

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. 21-CI-_____

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

and

ERIC FRIEDLANDER, in his official capacity as
Secretary of the Cabinet for Health and Family Services,

PLAINTIFFS,

vs.

DAVID W. OSBORNE, in his official capacity as
Speaker of the Kentucky House of Representatives,

Serve: 702 Capitol Avenue
Annex Room 236
Frankfort, Kentucky 40601

Jay Hartz, Director
Legislative Research Commission
700 Capitol Avenue, Room 300
Frankfort, Kentucky 40601-3449

and

BERTRAM ROBERT STIVERS, II, in his official
capacity as President of the Kentucky Senate,

Serve: 702 Capitol Avenue
Annex Room 332
Frankfort, Kentucky 40601

Jay Hartz, Director
Legislative Research Commission
700 Capitol Avenue, Room 300
Frankfort, Kentucky 40601-34499

and

LEGISLATIVE RESEARCH COMMISSION,

Serve: Greg Woosley
Legislative Research Commission
700 Capitol Avenue, Room 300
Frankfort, Kentucky 40601-34499

and

DANIEL J. CAMERON, in his official capacity as
Kentucky Attorney General,

SERVE: Office of the Attorney General
The Capitol Building
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601-3449

DEFENDANTS.

**VERIFIED COMPLAINT FOR A DECLARATION OF RIGHTS, A TEMPORARY
RESTRAINING ORDER, A TEMPORARY INJUNCTION
AND A PERMANENT INJUNCTION**

Plaintiffs Andy Beshear, in his official capacity as Governor of the Commonwealth of Kentucky, and the Cabinet for Health and Family Services, by and through counsel, bring this action for a declaration of rights, a temporary restraining order, a temporary injunction and a permanent injunction against the Defendants, Robert W. Osborne, Speaker of the Kentucky House of Representatives, Bertram Robert Stivers, II, President of the Kentucky Senate, and Daniel J. Cameron, the Kentucky Attorney General.

INTRODUCTION AND FACTUAL BACKGROUND

1. The Commonwealth and the United States remains in a life-and-death battle against COVID-19 – the gravest threat to public health in over a century. To date, the pandemic has killed more than 441,000 Americans, meaning the virus has taken more lives than World War I, World War II, or the Korean or Vietnam Wars.

2. COVID-19 is a deadly, highly infectious disease. As described by the Kentucky Supreme Court:

COVID-19 is a respiratory disease caused by a virus that transmits easily from person-to-person and can result in serious illness or death. According to the Centers for Disease Control and Prevention (CDC), the virus is, primarily spread through respiratory droplets from infected individuals coughing, sneezing or talking while in close proximity (within six feet) to other people. On January 31, 2020, the United States Department of Health and Human Services declared a national public health emergency, effective January 27, 2020, based on the rising number of confirmed COVID-19 cases in the United States. The CDC identified the potential public health threat posed by COVID-19 nationally and world-wide as “high”.

Beshear v. Acree, 2020-SC-0313-OA, 2020 WL 6736090, at *3 (Nov. 12, 2020).

3. COVID-19 also spreads through airborne transmission, particularly in poorly ventilated indoor spaces. As the disease has progressed, studies have shown that places where people congregate indoors for extended periods of time are the locations most associated with spread, especially if people do not wear masks or they remove their masks while indoors. These outbreaks can race through a community, affecting even people who did not choose to assume any risk by engaging in activities posing a higher risk of infection. While it is not possible to entirely prevent the spread of COVID-19, public health interventions can substantially reduce transmission rates.

4. As with other viruses, COVID-19 has mutated and multiple variants of COVID-19 have recently been documented. Three of these variants raise serious concern, as they spread more aggressively than the traditional strain that the United States has thus-far battled.¹ At least one of the new variants has been identified in Kentucky,² and another 29 states have reported

¹ New COVID-19 Variants, Centers for Disease Control and Prevention, updated Jan. 9, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html> (last visited Jan. 31, 2021).

² Gov. Beshear: President’s COVID-19 Team Increases Kentucky’s Vaccine Allocation, Jan. 26, 2021, available at <https://kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prId=573> (last visited Jan. 31, 2021).

cases of this variant.³ The virulent South African B.1.351 variant has been identified in South Carolina⁴ and Maryland.⁵ And the Brazilian P.1 variant – which filled one Brazilian city’s hospitals to capacity in a matter of hours⁶ – has appeared in Minnesota.⁷ Public health experts agree the numbers likely understate the prevalence of these variants in the United States because of limited genomic testing.⁸ While vaccines show a light at the end of the tunnel, new strains of COVID-19 that may be as much as 50% more contagious and may be more fatal are already circulating in the United States. Public health authorities have therefore warned that the coming months will be deadly, forecasting 200,000 additional American deaths by May 1, an almost 50% increase to the already tragic toll.⁹ These experts have warned that these variants pose a particularly serious risk to hospital systems, which have been overwhelmed in other countries,¹⁰ and that they require “universal use of and strict compliance with” public health measures like those implemented in the Governor’s emergency orders.¹¹

³ Available at [html https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant-cases.html](https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant-cases.html) (last visited Jan. 31, 2021).

⁴ Andrew Joseph, South Carolina identifies the first U.S. cases of coronavirus variant first seen in South Africa, Jan. 28, 2021, available at <https://www.statnews.com/2021/01/28/south-carolina-first-cases-of-south-africa-variant/> (last visited Jan. 31, 2021).

⁵ Jason Hanna and Madeline Holcombe, *Maryland becomes 2nd state to report coronavirus variant first identified in South Africa*, CNN, Jan. 30, 2021, available at <https://www.cnn.com/2021/01/30/health/us-coronavirus-saturday/index.html> (last visited Jan. 31, 2021).

⁶ <https://www.washingtonpost.com/world/2021/01/27/coronavirus-brazil-variant-manaus/> (last visited Feb. 1, 2021).

⁷ <https://www.npr.org/sections/goatsandsoda/2021/01/27/961108577/why-scientists-are-very-worried-about-the-variant-from-brazil> (last visited Feb. 1, 2021).

⁸ <https://www.washingtonpost.com/health/2021/01/29/genetic-sequencing-mutations-coronavirus/> (last visited Feb. 1, 2021).

⁹ Maggie Fox, New variants could add up to 85,000 Covid-19 deaths to US toll by May, influential model forecasts, CNN Health, Jan. 29, 2021, available at https://edition.cnn.com/world/live-news/coronavirus-pandemic-vaccine-updates-01-29-21/h_5c168180a4c46f9c0203abb55997ce08 (last visited Feb. 2, 2021).

¹⁰ <https://www.nytimes.com/2021/01/15/health/covid-cdc-variant.html>. (last visited Feb. 2, 2021).

¹¹ https://www.cdc.gov/mmwr/volumes/70/wr/mm7003e2.htm?s_cid=mm7003e2_w (last visited Feb. 2, 2021).

5. On March 6, 2020, the Governor declared a State of Emergency related to COVID-19 and activated the Commonwealth's Emergency Operations Center upon the first confirmed diagnosis of COVID-19 in Kentucky via Executive Order 2020-215.¹²

6. The federal government has concurred in that ongoing declaration. President Donald Trump issued four separate declarations of a federal state of emergency related to COVID-19, declarations now-President Joe Biden has left undisturbed. President Trump and Health and Human Services Secretary Alex Azar declared a public health emergency under the Public Health Service Act on Jan. 31, issued two national emergency declarations under both the Stafford Act and the National Emergencies Act (NEA) on March 13, *declaring all 50 states, the District of Columbia, and five territories major disaster areas*, and invoked emergency powers via Executive Order under the Defense Production Act on March 18.¹³ On March 19, President Trump named the Federal Emergency Management Agency (FEMA) as the lead agency in the COVID-19 emergency response efforts, a designation previously held by the Department of Health and Human Services (HHS). On January 7, 2021, Azar again renewed his determination that a public health emergency exists in the United States, a determination he first issued in January, 2020.¹⁴ On January 17, 2021, the White House Coronavirus Task Force warned in its State Report for Kentucky: **"Overall, this fall and winter surge is more aggressive, with more rapid community spread that will need to be continuously met with aggressive and escalating mitigation."**¹⁵

¹² Ky. Exec. Order 2020-215, available at https://governor.ky.gov/attachments/20200306_Executive-Order_2020-215.pdf (last visited Jan. 28, 2021).

¹³ Federal Emergency Management Agency, COVID-19 Disaster Declarations, available at <https://www.fema.gov/disasters/coronavirus/disaster-declarations> (last visited Jan. 22, 2021).

¹⁴ U.S. Department of Health and Human Services, Renewal of Determination that a Public Health Emergency Exists, Jan. 7, 2021, available at <https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-07Jan2021.aspx> (last visited Jan. 22, 2021).

¹⁵ White House Coronavirus State Report, Jan. 17, 2021, available at <https://chfs.ky.gov/agencies/dph/covid19/Kentucky01172021.pdf> (last visited Jan 31, 2021).

7. Since taking office on January 20, 2021, President Joe Biden has issued additional declarations, including an omnibus order on January 22, 2021 addressing COVID-19-related financial insecurity, food insecurity, veteran assistance, and intergovernmental coordination.¹⁶

8. The Governor and the Cabinet for Health and Family Services (“CHFS”) have taken effective measures – through the Governor’s emergency powers – to protect the citizens of the Commonwealth. In taking these measures, the Governor has followed the recommendations and guidance of state, national, and global experts, including those at the White House, the Centers for Disease Control and Prevention, the World Health Organization, and the Kentucky Department for Public Health.

9. With the evolution of COVID-19 and our understanding of it, the Governor’s approach has evolved to a surgical and targeted approach based on expert advice, scientific studies, and real-time experience fighting the virus. The current approach involves a calibrated assessment of the risks posed by specific activities, and implementation of tailored measures to mitigate those risks with specific characteristics of Kentucky in mind. Notably, the White House recently “commended” the Governor for the widely-celebrated success of his “active measures.”¹⁷

10. The Governor has acted under constitutional executive powers, and the Governor and the Cabinet have acted pursuant to their executive powers under KRS Chapters 39A, 194A and 214. In enacting KRS Chapter 39A, the General Assembly recognized “that the rationale and

¹⁶ Fact Sheet: President Biden’s New Executive Actions Deliver Economic Relief for American Families and Businesses Amid the COVID-19 Crises (Jan. 22, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/22/fact-sheet-president-bidens-new-executive-actions-deliver-economic-relief-for-american-families-and-businesses-amid-the-covid-19-crises/> (last visited Jan. 30, 2021).

¹⁷ *White House Coronavirus Task Force Report for Kentucky*, Kentucky Cabinet for Health and Human Services, Nov. 15, 2020), available at <https://dnks20yxl1c2u.cloudfront.net/381d0fbb43b611527a8f1c329301ef51fd555fcf/Kentucky%20%2011.17.pdf> (last visited Jan. XX, 2021).

purpose of the comprehensive emergency management program of the Commonwealth has evolved from a program for response to threats to national security, enemy attack and other defense needs, to a program for response to all hazards[.]” KRS 39A.030. It further declared it to necessary “[t]o confer upon the Governor . . . the emergency powers provided in KRS Chapters 39A to 39F[.]” KRS 39A.010(2).

11. The Supreme Court of Kentucky recently and unanimously upheld the executive powers of the Governor and the measures he has taken during this public health emergency.

