

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION AT LONDON**

Civil Action No. 6:18-cv-00277-KKC

Electronically Filed

DERIC LOSTUTTER, *et al.*

PLAINTIFFS

v.

MATTHEW G. BEVIN, in his official capacity as
Governor of the Commonwealth of Kentucky

DEFENDANT

**GOVERNOR BEVIN'S ANSWER
TO PLAINTIFFS' FOURTH AMENDED COMPLAINT**

Defendant Matthew G. Bevin, in his official capacity as Governor of the Commonwealth of Kentucky ("Governor Bevin"), for his Answer to Plaintiffs' Fourth Amended Complaint (R. 31, the "Complaint"), states as follows:

1. Governor Bevin denies the allegations in Paragraphs 38, 56, 57, and 59 of the Complaint.
2. Governor Bevin is without knowledge or information sufficient to admit or deny the allegations in Paragraphs 8, 15, 17, 19, 20, 21, 22, 36, and 55 of the Complaint and therefore denies the same.
3. Paragraphs 9, 10, 11, 13, 40, 42, 45, 46, 47, 50, 51, 52, 54, 58 of the Complaint contain legal conclusions to which no response is required. Governor Bevin denies any allegations in these paragraphs not specifically admitted herein.
4. Governor Bevin admits the allegations in 23 of the Complaint.

4. Governor Bevin denies the allegation in the first sentence of Paragraph 1. Governor Bevin is without knowledge or information sufficient to admit or deny the second and third sentences of Paragraph 1 and therefore denies the same. To the extent the second and third sentences of Paragraph 1 contain legal conclusions, no response is required. The fourth and fifth sentences of Paragraph 1 contain a legal conclusion to which no response is required. To the extent a response is required, Governor Bevin denies the allegations. In response to the sixth, seventh, and eighth sentences of Paragraph 1 of the Complaint, Governor Bevin states that the Complaint speaks for itself and denies any allegations inconsistent with its terms.

5. The first sentence of Paragraph 2 of the Complaint contains a legal conclusion to which no response is required. To the extent a response is required, Governor Bevin denies the allegations. As to the allegations in the second sentence of Paragraph 2, Governor Bevin states that the application cited by the Plaintiffs speaks for itself and denies any allegation that is inconsistent with that application. Governor Bevin is without knowledge or information sufficient to admit or deny the third and sixth sentences of Paragraph 2 and therefore denies the same. The fourth and fifth sentences of Paragraph 2 contain legal conclusions to which no response is required. To the extent a response is required, Governor Bevin denies the allegations.

6. The first, second, and fourth sentences of Paragraph 3 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, Governor Bevin denies the allegations. Governor Bevin is without sufficient knowledge or information to admit or deny the third sentence of Paragraph 3 and therefore denies the same.

7. The first and fifth sentence of Paragraph 4 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, Governor Bevin denies the allegations. Governor Bevin admits that he has not denied any applications for a restoration of civil rights but denies the remaining allegations in the second and third sentences of Paragraph 4. Governor Bevin is without sufficient knowledge or information to admit or deny the fourth sentence of Paragraph 4 and therefore denies the same.

8. In response to Paragraph 5 of the Complaint, Governor Bevin admits that he rescinded an eleventh-hour executive order issued by his predecessor. Governor Bevin states that the rescinded executive order referred to in the first sentence of Paragraph 5 of the Complaint speaks for itself and denies any allegations inconsistent with its terms. Governor Bevin denies the third sentence of Paragraph 5 of the Complaint. Governor Bevin is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 5 and therefore denies the same.

9. In response to Paragraph 6 of the Complaint, Governor Bevin states that the allegations and claims in the Complaint speak for themselves and he denies any allegations inconsistent with those allegations. Governor Bevin denies the allegation that he unlawfully deprived the Plaintiffs of their First Amendment rights.

10. In response to Paragraph 7 of the Complaint, Governor Bevin is without sufficient knowledge or information to admit or deny the allegations in the first, third, fourth, fifth, or sixth sentences and therefore denies the same, except that Governor Bevin denies the allegation that Margaret Sterne, whose claims have been dismissed as moot, is a disenfranchised felon and that she has not applied for a restoration of her ability to vote. In

response to the second sentence of Paragraph 7, Governor Bevin admits that Stephon Doné Harbin and Leroy Petro, Jr. submitted applications for the restoration of their right to vote, which remain pending, and Governor Bevin is without sufficient knowledge or information to admit or deny the remaining allegations in the second sentence of Paragraph 7. The seventh sentence of Paragraph 7 contains a legal conclusion to which no response is required. To the extent a response is required, Governor Bevin denies the allegations.

