

SENATE MEMBERS

Robert Stivers
President, LRC Co-Chair
David Givens
President Pro Tempore
Damon Thayer
Majority Floor Leader
Morgan McGarvey
Minority Floor Leader
Julie Raque Adams
Majority Caucus Chair
Reginald Thomas
Minority Caucus Chair
Mike Wilson
Majority Whip
Dennis Parrett
Minority Whip



LEGISLATIVE RESEARCH COMMISSION

State Capitol 700 Capital Avenue Frankfort KY 40601

502-564-8100

Capitol Fax 502-564-2922

Annex Fax 502-564-6543

legislature.ky.gov

Jay D. Hartz
Director

HOUSE MEMBERS

David W. Osborne
Speaker, LRC Co-Chair
David Meade
Speaker Pro Tempore
Steven Rudy
Majority Floor Leader
Joni L. Jenkins
Minority Floor Leader
Suzanne Miles
Majority Caucus Chair
Derrick Graham
Minority Caucus Chair
Chad McCoy
Majority Whip
Angie Hatton
Minority Whip

IN RE THE IMPEACHMENT OF GOVERNOR ANDREW BESHEAR

THE IMPEACHMENT COMMITTEE'S REPORT AND RECOMMENDATION THAT NO FURTHER ACTION BE TAKEN CONCERNING THE IMPEACHMENT OF GOVERNOR ANDREW BESHEAR

INTRODUCTION

On January 11, 2021, the Speaker of the House of Representatives of the General Assembly of the Commonwealth of Kentucky appointed a committee of seven members to investigate the petition to impeach Governor Andrew Beshear, and upon completion of its investigation, to report its findings and recommendations to the House. The members included: Rep. George Brown Jr. of the 77th District, Rep. Angie Hatton of the 94th District,¹ Rep. Kim King of the 55th District, Rep. C. Ed Massey of the 66th District, Rep. Suzanne Miles of the 7th District, Rep. Patti Minter of the 20th District, and Rep. Jason Nemes of the 33rd District who served as Chairman. Two alternate members were also appointed; Reps. Felicia Rabourn and Buddy Wheatley of the 47th and 65th districts respectively. The committee has met from time to time in executive session and has come to the conclusions laid out herein.

¹ Rep. Angie Hatton informed the Committee of a conflict of interest and abstained from partaking in any of the decisions this Committee has made concerning the impeachment petition of Gov. Beshear. Accordingly, the Chairman has appointed Rep. Buddy Wheatley, an alternate member duly appointed by the House of Representatives, to replace Rep. Hatton.

BACKGROUND

A. Factual History

Pursuant to KRS 63.030, four Kentucky citizens on January 9, 2021 filed a petition with the House of Representatives seeking to impeach Governor Andrew Beshear.² The House, as required by statute, “refer[ed] the petition to a committee.”³ This Committee met on January 13, 2021, to adopt rules⁴ and to organize its work related to this matter.⁵ The Committee invited the Governor to respond to the Petition by January 22, 2021 and invited the Petitioners to submit a reply by January 26, 2021. The Committee requested and received additional information from the Governor’s office. The matter is now ripe for a decision.

B. Governors and Civil Officers May be Removed for “Misdemeanors in Office”

Ky. Const. §§ 66-68:

The Kentucky Constitution delegates to the General Assembly the authority to remove certain officers from office through impeachment by the House and subsequent conviction the Senate. Section 66 vests the sole power of impeachment in the House of Representatives, while the power to try impeachments is the given to the Senate by Section 67. Section 68 provides that the Governor and all civil officers shall be liable to impeachment for any “misdemeanor in office.”

² The Petitioners are Jacob Clark, Tony L. Wheatley, Randall L. Daniel, and Andrew D. Cooperrider. However, one Petitioner, Randall L. Daniel, has given notice that his Petition will be withdrawn.

³ KRS 63.030(2) (“The House shall refer the petition to a committee, with power to send for persons and papers, to report thereon. . .”).

⁴ This Committee adopted rules substantially similar to the rules it adopted last year related to an impeachment inquiry into a circuit judge in Kenton Circuit (Family) Court and those adopted in the impeachment proceedings in 1991 related to the Commissioner of Agriculture Ward “Butch” Burnette. The only substantial change to the rules is that this Committee decided to make its proceeding open to the public, whereas previous proceedings were closed to the public.

