

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT, DIVISION I
CASE NO. 21-CI-00443
Filed Electronically

ROBERT CALVIN LANGDON,

PLAINTIFF

v.

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

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

**FIRST AMENDED CLASS ACTION COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Robert Calvin Langdon brings this class action on behalf of himself and other similarly situated individuals who completed Kentucky rights restoration applications prior to December 10, 2019. For his Complaint for Declaratory and Injunctive Relief, Plaintiff and Putative Class Representative Langdon states and alleges as follows:

INTRODUCTION

1. This case is about providing Kentuckians with felony convictions a fair opportunity to apply for voting rights restoration under the applicable rules and procedures and giving those Kentuckians adequate notice if the Governor decides to change those rules or procedures after a Kentuckian has already completed an application seeking the restoration of their voting rights.
2. All eligible individuals must be given the chance to file a rights restoration application and receive a decision containing a statement of reasons for that decision.¹

¹ Section 77 of the Kentucky Constitution gives Kentucky's Governor the power to "grant reprieves and pardons" and the obligation to "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."

3. Upon information and belief, 2,276 Kentuckians submitted applications for restoration of their voting rights during Governor Matt Bevin's term and before Governor Andrew Beshear took office on December 10, 2019. 1,385 of these individuals have been restored, and 891 have never been restored. Plaintiff has obtained a list of the names of each of these individuals in an open records request to the Kentucky Department of Corrections, Justice and Public Safety Cabinet. See **Exhibit 1**, List of Individuals Who Submitted Voting Rights Restoration Applications During the Bevin Administration.
4. The list that the Department of Corrections provided in response to the Open Records Request includes the cities of each of the Kentuckians who applied to have their voting rights restored during the Bevin Administration, but the Justice and Public Safety Cabinet redacted the addresses of the applicants, citing KRS 61.878(1)(a) ("information of a personal nature"). See **Exhibit 2**, Letter from Katherine Williams, June 11, 2021, p. 2.
5. Upon information and belief, hundreds of the applications submitted by the 891 unrestored individuals have been lost by the Governor's Office, either during Governor Bevin's or Governor Beshear's terms.²
6. Plaintiff Langdon is one of the Kentuckians who have completed an application for restoration of his voting rights prior to the beginning of Governor Beshear's term.
7. According to his filings in this case, Defendant Governor Beshear has decided to treat any restoration application, like Mr. Langdon's, that a Kentuckian completed during his predecessor's term and upon which Governor Bevin never acted. Indeed, Governor Bevin did not take the position that these applications were denied by his failure to act on them by the

² 891 Kentuckians had applications pending at the time Governor Beshear took office. In his Motion to Dismiss, Defendant says, "Plaintiff's application to former Governor Bevin has not been located among the few hundred that remained in the Office of the Governor upon the transition of the office to Governor Beshear." Defendant's Motion to Dismiss, p. 4.

end of his term.³ In Defendant’s view, each of the 891 applicants whose previously-submitted applications remained pending at the end of Governor Bevin’s term, must reapply in order to be considered for voting rights restoration. In the Motion to Dismiss the original complaint, Defendant writes “former Governor Bevin denied [former Plaintiff Petro’s] application when he did not restore his civil rights prior to leaving office, and Plaintiff received *notice* of that decision when he was *not informed* that the former Governor restored his rights.” Def.’s Mot. to Dismiss, at 9-10 (emphases added).

8. But of course, if a person is “not informed,” then they have not received “notice.” And to date, the Governor’s Office has not provided these Kentuckians—whose names, addresses, and other identifying information are available to it—with any notice that Defendant regards their applications as denied by Governor Bevin’s inaction before the expiration of his term in office.
9. Nor has Defendant provided any actual notice to these Kentuckians whose applications were pending at the expiration of Governor Bevin’s time in office that they must reapply in order to be considered eligible for voting rights restoration.
10. Indeed, in the Motion to Dismiss the original Complaint, Defendant Governor Beshear asserted that he “is entitled to require application to his office during his tenure as Governor for consideration of clemency.” Def.’s Mot. to Dismiss, at 4; *see also id.* at 7. The Governor also took the extraordinary position that he “is not required to provide any notice of that decision” to require reapplication. *Id.* at 4. This cannot be. Even if Kentucky law affords

³ Plaintiff takes no position on the legal accuracy or lawfulness of Governor Beshear’s determination that inaction by a Governor before the expiration of that Governor’s term of office is a denial of those Kentuckians’ applications left unaddressed by that Governor. Because Governor Beshear has broad discretion to grant, deny, or refuse to grant or deny any Kentuckian’s application to have their voting rights restored, it makes no legal difference whether his legal position on that question is correct or incorrect, fair or unfair, sensible or senseless.

