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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

**** **** ****

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).

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).

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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