⁵ The members of this Committee were appointed by the Committee on Committees, with the same membership that served on the 2020 Impeachment Committee to consider the impeachment of a circuit judge in Kenton Circuit (Family) Court. The lone difference was the Rep. C. Ed Massey, the current chairman of the House Judiciary Committee, was appointed to replace Rep. Jason Petrie, the former chairman of the House Judiciary Committee. Two alternates were also appointed to ensure that the Committee would have seven voting members if one of the active members were unable to participate in this Committee’s proceedings for any reason.

Nearly every state has adopted some form of impeachment—many with the same or similar language as Kentucky.⁶

What Constitutes a “Misdemeanor in Office”:

Kentucky’s 1891 Constitution mirrors the federal constitution in terms of its impeachment provisions. Accordingly, an examination of the federal impeachment clause and its common law origins is central to fleshing out the proper meaning of Section 68.

At the Constitutional Convention of 1787, the Framers were keenly aware of the danger of any impeachment process that would make the President “the mere creature of the Legislature.” The dangers were so severe that Thomas Jefferson remained convinced that impeachment constituted “the most formidable weapon for the purposes of a dominant faction that ever was contrived.”⁷ In Federalist No. 65, Alexander Hamilton stated that impeachment proceedings “will seldom fail to agitate the passions of the whole community, and to divide it into parties, more or less friendly or inimical, to the accused.” As a result, there will always be danger that “the decision will be regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt.”⁸ Accordingly, the Framers sought to tame such unruly political passions that an impeachment would likely unleash by drawing upon British law to set a high standard for impeachment.

The concept of impeachment, as well as the standard of “high Crimes and Misdemeanors,” dates to pre-colonial English Parliamentary practice.⁹ “High crimes and misdemeanors,” encompassed more than just indictable offenses.¹⁰ Instead, impeachment in England was primarily

⁶ See Table of Constitutional and Statutory Impeachment Provisions in 50 States (attached hereto as Exhibit A).

⁷ Letter from Thomas Jefferson to James Madison (Feb. 8, 1798), in 8 THE WORKS OF THOMAS JEFFERSON 368-69 (Paul Leicester Ford, ed. 1904).

⁸ THE FEDERALIST NO. 65, at 439-40 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

⁹ RAOUL BERGER, IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS 54 (1973); H. COMM. ON THE JUDICIARY 93D CONG., CONSTITUTIONAL GROUNDS FOR PRESIDENTIAL IMPEACHMENT 4 (Comm. Print 174).

¹⁰ Berger, *Impeachment for High Crimes and Misdemeanors*, 44 S. CAL. L. REV. 395, 400-415 (1971).

a political proceeding, and impeachable offenses were regarded as “political crimes”—*i.e.*, “the critical element of injury in an impeachable offense had to be an injury to the state.”¹¹ Many of the early American colonial governments subsequently adopted the English common law form of impeachment into their own state constitutions.¹² Indeed, at the time of the drafting of the Federal Constitution, ten of the eleven states in attendance at the Convention already had impeachment provisions of their own.

The “high crimes and misdemeanors” limitation is best understood in the context of the history of its adoption by the constitutional convention. While the “high crimes and misdemeanors” language may seem broad or vague to modern ears, in 1787 it was intended to raise the bar of impeachment, making it more difficult, as evidenced by the convention’s rejection of a more permissive impeachment language. George Mason thought it imprudent that impeachment be “restrained to Treason & bribery only” and suggested that the power be expanded to include “maladministration.” His concern was that treason and bribery were insufficient to reach such political offenses as the subversion of the Constitution. James Madison, however, wanted a high standard for impeachment and insisted that “maladministration” was too vague a term and would reduce the term of the President “to a tenure during pleasure of the Senate.”¹³ Consequently, George Mason withdrew “maladministration” and substituted the phrase “other high crimes & misdemeanors,” which was ultimately adopted.¹⁴

The history of how the “high crimes and misdemeanors” language came to be adopted thus clearly demonstrates that, in the Framers’ view, it had narrower scope than “maladministration”

¹¹ Michael J. Gerhardt, *Putting the Law of Impeachment in Perspective*, 43 ST. LOUIS U. L.J. 905, 914 (1999).

¹² See *Art and History: Senate Impeachment Role*, UNITED STATES SENATE, https://www.senate.gov/artand history/history/common/briefing/Senate_Impeachment_Role.htm (last visited Feb. 2, 2021).