Beshear v. Acree, 2020 WL 6736090. The Supreme Court concluded:

We conclude that the greater public interest lies instead with the public health of the citizens of the Commonwealth as a whole. The global COVID-19 pandemic threatens not only the health and lives of Kentuckians but also their own economic interests; the interests of the vast majority take precedence over the individual business interests of any one person or entity. While we recognize and appreciate that the Plaintiffs allege injuries to entire industries in the state, such as the restaurant and childcare industries, the interests of these industries simply cannot outweigh the public health interests of the state as a whole. The Governor’s orders were, and continue to be, necessary to slow the spread of COVID-19 and protect the health and safety of all Kentucky citizens. This type of highly contagious etiological hazard is precisely the type of emergency that requires a statewide response and properly serves as a basis for the Governor’s actions under KRS Chapter 39A. Because the law and equities favor the Governor in this matter, it was an abuse of discretion for the trial court to issue the temporary injunction.

Id., at *37. Prior to its Opinion, the Supreme Court recognized the need for “a clear and consistent statewide public health policy” to slow the spread of this deadly disease. Order, *Beshear v. Acree*, 2020-SC-000313-OA (Ky. July 17, 2020) (attached as Exhibit A).

12. Kentucky has fared better than other states, seeing fewer cases and significantly fewer deaths. Adjusted for population, Kentucky has lost half the number of lives as Tennessee, a state that refuses to impose a mask mandate.¹⁸ Kentucky has lost less than one-fourth of the

¹⁸ Compare 9,374 total deaths/137 per 100,000 in Tennessee with 3,910 total deaths/88 per 100,000 in Kentucky as of January 29, 2021. See Coronavirus in the U.S.: Latest Map and Case Count, NY Times (available at <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#states>) (last visited Jan. 30, 2021).

lives lost in North or South Dakota, states that refused to enact any measures until they recorded the highest mortality rates in the world late last fall.¹⁹

13. While the Governor's measures have worked, Kentucky is still experiencing some of the highest number of cases and deaths it has seen during the pandemic. On January 6, Kentucky reported a record high 5,742 new cases of COVID-19, 670 of which were for people ages 18 and under, and 34 new deaths.²⁰ On that day, 1,778 Kentuckians were hospitalized for COVID-19, with 428 patients in the intensive care unit and 244 fighting for their lives on ventilators.²¹ The state's positivity rate had increased to 12.34% on January 14.²² Kentucky reported a record number of new deaths, 69, on January 28, 2021.²³ In late December, after the Governor's efforts and Kentuckians' sacrifices, the positivity rate had dropped to below eight percent (8%).²⁴ As of February 1, 2021, all but 12 of Kentucky's 120 counties were in the "red zone" based on average daily cases per 100,000 population over the prior seven days.²⁵

14. During the COVID-19 global pandemic, the CDC – organized under the U.S. Department for Health and Human Services – has issued guidance and considerations for state and local health officials to evaluate when implementing measures to protect citizens. The CDC is clear that its guidance should not take the place of state rules or regulation. Indeed, many of its documents explicitly warn against their use as regulatory material. In its "Considerations for

¹⁹ *Id.*

²⁰ KY COVID-19 Report, 06 JAN 21, available at <https://chfs.ky.gov/cvdaily/COVID19DailyReport010621.pdf> (last visited Feb. 2, 2021).

²¹ *Id.*

²² KY COVID-19 Report, 14 JAN 21, available at <https://chfs.ky.gov/cvdaily/COVID19DailyReport011421.pdf> (last visited Feb. 2, 2021).

²³ KY COVID-19 Report, 28 JAN 21, available at <https://chfs.ky.gov/cvdaily/COVID19DailyReport012821.pdf> (last visited Feb. 2, 2021).

²⁴ KY COVID-19 Report, 28 DEC 20, available at <https://chfs.ky.gov/cvdaily/COVID19DailyReport1228.pdf> (last visited Jan. 28, 2021).

²⁵ Kentucky Coronavirus Monitoring, Feb. 1, 2021, available at <https://govstatus.egov.com/kycovid19> (last visited Feb. 1, 2021).

Events and Gatherings,” updated January 8, 2021, the CDC states, “Because COVID-19 virus circulation varies in communities, these considerations are meant to supplement – **not replace** – any state, local, territorial, or tribal health and safety laws, rules, and regulations with which gatherings must comply.”²⁶ Guidance documents related to schools and community based organizations contain the same statement and warning. *See also* CDC, Operating schools during COVID-19: CDC’s Considerations (updated Jan. 8, 2021)²⁷; CDC, Considerations for Community-Based Organizations (updated Dec. 31, 2020)²⁸ (noting same restriction on the use of guidance as law, rule or regulation).

15. The CDC takes this position because its documents are numerous and overlapping, they do not provide clear directives (because they are “advice”), and they are primarily written in terms of “should” instead of “shall” or “must.” Simply put, they were never meant to be regulation and are therefore not written as such. For example, the most current guidance on events and gatherings gives no firm rules whatsoever; rather, the document simply labels activities as “lowest risk,” “more risk,” “higher risk,” and “highest risk.”²⁹

16. The sheer volume of overlapping guidance documents also makes it difficult to determine what rules apply. The CDC’s webpages lists 180 current COVID-19 guidance

²⁶ CDC, COVID-19, Considerations for Events and Gatherings, last updated Jan. 8, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html> (last visited Jan. 28, 2021).

²⁷ CDC, Operating schools during COVID-19: CDC’s Considerations, last updated Jan. 8, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html> (last visited Jan. 28, 2021).

²⁸ CDC, Considerations for Community-Based Organizations, last updated Dec. 31, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/community-based.html> (last visited Jan. 28, 2021).

²⁹ CDC, COVID-19, Considerations for Events and Gatherings, last updated Jan. 8, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html> (last visited Jan. 28, 2021).

documents as of January 28, 2021. These guidance documents are continuously updated and changed with little-to-no public notice.³⁰

17. Avoiding any doubt, on January 11, 2021, the Director of the CDC advised the Governor by letter as follows:

I want to make it clear that ***CDC guidance should not be interpreted as regulation***; rather they are meant as recommendations, It should be used in consideration for specific state and/or local regulations, but this guidance is meant to be flexible and adaptable. It is not meant to be prescriptive or interpreted as standards that can be regulation.

CDC provides ongoing guidance to individuals, businesses, schools, and states. We have and will continue to be available for technical assistance and guidance, but we expect each jurisdiction to modify this guidance to meet their state's needs.³¹

See CDC Letter, Jan. 11, 2021 (emphasis added) (attached as Exhibit B).

18. While CDC and White House Coronavirus Task Force³² recommendations are helpful—even vital – their very nature as “guidance” can lead to conflicting interpretations. Multiple guidance documents can apply to a single type of business. Food service providers could conceivably be subject to, among others, the Considerations for Events and Gatherings,³³ the Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Business, Schools, and Homes,³⁴ the Guidance for Businesses and Employers Responding to Coronavirus Disease 2019

³⁰ CDC, COVID-19 Guidance Documents, updated Jan. 28, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/communication/guidance-list.html?Sort=Date%3A%3Adesc> (last visited Jan. 28, 2021).

³¹ Letter from Robert R. Redfield, MD to Governor Andy Beshear, Jan. 11, 2021 (attached as Exhibit A).

³² Along with the CDC, the White House Coronavirus Task Force, within the federal executive branch, issues guidance and recommendations, and issues weekly state reports that include recommendations for other states. For example, the most recent White House Coronavirus Task Force State Report for Kentucky includes recommendations and information regarding states from California across the Sunbelt and into the Southeast, Mid-Atlantic and Northeast.

³³ *Id.*

³⁴ CDC, Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes, updated Jan. 5, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html> (last visited Jan. 28, 2021).

(COVID-19),³⁵ the Considerations for Restaurant and Bar Operators,³⁶ and the guidance on Personal and Social Activities.³⁷

19. Even if a business can readily identify all potentially applicable guidance, they can be difficult to harmonize and interpret. The Considerations for Restaurant and Bar Operators can be interpreted to require limiting food service to drive-through, delivery, take-out, and curbside pickup, or allowing on-site dining with indoor seating at no reduced capacity or even social distancing.³⁸ Likewise, the guidance on Personal and Social Activities could be interpreted to require take-out only if there is any kind of a “crowd,” which is undefined, both indoors and outdoors.³⁹

20. During the pandemic, the Governor’s administration has endeavored to keep the General Assembly and the public updated about the actions it has taken with regard to the COVID-19 emergency. Members of the Governor’s administration have appeared at the request of the General Assembly at over 40 committee hearings and spent more than 30 hours testifying under oath. Those testifying include Dr. Steven Stack, Commissioner of the Department of Public Health, who has testified a total of approximately six hours. Eric Friedlander, Secretary of the Cabinet for Health and Family Services, who has testified a total of approximately five hours. In addition, the Governor has held regular, sometimes daily press conferences explaining

³⁵ CDC, Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19), updated Jan. 4, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> (last visited Jan. 28, 2021).

³⁶ CDC, Considerations for Restaurant and Bar Operators, updated Dec. 16, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html> (last visited Jan. 28, 2021).

³⁷ CDC, Personal and Social Activities, updated Jan. 6, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html> (last visited Jan. 28, 2021).

³⁸ CDC, Considerations for Restaurant and Bar Operators, updated Dec. 16, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html> (last visited Jan. 28, 2021).

³⁹ CDC, Personal and Social Activities, updated Jan. 6, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html> (last visited Jan. 28, 2021).

all steps taken to combat the virus and the reasons behind them. The Commonwealth has further maintained a comprehensive website, kycovid19.ky.gov, with enormous amounts of data available to legislators and the public including: daily and total cases, daily and total positivity rates, K-12 school case and quarantine information, testing rates and locations, and, now, vaccine rates and locations. The website also includes links to resources for the public, such as rental and utility assistance, current Healthy at Home guidance, and contact tracing information. Both the public and the General Assembly have more information and data available to them than in any previous emergency in the state's history.

21. Despite the grave and extraordinary circumstances facing the Commonwealth, immediately upon gaveling into the 30-day Regular Session on January 5, 2021 – a session in which a state budget must be enacted – the General Assembly chose to prioritize legislation aimed at taking away the Governor's executive authority to address emergencies rather than legislation to address COVID-19, to pass a state budget, to provide affordable health care, to address racial injustice, to invest in education, to address the opioid epidemic, or to appropriate more than \$220 million to help small businesses.

22. The General Assembly came into session on Saturday, January 9, 2021, to fully pass the following bills: Senate Bill 1 (R.S. 2021) (attached as Exhibit C), House Bill 1 (R.S. 2021) (attached as Exhibit D), and Senate Bill 2 (R.S. 2021) (attached as Exhibit E).

23. The Governor vetoed SB 1, HB 1 and SB 2 on January 20, 2021. Veto Messages, Jan. 20, 2021 (attached as Exhibit F). After issuing his vetoes, the Governor attempted good faith negotiations with the Speaker and Senate President. On January 20, 2021 he sent a letter suggesting any legislation wait until after this deadly pandemic, but nevertheless offering some areas of compromise. *See* Governor's Letter, Jan. 20, 2021 (attached as Exhibit G). No response

was provided for more than 11 days. Instead, on February 1, 2021 - the day before the General Assembly was scheduled to resume its session – the Speaker and Senate President sent a letter claiming they were too busy, would override the veto, and then the parties could potentially discuss. *See* Stivers & Osborne Letter, Feb. 1, 2021 (attached as Exhibit H).