However, that is not to say that his position is without consequences or creates no legal obligations for his administration under Section 77 and Section 2’s Due Process guarantee in the Kentucky Constitution. While Kentuckians seeking restoration of their voting rights are subject to the whims of a Governor on the substantive decision of whether to restore or not, they are legally entitled to basic minimum procedural protections under the law.

Governor Beshear vast discretion to render ultimate decisions on restoration applications, the Kentucky Constitution does not license him to secretly create and secretly enforce *procedural* requirements.

11. Plaintiff and Plaintiff's counsel take no position on whether the Governor is correct as a matter of Kentucky law and the facts to determine that all restoration applications submitted during Governor Bevin's term but left unaddressed and pending at the time Governor Beshear's term began were in fact denied. Plaintiff and Plaintiff's counsel expressly do not concede that this determination or policy is lawful.
12. However, given that this is clearly Governor Beshear's determination and his representation to this Court, this amended complaint will focus exclusively on the violations of Section 2, specifically the due process clause, and Section 77 of the Kentucky Constitution. Defendant Governor Beshear, in his official capacity as Governor of Kentucky, has violated both Sections by failing to provide these 891 unrestored applicants with a statement of the reason for the denial of their applications and adequate notice that:
 - he has decided to treat any restoration application that a Kentuckian completed during his predecessor's term and upon which Governor Bevin never acted as though it were denied by Governor Bevin's failure to act by the end of his term;
 - many applications have been lost during either Governor Bevin's or Defendant's terms and therefore are effectively denied; and
 - all of them (those with denied or lost applications) must reapply.
13. This action seeks a court order requiring Defendant Governor Beshear to comply with Section 77 of the Kentucky Constitution with respect to Plaintiff and the putative class, by providing a statement of the reasons for the denial of Plaintiff's applications, including but perhaps not limited to the Governor's determination that applications submitted but left unaddressed during Governor Bevin's term were denied and that many applications have been lost. This action also seeks a court order requiring Defendant Governor Beshear to comply with the due process clause in Section 2 of the Kentucky Constitution with respect to

Plaintiff and the putative class, by providing adequate notice of Defendant's determination that their pending applications were effectively denied at the expiration of Governor Bevin's term, that many applications have been lost during either Governor Bevin's or Defendant's terms and therefore are effectively denied, and that all of them must reapply.

PARTIES

14. Plaintiff Robert Calvin Langdon is a United States citizen, 43 years old, and a resident of Mount Washington, Kentucky. Mr. Langdon was convicted of a least one felony in Kentucky state court and lost his right to vote under Kentucky law. He finished his complete sentence including parole and probation in 2014 and, in 2016, submitted an application for restoration of his right to vote. At some point, Mr. Langdon spoke on the phone with a representative from the Governor's office, who informed him that his pending application would never be approved by the Governor, given the nature of his offense, second-degree assault. His application has never been granted and never been formally denied.
15. Mr. Langdon wants his voting rights restored so he can register and vote in future primary and general elections in Kentucky for candidates and ballot initiatives of his choice, and to support and associate with political parties to advance the parties' goals.
16. Mr. Langdon applied for restoration of his voting rights in 2018. He applied in accordance with all the established rules and procedures, and his submission included all of the proper documentation. Pursuant to established law and policy, once it received Mr. Langdon's completed application, the Kentucky Department of Corrections forwarded the application to the Governor's Office several weeks later. As far as Plaintiff Langdon knew, it was pending before the Governor, eligible for consideration and a final decision.
17. Plaintiff Langdon has not received any statement of reasons for the denial of his application or adequate notice of Defendant's determination that his pending application was effectively denied at the expiration of Governor Bevin's term and that he must reapply. Accordingly, Plaintiff Langdon has not reapplied for rights restoration.

18. Defendant Andrew Beshear is the Governor of the Commonwealth of Kentucky. The Governor may “grant reprieves and pardons” including restoration of civil rights. Ky. Const. § 77. The Governor must file with each application a statement of reasons for his decision. *Id.* He is sued in his official capacity.