¹³ Gerhardt, *supra* note 10, at 910-11.

¹⁴ *Id.*

or other more similarly broad terms that had been rejected at various stages, including “neglect of duty,” “malversation,” and “corruption.” While these words had been considered at some point, none survived as a basis for impeachment because their subjectivity and breadth raised the specter of the Framers’ biggest fear—that impeachment would become a tool for unseating a duly-elected President based on mere policy or political disagreements with Congress.

Alexander Hamilton summarized this understanding of “high Crimes and Misdemeanors.” The objects of impeachment, he noted, “are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.”¹⁵ As finally adopted, the standard of “high Crimes and Misdemeanors” thus seems to have a broader meaning than mere crimes against the government.

William & Mary Law Professor Michael Gerhardt—the only witness jointly selected by both the House Majority and Minority in the impeachment proceedings of President William J. Clinton—has likewise posited that impeachment should principally be limited to the political crimes that Hamilton alludes to in his Federalist No. 65:

My sense of the history of the federal impeachment process, as reflected in the debates in the constitutional and state ratifying conventions and Congress’ subsequent exercises of its impeachment authority, is that “other high crimes or misdemeanors” are technical terms of art that refer to so-called political crimes. Political crimes are abuses of power or the kinds of misconduct that can only be committed by some public officials by virtue of the public offices or special trust that they hold. These political crimes are not necessarily indictable offenses. Not all political crimes are indictable offenses, and not all indictable offenses are political crimes.¹⁶

¹⁵ THE FEDERALIST NO. 65, at 396 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

¹⁶ Gerhardt, *supra* note 10, at 929.

Likewise, the great majority of legal commentators who have examined the meaning of “high crimes or misdemeanors” have reached the same conclusion—that the phrase “high crimes and misdemeanors” consists of technical terms of art referring to “political crimes.”¹⁷

History of Impeachments in Kentucky:

Throughout the entirety of Kentucky’s almost 229-year history, the House of Representatives has only addressed impeachment on eight occasions, and only three of these eight individuals were actually convicted by the Senate following a House vote of impeachment.¹⁸ This

¹⁷ See e.g., James Wilson, *Lectures on the Law, No. 11, Comparison of the Constitution of the United States with that of Great Britain*, in 1 THE WORKS OF JAMES WILSON 382, 426 (Robert McCloskey ed., 1987); JOSEPH STORY, 2 COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES, at 269-87 (1987); CHARLES E. HUGHES, THE SUPREME COURT OF THE UNITED STATES 19 (1928); Arthur J. Goldberg, *The Question of Impeachment*, 1 HASTINGS CONST. L.Q. 5, 6 (1974); CHARLES L. BLACK, IMPEACHMENT: A HANDBOOK 35, 39-40 (1974); RAOUL BERGER, IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS 58 (1974); GEORGE T. CURTIS, CONSTITUTIONAL HISTORY OF THE UNITED STATES 260-61 (1974); Arthur Bestor, *Impeachment* (reviewing RAOUL BERGER, IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS (1974)), 49 WASH. L. REV. 255, 264-66 (1973); Paul S. Fenton, *The Scope of the Impeachment Power*, 65 NW. U. L. REV. 719, 726 (1971); PETER HOFFER & N.E.H. HULL, IMPEACHMENT IN AMERICA, 1635-1805 101 (1984); John Feerick, *Impeaching Federal Judges: A Study of the Constitutional Provisions*, 39 FORDHAM L. REV. 1, 47-58 (1970); JOHN LABOVITV, PRESIDENTIAL IMPEACHMENT 26-89, 108-31 (1978).

¹⁸ In 1801, impeachment proceedings began against Elijah Craig, a Gallatin County Justice of the Peace, who was apparently impeached before the House proceedings ended without a Senate conviction. See 3 William Littell, *The Statute Law of Kentucky* ch. 386, at 99, 162-63 (Frankfort, Ky., Johnson & Pleasants 1809); Robert M. Ireland, *The Place of the Justice of the Peace in the Legislature and Party System of Kentucky, 1792- 1850*, 13 AM. J. LEGAL HIST. 202, 209 n.20 (1969).

In 1803, Thomas Jones, Surveyor of Bourbon County, was impeached for overcharging the state for work done, for failure to perform his duties, and for surveying the wrong tracks of land. Although Jones resigned during the Senate trial, the members of the tribunal determined that his resignation did not terminate their authority, and continued the case. Jones was eventually found guilty of five different charges and was ordered perpetually excluded from office. See Anita Taylor, Legislative Research Comm’n, *Impeachment in Kentucky*, Informational Bulletin No. 176, at 13 (1991).