24. The General Assembly convened on February 2, 2021, to vote to override the vetoes of SB 1, HB 1 and SB 2.

House Bill 1

25. House Bill 1 is named “An Act relating to reopening the economy in the Commonwealth of Kentucky in response to the state of emergency declared by the Governor of Kentucky beginning in March 2020 and continuing throughout the year of 2021 and declaring an emergency.”

26. Section 1 of HB 1 states that notwithstanding any state law, administrative regulation, executive order, or executive directive to the contrary, during the current state of emergency “declared by the Governor in response to COVID-19 or any future state of emergency related to any virus or disease, including but not limited to any mutated strain of the current COVID-19 virus, until January 31, 2022”, certain entities may remain open and be fully operational if they meet certain requirements of the bill.

27. The entities that HB 1 allows to remain open and be fully operational are: Any business; for-profit or not-for-profit organization; local government; association; or any school or school district; public; private; or religiously affiliated.

28. An entity identified in Section 1 of HB 1 may remain open and be fully operational so long as it adopts an operating plan that:

a. Meets or exceeds all applicable guidance issued by the CDC or by the executive branch, whichever is least restrictive;

b. Details how the entity will foster the safety of employees, customers, attendees and patrons, including social distancing requirements; and

c. Is posted in a conspicuous place on the main entrance of the physical location of the entity, and on the website of the entity, if one exists.

29. HB 1 does not indicate whether the executive branch referenced in Section 1 is the state executive branch or the federal executive branch.

30. Under Section 1 of HB 1, the entity may prepare its operating plan or may use a plan prepared by a local or state government agency, local or state chamber of commerce, trade association, or other recognized affiliated organization.

31. Section 1 of HB 1 prohibits any state or local agency from enforcing restrictions related to the state of emergency impacting the ability of the entities listed in the section to remain open and fully operational for in-person services that exceed current applicable guidelines issued by the CDC or the executive branch, whichever is least restrictive.

32. Section 2 of HB 1 serves as the bill's emergency clause, stating, "Whereas the economic impact of the state of emergency declared in response to COVID-19 on Kentucky's citizens and businesses is of the utmost importance, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law."

Senate Bill 1

33. Senate Bill 1 ("SB 1"), "An Act relating to emergencies and declaring an emergency," amends provisions of KRS Chapter 39A to take away the Governor's ability to

respond to and protect Kentuckians from the very kind of emergency we now face – a once in a century pandemic – and any emergency and consequences of it that could last for more than 30 days. The bill also attempts to provide an end run around Sections 55 and 80 of the Kentucky Constitution by forcing the Governor to call the legislature into an extraordinary session every 30 days to extend, modify or terminate any order, including an order declaring a state of emergency or disaster, and any administrative regulation or other directive issued under KRS Chapter 39A.

34. Section 2 of SB 1 amends KRS 39A.090 to make any executive order, administrative regulation, or other directive issued under KRS Chapter 39A effective no longer than 30 days unless the General Assembly approves it prior to the extension of any executive order or directive that:

a. Places restrictions on the in-person meeting or places restrictions on the functioning of the following: Elementary, secondary, or postsecondary educational institutions; Private businesses or nonprofit organizations; Political, religious, or social gatherings; Places of worship; or Local governments; or

b. Imposes mandatory quarantine or isolation requirements.

35. Under Section 2 of SB 1: “All other executive orders, administrative regulations, or directives that are not described in paragraph (a) of this subsection may exceed thirty (30) days if requested by a chief executive officer or a legislative body of a local government only for that local government and only for the period of time requested by the chief executive officer or a legislative body. The chief executive officer or a legislative body may make a written request for extensions or early termination of the executive order.” The language of the section is not clear as to whom the chief executive officer or legislative body of a local government must submit a written request. This means that as to any executive orders, administrative regulations,

or directives issued during any statewide emergency like the COVID-19 pandemic, such a request must be received from all 120 counties to extend them, and the extension could only last for the amount of time requested by the local government.

36. Section 2 of SB 1 would also amend KRS 39A.090 in the following way:

Upon the expiration of an executive order or other directive described in subsection (2)(a) of this section declaring an emergency or other implementation of powers under this chapter, the Governor shall not declare a new emergency or continue to implement any of the powers enumerated in this chapter based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the General Assembly.

37. Section 2 of SB 1 further provides that “[t]he General Assembly, by joint resolution, may terminate a declaration of emergency at any time.” Therefore, under the language of the bill, even if the General Assembly approved an extension of an executive order, administrative regulation, or other directive issued by the Governor under KRS Chapter 39A, including those described in Section 2, and even if the chief executive officer or legislative body of a local government – or from each of the 120 counties – submitted a written request to extend an executive order, administrative regulation, or directive, under SB 1 the General Assembly has discretion, by joint resolution and at any time, to terminate the declaration of emergency that effectuated those executive orders, administrative regulations, or directives.

38. Under Section 2 of SB 1, the General Assembly waives the Commonwealth’s immunity for prospective equitable and declaratory relief only under the Eleventh Amendment to the United States Constitution of the United States for cases brought against the Commonwealth in federal jurisdictions pursuant to KRS 446.350 during emergencies declared under KRS Chapters 39A to 39F.

39. In Section 3, SB 1 amends KRS 39A.100 to completely erase KRS 39A.100(1)(j), which currently allows the Governor “to perform an exercise other functions, powers, and duties deemed necessary to promote and secure the safety and protection of the civilian population.”

40. Section 3 of SB 1 also amends KRS 39A.100(1)(k) to remove the authority of the Governor, on the recommendation of the Secretary of State, to declare by executive order a different manner for holding elections. Under SB 1, the Governor and Secretary of State cannot, as they did for the primary and general elections in 2020, work together on a bipartisan basis to develop a plan for holding an election during an emergency, including one due to a pandemic of a highly contagious disease, such as by no-excuse or expanded-excuse mail-in or drop-off absentee ballot, or expanded early in-person voting. Under Section 3, the executive order affecting the time or place of an election remains in effect until the date of the suspended or delayed election, regardless of the time limitations in Section 2 of the bill, and shall not be changed except by approval of the General Assembly.

41. Section 3 of SB 1 adds a new KRS 39A.100(1)(l) that would provide the following authority to the Governor: “Except as prohibited by this section or other law, to take action necessary to execute those powers enumerated in paragraphs (a) through (k) of this subsection.”

42. Section 3 of SB 1 amends KRS 39A.100(4) to add that nothing in KRS 39A.100 shall be construed to allow a governmental entity to impose additional restrictions on: “[t]he right of people to exercise free speech, freedom of the press, to petition their government for redress of injuries, or to peaceably assemble” or “[t]he right of the people to worship in-person, or to act or refuse to act in a manner motivated by a sincerely held religious belief.” Section 3 then adds a new KRS 39A.100(5) that states that nothing in KRS 39A.100 “shall be construed to

allow any governmental entity to impose restrictions on the right of people to: (a) Peaceably assemble; or (b) Worship, worship in person, or to act or refuse to act in a manner motivated by a sincerely held religious belief.”

43. Section 4 of SB 1 amends KRS 39A.180(2) by deleting language under which, as the Kentucky Supreme Court confirmed in *Beshear v. Acree*, No. 2020-SC-0313-OA, 2020 WL 6736090 (Ky. Nov. 12, 2020), the General Assembly suspends all existing laws, ordinances, and administrative regulations inconsistent with KRS Chapters 39A through 39F, or any order or administrative regulation issued under KRS Chapters 39A through 39F, during the period of time and to the extent the conflict exists. Section 4 adds language to KRS 39A.180(2) that requires all administrative regulations promulgated under KRS Chapters 39A through 39F to follow the requirements of KRS Chapter 13A.

44. Section 4 of SB 1 adds a new provision to KRS 39A.180 that allows the Governor to suspend a statute by executive order when an emergency is declared under KRS Chapter 39A if: (1) The statute is specifically enumerated by the Governor in the executive order; and (2) The executive order specifying the suspension is approved by the Attorney General in writing.

45. Under Section 4 of SB 1, a statute suspension authorized by the section shall only be in effect while the emergency executive order is in effect.

46. Also under Section 4 of SB 1, any existing administrative regulation that conflicts with a written order issued under KRS Chapter 39A must be amended, withdrawn, or repealed pursuant to KRS Chapter 13A to conform with the written order. When a written order ends, any administrative regulation promulgated under the authority of Section 4 must become void and be withdrawn, amended, or repealed pursuant to KRS Chapter 13A.

47. Section 6 of SB 1 removes the penalty of a Class A misdemeanor for violation of any provision of KRS Chapter 39A or any administrative regulation or order issued under it for which another penalty is not specified. Under SB 1, the penalty would be a fine of up to \$100 for a first offense and up to \$250 for each subsequent offense.

48. Section 7 of SB 1 amends KRS 241.090 to limit the enforcement authority of state administrators and investigators during an emergency by providing, “The jurisdiction and police powers of state administrators and all investigators during an emergency declared under KRS Chapter 39A shall be subject to the limitations of Section 2 of [SB 1].”

49. Section 9 of SB 1 expressly states that the bill shall not affect the authority of the Attorney General to enforce the prohibition on price gouging implemented by the Governor during a declared state of emergency. Section 9 would amend KRS 367.374 to state, “Nothing in this section shall be affected by the requirements of Section 2 of this Act.”

50. Section 11 of SB 1 serves as the bill’s emergency clause, stating, “Whereas the impact of COVID-19 on Kentucky’s citizens and businesses is of the utmost importance, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.”

Senate Bill 2

51. Senate Bill 2 (“SB 2”), “An Act relating to administrative regulations and declaring an emergency,” among other things, amends KRS Chapter 13A.

52. Section 1 of SB 2 provides a definition for “legislative committee,” which is “an interim joint committee, a House or Senate standing committee, a statutory committee, or a subcommittee of the Legislative Research Commission.”

53. Section 2 of SB 2 amends KRS 13A.030(2) by no longer making the determination of the Administrative Regulation Review Subcommittee “nonbinding.” The bill does not insert any word as a substitute for “nonbinding.”

54. Section 4 of SB 2 amends KRS 13A.190 to subject emergency administrative regulations to the public comment provisions established under SB 2.

55. Section 4 of SB 2 also amends KRS 13A.190 to allow a legislative committee to review an emergency administrative regulation at a subsequent meeting, which may find the emergency administrative regulation deficient that must be reported to the Governor.

56. Section 14 of SB 2 amends KRS 13A.312 to add a new section that provides that if an executive order transfers authority over a subject matter to another administrative body or changes the name of an administrative body during the interim between regular sessions of the General Assembly, and the General Assembly does not codify or confirm the executive order during the next regular session, any and all administrative regulations promulgated to implement the executive order must return to their original form by the administrative body.

57. Section 22 of SB 2 amends KRS 214.020, the statute governing the Cabinet for Health and Family Services’ ability to respond to infectious or contagious disease in Kentucky. The Cabinet for Health and Family Services currently has authority to promulgate administrative regulations if it believes there is a probability that an infectious or contagious disease will invade Kentucky; SB 2 would make the Cabinet determine that such will invade the state.