JURISDICTION AND VENUE

19. 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, KRS 418.040, KRS 418.045, and Kentucky Rule of Civil Procedure 65.
20. Plaintiff resides in the Commonwealth of Kentucky, and Defendant’s office exists in Franklin County, Kentucky.
21. Venue is proper in this Court pursuant to KRS 452.405(2).

FACTS

A. Kentucky’s Rights Restoration Process

20. Individuals with felony convictions are not generally allowed to vote in Kentucky. Section 145 of the Kentucky Constitution sets forth the rules for voting eligibility and includes a felon disenfranchisement provision providing that the following persons shall not have the right to vote:

- a. 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.
- b. Persons who, at the time of the election, are in confinement under the judgment of a court for some penal offense.

Ky. Const. § 145. This disenfranchisement provision is incorporated within the Kentucky election code’s voting eligibility provision. KRS 116.025. People with felony convictions may not register to vote prior to being granted restoration of their civil rights pursuant to Section 145 of the Constitution. If a person with a felony conviction registers to vote and has not had

their rights restored, they are guilty of a Class D felony, punishable by up to five years in prison. KRS 119.025, 532.020(1)(a).

21. Kentucky state law charges the Department of Corrections with creating a “simplified process” for the restoration of civil rights, including: informing eligible individuals about the restoration process; creating a standard application form; generating a list of eligible persons who have been released from incarceration or discharged by the Parole Board and who have requested restoration; conducting an investigation to verify that an applicant has paid all restitution and that there are no outstanding warrants, charges, or indictments; and “[f]orward[ing] information on a monthly basis of eligible felony offenders who have requested restoration of rights to the Office of the Governor for consideration of a partial pardon.” KRS 196.045(1). An application for restoration of civil rights may be submitted to the Department of Corrections’ Division of Probation and Parole, and the application form is available on the Department’s website.⁴
22. People who have been convicted of felonies are eligible to apply for restoration of their civil rights, including the right to vote, upon final discharge or expiration of sentence. KRS 196.045(2)(a). Additionally, 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. KRS 196.045(2)(b). In December 2019, Governor Beshear issued an Executive Order (“2019 EO”) automatically restoring voting rights to individuals who were convicted of “nonviolent” Kentucky state felonies upon discharge or completion of their sentences.⁵ Individuals who are not covered by this Executive Order, such as individuals convicted of federal and out-of-state offenses, must still petition the Governor for rights restoration.

⁴ Ky. Dep’t of Corr., Div. of Prob. and Parole, Application for Restoration of Civil Rights (rev. Mar. 2020), available at <https://civilrightsrestoration.ky.gov/Documents/Restoration%20of%20Civil%20Rights%20Application%20Final.pdf>.

⁵ Ky. Exec. Order 2019-003 (Dec. 12, 2019), available at https://governor.ky.gov/attachments/20191212_Executive-Order_2019-003.pdf.

23. Applicants must provide their name, address, phone number, date of birth, and Social Security number. They must then list 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 crime or crime in another state. For each 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. Applicants must next answer a series of questions regarding whether they have ever been convicted of certain types of crimes. They must further state whether they have any pending charges, outstanding warrants, indictments, or unpaid restitution. The form must be signed and dated by the applicant.⁶
24. Applying to have your voting rights restored involves a nontrivial amount of time and expense for any Kentuckian seeking to regain the right to vote, including the hundreds of Kentuckians Governor Beshear is now “encouraging” to reapply who have already submitted complete applications. Each applicant must provide copies 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.” Paperwork that takes time, administrative hassle, and expense to secure. See “Application for Restoration of Civil Rights” [here](#).⁷
25. Restoration of civil rights applications that meet the threshold eligibility criteria are then referred to the Governor’s Office for a decision. Kentucky law authorizes the Governor to request that the Parole Board investigate and generate a report with respect to any restoration application. KRS 439.450.
26. All rights restoration applications that are submitted in accordance with the established rules and procedures and referred to the Governor’s Office are considered valid applications and

⁶ Ky. Dep’t of Corr., Div. of Prob. and Parole, Application for Restoration of Civil Rights (rev. Mar. 2020), available at <https://civilrightsrestoration.ky.gov/Documents/Restoration%20of%20Civil%20Rights%20Application%20Final.pdf>.