In 1806, Kentucky Court of Appeals Judge Benjamin Sebastian resigned before being impeached, after the House committee found him guilty on charges of essentially quasi-treasonous acts and receiving foreign pension while sitting as a judge in Kentucky. See Ky. House Jour., Reg. Session of 1806 (Nov. 22, 1806).

In 1808, William C. Rogers, Surveyor of Livingston County, was impeached in the House but later acquitted in the Senate. See Ky. House Jour., Reg. Sess. of 1808 (1809); Ky. Senate Jour., Reg. Sess. of 1809 (1810).

In 1847, John A. Duff, Surveyor of Perry County, was impeached on such allegations as extorting “a poor widow,” engaging in corrupt surveying, and failing to post the required bond in several years, and was subsequently convicted of one count in the next regular session for failing to post bond in five different years, a defined misdemeanor under Kentucky law. See Ky. Senate Jour., Reg. Sess. of 1846 (Jan. 13, 1847); Ky. Senate Jour., Reg. Sess. of 1847, at 35 (Jan. 11, 1848); Robert M. Ireland, *The County Courts in Antebellum Kentucky* 101-02 (1972).

scarce use of impeachment in the Commonwealth further emphasizes that the process of impeachment was, and still is, intended to address only serious abuses by public officials—not disagreement about exercises of official discretion.

COMMITTEE RECOMMENDATIONS ON EACH COUNT

The Petition includes eight counts seeking the impeachment of Governor Andrew Beshear, alleging violations of various sections of the Kentucky Constitution for his actions in response to the COVID-19 pandemic. It is the responsibility of the Petitioners to include the factual basis of the “misdemeanor in office” that they contend is impeachable. The Petition does not state how the purported violations meet the standard for impeachment other than to nakedly list various constitutional sections. Because of these shortcomings, the Committee could dismiss the Petition outright. But due to the seriousness of these allegations and because summary dismissal would likely invite a subsequent petition, thereby merely delaying resolution of this important matter, this Committee will consider each allegation in light of all of the actions taken by the Governor since March 6, 2020.

A. Counts I and II (Violation of Section 1 and Section 2 of the Kentucky Constitution – Lockdown Generally)

Petitioners’ first two counts claim that the Governor should be impeached because his COVID-19 executive orders violated the first two sections of the Commonwealth’s Constitution.

In 1888, “Honest Dick” Tate, State Treasurer, was impeached and convicted for leaving and abandoning his office without providing for its administration, refusing to perform his duties, and the theft of more than \$197,964.66 of the state’s money. *See Anita Taylor, supra*, at 13.

In 1916, McCreary County Judge J.E. Williams was charged of committing numerous acts of misfeasance and malfeasance as county judge. However, the Senate failed to achieve two-thirds vote required to convict. *See id.*

Finally, in 1991, Ward “Butch” Burnette, Commissioner of Agriculture, was impeached by the House for falsifying time sheets for an employee, which resulted in a theft of funds belonging to the Commonwealth of Kentucky. However, after the House voted on the article of impeachment, Burnette resigned before the Senate could try him and thus terminated the impeachment proceedings. *See id.* at 14.

The petitioners fail to identify any particular executive order that warrants impeachment. They do, however, quote the seven subsections of Section 1 and Section 2 of the Constitution, then state that the Governor's actions violated their rights to use their businesses, their personal freedoms, their freedom of movement, of conscience, of worship, and of the ability to gather and speak and protest. As an attachment to the constitutional claims, Petitioners allege that the Governor violated KRS 522.030, which states that a government official is guilty of official misconduct when he knowingly commits an act in his official capacity that is not authorized by law.