58. Under Section 22 of SB 2 , an administrative regulation issued under the authority of KRS 214.020 must be in effect no longer than 30 days if it:

- a. Places restrictions on the in-person meeting or functioning of the following: elementary, secondary, or postsecondary institutions; private businesses or

non-profit organizations; political, religious, or social gatherings; places of worship; or local governments; or

b. Imposes mandatory quarantine or isolation requirements.

59. Section 22 of SB 2 requires any administrative regulation issued under the authority of KRS 214.020 to include the penalty, appeal, and due process rights for violations of the administrative regulation, and to contain the public hearing and written comment period notice required under Section 9 of SB 2.

60. Section 23 of SB 2 purports to amend KRS 214.990(2), the penalty provision, to provide that “[a]ny person who willfully violates any administrative regulation promulgated under KRS Chapter 13A by the Cabinet for Health and Family Services under KRS 214.020 shall be guilty of a Class B misdemeanor.” Under the current KRS 214.990(2), “Any owner or person having charge of any public or private conveyance, including watercraft, who refuses to obey the rules and regulations made by the Cabinet for Health and Family Services under KRS 214.020 shall be guilty of a Class B misdemeanor.”

61. Section 25 of SB 2 is the emergency clause, providing: “Whereas, ensuring that Kentucky citizens have adequate access to the administrative regulation process is a compelling and immediate need, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.”

Section 2 of the Kentucky Constitution

62. In the Bill of Rights of the Kentucky Constitution, Section 2 provides:

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 27 of the Kentucky Constitution

63. Under Section 27 of the Kentucky Constitution:

The powers of the government of the Commonwealth of Kentucky shall be divided into three distinct departments, and each of them be confined to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

KY. CONST. § 27.

Section 28 of the Kentucky Constitution

64. As Section 28 of the Kentucky Constitution provides:

No person or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

KY. CONST. § 28.

Sections 36 and 42 of the Kentucky Constitution

65. Under Section 36 of the Kentucky Constitution:

(1) The General Assembly, in odd-numbered years, shall meet in regular session for a period not to exceed a total of thirty (30) legislative days divided as follows: The General Assembly shall convene for the first part of the session on the first Tuesday after the first Monday in January in odd-numbered years for the purposes of electing legislative leaders, adopting rules of procedure, organizing committees, and introducing and considering legislation. The General Assembly shall then adjourn. The General Assembly shall convene for the second part of the session on the first Tuesday in February of that year. Any legislation introduced but not enacted in the first part of the session shall be carried over into the second part of the session. In any part of the session in an odd-numbered year, no bill raising revenue or appropriating funds shall become a law unless it shall be agreed to by three-fifths of all the members elected to each House.

KY. CONST. § 36(1).

66. Under Section 42 of the Kentucky Constitution:

The members of the General Assembly shall severally receive from the State Treasury compensation for their services: Provided, No change shall take effect during the session at which it is made; nor shall a session occurring in odd-numbered years extend beyond March 30; nor shall a session of the General

Assembly occurring in even-numbered years continue beyond sixty legislative days, nor shall it extend beyond April 15; these limitations as to length of sessions shall not apply to the Senate when sitting as a court of impeachment. A legislative day shall be construed to mean a calendar day, exclusive of Sundays, legal holidays, or any day on which neither House meets.

KY. CONST. § 42.

Section 55 of the Kentucky Constitution

67. Section 55 of the Kentucky Constitution provides:

No act, except general appropriation bills, shall become a law until ninety days after the adjournment of the session at which it was passed, except in cases of emergency, when, by the concurrence of a majority of the members elected to each House of the General Assembly, by a yea and nay vote entered upon their journals, an act may become a law when approved by the Governor; but the reasons for the emergency that justifies this action must be set out at length in the journal of each House.

KY. CONST. § 55.

Section 59 of the Kentucky Constitution

68. In pertinent part, Section 59 of the Kentucky Constitution provides:

The General Assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes, namely: ...

Twentieth: To provide for conducting elections, or for designating the places of voting, or changing the boundaries of wards, precincts or districts, except when new counties may be created.

...

Twenty-fourth: To regulate labor, trade, mining or manufacturing.

...

Twenty-ninth: In all other cases where a general law can be made applicable, no special law shall be enacted.

KY. CONST. § 59.

Section 60 of the Kentucky Constitution

69. Section 60 of the Kentucky Constitution provides:

The General Assembly shall not indirectly enact any special or local act by the repeal in part of a general act, or by exempting from the operation of a general act any city, town, district or county; but laws repealing local or special acts may be enacted. No law shall be enacted granting powers or privileges in any case where the granting of such powers or privileges shall have been provided for by a general law, nor where the courts have jurisdiction to grant the same or to give the relief asked for. No law, except such as relates to the sale, loan or gift of vinous, spirituous or malt liquors, bridges, turnpikes or other public roads, public buildings or improvements, fencing, running at large of stock, matters pertaining to common schools, paupers, and the regulation by counties, cities, towns or other municipalities of their local affairs, shall be enacted to take effect upon the approval of any other authority than the General Assembly, unless otherwise expressly provided in this Constitution.

KY. CONST. § 60.

Section 69 of the Kentucky Constitution

70. Under Section 69 of the Kentucky Constitution:

The supreme executive power of the Commonwealth shall be vested in a Chief Magistrate, who shall be styled the “Governor of the Commonwealth of Kentucky.”

KY. CONST. § 69.

Section 75 of the Kentucky Constitution

71. Section 75 states with respect to the Governor:

He shall be Commander-in-Chief of the army and navy of this Commonwealth, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless advised so to do by a resolution of the General Assembly.

KY. CONST. § 75.

Section 80 of the Kentucky Constitution

72. Under Section 80 of the Kentucky Constitution, as to the Governor:

He may, on extraordinary occasions, convene the General Assembly at the seat of government, or at a different place, if that should have become dangerous from an enemy or from contagious diseases. In case of disagreement between the two Houses with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not exceeding four months. When he shall convene the

General Assembly it shall be by proclamation, stating the subjects to be considered, and no other shall be considered.

KY. CONST. § 80.

73. Section 80 of the Kentucky Constitution provides that the Governor “shall take care that the laws be faithfully executed.” KY. CONST. § 80.

Section 88 of the Kentucky Constitution

74. In pertinent part, Section 88 of the Kentucky Constitution states:

Every bill which shall have passed the two Houses shall be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which shall enter the objections in full upon its journal, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall likewise be considered, and if approved by a majority of all the members elected to that House, it shall be a law; but in such case the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal of each House respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall be a law, unless disapproved by him within ten days after the adjournment, in which case his veto message shall be spread upon the register kept by the Secretary of State.

KY. CONST. § 88.

NATURE OF THE ACTION

75. This Verified Complaint for a Declaration of Rights and a Permanent Injunction is governed by the Kentucky Declaratory Judgment Act, KRS 418.010, *et seq.*, Kentucky Rule of Civil Procedure (“CR”) 57, and CR 65.

76. KRS 418.040 provides this Court with authority to “make a binding declaration of rights, whether or not consequential relief is or could be asked” when a controversy exists.

Actual and justiciable controversies regarding violations of Kentucky laws and the interpretation of contracts clearly exist in this action.

77. CR 65 permits this Court to issue a restraining order and a temporary injunction, and, in a final judgment, to issue a permanent injunction, any and all of which may restrict or mandatorily direct the doing of an act.

78. Plaintiffs request an expedited review pursuant to KRS 418.050 and CR 57. The COVID-19 state of emergency is ongoing and is in the midst of a surge of positive cases and hospitalizations. Resolution of Plaintiffs' authority to exercise executive powers in a public health emergency is an immediate concern. For these reasons, this justiciable controversy presents an immediate concern that the Court must promptly resolve.

JURISDICTION AND VENUE

79. An actual, justiciable controversy exists, and this Court has subject matter jurisdiction over this action pursuant to KRS 418.040, KRS 23A.010, CR 57 and CR 65.

80. Venue is appropriate in this Court pursuant to KRS 452.405 because the cause of action arises in Franklin County. In particular, the primary offices of the General Assembly and the Attorney General are located in Frankfort, Franklin County, Kentucky. Further, this action generally relates to violations of the Kentucky Constitution, which were either determined or accomplished or occurred in Franklin County, Kentucky.

81. Pursuant to KRS 418.040, *et seq.*, this Court may properly exercise *in personam* jurisdiction over the Defendants.

PARTIES

82. Plaintiff Andy Beshear files this action in his official capacity as the Governor of the Commonwealth of Kentucky.

83. Plaintiff Eric Friedlander files this action in his official capacity as the Secretary of the Cabinet for Health and Family Services. CHFS is the Executive Branch Cabinet authorized by KRS Chapter 194A and KRS Chapter 214 to address matters related to public health and related to infectious and contagious diseases, including, but not limited to, by promulgating administrative regulations and directing local public health departments.

84. Defendant David W. Osborne is the Speaker of the Kentucky House of Representatives and is sued in his official capacity only. In his position as Speaker of the Kentucky House of Representatives, Defendant Osborne led passage of House Bill 1 and signed House Bill 1 as part of the bill enrollment process.

85. Defendant Bertram Robert Stivers, II, is the President of the Kentucky Senate and is sued in his official capacity only. In his position as Kentucky Senate President, Defendant Stivers led passage of Senate Bill 1 and Senate Bill 2 and signed Senate Bill 1 and Senate Bill 2 as part of the bill enrollment process.

86. Defendant Legislative Research Commission (“LRC”) is sued in its official capacity only. LRC is the administrative and research arm of the General Assembly, and its structural work is performed by committees of three types that are considered subcommittees of LRC: interim joint committees, statutory committees, and special committees/task forces.

87. Defendant Daniel J. Cameron is the Attorney General of the Commonwealth of Kentucky and is sued in his official capacity only. In his position as Attorney General, Defendant serves as the Commonwealth’s chief law officer and chief prosecutor, charged with general supervision of criminal justice. KRS 15.020; KRS 15.700.

CLAIMS**Count I****Declaration of Rights****SB 1 – Violation of KY. CONST. § 2**

88. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

89. In its Bill of Rights, the Kentucky Constitution prohibits “absolute and arbitrary power over the lives, liberty and property of freeman” in the Commonwealth. KY. CONST. § 2.

90. Despite the statutory language of KRS Chapter 39A that requires specificity and precision, through SB 1 the General Assembly attempts to amend KRS Chapter 39A to strip the Governor of his executive powers to respond to an emergency, including a public health emergency that is a global pandemic, and arbitrarily gives those executive powers to the legislative branch of state government and the local governments of the Commonwealth.

91. SB 1 gives absolute and arbitrary power to the General Assembly in an emergency by requiring the approval of the part-time legislature before the Governor may extend, modify or terminate any executive order or directive issued under KRS Chapter 39A that places restrictions on the in-person meeting or function of: Elementary, secondary, or postsecondary educational institutions; Private businesses or nonprofit organizations; Political, religious, or social gatherings; Places of worship; or Local governments. The same approval of the part-time legislator is required to extend any executive order or directive that imposes mandatory quarantine or isolation requirements. This absolute and arbitrary power would exist even when the part-time legislature is not in regular session, which would be 335 days in odd-numbered years under KY. CONST. § 36 and 315 days in even-numbered years under KY. CONST. § 42. SB 1, § 2(2)(a).