⁷ *Id.*

eligible for the Governor's consideration and decision. At this point in the process, individual applicants do not need to take any further action for their applications to be considered valid.

27. On information and belief, the Governor's Office sends signed restoration orders to the Secretary of State's Office. The Secretary of State signs the restoration order as well, adds a certificate and seal, enters information into a database, and then sends the restoration order and certificate back to the Governor's Office. The Governor's Office then sends the signed and sealed executive orders with certificates to the Department of Corrections, and the Department of Corrections completes the process by sending the executive order, certificate, and voter registration card or voter registration information to the individual whose rights have been restored by the Governor.
28. If a rights restoration application is denied, the Governor's Office must issue a statement of the reasons for this denial which would be open to public inspection. Ky. Const. § 77.

B. The Change in Administration and Governor Beshear's Determination that Previously-Submitted Rights Restoration Applications Were Denied By Governor Bevin's Inaction.

28. Defendant Beshear took office as Governor of Kentucky on December 10, 2019. On information and belief, rights restoration applications that were pending before Governor Matthew Bevin remained in the office, available to Governor Beshear's administration for consideration.
29. According to the Justice and Public Safety Cabinet, 2,276 Kentuckians submitted applications for restoration of their voting rights during Governor Matt Bevin's term and before Governor Andrew Beshear took office on December 10, 2019. 1,385 of these individuals have been restored, and 891 have never been restored.
30. Plaintiff Robert Langdon is one of the Kentuckians who have completed an application for restoration of his voting rights prior to the beginning of Governor Beshear's term.

31. Upon information and belief, hundreds of the applications submitted by the 891 unrestored individuals have been lost by the Governor's Office, either during Governor Bevin's or Governor Beshear's terms.
32. According to Defendant's motion to dismiss the original complaint, Governor Beshear has determined that any restoration application, like Plaintiff Langdon's, that was submitted during his predecessor's term and upon which Governor Bevin never acted, was in fact denied by the expiration of Governor Bevin's term. Defendant wrote in the motion to dismiss the original complaint that "former Governor Bevin denied [former Plaintiff Petro's] application when he did not restore his civil rights prior to leaving office, and Plaintiff received *notice* of that decision when he was *not informed* that the former Governor restored his rights." Def.'s Mot. to Dismiss, at 9-10 (emphases added). Therefore, in Defendant's view, each of the 891 applicants whose previously-submitted applications remained pending at the end of Governor Bevin's term, must reapply in order to be considered for voting rights restoration.
33. Governor Beshear's determination that the completed rights restoration applications submitted during previous gubernatorial administrations were effectively denied, means that all individuals who submitted applications prior to December 10, 2019 need to submit a new application to have any chance of securing the restoration of their right to vote. This official position is evidence by language in Defendant Governor Beshear's motion to dismiss the original complaint, which asserted that he "may require updated applications be submitted to his office"—a strong indication that that is in fact what he is doing. Def.'s Mot. to Dismiss, at 4; *see also id.* at 7 ("[T]he Governor is entitled to require application to his office during his tenure as Governor for consideration of clemency."). The Governor also took the extraordinary position that he "is not required to provide any notice of that decision" to require reapplication. *Id.* at 4.
34. Because it is Governor Beshear's position that Governor Bevin's denied the 891 applications for restoration pending when Governor Bevin left office without acting on those applications,

it is Governor Beshear's obligation to provide the notice required by due process and the statement of reasons required by Section 77. Prior to Governor Beshear's determination that Plaintiff Langdon and putative class members' applications had previously been denied implicitly at the end of Governor Bevin's term, these applications were simply under submission and pending with the Governor's Office. It is Governor Beshear who has altered the status of those applications, not Governor Bevin. Moreover, these obligations run against the Governor's Office, not any particular occupant of the office. Governor Beshear is of course sued here in his official, not personal, capacity.⁸

35. On information and belief, to date, Governor Beshear has not provided any notice to these individuals that he has determined their applications were effectively denied by his predecessor's inaction and the expiration of Governor Bevin's term or notice that they must reapply in order to be considered eligible for voting rights restoration. These applicants' names, addresses, and other identifying information are available to the Governor's office. Given the lack of notice, these individuals do not know that they need to submit new applications.

