts that his due process rights have been violated, and that his equal protection rights have been violated, we find no evidence that this was the case. As previously noted, Chandler has no life or liberty interest in clemency which is protected by the Due Process Clause, nor does he have a "right" at issue protected by the provisions allowing for equal protection and procedural fairness. While Chandler repeatedly and adamantly asserts that his request was denied because he was black, it is far more likely that the request was denied because Chandler was convicted of first degree murder.

Whatever the reason for denying the application, that determination lies solely in the governor's discretion, and we decline to find otherwise on appeal. Indeed, as the governor is vested with a broad and virtually unfettered discretion to pardon, the courts of this state are without constitutional authority to pass on the wisdom of such an action. Doing so would be a brazen violation of the separation of powers. *Fletcher v. Graham,* 192 S.W.3d 350 (Ky.2006).

As to Chandler's claim that his conviction was wrongful and should be overturned, a civil action against the Governor is not the proper avenue for the pursuit of such a claim. Having not been provided with Chandler's criminal records, we are unable to comment upon whether or not he previously followed the proper procedures to challenge his sentence. However, we do note that a petition for pardon is not an alternative to a proper appeal to a criminal conviction.

In light of the foregoing we find no meritorious basis for appeal, and find no error in the governor's decision to deny pardon to Chandler. Accordingly, the order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

All Citations

Not Reported in S.W. Rptr., 2008 WL 4952109

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Footnotes

1 Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

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Tab 10

Commonwealth, Dep't of Alcoholic Beverage Control v. Tapp,
No. 2014-SC-000154-MR, 2014 WL 5410325
(Ky. Oct. 23, 2014)

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Unpublished opinion. See KY ST RAP Rule 41 before citing.

Supreme Court of Kentucky.

COMMONWEALTH of Kentucky, DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL; Frederick Higdon, Commissioner; and Tony Dehner, Distilled Spirits Administrator, Appellants

v.

Honorable David A. TAPP, Judge, Pulaski Circuit Court, Appellee

and

City of Somerset, Kentucky; and Nick Bradley, Somerset Alcoholic Beverage Control Administrator, Real Parties in Interest.

No. 2014–SC–000154–MR
|
Oct. 23, 2014.

Synopsis

Background: City brought declaratory judgment action against Department of Alcoholic Beverage Control, seeking determination that Department usurped its statutorily defined role in process of distributing licenses to sell alcohol. Department petitioned for writ of prohibition to block the Circuit Court from proceeding.

Holdings: The Supreme Court held that:

Circuit Court had subject matter jurisdiction over the declaratory judgment action, such that Department was not entitled to writ on ground of lack of jurisdiction, and

Department was not entitled to writ on ground of city's alleged lack of standing.

Petition denied.

Attorneys and Law Firms

Peter Frank Ervin, Noelle Jill Bailey, Public Protection Cabinet, Counsel for Appellants.

David Austin Tapp, Judge, Pulaski Circuit Court, Appellee Honorable David A. Tapp, Judge, Pulaski Circuit Court.

Charles David Cole, Carrie E.D. Wiese, Derrick Thomas Wright, Sturgill, Turner, Barker & Moloney, PLLC, Counsel for Appellees City of Somerset, Kentucky, and Nick Bradley, Somerset Alcoholic Beverage Control Administrator.

MEMORANDUM OPINION OF THE COURT

***1** The Department of Alcoholic Beverage Control seeks a writ of prohibition to block the trial court from proceeding with the underlying declaratory-judgment action. The underlying action involves a controversy over the proper roles cities and the Department play in the process of distributing licenses to sell alcohol. The City of Somerset argues the Department usurped its statutorily defined role. In defense, the Department counters that Somerset's action violates Kentucky's constitutional separation of powers or, alternatively, is moot.

The Department fails to prove the necessary elements for a writ of prohibition so we decline to interpose such an extraordinary remedy.

I. FACTUAL AND PROCEDURAL BACKGROUND.

Somerset, through a local-option election under Kentucky Revised Statutes (KRS) 242.125, approved the sale of alcoholic beverages. Following the election, Somerset enacted ordinances regulating the activity. The Department, under KRS 241.060, determined that Somerset was entitled to five retail-package liquor licenses and issued a notice to the public of their availability.