92. SB 1 gives absolute and arbitrary power to the General Assembly by allowing the part-time legislature to, by joint resolution and not formal legislation, terminate a declaration of an emergency at any time, including during the 10 to 11 months that the General Assembly is not in regular session. SB 1, § 2(4). Reading SB 1, § 2(2)-(3) and SB 1, § 2(4) together, the General Assembly would have the absolute and arbitrary power to, by joint resolution, terminate an order issued by the Governor under KRS Chapter 39A that the General Assembly has agreed to extend beyond 30 days.

93. SB 1 gives absolute and arbitrary power to the General Assembly by requiring the approval of the part-time legislature before the Governor may, upon the expiration of an executive order or other directive described in Section 2(2)(a), declare a new emergency or continue to implement any of the powers in KRS Chapter 39A based on the same or substantially similar facts and circumstances as the original declaration or implementation. SB 1, § 2(3). This absolute and arbitrary power would exist even when the part-time legislature is not in regular session, which would be 335 days in odd-numbered years under KY. CONST. § 36 and 315 days in even-numbered years under KY. CONST. § 42. *See id.*

94. SB 1 gives absolute and arbitrary power to each local government in each of the 120 counties in the Commonwealth by requiring a written request of the chief executive officer or legislative body of a local government before any executive order, administrative regulation, or directive other than those described in SB 1, § 2(2)(a) may exceed 30 days. SB 1, § 2(2)(b). An executive order, administrative regulation, or directive may be extended only for the local government that submits the written request and only for the period of time requested. *Id.* The absolute and arbitrary power that SB 1 gives to each local government also allows the chief

executive or legislative body of a local government to request extensions or early terminations of the executive order. *Id.*

95. Aside from giving absolute and arbitrary power to each local government over the Chief Magistrate of the Commonwealth with the supreme executive power, SB 1 does not establish what happens when the chief executive of a county submits a written request that an executive order, administrative regulation, or directive be extended beyond 30 days, but no local governments within that same county submit a written request, or when the chief executive of a county requests an early termination of the executive order, but no local government within that same county submits a request. *Id.*

96. Under SB 1, the Governor has no authority to extend, modify, or terminate any executive order, administrative regulation, or directive without the approval of the part-time General Assembly or the chief executive or legislative body of a local government. All executive orders, administrative regulations, or directives issued under KRS Chapter 39A are effective for only 30 days absent such approval.

97. SB 1, § 2(4), gives the part-time General Assembly absolute and arbitrary power to terminate a declaration of an emergency – an executive power and function – by joint resolution at any time.

Count II
Declaration of Rights
HB 1 – Violation of KY. CONST. § 2

98. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

99. In its Bill of Rights, the Kentucky Constitution prohibits “absolute and arbitrary power over the lives, liberty and property of freeman” in the Commonwealth. Ky. Const. § 2.

100. HB 1 violates Section 2 of the Kentucky Constitution because it is void for vagueness and places absolute and arbitrary power in the federal government over the Governor and the executive branch of state government by, under Section 1(1)(a), allowing certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – to remain open and fully operational for in-person services so long as it adopts an operating plan that meets or exceeds all applicable guidance issued by the CDC or by the executive branch, whichever is least restrictive.

101. HB 1, §1(1)(a) does not specify whether the executive branch it references is the executive branch of the federal government or the executive branch of state government. It does not specifically identify what qualifies as executive branch directives – directives of the federal executive branch from the White House, the Department for Health and Human Services or another agency, or directives of the executive branch of state government. The CDC cannot be the source of those directives under the language of the bill. Thus, it does not specifically provide the entities identified in HB 1, §1(1)(a) or any enforcement agency clear direction on what mandates to compare to the CDC guidance, and it does not provide sufficient notice of what is sought to be prohibited. HB 1 is therefore unconstitutionally vague and arbitrary in violation of Section 2 of the Kentucky Constitution.

102. The CDC is organized under the U.S. Department for Health and Human Services, an agency of the federal executive branch, and the White House Coronavirus Task Force, within the executive branch of the federal government, provides recommendations and guidance regarding the COVID-19 pandemic.

103. Regardless of the executive branch referenced but not defined in HB 1, HB 1 places absolute and arbitrary power in the CDC, a federal agency, to control the executive power

and function under Kentucky law of addressing and responding to emergencies in the Commonwealth.

104. The CDC provides guidance and considerations regarding COVID-19 for state and local health officials to consider when implementing measures to protect citizens. The guidance and considerations are meant to supplement – not replace – any state, local, territorial, or tribal health and safety laws, rules, and regulations with which entities or events must comply. The CDC guidance and consideration encourages collaboration of citizens with state and local health officials on whether and how to implement the guidance and considerations, making adjustments to meet the unique needs and circumstances of the local community.

105. In a letter to the Governor dated January 11, 2021, the CDC Director confirmed the non-regulatory intent of CDC guidance, stating: “I want to make it clear that CDC guidance should not be interpreted as regulation; rather, they are meant as recommendations. It should be used in consideration for specific state and/or local regulations, but this guidance is meant to be flexible and adaptable. It is not meant to be prescriptive or interpreted as standards that can be regulated. CDC provides ongoing guidance to individuals, businesses, schools, and states. We have and will continue to be available for technical assistance and guidance, but we expect each jurisdiction to modify this guidance to meet their state's needs.” (Exhibit A.)

106. The CDC guidance and recommendations change with changing circumstances nationally.

107. As of January 31, 2021, the CDC had issued at least 180 guidance documents, some of which are not relevant to the United States. CDC guidance is not generally organized by industry or degree of community transmission of COVID-19.

108. HB does not specify how a specific entity is to determine what CDC guidance applies to it. HB 1 does not specify what specific guidance the entities described in it must follow. HB 1 does not provide sufficient notice to the entities described in it or to any enforcement agency of what CDC guidance must be followed or what is sought to be prohibited. HB 1 is thus unconstitutionally vague and arbitrary in violation of Section 2 of the Kentucky Constitution.

109. Further, CDC guidance is permissive and necessarily less restrictive than state and local directives, laws, rules and regulations. Choosing the least restrictive alternative between the permissive guidance and an executive branch directive could leave the Commonwealth with no mandatory protections during the COVID-19 pandemic. HB 1 does not provide sufficient specificity and is therefore unconstitutionally vague, unconstitutionally unintelligible, and arbitrary in violation of Section 2 of the Kentucky Constitution.

110. HB 1 also violates Section 2 of the Kentucky Constitution by giving private entities – the local or state chamber of commerce, a trade association, or other recognized affiliated organization – the absolute and arbitrary power of preparing an operating plan for the entities described in Section 1(1)(a), rather than the Governor or the executive branch of state government or another governmental entity. HB 1 does not specify what operational plan an entity must implement when the plan prepared by a local or state chamber of commerce, a trade association, or another recognized affiliated organization differs from the operational plan prepared for another entity of the same or similar kind. This vagueness and arbitrariness also impedes enforcement of HB 1. HB 1 places arbitrary and absolute power in private entities to develop an operational plan for entities to respond to the COVID-19 public health emergency

and is unconstitutionally vague, unconstitutionally unintelligible, and arbitrary in violation of Section 2 of the Kentucky Constitution.

Count III
Declaration of Rights
SB 1 – Violation of KY. CONST. §§ 27, 28

111. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

112. SB 1 violates the separation of powers enshrined in the Kentucky Constitution by giving the part-time General Assembly the executive power and function of the Governor in addressing emergencies in the Commonwealth.

113. Senate Bill 1 requires the Governor to obtain the approval of the part-time General Assembly before extending, modifying, or terminating any executive order, administrative regulation, or directive issued under KRS Chapter 39A that places restrictions on the in-person meeting or functioning of elementary, secondary, or postsecondary educational institutions, private businesses or nonprofit organizations, political, religious, or social gatherings, places of worship, or local governments, or imposes mandatory quarantine or isolation requirements. In doing so, SB 1, § 2(2)(a) takes an executive power and function that properly belongs to the Governor – the Chief Magistrate of the Commonwealth with supreme executive power and the Commander in Chief under Sections 69 and 75 of the Kentucky Constitution, and gives it to the legislative branch in violation of Sections 27 and 28 of the Kentucky Constitution.

114. SB 1 also violates the separation of powers under the Kentucky Constitution by prohibiting the Governor – upon the expiration of any executive order or other directive that places restrictions on the in-person meeting or functioning of elementary, secondary, or

postsecondary educational institutions, private businesses or nonprofit organizations, political, religious, or social gatherings, places of worship, or local government, or imposes mandatory quarantine or isolation requirements – from declaring an emergency or continuing to implement any of his powers under KRS Chapter 39A based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the part-time General Assembly. SB 1, § 2(3) prevents the Governor – the Chief Magistrate of the Commonwealth with supreme executive power and the Commander in Chief under Sections 69 and 75 of the Kentucky Constitution – from exercising an executive power and function without legislative approval, which violates Sections 27 and 28 of the Kentucky Constitution. This prohibition puts at risk millions of dollars in FEMA funding for responses to emergencies that have lasted longer than 30 days. *See* KYEMS Letter, Feb. 2, 2021 (attached as Exhibit I).

115. SB 1 further violates the separation of powers under the Kentucky Constitution by giving the part-time General Assembly the authority to terminate a declaration of emergency by joint resolution at any time, SB 1, § 2(4), encroaching on the Governor's executive power and function in emergencies in violation of Sections 27 and 28 of the Kentucky Constitution.

Count IV
Declaration of Rights
HB 1 – Violation of KY. CONST. §§ 27, 28

116. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

117. HB 1 violates the separation of powers in Sections 27 and 28 of the Kentucky Constitution by giving to the CDC, an agency organized under the executive branch of the federal government, the executive power and function of addressing the COVID-19 public health emergency properly belonging to the Governor under the Kentucky Constitution and KRS

Chapter 39A. HB 1 thus encroaches on the executive branch of state government and presents an unlawful delegation of power in violation of Sections 27 and 28 of the Kentucky Constitution.

118. HB 1 violates Sections 27 and 28 of the Kentucky Constitution by unlawfully delegating to private entities – the local or state chamber of commerce, a trade association, or another recognized affiliated organization – the executive power and function of addressing the COVID-19 public health emergency properly belonging to the Governor under the Kentucky Constitution and KRS Chapter 39A by allowing those private entities to create operational plans for certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – to remain open and fully operational during the emergency.

119. HB 1 also violates Sections 27 and 28 of the Kentucky Constitution by encroaching on the executive power and function of addressing the COVID-19 public health emergency properly belonging to the Governor under the Kentucky Constitution and KRS Chapter 39A for all of the Commonwealth by allowing certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – to remain open and fully operational for in-person services without complying with the directives of the executive branch of state government.

120. HB 1 violates Section 27 of the Kentucky Constitution by prohibiting all state agencies of the executive branch of state government and under the supervision and control of the Governor from enforcing restrictions related to COVID-19. HB 1 allows certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – to remain open and fully operational as long as it meets the least restrictive guidelines issued by the CDC or the executive

branch. Thus, HB 1 prohibits the executive branch of state government from exercising the executive power and function of enforcing restrictions implemented to address the COVID-19 public health emergency.