C. Governor Beshear's Determination Has Effectively Denied Plaintiff and Other Similarly-Situated Putative Class Members' Rights Restoration Applications Without Giving Them Notice.

36. In 2018, Plaintiff Langdon applied for restoration of his voting rights by mailing his application and necessary attachments to the Department of Corrections. It took work and resources for Plaintiff to gather the proper documentation for that application. When Mr. Langdon submitted his rights restoration application, he used the form that was current at

⁸ The Court need not decide which Governor was originally obligated to provide notice and a statement of reasons due to Governor Beshear's novel position that inaction by a Governor on an application for voting rights restoration constitutes a denial of that application. *The Governor's Office* must provide notice and a statement of reasons for denied applications, and Governor Beshear is the Governor of Kentucky.

that time.⁹ That form was revised in March 2020 and asks questions designed to identify applicants who are eligible for non-discretionary restoration under 2019 EO, which Plaintiff Langdon is not.¹⁰

37. To date, Plaintiff Langdon has received no notice stating that he would be required to submit a new rights restoration application.

38. Plaintiff Langdon had no reason to believe that his application was in danger of being deemed effectively denied by the expiration of Governor Bevin's term with a decision or that any decision one way or the other would be made without notification. The application form and the Department of Corrections website have never stated that application forms expire at the end of a Governor's term, that reapplication is required when an incumbent Governor is defeated in an election, or in any other circumstance. Applicants are led to believe that their applications will remain pending and eligible for consideration even if the occupant of the Governor's office changes.

39. Again, Defendant has already conceded in his motion to dismiss the original complaint that he has concluded that any restoration application that was submitted during his predecessor's term and upon which Governor Bevin never acted, was in fact denied by the expiration of Governor Bevin's term without a decision. Defendant wrote "former Governor Bevin denied [former Plaintiff Petro's] application when he did not restore his civil rights prior to leaving office, and Plaintiff received *notice* of that decision when he was *not informed* that the former Governor restored his rights." Def.'s Mot. to Dismiss, at 9-10 (emphases added); *see also id.* at 10. Therefore, in Defendant's view, each of the 891 applicants whose previously-submitted applications remained pending at the end of Governor Bevin's term, must reapply in order to be considered for voting rights restoration.

⁹ Ky. Dep't of Corr., Div. of Prob. and Parole, Application for Restoration of Civil Rights (rev. Nov. 2015), available at <https://corrections.ky.gov/Probation-and-Parole/Documents/Civil%20Rights%20Application%20Rev%2011-25-2015.pdf>.

¹⁰ Ky. Dep't of Corr., Div. of Prob. and Parole, Application for Restoration of Civil Rights (rev. Mar. 2020), available at <https://civilrightsrestoration.ky.gov/Documents/Restoration%20of%20Civil%20Rights%20Application%20Final.pdf>.

40. On information and belief, the Governor's Office has not notified any of the rights restoration applicants whose applications were still pending at the end of Governor Bevin's term of what he has determined were implicit denials by inaction, the fact that hundreds of applications have been lost and therefore are effectively denied, or of the requirement to reapply. The sole exception to this is a single sentence towards the bottom of the Department of Corrections "Restoration of Civil Rights" webpage that reads: "Any individual who submitted an application for restoration of civil rights to a prior Governor's administration is encouraged to submit an application with updated information to the current administration."¹¹
41. Governor Beshear has no system to provide notice of the reapplication requirement to any of the Kentuckians who completed applications for restoration of their voting rights during Governor Bevin's term. No Kentuckians, including Plaintiff Langdon, have received any official notice of the Governor's determination that their applications were denied by Governor Bevin's inaction, a determination with which his predecessor would not have agreed. Like Mr. Langdon, many will not have submitted a new application for rights restoration, reasonably relying on the representation that their previous applications complied with the rules and were still pending and eligible for consideration. Because of this reasonable reliance, these applicants are highly unlikely to regularly check the Department of Corrections rights restoration webpage, if ever, and are also highly unlikely to see any disclaimers posted on those websites.