The claims in Counts I and II, except for those related to the right to worship, are the same as those that were presented to, and decided by, the Kentucky Supreme Court last fall.¹⁹ In that case, *Beshear v. Acree*, the Supreme Court stated as follows: "Plaintiffs assert that the challenged orders (1) violate Section 1 of the Kentucky Constitution, which protects the rights of life, liberty, pursuit of safety and happiness, and acquiring and protecting property; (2) are arbitrary, in violation of Section 2 of the Kentucky Constitution; (3) violate the separations of powers provisions in Sections 27 and 28 of the Kentucky Constitution; (4) exceed the Governor's authority to act pursuant to KRS 39A.100 . . ."²⁰

In that case the Supreme Court unanimously held that Governor Beshear was acting within his powers as granted by statute and not in violation of the Constitution, specifically noting, as relevant to these counts, that the Governor's executive orders did not violate Sections 1 or 2 of the Constitution.²¹ Although some may disagree—even strenuously so—with the Supreme Court's decision, this Committee finds it compelling that Kentucky's highest Court ruled unanimously that the Governor was acting within the bounds of the law. Such a holding does not per se preclude

¹⁹ *Beshear v. Acree*, __ S.W.3d __, 2020-SC-0313-OA, 2020 Ky. LEXIS 405 (Nov. 12, 2020). Issues related to religious freedom were not part of that case and will be discussed below, see discussion *infra* regarding Count III.

²⁰ *Id.*, slip op. at 11.

²¹ *Id.*, slip op. at 5-6, 11.

impeachment; it is for this Committee, and not the Supreme Court, to make that recommendation. Nonetheless, *Acree* is strong evidence that the Governor has not committed an impeachable offense. The proper response to disagreements on actions taken by an executive official related to policy is (1) for the legislature to enact controls on future executive conduct and (2) for those who disagree with the executive's action to take the question to the people so they can express their views at the ballot box. The first is being considered, as the General Assembly has revised the Governor's powers during an emergency. The second may occur at the next gubernatorial election.

Due to the foregoing, this Committee recommends that no further action be taken on Counts I and II of the Petition.

B. Count III (Violation of Section 5 of the Kentucky Constitution – Churches and Religious Schools)

Count III claims that the Governor has violated petitioners' rights to freely exercise their religion by prohibiting in person worship and in closing private religious schools. Several courts have found Governor Beshear's orders unconstitutional. Even so, the various courts' opinions demonstrate the confusion and lack of clarity on the constitutionality of such orders.

Throughout the course of the pandemic, Governor Beshear has been sued on five different occasions for a series of executive orders issued to limit social interaction between Kentuckians, to curb the spread of the coronavirus. These cases, and others arising from different jurisdictions, have caused significant disagreement amongst judges across the country—including at the Supreme Court level.²² The legal chaos caused is exemplified by two conflicting orders concerning the constitutionality of travel restrictions on drive-in church services from two judges sitting on the same court.²³ Indeed, one judge out of the Eastern District even recognized the competing

²² See Timeline of Worship Service Litigation (attached herein as Exhibit B).

²³ See, *On Fire Christian Ctr., Inc. v. Fischer*, 453 F. Supp. 3d 901, 904 (W.D. Ky. Apr. 11, 2020) (Walker, J.) (granting plaintiff church's motion to enjoin Louisville Mayor Greg Fischer from enforcing a restriction on drive-in

orders of the courts, and noted (rightfully so) that he was not bound by these decisions and that the issues would ultimately be resolved on appeal by the Sixth Circuit.²⁴ The constitutionality of the Governor's actions was difficult to discern as litigation about COVID-19 restrictions unfolded.

When the Sixth Circuit resolved such disputes as the restrictions on drive-in and in-person church services,²⁵ the Governor has been swift to amend his orders to comply with the Court's instructions.²⁶ The United States Supreme Court, however, cast doubt upon the Sixth Circuit's decisions when it denied an application to enjoin similar executive orders issued by the governor of California, which likewise restricted public gatherings and in-person church services.²⁷ Chief Justice John Roberts issued a concurring opinion, which was not joined by any other Justice, expounding on the reasons for denial.²⁸ The other four Justices who voted to deny relief gave no indication as to the basis for their decisions. On the other hand, three of the four Justices who voted to grant the application for relief—Justices Clarence Thomas, Neil Gorsuch, and Brett

Easter Sunday church services); *Maryville Baptist Church v. Beshear*, 455 F. Supp. 3d 342 (W.D. Ky. Apr. 18, 2020) (Hale, J.) (denying plaintiff church's motion to enjoin the Governor from enforcing his prohibition on "mass gatherings" as to drive-in church services).