Count V
Declaration of Rights
SB 2 – Violation of KY. CONST. §§ 27, 28

121. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

122. SB 2 violates the separation of powers under Section 27 of the Kentucky Constitution by invading the executive power and function of the Cabinet for Health and Family Services – an executive branch Cabinet – to act to address and protect Kentuckians from infectious or contagious diseases by prohibiting *any* administrative regulation issued under KRS Chapter 214 from being in effect longer than 30 days if it: (1) places restrictions on the in-person meeting or functioning of elementary, secondary, or postsecondary educational institutions, private businesses or nonprofit organizations, political, religious, or social gatherings, places of worship, or local governments; or (2) imposes mandatory quarantine or isolation requirements . SB 2, § 22(2). Under SB 2, the General Assembly purports to limit the executive power and executive function of an executive branch Cabinet to take action under a statutory chapter over which that Cabinet has jurisdiction regarding an infectious or contagious disease by prohibiting any administrative regulation – emergency or ordinary – from being effective for more than 30 days. SB 2 thus places a limit on the executive power and function of the executive branch Cabinet and places it nowhere, infringing on the executive power in violation of Section 27 of the Kentucky Constitution.

Count VI
Declaration of Rights
SB 1 – Violation of KY. CONST. §§ 36, 42, 80

123. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

124. SB 1, § 2(2)(a) violates Sections 36, 42 and 80 of the Kentucky Constitution. SB 1 forces the Governor to call an extraordinary session of the part-time General Assembly to extend, modify, or terminate any executive order, administrative regulation, or directive that places restrictions on the in-person meeting or functioning of elementary, secondary, or postsecondary educational institutions, private businesses or nonprofit organizations, political, religious, or social gatherings, places of worship, or local governments, or imposes mandatory quarantine or isolation requirements. SB 1, § 2(2)(a). SB 1 forces the Governor to choose whether to allow an executive order, administrative regulation, or directive issued under KRS Chapter 39A – an executive power and function – to expire or call the part-time General Assembly into an extraordinary session at the expense of Kentucky taxpayers before the 30-day expiration date to seek the legislature’s approval to extend, modify, or terminate the executive order, administrative regulation, or directive. During the COVID-19 global pandemic or in response to any emergency that continues beyond 30 days, SB 1 would force the Governor to call an extraordinary session of the part-time General Assembly every month to obtain the legislature’s approval to extend, modify, or terminate such executive orders, administrative regulations, or directives. A continuous legislature violates Sections 36 and 42 of the Kentucky Constitution and is not what the framers of the Constitution intended in creating a part-time legislature. SB 1, § 2(2)(a) violates Sections 36, 42 and 80 of the Kentucky Constitution by

attempting to create a continuous legislature that the Kentucky Constitution does not allow through the forced calling of an extraordinary session.

125. SB 1, § 2(3) also violates Sections 26, 42 and 80 of the Kentucky Constitution by forcing the Governor to call an extraordinary session of the part-time General Assembly when an executive order, administrative regulation, or directive in SB 1, § 2(2)(a) expires to obtain the approval of the General Assembly before declaring a new emergency or continuing the implementation of any of the powers in KRS Chapter 39A based on the same or similar facts and circumstances as the original declaration of implementation. During the COVID-19 global pandemic or in response to any emergency that continues beyond 30 days, SB 1 would force the Governor to call an extraordinary session of the part-time General Assembly every time an executive order, administrative regulation, or directive expired to obtain the legislature's authority to exercise the executive power and function of declaring an emergency or implementing his executive powers under KRS Chapter 39A if the declaration or implementation were based on the same or similar facts and circumstances as the original declaration of implementation – even if the legislature previously approved extending the executive orders, administrative regulations, or directives under SB 1, § 2(2)(a). A continuous legislature violates Sections 36 and 42 of the Kentucky Constitution and is not what the framers of the Constitution intended in creating a part-time legislature. SB 1, § 2(2)(a) violates Sections 36, 42 and 80 of the Kentucky Constitution by attempting to create a continuous legislature that the Kentucky Constitution does not allow through the forced calling of an extraordinary session.

Count VII
Declaration of Rights
SB 1 – Violation of KY. CONST. § 69

126. Plaintiffs incorporate by reference each and every allegation previously set forth

in this Complaint as if fully set forth herein.

127. SB 1 violates Section 69 of the Kentucky Constitution by making the executive power and function of the Governor, the Chief Magistrate vested with the supreme executive power of the Commonwealth, in declaring and addressing emergencies subject to the approval of the part-time General Assembly. By requiring the Governor to obtain the approval of the part-time General Assembly before extending, modifying, or terminating any executive order, administrative regulation, or directive issued under KRS Chapter 39A that places restrictions on the in-person meeting or functioning of elementary, secondary, or postsecondary educational institutions, private businesses or nonprofit organizations, political, religious, or social gatherings, places of worship, or local governments, or imposes mandatory quarantine or isolation requirements, SB 1, § 2(2)(a) takes a executive power and function that properly belongs to the Governor and gives it to the legislative branch in violation of Section 69 of the Kentucky Constitution.

128. SB 1 also violates Section 69 of Kentucky Constitution by prohibiting the Governor – upon the expiration of any executive order or other directive that places restrictions on the in-person meeting or functioning of elementary, secondary, or postsecondary educational institutions, private businesses or nonprofit organizations, political, religious, or social gatherings, places of worship, or local government, or imposes mandatory quarantine or isolation requirements – from declaring an emergency or continuing to implement any of his powers under KRS Chapter 39A based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the part-time General Assembly. SB 1 prohibits the Governor from exercising an executive power and function without legislative approval in violation of Section 69 of the Kentucky Constitution.

129. SB 1 further violates Section 69 of the Kentucky Constitution by giving the part-time General Assembly the authority to terminate a declaration of emergency by joint resolution at any time in SB 1, § 2(4). The Governor, not the part-time General Assembly, has the supreme executive power of the Commonwealth as the Chief Magistrate, and the removal of the Governor's executive power and executive function in emergencies violates Section 69 of the Kentucky Constitution.

130. SB 1 violates Section 69 of the Kentucky Constitution by giving each local government in each of the 120 counties in the Commonwealth the power of allowing executive orders, administrative regulations, or directives issued by the Governor under KRS Chapter 39A that are not described in SB 1, § 2(2)(a) to lapse after 30 days without the written request of the chief executive officer or legislative body of the local government that it exceed 30 days. SB 1 also violates Section 69 of the Kentucky Constitution by giving each local government the ability to request extensions or early terminations of the executive order. SB 1, § 2(2)(b) violates the Governor's supreme executive power as the Chief Magistrate under Section 69 of the Kentucky Constitution.

131. SB 1 also violates Section 69 of the Kentucky Constitution by removing the executive power and function of the Governor, as the Chief Magistrate with the supreme executive power of the Commonwealth, in addressing an emergency by, upon the recommendation of the Secretary of State, declaring by executive order a different manner for holding elections in an election area for which a state of emergency has been declared for part of all of the election area, SB 1, § 3(1)(k).

132. SB 1 violates Section 69 of the Kentucky Constitution by removing the executive power and function of the Governor, the Chief Magistrate vested with the supreme executive

power of the Commonwealth, to perform and exercise other functions, powers, and duties deemed necessary to promote and secure the safety and protection of the civilian population, SB 1, § 3(1)(k).

133. SB 1 violates Section 69 of the Kentucky Constitution by placing the Governor – the Chief Magistrate vested with the supreme executive power – under the supervision and control of an inferior officer, the Attorney General, by requiring the Governor to obtain the inferior officer’s written approval before suspending a statute by executive order, SB 1, §4(2)(b).

Count VIII
Declaration of Rights
HB 1 – Violation of KY. CONST. § 69

134. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

135. HB 1 violates Section 69 of the Kentucky Constitution by making the executive power and function of the Governor, the Chief Magistrate with the supreme executive power of the Commonwealth, of addressing the COVID-19 public health emergency subject to the guidance and directives of the executive branch of the federal government as to certain entities in Kentucky – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated. HB 1 takes an executive power and function that properly belongs to the Governor and gives it to the executive branch of the federal government, in violation of Section 69 of the Kentucky Constitution.

136. HB 1 violates Section 69 of the Kentucky Constitution by prohibiting the Governor from exercising the executive power and function of the Governor, to address the COVID-19 public health emergency as to certain entities – any business, for-profit or not-for-

profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – in Kentucky during the emergency.

137. HB 1 violates Section 69 of Kentucky Constitution by giving private entities – the local or state chamber of commerce, a trade association, or another recognized affiliated organization – the executive power and function of addressing the COVID-19 public health emergency properly belonging to the Governor, by allowing those private entities to create operational plans for certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – to remain open and fully operational during the emergency.

138. HB 1 violates Section 69 of the Kentucky Constitution by prohibiting the Governor from exercising the executive power and function of the Governor to address the COVID-19 public health emergency by allowing certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – to fail to implement or comply with the directives of the executive branch of state government during the emergency.

139. HB 1 violates Section 69 of the Kentucky Constitution by prohibiting all state agencies within the executive branch of state government and under the supervision and control of the Governor, the Chief Magistrate vested with the supreme executive power of the Commonwealth, from enforcing restrictions related to the state of emergency regarding the COVID-19 public health agency, allowing certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – to remain open and fully operational as long as it meets the least restrictive guidelines issued by the CDC or the executive branch.

Count IX
Declaration of Rights
SB 2 – Violation of KY. CONST. § 69

140. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

141. SB 2 violates Section 69 of the Kentucky Constitution by invading the purely executive power and function of the Cabinet for Health and Family Services – an executive branch Cabinet under the supervision and control of the Governor – to act to address and protect Kentuckians from infectious or contagious diseases by prohibiting *any* administrative regulation issued under KRS Chapter 214 from being in effect longer than 30 days if it places restrictions on the in-person meeting or functioning of elementary, secondary, or postsecondary educational institutions, private businesses or nonprofit organizations, political, religious, or social gatherings, places of worship, or local governments, or imposes mandatory quarantine or isolation requirements. SB 2, § 22(2). Under SB 2, the General Assembly purports to limit the executive power and executive function of an executive branch Cabinet of the Governor to take action under a statutory chapter over which that Cabinet has jurisdiction regarding an infectious or contagious disease by prohibiting any administrative regulation – emergency or ordinary – from being effective for more than 30 days. SB 2 thus violates Section 69 of the Kentucky Constitution that vests the Governor, as the Chief Magistrate, with the supreme executive power of the Commonwealth.

Count X
Declaration of Rights
SB 1 – Violation of KY. CONST. § 75

142. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

143. SB 1 violates Section 75 of the Kentucky Constitution by making the executive power and function of the Governor, the Commander in Chief, in declaring and addressing emergencies subject to the approval of the part-time General Assembly. By requiring the Governor to obtain the approval of the part-time General Assembly before extending, modifying, or terminating any executive order, administrative regulation, or directive issued under KRS Chapter 39A that places restrictions on the in-person meeting or functioning of elementary, secondary, or postsecondary educational institutions, private businesses or nonprofit organizations, political, religious, or social gatherings, places of worship, or local governments, or imposes mandatory quarantine or isolation requirements, SB 1, § 2(2)(a) takes an executive power and function that properly belongs to the Governor as the Commander in Chief and gives it to the legislative branch, in violation of Section 75 of the Kentucky Constitution.

144. SB 1 also violates Section 75 of Kentucky Constitution by prohibiting the Governor, the Commander in Chief – upon the expiration of any executive order or other directive that places restrictions on the in-person meeting or functioning of elementary, secondary, or postsecondary educational institutions, private businesses or nonprofit organizations, political, religious, or social gatherings, places of worship, or local government, or imposes mandatory quarantine or isolation requirements – from declaring an emergency or continuing to implement any of his powers under KRS Chapter 39A based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the part-time General Assembly. SB 1 bars the Governor from exercising an executive power and function without legislative approval in violation of Section 75 of the Kentucky Constitution.