¹¹ Ky. Dep't of Corrections, Restoration of Civil Rights, <https://corrections.ky.gov/Probation-and-Parole/Pages/CivilRights.aspx>. "Encouragement" to submit new applications on a website that no person who has already completed an application for voting rights restoration would have any reason to visit, is not notice. The statement "encouraging" Kentuckians who have already completed applications to reapply does not even articulate the Governor's position that Governor Bevin's inaction on any applications pending at the time he left office is a denial of those applications. In other words, even the "notice" the Governor claims to provide on the Commonwealth's website is too vague and mealy-mouthed to even provide notice to those few Kentuckians who stumble upon this webpage. The Governor's "encouragement" should be read as encouraging individuals whose applications were denied by the Governor Bevin to reapply because this Governor *requires* reapplying to initiate the Governor's consideration of voting rights restoration.

42. Mr. Langdon never received any communication from either the Department of Corrections or the Governor's Office in any format and, on information and belief, the same is true for all of the other restoration applicants whose applications were never addressed by Governor Bevin and that Governor Beshear has retroactively determined were implicitly, effectively denied by the end of Governor Bevin's term. These restoration applicants have never received any notice of Governor Beshear's determination that their applications were denied, that many of their applications have been lost and are therefore effectively denied, or that Governor Beshear is requiring them to submit a new application for voting rights restoration.

CLASS ACTION ALLEGATIONS

43. Plaintiff brings all claims as a class action on behalf of himself and all others similarly situated pursuant to Kentucky Rule of Civil Procedure 23.01 and 23.02. The proposed Class that Plaintiff seeks to represent is defined as follows:

All individuals who completed Kentucky voting rights restoration applications that were received by the Kentucky Governor's Office between December 9, 2015 and December 9, 2019, inclusive, excluding those whose applications were officially granted or denied in writing or otherwise mooted by issuance of Executive Order 2019-003 restoring certain applicants' voting rights.

44. 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 easily ascertainable.

45. Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the proposed Class is impracticable. Plaintiff understands that at least 891 people submitted completed voting rights restoration applications prior to December 10, 2019 but Governor Bevin never took action on their applications. Governor Beshear has interpreted his predecessor's inaction to have effectuated a denial of those applications, but the Governor's office has never given these applicants a statement of the reasons for this denial, including Governor Beshear's determination and/or the fact that hundreds of these

applications have been lost, or notice of Governor Beshear's requirement to reapply. This volume makes bringing the claims of each individual member of the class before this Court impracticable. Likewise, joining each individual member of the proposed Class as a plaintiff in this action is impracticable. Furthermore, the identities of the members of the proposed Class are readily ascertainable from Defendant's records. 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 Defendant.

46. Commonality: There are questions of law and fact common to Plaintiff and the proposed Class that predominate over any questions affecting only individual members of the proposed Class. These common questions of law and fact include, but are not limited to:

- i. Whether Defendant provided notice to Plaintiff and proposed Class members of the denial of their rights restoration applications;
- ii. Whether Defendant failed to file a statement of reasons for the denial of Plaintiff's and proposed Class members' application for restoration of their voting rights;
- iii. Whether Defendant's failure to notify Plaintiff and proposed Class members of the denial of their applications violates Section 77 of the Kentucky Constitution;
- iv. Whether Defendant's failure to file a statement of reasons for the denial of Plaintiff and proposed Class members' applications violates Section 77 of the Kentucky Constitution;
- v. Whether Defendant's failure to notify Plaintiff and proposed Class members of the denial of their applications violates the Kentucky Constitution's due process protections;
- vi. Whether Plaintiff and proposed Class members are entitled to a declaration of rights; and
- vii. Whether Plaintiff and proposed Class members are entitled to injunctive relief.

49. Typicality: Plaintiff's claims are typical of the claims of the proposed Class. Defendant's common course of conduct in violation of law as alleged herein has caused Plaintiff and

proposed Class members to sustain the same or similar injuries. Plaintiff's claims are thereby representative of and coextensive with the claims of the proposed Class.

50. Adequacy of Representation: Plaintiff 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. Counsel representing Plaintiff are competent and experienced in litigating complex cases and class actions, including cases regarding rights restoration. Plaintiff will fairly and adequately represent and protect the interests of the proposed Class members.
51. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed Class members is not practicable, and questions of law and fact common to the proposed Class predominate over any questions affecting only individual members of the proposed Class. Each proposed Class member is entitled to relief by reason of Defendant's illegal policies and/or practices. 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.
52. In the alternative, the proposed Class may be certified because the prosecution of separate actions by the individual members of the proposed Class would create a risk of inconsistent or varying adjudication with respect to individual members of the proposed Class, which would establish incompatible standards of conduct for Defendant.