²⁴ *Tabernacle Baptist Church v. Beshear*, 459 F. Supp. 3d 847 (E.D. Ky. May 8, 2020) (Van Tatenhove, J.) (granting plaintiff's motion for TRO to enjoin Gov. Beshear's order restricting mass gatherings as to in-person church services); see also *id.* at 851 (noting that the court was not obligated to follow the decisions of the district courts in *On Fire Christian Ctr., Inc. v. Fischer*, *supra*; *Maryville Baptist Church v. Beshear*, *supra*; or *Roberts v. Neace*, 457 F. Supp. 3d 595 (E.D. Ky. May 4, 2020)).

²⁵ See e.g., *Maryville Baptist Church v. Beshear*, 957 F.3d 610 (6th Cir. May 2, 2020) (Sutton, McKeague, and Nalbandian, J.J.) (granting plaintiffs' motion for injunction pending appeal as to Gov. Beshear's "mass gatherings" order—limited its holding to drive-in services only); *Roberts v. Neace*, 958 F.3d 409 (6th Cir. May 9, 2020) (Sutton, McKeague, and Nalbandian, J.J.) (granting plaintiff's motion for injunction pending appeal as to Gov. Beshear's "mass gatherings" order prohibiting in-person services).

²⁶ See e.g., Amended Mass Gatherings Order, Secretary of Health and Family Services (May 9, 2020) (Secretary amended the Mass Gatherings Order by removing "in-person services of faith-based organizations" from the prohibition on mass gatherings, so long as the services follow the guidelines for places of worship and social distancing guidance).

²⁷ *S. Bay United Pentecostal Church v. Newson*, 140 S. Ct. 1613 (May 29, 2020).

²⁸ See *id.* at 1613-14 (Roberts, C.J., concurring) (emphasizing that the actions of state officials "should not be subject to second-guessing by an 'unelected federal judiciary'").

Kavanaugh—joined in a dissenting opinion authored by Justice Kavanaugh.²⁹ Consequently, the law that has emerged is somewhat unclear.³⁰

The Supreme Court has offered little guidance.³¹ For example, in *Danville Christian Acad. v. Beshear*,³² there had been disagreement amongst the lower courts as to the constitutionality of the Gov. Beshear's November 18 executive order requiring all public and private K-12 schools to cease in-person instruction.³³ The Supreme Court denied the plaintiffs' application to stay on the reasoning that the Governor's order was due to expire soon and thus did not warrant any immediate action.³⁴ Justices Samuel Alito and Neil Gorsuch, dissenting, noted how the Majority had left these issues ultimately unresolved, as the Governor reserved the right to issue similar orders in the future.³⁵ Accordingly, the dissenters would have vacated the Sixth Circuit's stay and then remanded the matter back to the Sixth Circuit for further consideration under the proper legal standards.³⁶

²⁹ See *id.* at 1614 (Kavanaugh, J., dissenting) (joined by Justices Thomas and Alito) (stating that he would have granted the Church's requested temporary injunction because the California order discriminated against places of worship and in favor of comparable secular businesses); *Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603, 2604 (July 24, 2020) (Alito, J., dissenting) (stating he would have granted an injunction barring the state of Nevada from interfering with worship services).

³⁰ See e.g., *Ramsek v. Beshear*, 468 F. Supp. 904, 911-12 (E.D. Ky. June 24, 2020) (Van Tatenhove, J.) (noting that Chief Justice Roberts' opinion in *S. Bay*, while informative, does not create controlling precedent); *Calvary Chapel Dayton Valley v. Sisolak*, 2020 U.S. Dist. LEXIS 103234 (D. Nev. Jun. 11, 2020).

³¹ See e.g., *Elim Romanian Pentecostal Church v. Pritzker*, 140 S. Ct. 2823 (May 29, 2020) (Court denied application for injunctive relief as to Illinois Governor's restriction on mass gatherings in light of the state issuing new guidelines which effectively removed limitations on religious gatherings); *Danville Christian Acad. v. Beshear*, 141 S. Ct. 527 (Dec. 17, 2020) (Court denied plaintiff's application to vacate Sixth Circuit's stay of district court's preliminary injunction, finding that the timing and impending expiration of Ky. Exec. Order 2020-969 did not warrant any further action).

³² 141 S. Ct. 527 (Dec. 17, 2020).