145. SB 1 further violates Section 75 of the Kentucky Constitution by giving the part-time General Assembly the authority to terminate a declaration of emergency by joint resolution at any time in SB 1, § 2(4). The Governor is the Commander in Chief, not the part-time General Assembly, and the removal of the Governor's executive power and executive function in emergencies violates Section 75 of the Kentucky Constitution.

146. SB 1 violates Section 75 of the Kentucky Constitution by giving each local government in each of the 120 counties in the Commonwealth the power to allow executive orders, administrative regulations, or directives issued by the Governor under KRS Chapter 39A that are not described in SB 1, § 2(2)(a) to lapse after 30 days without the written request of the chief executive officer or legislative body of the local government that they exceed 30 days. SB 1 also violates Section 69 of the Kentucky Constitution by giving each local government the ability to request extensions or early terminations of the executive order. SB 1, § 2(2)(b) violates the Governor's authority under Section 75 of the Kentucky Constitution.

147. SB 1 also violates Section 75 of the Kentucky Constitution by removing the executive power and function of the Governor, as the Commander in Chief, to address an emergency by, upon the recommendation of the Secretary of State, declaring by executive order a different manner for holding elections in an election area for which a state of emergency has been declared for part of all of the election area, SB 1, § 3(1)(k).

148. SB 1 violates Section 69 of the Kentucky Constitution by removing the executive power and function of the Governor, the Commander in Chief, to perform and exercise other functions, powers, and duties deemed necessary to promote and secure the safety and protection of the civilian population, SB 1, § 3(1)(k).

149. SB 1 violates Section 69 of the Kentucky Constitution by placing the Governor, the Commander in Chief, under the supervision and control of an inferior officer, the Attorney General, by requiring the Governor to obtain the inferior officer's written approval before suspending a statute by executive order, SB 1, §4(2)(b).

Count XI
Declaration of Rights
HB 1 – Violation of KY. CONST. § 75

150. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

151. HB 1 violates Section 75 of the Kentucky Constitution by making the executive power and function of the Governor, the Commander in Chief, to address the COVID-19 public health emergency subject to the guidance and directives of the executive branch of the federal government as to certain entities in Kentucky – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated. HB 1 takes an executive power and function that properly belongs to the Governor and gives it to the executive branch of the federal government, in violation of Section 75 of the Kentucky Constitution.

152. HB 1 violates Section 75 of the Kentucky Constitution by prohibiting the Governor from exercising the executive power and function of the Governor, the Commander in Chief, to address the COVID-19 public health emergency as to certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – in Kentucky during the emergency.

153. Specifically, HB 1 violates Section 75 of Kentucky Constitution by giving private entities – the local or state chamber of commerce, a trade association, or another recognized

affiliated organization – the executive power and function to address the COVID-19 public health emergency properly belonging to the Governor, the Commander in Chief, by allowing those private entities to create operational plans for certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – to remain open and fully operational during the emergency.

154. HB 1 also violates Section 75 of the Kentucky Constitution by prohibiting the Governor from exercising the executive power and function of the Governor, the Commander in Chief, to address the COVID-19 public health emergency by allowing certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – to fail to implement or comply with the directives of the executive branch of the state government during the emergency.

155. HB 1 violates Section 75 of the Kentucky Constitution by prohibiting all state agencies within the executive branch of state government and under the supervision and control of the Governor, the Commander in Chief, from enforcing restrictions related to the COVID-19 state of emergency, impacting the ability of certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – to remain open and fully operational that exceed current applicable guidelines issued by the CDC or the federal or state executive branch, whichever is least restrictive.

Count XII
Declaration of Rights
SB 2 – Violation of KY. CONST. § 75

156. Plaintiffs incorporate by reference each and every allegation previously set forth

in this Complaint as if fully set forth herein.

157. SB 2 violates Section 75 of the Kentucky Constitution by invading the purely executive power and function of the Cabinet for Health and Family Services – an executive branch Cabinet – to act to address and protect Kentuckians from infectious or contagious diseases by prohibiting *any* administrative regulation issued under KRS Chapter 214 from being in effect longer than 30 days if it places restrictions on the in-person meeting or functioning of elementary, secondary, or postsecondary educational institutions, private businesses or nonprofit organizations, political, religious, or social gatherings, places of worship, or local governments, or imposes mandatory quarantine or isolation requirements. SB 2, § 22(2). Under SB 2, the General Assembly purports to limit the executive power and executive function of an executive branch Cabinet of the Governor to take action under a statutory chapter over which that Cabinet has jurisdiction regarding an infectious or contagious disease by prohibiting any administrative regulation – emergency or ordinary – from being effective for more than 30 days. SB 2 thus violates the Governor’s authority as the Commander in Chief under Section 75 of the Kentucky Constitution.

Count XIII
Declaration of Rights
SB 1 – Violation of KY. CONST. § 81

158. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

159. SB 1 violates Section 81 of the Kentucky Constitution by preventing the Governor from carrying out his duty to take care that the laws be faithfully executed by making his executive power in declaring and addressing emergencies subject to the approval of the part-time General Assembly. By requiring the Governor to obtain the approval of the part-time

General Assembly before extending, modifying, or terminating any executive order, administrative regulation, or directive issued under KRS Chapter 39A that places restrictions on the in-person meeting or functioning of elementary, secondary, or postsecondary educational institutions, private businesses or nonprofit organizations, political, religious, or social gatherings, places of worship, or local governments, or imposes mandatory quarantine or isolation requirements, SB 1, § 2(2)(a) takes an executive power and function that properly belongs to the Governor as the Commander in Chief and gives it to the legislative branch.

160. SB 1 also violates Section 81 of Kentucky Constitution by preventing the Governor from carrying out his duty to take care that the laws be faithfully executed by prohibiting him – upon the expiration of any executive order or other directive that places restrictions on the in-person meeting or functioning of elementary, secondary, or postsecondary educational institutions, private businesses or nonprofit organizations, political, religious, or social gatherings, places of worship, or local government, or imposes mandatory quarantine or isolation requirements – from declaring an emergency or continuing to implement any of his powers under KRS Chapter 39A based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the part-time General Assembly. Preventing the Governor from taking care that the laws be faithfully executed by exercising the purely executive power and function of acting in an emergency without legislative approval violates Section 81 of the Kentucky Constitution.

161. SB 1 further violates Section 81 of the Kentucky Constitution by giving the part-time General Assembly the authority to terminate a declaration of emergency by joint resolution at any time in SB 1, § 2(4), making the Governor's duty to faithfully execute the laws subject to legislative approval.

162. SB 1 violates Section 81 of the Kentucky Constitution by giving each local government in each of the 120 counties in the Commonwealth the power of allowing executive orders, administrative regulations, or directives issued by the Governor under KRS Chapter 39A that are not described in SB 1, § 2(2)(a) to lapse after 30 days without the written request of the chief executive officer or legislative body of the local government that it exceed 30 days. SB 1 also violates Section 69 of the Kentucky Constitution by giving each local government the ability to request extensions or early terminations of the executive order. SB 1, § 2(2)(b) violates Section 81 of the Kentucky Constitution by ceding the Governor's duty to take care that the laws be faithfully executed to the authority of local governments in an emergency.

163. SB 1 also violates Section 81 of the Kentucky Constitution by removing the executive power and function of the Governor to address an emergency by, upon the recommendation of the Secretary of State, declaring by executive order a different manner for holding elections in an election area for which a state of emergency has been declared for part or all of the election area, SB 1, § 3(1)(k).

164. SB 1 violates Section 81 of the Kentucky Constitution by removing the Governor's executive power to perform and exercise other functions, powers, and duties deemed necessary to promote and secure the safety and protection of the civilian population, in an emergency SB 1, § 3(1)(k).

165. SB 1 violates Section 81 of the Kentucky Constitution by requiring the Governor to obtain the written approval of an inferior officer, the Attorney General, before suspending a statute by executive order, SB 1, §4(2)(b), thus preventing the Governor from carrying out his duty to take care that the laws be faithfully executed.

Count XIV
Declaration of Rights
HB 1 – Violation of KY. CONST. § 81

166. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

167. HB 1 violates Section 81 of the Kentucky Constitution by making the executive power and function of addressing the COVID-19 public health emergency subject to the guidance and directives of the executive branch of the federal government as to certain entities in Kentucky – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated.

168. HB 1 also prevents the Governor from carrying out his constitutional duty to take care that the laws be faithfully executed by prohibiting him from exercising the executive power and function of addressing the COVID-19 public health emergency as to certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – in Kentucky during the emergency.

169. HB 1 also violates Section 81 of the Kentucky Constitution by prohibiting him from exercising the executive power and function of addressing the COVID-19 public health emergency by allowing certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – to fail to implement or comply with the directives of the executive branch of the state government during the emergency.

170. HB 1 violates Section 81 of the Kentucky Constitution by prohibiting all state agencies within the executive branch of state government and under the supervision and control of the Governor, the Commander in Chief, from enforcing restrictions related to the state of

emergency related to the COVID-19 state of emergency, impacting the ability of certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – to remain open and fully operational that exceed current applicable guidelines issued by the CDC or the federal or state executive branch, whichever is least restrictive.

Count XV
Declaration of Rights
SB 2 – Violation of KY. CONST. § 81

171. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

172. SB 2 violates Section 81 of the Kentucky Constitution by invading the executive power and function of the Cabinet for Health and Family Services – an executive branch Cabinet – to act to address and protect Kentuckians from infectious or contagious diseases by prohibiting *any* administrative regulation issued under KRS Chapter 214 from being in effect longer than 30 days if it places restrictions on the in-person meeting or functioning of elementary, secondary, or postsecondary educational institutions, private businesses or nonprofit organizations, political, religious, or social gatherings, places of worship, or local governments, or imposes mandatory quarantine or isolation requirements. SB 2, § 22(2). Under SB 2, the General Assembly purports to limit the executive power and executive function of an executive branch Cabinet of the Governor to take action under a statutory chapter over which that Cabinet has jurisdiction regarding an infectious or contagious disease by prohibiting any administrative regulation – emergency or ordinary – from being effective for more than 30 days. SB 2 prevents the Governor from carrying out his duty to take care that the laws be faithfully executed, in violation of Section 81 of the Kentucky Constitution.

Count XVI
Declaration of Rights
SB 1 – Violation of KY. CONST. § 59

173. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

174. SB 1, Section 1, § 3(1)(k), violates Section 59 of the Kentucky Constitution as a special act purporting to amend KRS Chapter 39A to provide for the conducting of elections in an emergency, which is an executive power and function. Thus, SB 1 is special legislation in violation of Section 59 of the Kentucky Constitution.

175. SB 1, Section 2(2)(a), violates Section 59 of the Kentucky Constitution as a special act purporting to amend KRS Chapter 39A to regulate labor and trade in a manner that treats certain entities – elementary, secondary, or postsecondary educational institutions; private businesses or nonprofit organizations; and places of worship – more favorably and differently than other entities in the Commonwealth in an emergency. Thus, SB 1 is special legislation in violation of Section 59 of the Kentucky Constitution.

176. SB 1 violates Section 59 of the Kentucky Constitution because it is a special law purporting to amend KRS Chapter 39A – a law that is generally applicable to emergencies – in a way that renders KRS Chapter 39A no longer generally applicable.