COUNT ONE

Failure to Provide Statement of Reasons for Restoration Application Denials (Violation of Section 77 of the Kentucky Constitution)

53. Plaintiff restates and incorporates by reference, as if set forth fully herein, the allegations in the preceding paragraphs of the Complaint.
54. Section 77 of the Kentucky Constitution provides 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.

Ky. Const. § 77 (emphasis added).

55. Case law confirms that this duty is mandatory. The Governor is required to file this statement of reasons with each clemency application: “There exist only two constitutionally mandated requirements under Section 77: that the movant file an application for clemency with the Governor; and that the Governor file with each application a statement of the reasons for his decision.” *Baze v. Thompson*, 302 S.W.3d 57, 60 (Ky. 2010).
56. A plain reading of Section 77 mandates that the Governor file a statement of reasons for the decision rendered on every type of clemency, commutation, and pardon application received, including rights restoration applications.
57. Rights restoration applications are included within Section 77’s mandate. Section 77 empowers the Governor to grant a wide variety of clemency requests, including partial pardons which “exonerate[] the offender from some but not all of the punishment or legal consequences of a crime.” *Anderson v. Com.*, 107 S.W.3d 193, 196 (Ky. 2003) (citing *Black's Law Dictionary* (7th ed. 1999)). Rights restoration requests fall within this definition because they restore voting rights but do not fully exonerate the applicant. Any decisions on rights restoration applications thus trigger the Governor’s constitutionally-mandated duty to file a statement of reasons for that decision.
58. In determining that Governor Bevin’s inaction on the 891 applications left unaddressed at the end of his term resulted in an implicit denial (a position never taken by Governor Bevin and his office¹²), Governor Beshear has effectively denied those applications, triggering his duty under Section 77 to provide a statement of the reasons for his decisions on those applications. Moreover, the obligation under Section 77 runs against the Office of the Governor and does not expire when the current occupant leaves the office. Governor Beshear is sued in his official, not personal, capacity. He has violated Section 77 by failing to provide these 891 unrestored applicants with a statement of the reasons for the denial of their applications,

¹² And, nothing in Section 77 says that an application expires at the end of the term of the governor to which the application was made.

including but perhaps not limited to Governor Beshear's novel conclusion that applications submitted but left unaddressed during his predecessor's term were in fact denied and that many of these applications have been lost¹³.

59. Governor Beshear has not issued any such statements of reasons for the rights restoration applications that his office has effectively denied by taking the position that his predecessor's inaction constituted a denial. Nor has he issued any statements of reasons to those applicants whose applications have been lost either during his term or his predecessor's term. These restoration applicants, including Plaintiff Langdon, have received no notice of any decision, new policy, or loss of their application from the Governor's Office.
60. On information and belief, unknown hundreds of other individuals who submitted rights restoration applications prior to December 10, 2019 still believe that those applications remain pending, valid, and eligible for consideration, and have no reason to think otherwise.
61. By providing no statements of reasons for the denial of Plaintiff Langdon's and other putative class members' applications, and/or statements for the de facto denials through application loss, Governor Beshear has violated and continues to violate Section 77 of the Kentucky Constitution.

COUNT TWO

Failure to Provide Notice of Application Denials and the Need for Reapplication (Violation of Procedural Due Process, Section 2 of the Kentucky Constitution)

62. Plaintiff restates and incorporates by reference, as if set forth fully herein, the allegations in the preceding paragraphs of the Complaint.
63. Due process guarantees the rights to notice and a hearing when the state deprives an individual of a fundamental liberty interest.
64. Section 2 of the Kentucky Constitution states that "[a]bsolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest

¹³ That some Kentuckians' applications were lost does not absolve Defendant of the obligation to provide notice and a statement of reasons for the denial. Were that true, any Governor could skirt Section 77's mandate by refusing to put the mechanisms in place to ensure that each application is properly maintained and available for review.

majority.” Ky. Const. § 2. This provision also guarantees procedural due process rights. *See Pritchett v. Marshall*, 375 S.W.2d 253, 258 (Ky. 1963) (Section 2 is “a concept we consider broad enough to embrace both due process and equal protection of the laws, both fundamental fairness and impartiality.”); *Kaelin v. City of Louisville*, 643 S.W.2d 590, 591 (Ky. 1982) (“In the interest of fairness and in order to comply with the mandate of Section 2, a party whose rights are affected by an administrative action is entitled to procedural due process.”).