Fourteen businesses applied for the five licenses. In his discretion, Tony Dehner, the Department's Distilled Spirits Administrator, awarded the five licenses. Somerset then sued the Department seeking to increase the city's license allotment. Eventually, however, that lawsuit was dismissed through an agreement by both parties to resolve

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Somerset's concerns through the administrative process. The Department increased Somerset's allotment by amending its regulations. But Somerset's win was short-lived because the General Assembly's Administrative Regulation Review Subcommittee declined to approve the amended regulations providing a license increase.[1] The ARR Subcommittee found the proposed regulations were deficient under KRS 13A.335. In light of this determination, the Department amended its regulations to: (1) automatically set a city's quota following a vote to authorize the sale of alcoholic beverages; (2) provide a three-year moratorium for any additional quota license increases; and (3) provide a detailed procedure to govern requests for additional quota licenses.

Again, Somerset sued the Department, this time seeking declaratory and injunctive relief. In Somerset's estimation, the Department arbitrarily enforced regulations concerning license allotments and, by approving applications for state licenses before the city administrator approved applications, violated KRS 243.370. The Department responded by moving to dismiss Somerset's suit premised largely on separation of powers and the absence of proper standing by the city. The trial court denied the Department's motion, and this writ action followed in the Court of Appeals.

The Court of Appeals denied the Department's writ request because the Department failed to show the trial court was without subject-matter jurisdiction. According to the Court of Appeals, Somerset's declaratory-judgment action was appropriately within the trial court's province regardless of whether the injunctive relief sought by Somerset could actually be granted without violating Kentucky's strong doctrine of separation of powers. Further, the Court of Appeals noted that the Department's standing argument was insufficient for a writ to issue because there was an available remedy through appeal.

II. ANALYSIS.

***2** When ruling on a writ petition, we must first determine if the writ is appropriate. Only if the writ is appropriate do we look to the merits of the petition to determine the soundness of the trial court's decision. The decision whether to issue a writ always lies within this Court's discretion.[2] Truly a remarkable remedy, a writ action commands conservative use of that discretion "to prevent short-circuiting normal appeal procedure [.]"[3] Accordingly, a writ should issue only:

> [U]pon a showing that (1) the lower court is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court; or (2) that the lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if petition is not granted.[4]

Essentially, writs are divided into two classes. Here, the Department presents an argument under both classes. The Department first argues the trial court is without jurisdiction to proceed. And, in the alternative, even if the trial court has jurisdiction, the Department argues it would be improper to proceed because Somerset lacks standing. Because jurisdiction and standing are questions of law, our review is de novo.[5]

As we recently made clear in *Davis v. Wingate,*[6] the first class of writ does not require the showing of an irreparable injury or lack of adequate remedy by appeal. Rather, "[t]hose prerequisites apply only in the second class of writ actions —actions in which the trial court is allegedly erroneous but *within* its jurisdiction."[7]

In the context of writ actions, *jurisdiction* refers to subject-matter jurisdiction, meaning the authority not simply to hear "this case[,] but *this kind of case.*"[8] A court only acts outside its jurisdiction, therefore, "where [it] has not been given, by constitutional provision or statute, the power to do anything at all."[9] KRS 418.040, governing declaratory judgment actions, "allows a claim for a declaration of rights to be brought in any court of record in the Commonwealth[;] ... circuit courts are such courts of record."[10] Without a doubt, the trial court has jurisdiction over *this kind* of case.

The Department argues the trial court, because of Kentucky's strong doctrine of separation of powers, does not have the authority to grant the relief sought by Somerset, which is the authority to compel the Department to increase the city's license allotment. As accurate as this argument may be, it is immaterial to the trial court's subject-matter jurisdiction over Somerset's claim. KRS 418.040 makes clear that a "plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, *whether or not consequential relief is or could be asked.*"[11] The trial court's purported inability to grant the injunctive

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relief Somerset requests is not fatal to the viability of the overall claim under KRS 418.040. Again, as we pointed out in *Davis,*

> ***3** Frankly speaking, so long as the applicable law is followed, a litigant's choice to pursue a potentially hollow victory is not for us to consider here. We are not responsible for trying the case for the parties or ensuring the best litigation strategy. Instead, we are simply responsible for enforcing the law.[12]

The Department's writ petition must fail because the trial court *does* have subject-matter jurisdiction and is, therefore, not about to proceed outside its jurisdiction.