11. In response to Paragraph 12 of the Complaint, Governor Bevin admits that he is an elected state government official who works in Frankfort, Kentucky. The remaining allegations in Paragraph 12 contain legal conclusions to which no response is required. To the extent a response is required, Governor Bevin denies the allegations.

12. In response to Paragraph 14 of the Complaint, Governor Bevin admits that Plaintiff Stephon Doné Harbin submitted an application for restoration of his right to vote, which remains pending. Governor Bevin is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 14 and therefore denies the same.

13. In response to Paragraph 16 of the Complaint, Governor Bevin admits that Plaintiff Richard Leroy Petro, Jr. submitted an application for restoration of his right to vote, which remains pending. Governor Bevin is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 16 and therefore denies the same.

14. In response to Paragraph 18 of the Complaint, Governor Bevin states that the Governor has restored Margaret Sterne's civil rights. Governor Bevin is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 18 and therefore denies the same.

15. Paragraph 24 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, Governor Bevin denies the allegations. To the extent that Paragraph 24 refers to specific provisions of the Kentucky Constitution or Kentucky Revised Statutes, Governor Bevin states that those provisions speak for themselves and denies any allegations inconsistent with their terms.

16. In response to Paragraph 25 of the Complaint, Governor Bevin admits he has the discretion to grant or deny the restoration of civil rights under Kentucky law. The remaining allegations in Paragraph 25 contain legal conclusions to which no response is required. To the extent that Paragraph 25 refers to specific provisions of the application for the restoration of civil rights, Governor Bevin states that the application speaks for itself and denies any allegations consistent with its terms.

17. As to Paragraph 26 of the Complaint, Governor Bevin is without sufficient knowledge or information to admit or deny the allegations regarding the application for restoration of civil rights that can be submitted to the Department of Corrections. The remaining allegations in Paragraph 26 contain legal conclusions to which no response is required. To the extent that the allegations in Paragraph 26 refer to provisions of the Kentucky Revised Statutes, Governor Bevin states that the provisions of those statutes speak for themselves and denies any allegations inconsistent with their terms.

18. The allegations in Paragraphs 27 of the Complaint describe provisions of the Kentucky Revised Statutes. Governor Bevin states that those statutory provisions speak for themselves and denies any allegations inconsistent with their terms.

19. The allegations in Paragraph 28 appear to describe the requirements of an application for the restoration of civil rights. In response, Governor Bevin states that the application speaks for itself and denies any allegations inconsistent with that application. To the extent there are any remaining allegations in Paragraph 28, Governor Bevin is without sufficient knowledge or information to admit or deny the allegations and therefore denies the same.

20. Governor Bevin does not have sufficient knowledge or information to admit or deny the first sentence of Paragraph 29 of the Complaint and therefore denies the same. The second sentence of Paragraph 29 contains legal conclusions to which no response is required. To the extent a response is required, Governor Bevin denies the allegations. Governor Bevin denies the allegations in the third sentence of Paragraph 29.

21. In response to Paragraph 30 of the Complaint, Governor Bevin admits that when an application for the restoration of civil rights is granted, the Governor's office transmits an executive order to the Secretary of State's office bearing a signature from the Governor. Governor Bevin further admits that the Governor's office eventually sends a signed executive order and certificate to the Department of Corrections. Governor Bevin is without sufficient information or knowledge to admit or deny the allegations in Paragraph 30 describing the role of the Secretary of State or the Department of Corrections and therefore denies the same. Governor Bevin denies the remaining allegations in Paragraph 30 of the Complaint.

22. To the extent that Paragraph 31 describes the terms of Executive Order 2015-871, Governor Bevin states that the executive order speaks for itself and denies any allegations

inconsistent with that executive order. Governor Bevin is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 31.