³³ See Ky. Exec. Order 2020-969 (Nov. 18, 2020); see also *Danville Christian Acad. v. Beshear*, 2020 U.S. Dist. LEXIS 221366 (E.D. Ky. Nov. 25, 2020) (Van Tatenhove, J.) (granting the plaintiff school's motion for preliminary injunctive relief and enjoined the Governor from enforcing Ky. Exec. Order 2020-969 against any private, religious school in the Commonwealth); *Ky. ex. Rel. Danville Christian Acad. v. Beshear*, 981 F.3d 505, (6th Cir. Nov. 29, 2020) (Moore, Rogers, and White, J.J.) (finding the Governor's order to be neutral and of general applicability, and thus granted his motion to stay the district court's order).

³⁴ *Danville Christian*, 141 S. Ct. at 528.

³⁵ *Id.* at 530 (Gorsuch, J., dissenting).

³⁶ *Id.*

Even though some courts found the Governor's orders to be violative of certain individual liberties, many were also cognizant that these orders were issued by the Governor on behalf of a good faith effort to curb the spread of the virus in the Commonwealth.³⁷ This Committee thus finds that the executive orders do not rise to the level of impeachment—even assuming the executive orders were unlawful. Several past Kentucky Governors has been found by a court to have exceeded his or her authority at some point during their tenure in office.³⁸ As a practical matter, if a constitutional officer is impeached every time he or she loses in court, impeachment will lead to paralysis. Moreover, governors in many other states have enacted orders preventing in-person worship; Governor Beshear was not alone in this approach.³⁹ As noted above, this committee finds that the best response to curtail future such actions is either at the ballot box or legislation, not impeachment.

Concerning the executive orders closing private schools, this Committee takes notice of courts' rulings that such action does not violate the First Amendment provided such orders neutrally applied to religious schools. They did here, in that those orders applied equally to public

³⁷ See e.g., *Tabernacle Baptist Church v. Beshear*, 459 F. Supp. 3d 847, 850 (E.D. Ky. May 8, 2020) (Van Tatenhove, J.) ("Public officials, including (the Governor), make minute by minute decisions with the best of intentions and the goal of saving the health and lives of our citizens."); *Ramsek v. Beshear*, 468 F. Supp. 3d 904, 916 (E.D. Ky. June 24, 2020) (Van Tatenhove, J.) ("Governor Beshear may disagree with the content of the protestors' message, but it cannot be said it was enacted with the intent to suppress Plaintiffs' political point of view. Nor has it been used to stifle the political expression of others."); cf. *Beshear v. Acree*, No. 2020-SC-0313-OA, 2020 WL 6736090, at *37 (Ky. Nov. 12, 2020) (Kentucky Supreme Court unanimously upheld his orders as "necessary to slow the spread of COVID-19 and protect the health and safety of all Kentucky citizens."); see also Timeline of Worship Service Litigation (attached herein as Exhibit B).

³⁸ See e.g., *Commonwealth ex rel. Andy Beshear v. Matthew Bevin*, 498 S.W.3d 355 (Ky. 2016); *Beshear v. Haydon Bridge*, 304 S.W.3d 682 (Ky. 2010); *Fletcher v. Office of the AG. ex rel. Stumbo*, 163 S.W.3d 852 (Ky. 2005).

³⁹ See e.g., *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (May 29, 2020) (California Governor's executive order restricting public gatherings including church services); *Elim Romanian Pentecostal Church v. Pritsker*, 140 S. Ct. 2823 (May 29, 2020) (Illinois Governor's stay-at-home order restricted mass gatherings and public worship services); *Calvary Chapel Dayton Valley v. Sisolak*, 140 S.Ct. 203 (July 24, 2020) (Nevada Governor limits in-person worship to no more than 50 person).

schools and religious schools. This Committee, therefore, recommends that no further action be taken on Count III.

C. Count IV (Violation of Sections 14 and 19 of the Kentucky Constitution – Courts and Evictions)

Petitioners make two allegations in Count IV. First, they claim Governor Beshear violated Section 14 of the Constitution by “restricting access to courts.” Second, they claim Governor Beshear violated Section 19 of the Constitution by impairing the contracts of property owners trying to “regain possession of their property from tenants who refused to provide compensation.”

Section 14 provides, “All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and the right and justice administered without sale, denial, or delay.” Presumably, though not outlined in the Petition, the Petitioners believe Governor Beshear restricted access to the courts by closing the courts. However, there does not appear to be any instance where Governor Beshear closed the courts. The Chief Justice of the Commonwealth of Kentucky, John Minton, did enter orders concerning access to courthouses, but Kentucky’s Court of Justice was not closed.⁴⁰ It is true that access to Kentucky’s courthouses were limited to many in-person procedures, but virtual access remained available. The Committee finds no violation of Section 14 of the Kentucky Constitution.