65. In Kentucky, “some minimal level of procedural due process applies to clemency proceedings.” *Baze v. Thompson*, 302 S.W.3d 57, 59 (Ky. 2010). These protections are limited to “the clemency procedures explicitly set forth by state law” and require that the State not arbitrarily deny “all access to the clemency process.” *Wilson v. Com.*, 381 S.W.3d 180, 194 (Ky. 2012). In Kentucky, the clemency process consists of “only two constitutionally mandated requirements[.]” *Baze*, 302 S.W.3d at 60. These requirements are “that the movant file an application for clemency with the Governor; and that the Governor file with each application a statement of the reasons for his decision.” *Id.*; Ky. Const. § 77.
66. Under Kentucky law, Plaintiff Langdon has a protectable interest in the continued preservation and validity of his rights restoration application, which was submitted in accordance with all established laws, rules, and procedures in effect at the time of submission.
67. Defendant Governor Beshear, in his official capacity as Governor of Kentucky, has violated the due process clause in Section 2 by failing to provide Plaintiff Langdon and these 891 unrestored applicants in the putative class with adequate notice of the following: (1) that the Governor has determined that their pending applications were effectively denied at the expiration of Governor Bevin’s term; (2) that many applications have been lost during either Governor Bevin’s or Defendant’s terms and therefore are effectively denied; and (3) that all of them must reapply in order to be considered for voting rights restoration.
68. By failing to provide notice to Plaintiff Langdon and putative class members of these policy and factual developments that have had material consequences for the continued preservation

and validity of their rights restoration applications, Governor Beshear has violated the Kentucky Constitution's guarantee of due process. This failure to provide "the clemency procedures explicitly set forth by state law" without notice or an opportunity to be heard violates Plaintiff Langdon and putative class members' right to procedural due process. *Wilson*, 381 S.W.3d at 194. The Governor has effectively and arbitrarily denied Plaintiff Langdon "all access to the clemency process" and thus violated his due process rights. *Id.*

69. By failing to give adequate notice to Plaintiff Langdon and putative class members of crucial information regarding the continued existence, validity, and eligibility of their rights restoration applications, Governor Beshear has violated their due process rights as guaranteed by the Kentucky Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Certify the proposed class under the Kentucky Rules of Civil Procedure;
- B. Declare that Governor Beshear's failure to provide statements of reasons for the denial of Plaintiff Langdon's and putative class members' applications, pursuant to Governor Beshear's determination that his predecessor's inaction constituted denial and the loss of hundreds of these same applications violates Section 77 of the Kentucky Constitution;
- C. Declare that Governor Beshear's failure to provide Plaintiff Langdon and the putative class members with adequate notice (1) that the Governor has determined that their pending applications were effectively denied at the expiration of Governor Bevin's term; (2) that many applications have been lost during either Governor Bevin's or Defendant's terms and therefore are effectively denied; and (3) that all of them must reapply in order to be considered for voting rights restoration, violates the due process clause of Section 2 of the Kentucky Constitution;
- D. Issue a permanent injunction requiring Defendant Governor Beshear to comply with Section 77 of the Kentucky Constitution with respect to Plaintiff and the putative class members by providing a statement of the reasons for the denial of Plaintiff's applications,

including but perhaps not limited to the Governor's determination that applications submitted but left unaddressed during Governor Bevin's term were denied and the fact that hundreds of applications have been lost;

- E. Issue a permanent injunction requiring Defendant Governor Beshear to comply with the due process clause in Section 2 of the Kentucky Constitution with respect to Plaintiff and the putative class, by providing adequate notice of Defendant Governor Beshear's determination that their pending applications were effectively denied at the expiration of Governor Bevin's term, that many applications have been lost during either Governor Bevin's or Defendant's terms and therefore are de facto denied, and that all of them must reapply to be considered for voting rights restoration;
- F. Grant reasonable costs of suit to Plaintiff and the putative class; and
- G. Grant all other relief to which Plaintiff and the putative class may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2021, I filed the foregoing Response to Defendant's Motion to Dismiss and served it on the following counsel by submitting it through the court's electronic filing system. All parties are represented by counsel who are registered electronic filers.

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