23. In response to Paragraph 32 of the Complaint, Governor Bevin admits that he rescinded Executive Order 2015-871, which is dated December 22, 2015. To the extent that the allegations in Paragraph 32 describe the contents of Executive Order 2015-052, Governor Bevin states that the executive order speaks for itself and denies any allegations inconsistent with that executive order. Governor Bevin is without sufficient knowledge or information to admit or deny the allegations about the current application for the restoration of civil rights on the website maintained by the Department of Corrections and therefore denies the same.

24. In response to Paragraph 33 of the Complaint, Governor Bevin admits that the first group of applications for the restoration of civil rights was formally approved in early 2017. Governor Bevin denies the allegations in the fourth sentence of Paragraph 33. As to the remaining allegations in Paragraph 33, Governor Bevin is without sufficient knowledge or information to admit or deny the allegations and therefore denies the same.

25. In response to Paragraph 34 of the Complaint, Governor Bevin states that he is without sufficient knowledge or information to admit or deny the first two sentences of the paragraph and therefore denies the same. Governor Bevin admits that counsel for the Governor's office has taken the legal position that it is not required by state law to track the number of submitted applications.

26. In response to Paragraph 35 of the Complaint, Governor Bevin states that he has not denied any application for the restoration of civil rights. Governor Bevin denies the remaining allegations in Paragraph 35.

27. Governor Bevin admits the allegation in Paragraph 37 of the Complaint to the extent that the Kentucky Constitution provides the Governor with discretion to restore the civil rights of convicted felons.

28. In response to Paragraph 39 of the Complaint, Governor Bevin incorporates his response to the allegations made in Paragraphs 1 through 38 of the Complaint.

29. In response to Paragraph 41, Governor Bevin states that the First Amendment of the United States Constitution speaks for itself and denies any allegations inconsistent with its text.

30. Governor Bevin denies the last sentence of Paragraph 43 of the Complaint. The remaining allegations in Paragraph 43 contain legal conclusions to which no response is required. To the extent a response is required, Governor Bevin denies the allegations.

31. Governor Bevin denies the last sentence of Paragraph 44 of the Complaint. The remaining allegations in Paragraph 44 contain legal conclusions to which no response is required. To the extent a response is required, Governor Bevin denies the allegations.

32. Governor Bevin denies the first sentence of Paragraph 48 of the Complaint. The second sentence of Paragraph 48 contains legal conclusions to which no response is required. To the extent a response is required, Governor Bevin denies the allegations.

33. In response to Paragraph 49 of the Complaint, Governor Bevin incorporates his responses to the allegations made in Paragraphs 1 through 48 of the Complaint.

34. Governor Bevin denies the last sentence in Paragraph 53 of the Complaint. The remaining allegations in Paragraph 53 contain legal conclusions to which no response is required. To the extent a response is required, Governor Bevin denies the allegations.

35. Governor Bevin denies all allegations not specifically admitted above.

36. Governor Bevin denies all requests for relief sought by the Plaintiffs and states that the Plaintiffs are not entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. The Court lacks subject-matter jurisdiction as the Plaintiffs lack standing.

3. Governor Bevin pleads all applicable affirmative defenses allowed under Federal Rules of Civil Procedure 8 and 12, including but not limited to estoppel, waiver, and laches.

4. Governor Bevin reserves his right to amend his Answer to assert to raise additional affirmative defenses and to assert any third-party complaints, counterclaims, or cross-claims, as necessary, after discovery and an investigation into the facts and circumstances of this case.

WHEREFORE, Governor Bevin, having answered the Complaint, demands as follows:

- A. That the Complaint be dismissed with prejudice;
- B. That judgment be entered in Governor Bevin's favor;
- C. That Plaintiffs' request for declaratory and injunctive relief be denied;
- D. That Plaintiffs' request for attorneys' fees and costs be denied;
- E. That Plaintiffs receive no relief whatsoever;
- F. That Governor Bevin receive all further relief to which he may be entitled.

Respectfully submitted,

/s/ Brett R. Nolan

M. Stephen Pitt

S. Chad Meredith

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*Counsel for Matthew G. Bevin, in his
official capacity as Governor of the
Commonwealth of Kentucky*

CERTIFICATE OF SERVICE

I certify that on September 13, 2019, I filed the foregoing document electronically using the Court's CM/ECF system, which will send a copy to counsel of record.

/s/ Brett R. Nolan
*Counsel for Matthew G. Bevin, in his
official capacity as Governor of the
Commonwealth of Kentucky*