

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION ____
CASE NO. 20-CI-_____**

FILED ELECTRONICALLY

RICHARD LEROY PETRO, JR.,

PLAINTIFF

v.

**ANDY 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 Richard Leroy Petro, Jr. 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 Petro states and alleges as follows:

INTRODUCTION

1. This case is about providing individuals with felony convictions a fair opportunity to apply for voting rights restoration under the applicable rules and procedures and giving them adequate notice if those rules or procedures change.
2. Under Kentucky law, 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.

3. Upon information and belief, approximately 2,400 Kentuckians completed applications for restoration of their voting rights before Governor Andy Beshear took office on December 10, 2019. It is unknown at present how many of those individuals received a decision on their application before Governor Bevin left office. However, it is likely that hundreds—if not thousands—of those individuals did not receive a reasoned decision from the Governor’s Office.

4. Plaintiff Rick Petro is one of the Kentuckians who have completed an application for restoration of his voting rights prior to Governor Andy Beshear’s time in office.

5. Upon information and belief, Governor Beshear has adopted a policy of treating previously submitted rights restoration applications, like Mr. Petro’s, as invalid and ineligible for his consideration and decision solely because they were submitted prior to his term as Governor. Governor Beshear has not considered this subset of applications and, upon information and belief, has no intention of doing so.

6. Crucially, however, the Governor’s Office has not provided these Kentuckians — whose names and other identifying information are available to it—with any notice that he considers their applications invalid and effectively denied.

7. The Governor’s policy and practice—deeming completed applications as invalid solely because they were filed in a previous administration while simultaneously refusing to inform applicants that they need to reapply—violates the Kentucky Constitution.

8. This action seeks to enjoin Governor Beshear’s unwritten and non-public policy of invalidating voting rights restoration applications that Kentuckians completed prior to his time in office (December 10, 2019), based solely and arbitrarily on the time that those

applications were submitted. In the alternative, it seeks to compel Governor Beshear to comply with the Kentucky Constitution by providing adequate notice and a statement of reasons for his decision to all individuals who submitted rights restoration applications prior to his administration that he has implicitly and effectively denied.

PARTIES

9. Plaintiff Richard Leroy Petro, Jr. is a United States citizen, 67 years old, and a resident of Murray, Kentucky. Mr. Petro was convicted of at least one felony in federal court and lost his right to vote under Kentucky law. After spending 12 years in prison, Mr. Petro was released in 1992 and discharged from parole in 1994, which marked the completion of his sentence. After completing his sentence, Mr. Petro lawfully voted in elections as a resident of Indiana. He has not voted since moving to Kentucky.

10. Mr. Petro 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.

11. Mr. Petro 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. Petro's completed application, the Kentucky Department of Corrections forwarded the application to the Governor's Office several weeks later. It has since remained before the Governor, eligible for consideration and a final decision.

12. On information and belief, Governor Beshear has deemed ineligible for consideration and implicitly denied Mr. Petro's completed application through an

unwritten and non-public policy of invalidating all rights restoration applications submitted prior to his taking public office in December 2019. Mr. Petro has not received any notice that his application has been deemed ineligible for consideration and therefore implicitly denied, or of any other decision from the Governor's Office. Accordingly, he has not reapplied for rights restoration.

13. Defendant Andy 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

14. 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.

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

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

FACTS

I. Kentucky's Rights Restoration Process

17. 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).

18. 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 form for its submission is made available on the Department's website.¹

19. 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.² Individuals who are not covered by this Executive Order must still petition the Governor for rights restoration.

20. 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

¹ 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>.

² Ky. Exec. Order 2019-003 (Dec. 12, 2019), available at https://governor.ky.gov/attachments/20191212_Executive-Order_2019-003.pdf.

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.³

21. 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.

22. On information and belief, 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 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.

23. 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.

³ 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>.

24. 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.

II. The Change in Administration and Policy of Invalidating and Effectively Denying Previously-Submitted Rights Restoration Applications

25. Defendant Beshear took office as Governor of Kentucky on December 10, 2019. On information and belief, rights restoration applications that Kentuckians completed and were originally submitted to Governor Beshear's predecessors, including Governor Matthew Bevin, remained in the office, available to Governor Beshear's administration for consideration.

26. On information and belief, Governor Beshear instituted an unwritten and non-public policy of invalidating and implicitly denying these applications.

27. Governor Beshear does not consider applications filed during previous administrations to be pending and eligible for a decision and will not consider, grant, or officially, explicitly deny them.

28. Governor Beshear's decision to invalidate the completed rights restoration applications submitted during previous gubernatorial administrations effectively 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.