Count XVII
Declaration of Rights
HB 1 – Violation of Ky. Const. § 59

177. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

178. HB 1 violates Section 59 of the Kentucky Constitution because it is a special act that is not legislation or law at all. HB 1 does not purport to create legislation or amend existing

legislation in the Kentucky Revised Statutes. It purports to address the COVID-19 pandemic and by its own language has no effect and will not exist beyond January 31, 2021. HB 1 is therefore special legislation in violation of Section 59 of the Kentucky Constitution.

179. HB 1 also violates Section 59 of the Kentucky Constitution because it is a special act purporting to regulate labor and trade in a manner that treats certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – more favorably and differently than other entities in the Commonwealth. Thus, HB 1 is special legislation in violation of Section 59 of the Kentucky Constitution.

180. HB 1 violates Section 59 of the Kentucky Constitution because it is a special law purporting address the COVID-19 public health emergency in a specific manner other than Kentucky law, KRS Chapter 39A, that is generally applicable to emergencies in the Commonwealth.

Count XVIII
Declaration of Rights
SB 2 – Violation of KY. CONST. § 59

181. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

182. SB 2, § 22(2) violates Section 59 of the Kentucky Constitution as a special act purporting to amend KRS 214.020, a generally applicable statute that grants the Cabinet for Health and Family Services the power to address and protect Kentuckians from infectious or contagious disease, in a manner that makes KRS 214.020 apply more favorably and differently to certain entities – elementary, secondary, or postsecondary educational institutions; private businesses or nonprofit organizations; and places of worship – than others.

Count XIX
Declaration of Rights
SB 1 – Violation of KY. CONST. § 60

183. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

184. SB 1 violates Section 60 of the Kentucky Constitution because it is a special law purporting to amend KRS Chapter 39A – a law that is generally applicable to emergencies – in a way that renders KRS Chapter 39A no longer generally applicable. Instead, SB 1 applies KRS Chapter 39A more favorably and differently to some entities – elementary, secondary, or postsecondary educational institutions; private businesses or nonprofit organizations; and places of worship – than others.

Count XX
Declaration of Rights
HB 1 – Violation of KY. CONST. § 60

185. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

186. HB 1 violates Section 60 of the Kentucky Constitution because it is a special act that is not legislation or law at all. HB 1 does not purport to create legislation or amend existing legislation in the Kentucky Revised Statutes. It purports to address the COVID-19 pandemic and by its own language has no effect and will not exist beyond January 31, 2021. HB 1 is therefore special legislation in violation of Section 60 of the Kentucky Constitution.

187. HB 1 violates Section 60 of the Kentucky Constitution because it is a special act purporting to regulate labor and trade in a manner that treats certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – more favorably and differently than other

entities in the Commonwealth. HB 1 is special legislation in violation of Section 60 of the Kentucky Constitution.

188. HB 1 violates Section 60 of the Kentucky Constitution because it is a special law purporting address the COVID-19 public health emergency in a specific manner other than Kentucky law, KRS Chapter 39A, that is generally applicable to emergencies in the Commonwealth.

Count XXI
Declaration of Rights
SB 2 – Violation of KY. CONST. § 60

189. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

190. SB 2, § 22(2) violates Section 60 of the Kentucky Constitution as a special act purporting to amend KRS 214.020, a generally applicable statute that grants the Cabinet for Health and Family Services the power to address and protect Kentuckians from infectious or contagious disease, in a manner that makes KRS 214.020 apply more favorably and differently to certain entities – elementary, secondary, or postsecondary educational institutions; private businesses or nonprofit organizations; and places of worship – than others.

Count XXII
Declaration of Rights
SB 1 – Violation of KY. CONST. § 55

191. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

192. SB 1 violates Section 55 of the Kentucky Constitution because it does not set out at length in the journal of each House the reasons for the emergency that justifies it being emergency legislation. Section 11 of SB 1 states, “Whereas the impact of COVID-19 on

Kentucky's citizens and businesses is of the utmost importance, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law." The one conclusory sentence does not satisfy the requirement of Section 55 of the Kentucky Constitution; it does not set out at length the reasons justifying why SB 1 is necessary as emergency legislation in the 10th month of the COVID-19 pandemic, and it does not provide any rational basis for concluding the circumstances cited as constituting an emergency justify more expeditious action than would ordinarily be true.

Count XXIII
Declaration of Rights
HB 1 – Violation of KY. CONST. § 60

193. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

194. HB 1 violates Section 60 of the Kentucky Constitution because it is a special act that is not legislation or law at all. HB 1 does not purport to create legislation or amend existing legislation in the Kentucky Revised Statutes. It purports to address the COVID-19 pandemic and by its own language has no effect and will not exist beyond January 31, 2021. HB 1 is therefore special legislation in violation of Section 60 of the Kentucky Constitution.

195. HB 1 violates Section 60 of the Kentucky Constitution because it is a special act purporting to regulate labor and trade in a manner that treats certain entities – any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated – more favorably and differently than other entities in the Commonwealth. HB 1 is special legislation in violation of Section 60 of the Kentucky Constitution.

196. HB 1 violates Section 60 of the Kentucky Constitution because it is a special law purporting address the COVID-19 public health emergency in a specific manner other than Kentucky law, KRS Chapter 39A, that is generally applicable to emergencies in the Commonwealth.

Count XXIV
Declaration of Rights
SB 2 – Violation of KY. CONST. § 55

197. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

198. SB 2 violates Section 55 of the Kentucky Constitution because it does not set out at length in the journal of each House the reasons for the emergency that justifies it being emergency legislation. Section 25 of SB 2 serves as the emergency clause, providing: “Whereas, ensuring that Kentucky citizens have adequate access to the administrative regulation process is a compelling and immediate need, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.” The one sentence does not satisfy the requirement of Section 55 of the Kentucky Constitution; it does not set out at length the reasons justifying why SB 2 is necessary as emergency legislation to amend KRS 214.020, and it does not provide any rational basis for concluding the circumstances cited as constituting an emergency justify more expeditious action than would ordinarily be true.

Count XXV
Declaration of Rights
SB 1 – Violation of KY. CONST. §§ 55, 88

199. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

200. Under Section 55 of the Kentucky Constitution, no act other than general appropriation bills shall become law until 90 days after the session adjourns, except in cases of emergency, and emergency legislation may become law when approved by the Governor.

201. Under Section 88 of the Kentucky Constitution, every bill that has passed the two Houses of the General Assembly must be presented to the Governor and if he returns the bill with his objections to the House in which it originated, the two Houses must reconsider it and pass it over the Governor's objections by a majority of the members.

202. Reading Sections 55 and 88 together, SB 1, emergency legislation, does not become law until 90 days after the adjournment of the 2021 Regular Session of the General Assembly because the Governor vetoed SB 1 and did not approve it.

Count XXVI
Declaration of Rights
HB 1 – Violation of KY. CONST. §§ 55, 88

203. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

204. Under Section 55 of the Kentucky Constitution, no act other than general appropriation bills shall become law until 90 days after the session adjourns, except in cases of emergency, and emergency legislation may become law when approved by the Governor.

205. Under Section 88 of the Kentucky Constitution, every bill that has passed the two Houses of the General Assembly must be presented to the Governor and if he returns the bill with his objections to the House in which it originated, the two Houses must reconsider it and pass it over the Governor's objections by a majority of the members.

206. Reading Sections 55 and 88 together, HB 1, emergency legislation, does not become law until 90 days after the adjournment of the 2021 Regular Session of the General Assembly because the Governor vetoed HB 1 and did not approve it.

207. Plaintiffs are entitled to further relief as may be shown by the evidence and legal authority that may be presented in this proceeding. Plaintiffs reserve the right to amend this Complaint, as necessary, to request any further relief to which they are entitled.

Count XXVII
Declaration of Rights
SB 2 – Violation of KY. CONST. §§ 55, 88

208. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

209. Under Section 55 of the Kentucky Constitution, no act other than general appropriation bills shall become law until 90 days after the session adjourns, except in cases of emergency, and emergency legislation may become law when approved by the Governor.

210. Under Section 88 of the Kentucky Constitution, every bill that has passed the two Houses of the General Assembly must be presented to the Governor and if he returns the bill with his objections to the House in which it originated, the two Houses must reconsider it and pass it over the Governor's objections by a majority of the members.

211. Reading Sections 55 and 88 together, SB 2, emergency legislation, does not become law until 90 days after the adjournment of the 2021 Regular Session of the General Assembly because the Governor vetoed SB 2 and did not approve it.

212. Plaintiffs are entitled to further relief as may be shown by the evidence and legal authority that may be presented in this proceeding. Plaintiffs reserve the right to amend this Complaint, as necessary, to request any further relief to which they are entitled.

WHEREFORE, Plaintiffs demand judgment against Defendants as set forth in the prayer for relief, below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand as follows:

- I.** A declaration that SB 1 violates Sections 2, 27, 28, 36, 42, 55, 59, 60, 69, 75, 80, 81, and 88 of the Kentucky Constitution;
- II.** A declaration that HB 1 violates Sections 2, 27, 28, 55, 59, 60, 69, 75, 81, and 88 of the Kentucky Constitution;
- III.** A declaration that SB 2 violates Sections 27, 28, 42, 55, 59, 60, 69, 75, 81, and 88 of the Kentucky Constitution;
- IV.** Preliminary and permanent injunctive relief preventing enforcement of SB 1;
- V.** Preliminary and permanent injunctive relief preventing enforcement of HB 1;
- VI.** Preliminary and permanent injunctive relief preventing enforcement of SB 2; and
- VII.** Any and all other relief to which Plaintiff appears entitled.

Respectfully submitted,

/s/ Amy. D. Cabbage

Amy D. Cabbage

General Counsel

S. Travis Mayo

Chief Deputy General Counsel

Taylor Payne

Deputy General Counsel

Marc Farris

Deputy General Counsel

Laura C. Tipton

Deputy General Counsel

Office of the Governor

700 Capitol Avenue, Suite 106

Frankfort, KY 40601

(502) 564-2611

amy.cabbage@ky.gov

travis.mayo@ky.gov
taylor.payne@ky.gov
marc.farris@ky.gov
laurac.tipton@ky.gov

/s/ Wesley W. Duke (w/ permission)

Wesley W. Duke
Executive Director
Office of Legal Services
LeeAnne Applegate
Deputy General Counsel
Cabinet for Health and Family Services
275 East Main Street 5W-A
Frankfort, KY 40621
(502) 564-7042
WesleyW.Duke@ky.gov
LeeAnne.Applegate@ky.gov

Counsel for Plaintiffs

VERIFICATION

I hereby certify that, in my capacity as Secretary of the Cabinet for Health and Family Services of the Commonwealth of Kentucky, I have reviewed the Verified Complaint for a Declaration of Rights, a Temporary Restraining Order, a Temporary Injunction and a Permanent Injunction, and the statements contained therein are true and accurate statements to the best of my knowledge, belief and information.

Eric Friedlander

Eric Friedlander
Secretary
Cabinet for Health and Family Services

Commonwealth of Kentucky)
County of Franklin) :ss

The foregoing instrument was acknowledged before me this 2nd day of February, 2021.

My Commission expires: 5/26/2024

NOTARY PUBLIC KYNP 7280

MELISSA D. PITTMAN
NOTARY PUBLIC
STATE AT LARGE
KENTUCKY

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

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