The Department's second argument proceeds under the second class of writ; that is, the trial court is acting erroneously within its jurisdiction. According to the Department, the trial court was erroneous in finding Somerset had standing to challenge the allotment of licenses. When operating under this class of writ, both irreparable injury and lack of an adequate remedy by appeal must be proven by the writ-seeking party.[13] Of course, we have considered writ actions despite "the absence of a showing of specific great and irreparable injury to the petitioner, provided a substantial miscarriage of justice will result if the lower court is proceeding erroneously, *and* correction of the error is necessary and appropriate in the interest of orderly judicial administration."[14]

The Department has failed to prove it lacks an adequate remedy by appeal. In point of fact, our case law demonstrates standing is a proper issue for appellate review on direct appeal.[15] While the cost or inconvenience of litigation may be objectionable to the Department, that objection, in and of itself, is not sufficient to justify a writ.[16] And, as correctly pointed out by the Court of Appeals, the exception mentioned above does not apply to the Department because "the exception allows a petitioner to avoid only the requirement of great and irreparable injury, not the requirement of lack of an adequate remedy by appeal."[17]

We admit that we may, in our discretion, "address the merits of the issue within the context of the petition for the writ[.]"[18] And the Department urges us to do so here because of the constitutional separation-of-power concerns presented. But it is equally true that we "may decline to [address the merits] on grounds that there is an adequate remedy by appeal."[19] So we decline the Department's invitation to wade into the deep, perhaps murky, water of this litigation at this juncture. The Department has offered little to persuade us that it will suffer any injury that cannot be fully remedied on appeal.

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III. CONCLUSION.

For the foregoing reasons, we deny the Department's petition for a writ of prohibition.

All sitting. All concur.

All Citations

Not Reported in S.W. Rptr., 2014 WL 5410325

Footnotes

1 KRS 13A.290 requires review and approval by the Administrative Regulation Review Subcommittee.

2 *Hoskins v. Maricle,* 150 S.W.3d 1, 5 (Ky.2004) (citation omitted).

3 *Bender v. Eaton,* 343 S.W.2d 799, 800 (Ky.1961).

4 *Hoskins,* 150 S.W.3d at 10.

5 *See Tax Ease Lien Investments 1, LLC v. Commonwealth Bank & Trust,* 384 S.W.3d 141, 143 (Ky.2012) (noting that standing is a question of law subject to de novo review); *Grange Mut. Ins. Co. v. Trude,* 151 S.W.3d 803, 810 (Ky.2004) (highlighting de novo review is typically appropriate under the first class of writs because jurisdiction is a question of law).

6 *Davis v. Wingate,* No.2014–SC–000323–MR, 2014 WL 4160032 (Ky. Aug.14, 2014).

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7 *Id.* at *2.

8 *Dougherty v. Telek*, 366 S.W.3d 463, 466 (Ky.2012) (internal quotation marks omitted).

9 *Id.* at 467.

10 *Davis*, 437 S.W.3d 720, 2014 WL 4160032 at *3 (citing KRS 23A.010(3)).

11 Emphasis added.

12 *Davis*, 437 S.W.3d 720, 2014 WL 4160032 at *4.

13 *Hoskins*, 150 S.W.3d at 9–10.

14 *Bender*, 343 S.W.2d at 801.

15 *See Bailey v. Preserve Rural Roads of Madison County, Inc.*, 394 S.W.3d 350, 355 (Ky.2011).

16 *See, e.g.*, *Fritsch v. Caudill*, 146 S.W.3d 926, 930 (Ky.2004) ("Inconvenience, expense, annoyance, and other undesirable aspects of litigation may be present, but great and irreparable injury is not.").

17 *Com. of Kentucky, Dep't of Alcoholic Beverage Control, et al. v. Tapp, et al.*, No.2013–CA–001927–OA at 6 (Ky.App. February 18, 2014) (order denying petition for writ of prohibition) (quoting *Indep. Order of Foresters v. Chauvin*, 175 S.W.3d 610, 617 (Ky.2005)).

18 *St. Clair v. Roark*, 10 S.W.3d 482, 485 (Ky.1999).

19 *Id.*

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