29. On information and belief, Governor Beshear did not provide any notice to individuals whose applications he has deemed ineligible for consideration by way of this

unwritten and non-public policy. Thus, these individuals do not know that they need to submit a new application. In effect, he has implicitly denied these applications.

III. Governor Beshear's Policy Has Effectively Denied Plaintiff's Rights Restoration Application Without Giving Him Notice.

30. In 2018, Mr. Petro applied for restoration of his voting rights by mailing his application and necessary attachments to the Department of Corrections. Mr. Petro went to great lengths and paid significant fees to gather the proper documentation for that application. He contacted several courts and archives and even submitted a Freedom of Information Act Request to secure the required records. When Mr. Petro submitted his rights restoration application, he used the form that was current at that time.⁴ That form was revised in March 2020 but does not require applicants to submit any additional information, documentation or attachments beyond what Mr. Petro had already provided.⁵

31. To date, Mr. Petro has received no notice stating that he would be required to submit a new rights restoration application.

32. Thirteen weeks after Mr. Petro submitted his application, he called the Department of Corrections, which told him that his application had been received and screened to make sure it had all proper documentation attached and was then forwarded to the Governor's Office several weeks earlier. The Department of Corrections told Mr. Petro to contact the Governor's Office if he wanted to check the status of his application.

⁴ 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>.

⁵ 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>.

33. Mr. Petro then called the Governor's Office several times over the next several weeks. Each time, he was connected to the Governor's legal counsel and told that his application had been received and was awaiting the Governor's review and decision. Mr. Petro was also told that he would be notified when the Governor made a decision. When Mr. Petro inquired as to how long the process would take, he was told that there was no required time limit and that it would "just be whenever the Governor got around to it." Mr. Petro had no reason to believe that his application was in danger of being deemed invalid or that any decision one way or the other would be made without notification.

34. Mr. Petro attempted to contact the Governor's Office again shortly after Governor Beshear took office in December 2019. Mr. Petro used the "Contact Us" page on the Governor's website and inquired as to the status of his application, but he never received a response. Mr. Petro also tried calling the Governor's Office several times but was never able to make contact with any staff member.

35. On information and belief, Governor Beshear has an unwritten, non-public policy to deem invalid all rights restoration applications that were submitted under prior gubernatorial administrations and were not officially granted or denied. Under this policy, the Governor considers these previously pending restoration applications per se ineligible for consideration and has implicitly denied them simply by virtue of the fact that they were submitted one or more days before Governor Beshear took office.

36. On information and belief, Governor Beshear will not consider or make explicit decisions upon any of the rights restoration applications that were submitted under prior gubernatorial administrations. On information and belief, Governor Beshear does not

consider those applications to be valid, eligible for consideration, or pending. To obtain any chance of consideration or decision on their applications, those applicants will need to complete and submit new rights restoration applications.

37. On information and belief, the Governor's Office has not notified any rights restoration applicants of these implicit denials or of the need to reapply. On information and belief, Governor Beshear does not intend to notify any implicitly denied applicants of the implicit denial or need to reapply, except that Governor Beshear might add a disclaimer to the top of the Department of Corrections and rights restoration application websites generally stating that individuals who applied to previous administrations need to complete and submit new applications.

38. On information and belief, Governor Beshear has not made efforts and has no intention to contact the individuals whose rights restoration applications he has deemed invalid and implicitly denied, even though these individuals' contact information is available to him.

39. None of the restoration applicants who submitted their applications prior to Governor Beshear taking office, including Plaintiff Petro, have received any official notice of this new policy and the implicit denial from the Governor's Office. Like Mr. Petro, 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 valid and eligible for consideration. Because of this reliance, these applicants are unlikely to regularly check the Department of Corrections and rights restoration

application websites and are also unlikely to see any disclaimers posted on those websites.

40. Mr. Petro 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 other restoration applicants who submitted their applications prior to Governor Beshear taking office and whose applications were not officially granted or denied. These restoration applicants have never received any notice of this unwritten, non-public policy or the Governor's requirement that they submit a new application for restoration.

CLASS ACTION ALLEGATIONS

41. 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 rights restoration applications that were received by the Kentucky Governor's Office prior to the administration of Governor Andy Beshear, excluding those whose applications were officially granted or denied or otherwise mooted by issuance of the 2019 EO restoring certain applicants' voting rights.

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 easily ascertainable.

43. 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 2,400 people sought restoration of their voting rights and submitted completed applications prior to December 10, 2019. An unknown number of them—likely hundreds—did not receive an official decision on their applications before Governor Beshear adopted his policy of effectively denying their applications without notice. 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 will be determined 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.

44. 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 deemed invalid, ineligible, and no longer pending Plaintiff's and proposed Class members' rights restoration applications;
- ii. Whether Defendant provided notice to Plaintiff and proposed Class members of his implicit denial of their rights restoration applications;
- iii. Whether Defendant's policy and practice of arbitrarily and implicitly denying Plaintiff's and proposed Class members' rights restoration applications violates the equal protection provisions of the Kentucky Constitution;

- iv. Whether Defendant's failure to notify Plaintiff and proposed Class members of this implicit denial violates Section 77 of the Kentucky Constitution;
- v. Whether Defendant's failure to notify Plaintiff and proposed Class members of this implicit denial violates the Kentucky Constitution's procedural 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.

45. 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 co-extensive with the claims of the proposed Class.

46. 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 is 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.

47. 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.

48. 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 I
Arbitrary Requirement for Reapplication
(Violation of Equal Protection)

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

50. The Kentucky Constitution provides for equal protection in Sections 1, 2, and 3. 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. 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." Ky. Const. § 2. Section 2 is considered "broad enough to embrace both due process and equal protection of the laws, both fundamental fairness and impartiality."

Pritchett v. Marshall, 375 S.W.2d 253, 258 (Ky. 1963). 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.

51. The Kentucky Constitution guarantees equal protection to “keep[] governmental decision makers from treating differently persons who are in all relevant respects alike.” *Vision Mining, Inc. v. Gardner*, 364 S.W.3d 455, 465 (Ky. 2011) (citation and internal quotation marks omitted).

52. Because this case does not target a suspect or quasi-suspect class, it qualifies for traditional rational basis review. 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.’” *Vision Mining*, 364 S.W.3d at 469 (citing *McLaughlin v. State of Fla.*, 379 U.S. 184, 190 (1964)) (emphasis in *Vision Mining*). And “whatever 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 Cty. v. City of Louisville*, 213 S.W.2d 995, 1000 (Ky. 1948).

53. However, due to Kentucky's enhanced equal protection guarantees, state courts sometimes apply a heightened standard. In those cases, courts have required that a challenged policy be accompanied by a "reasonable basis" or "substantial and justifiable reason" for its discriminatory classifications. *Vision Mining*, 364 S.W.3d at 466 (citing *Cain v. Lodestar Energy, Inc.*, 302 S.W.3d 39, 42-43 (Ky. 2009)).

54. On information and belief, Governor Beshear has deemed invalid and ineligible for consideration all rights restoration applications that were submitted before December 10, 2019 and remain pending with his Office from his predecessors' administrations. Plaintiff Petro's application is among those restoration applications that were submitted prior to Governor Beshear taking office. On information and belief, Governor Beshear considers all rights restoration applications submitted to his Office during his administration to be valid and eligible for consideration. The only difference between these classes of applications is the date on which they were filed. All else being equal, under this unwritten, non-public policy, an application submitted to the Governor's Office on December 11, 2019 is valid and eligible for consideration and a determination, while an application submitted to the Governor's Office on December 9, 2019 is not valid or eligible for consideration and a determination.

55. This classification fails traditional rational basis review. It is wholly arbitrary to force some individuals to reapply and submit two rights restoration applications for any chance of consideration, while all other individuals need only submit one for that same chance. The difference in submission dates does not "bear[] a reasonable and just relation to" the underlying validity of rights restoration applications submitted in accordance with

the established rules and procedures. *Vision Mining*, 364 S.W.3d at 469 (citing *McLaughlin*, 379 U.S. at 190). Under Kentucky law, there is no deadline and no expiration date for rights restoration applications. Governor Beshear's policy of arbitrary invalidation of previously-submitted restoration applications is "essentially unjust and unequal" and "exceeds the reasonable and legitimate interests" of applicants who have no reason to believe that their applications may be invalid based on the time of submission. *Sanitation Dist. No. 1 of Jefferson Cty.*, 213 S.W.2d at 1000.

56. This policy also fails under the heightened standard of Kentucky's enhanced equal protection guarantees. Governor Beshear can provide no "reasonable basis" or "substantial and justifiable reason" for his policy of invalidating all rights restoration applications submitted before December 10, 2019. *Vision Mining*, 364 S.W.3d at 466.

57. Thus, Governor Beshear's requirement for applicants to reapply for rights restoration, arbitrarily applied to one set of individuals, violates equal protection principles. Plaintiff Petro is in this group of individuals subjected to arbitrary and unjust treatment. Governor Beshear has therefore violated Plaintiff Petro's rights under Sections 1, 2, and 3 of the Kentucky Constitution.

COUNT II

Failure to Provide Notice of Need for Reapplication (Violation of Section 77 of the Kentucky Constitution)

58. Plaintiff restates and incorporates by reference, as if set forth fully herein, the allegations in the preceding paragraphs of the Complaint.

59. 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).

60. 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).

61. 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.

62. 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.

63. By instituting a policy that deems invalid all rights restoration applications submitted before December 10, 2019 under previous administrations, Governor Beshear has implicitly and effectively denied those applications, triggering his duty to provide a statement of the reasons for his decisions on those applications.

64. Governor Beshear has not issued any such statements for the rights restoration applications that he has implicitly denied. These restoration applicants, including Plaintiff Petro, have received no notice of a decision or new policy from the Governor's Office. Plaintiff Petro only knows about this implicit denial because his counsel inquired about his application and relayed their findings. 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.

65. By providing no statements of reasons for his implicit denial of Plaintiff Petro's and other applicants' rights restoration applications, Governor Beshear has violated and continues to violate Section 77 of the Kentucky Constitution.

COUNT III

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

66. Plaintiff restates and incorporates by reference, as if set forth fully herein, the allegations in the preceding paragraphs of the Complaint.

67. Due process guarantees the rights to notice and a hearing when the state deprives an individual of a fundamental liberty interest.

68. 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 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.”).

69. 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.

70. Under Kentucky law, Plaintiff Petro has a protectable interest in the 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. Mr. Petro also has a protectable interest in the Governor’s issuance of a statement of the reasons for any

implicit decision on his application, in this case the effective denial of this application due to the Governor's challenged policy. *See* Ky. Const. § 77 (“[the Governor] shall file with each application therefor a statement of the reasons for his decision thereon”).

71. By failing to provide notice to Plaintiff Petro of a new policy requiring re-submission of his rights restoration application and a statement of the reasons for effectively denying Plaintiff Petro's long-pending application, 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 Petro's right to procedural due process. *Wilson*, 381 S.W.3d at 194. The Governor has arbitrarily denied Plaintiff Petro “all access to the clemency process” and thus violated his due process rights. *Id.*

72. By invalidating and implicitly denying Plaintiff Petro's rights restoration application without affording him notice of the policy change and an opportunity to respond, Governor Beshear has violated Plaintiff Petro's due process rights 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 policy of automatically invalidating rights restoration applications that Kentuckians completed before he took office on December 10, 2019 violates Sections 1, 2, and 3 of the Kentucky Constitution;

- C. Declare that Governor Beshear's failure to provide notice to individuals whose rights restoration applications he has invalidated and implicitly denied violates Sections 2 and 77 of the Kentucky Constitution;
- D. Enjoin Governor Beshear's unwritten policy of deeming invalid and implicitly denying all rights restoration applications submitted before he took office and arbitrarily requiring those individuals with pending applications to reapply;
- E. In the alternative, issue an injunction compelling Governor Beshear to provide adequate notice of the challenged unwritten policy and of the mandatory statement of reasons for his decision to implicitly reject these previously-submitted applications to all individuals who completed rights restoration applications before Governor Andy Beshear took office on December 10, 2019;
- F. Grant reasonable costs of suit to Plaintiff; and
- G. Grant all other relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ Ben Carter

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*motions for admission *pro hac vice* forthcoming

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Presiding Judge: HON. PHILLIP J. SHEPHERD (648260)

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Commonwealth of Kentucky
Amy Feldman, Franklin Circuit Clerk

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Case Title: PETRO, RICHARD LEROY JR VS. BESHEAR,
ANDY
Filed On 6/2/2021 5:19:19PM

Confirmation Number: 126280502

#	Item Description	Amount
1	Access To Justice Fee	\$20.00
2	Civil Filing Fee	\$150.00
3	Money Collected For Others(Court Tech. Fee)	\$20.00
4	Library Fee	\$3.00
5	Court Facilities Fee	\$25.00
6	Money Collected For Others(Attorney Tax Fee)	\$5.00
7	Money Collected For Others(Postage)	\$13.20
8	Charges For Services(Copy - Photocopy)	\$2.60
TOTAL:		\$238.80



Case #: **21-CI-00443**

Court: **CIRCUIT**

County: **FRANKLIN**

CIVIL SUMMONS

Plaintiff, PETRO, RICHARD LEROY JR VS. BESHEAR, ANDY, Defendant

TO: ANDY BESHEAR
OFFICE OF THE ATTORNEY GENERAL
700 CAPITOL AVENUE, STE. 118
FRANKFORT, KY 406013449

The Commonwealth of Kentucky to Defendant:
ANDY BESHEAR

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

Amy Feldman

Franklin Circuit Clerk
Date: **6/2/2021**

Proof of Service

This Summons was:

☐ Served by delivering a true copy and the Complaint (or other initiating document)

To: _____

☐ Not Served because: _____

Date: _____, 20____

Served By

Title