Regarding Petitioner’s second allegations in this count, it should be noted that the moratorium on evictions was part of the CARES Act, which was an enactment and a requirement of the federal government.⁴¹ To the extent Governor Beshear’s executive order concerning eviction moratoriums pre-dated the federal moratorium by a few weeks, this Committee finds that this does

⁴⁰ See Ky. Supreme Court Amend. Order 2020-16 (April 1, 2020), <https://kycourts.gov/Courts/Supreme-Court/Supreme%20Court%20Orders/202016.pdf>.

⁴¹ Federal Housing Finance Agency, Press Release, June 17, 2020, <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-Eviction-Moratorium-6172020.aspx#>.

not present just cause for impeachment. Each member of this Committee does not necessarily agree with the broad (perhaps overly-broad) prohibition of evictions, but each member does find that this does not rise to the level of an impeachable offense.

Therefore, this Committee recommends that no further action be taken concerning Count IV of the Petition.

D. Count V (Violation of Section 24 of the Kentucky Constitution – Travel Restriction)

Next, Petitioners take issue with the travel restrictions entered on March 30, 2020. In his own words, Governor Beshear prohibited travel outside Kentucky because “[e]very state in the United States now has confirmed cases of COVID-19, but other states have not taken as aggressive steps as the Commonwealth to prevent the spread of COVID-19.”⁴² The travel restrictions disallowed any Kentuckian from leaving the Commonwealth, with limited exceptions for employment, healthcare, and to obtain necessary supplies.⁴³

Kentucky citizens immediately challenged the travel restrictions in federal court. The United States District Court for the Eastern District of Kentucky declared the Governor’s travel restrictions unconstitutional. In response to the Court’s Order, Governor Beshear recalled the executive order and entered a different order dealing with travel. This order was suggestive rather than mandatory.

As noted above concerning orders related to in-person worship services, a court finding that an executive exceeded his authority is not altogether unusual. This is not a small thing, of course. But it does not necessarily justify impeachment. In weighing the gravity of Governor Beshear’s unlawful conduct against the high standard for impeachment, this Committee also notes

⁴² See Ky. Exec. Order 2020-258, p.1.

⁴³ *Id.*

that several other states similarly enacted travel restrictions at the height of the pandemic.⁴⁴ Again, that other states have violated the law does not in and of itself exonerate the Governor, but it tends to show that the action in question is not so far out of bounds as to be impeachable.

Given the Governor's actions after the court ruled his actions were unconstitutional—this quick compliance with the court's decision—this Committee recommends that no further action be taken on Count V of the Petition.

E. Count VI (Violation of Sections 27 and 28 of the Kentucky Constitution – Call legislature into session)

Petitioners claim that Governor Beshear should be impeached because he acted as a one-man legislature by failing to call the legislature back into session. Petitioners contend that refusing to call the legislature back into session is a violation of the Separations of Powers sections of Kentucky's Constitution, namely Sections 27 and 28.

Section 27 provides, "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."

Section 28 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."

⁴⁴ See *Thinking of Traveling in the U.S.? Check Which States Have Travel Restrictions*, N.Y. TIMES, <https://www.nytimes.com/2020/07/10/travel/state-travel-restrictions.html> (last updated Feb. 3, 2021); Suzanne Rowan Kelleher, *45 U.S. States Shut Down and Counting: State-By-State Travel Restrictions*, FORBES, <https://www.forbes.com/sites/suzannerowankelleher/2020/03/28/23-states-shut-down-and-counting-state-by-state-travel-restrictions/?sh=2199db4158f4> (last updated Apr. 6, 2020).

Petitioners overlook Section 80 of the Constitution,⁴⁵ which permits, but does not require, the Governor to call the legislature into special session. Since the Constitution expressly grants the Governor this discretionary power, his decision to not call the legislature into session cannot violate the separations of powers because the discretionary power was, in the words of Section 28, “hereinafter expressly directed or permitted.” Therefore, this Committee recommends that no further action be taken on Count VI of the Petition.

F. Count VII (Violation of Sections 49 and 50 of the Kentucky Constitution) (\$800 million loan)

The Governor borrowed approximately \$800 million from the federal government to help pay unemployment claims of Kentuckians. Petitioners allege that this action violated Sections 49 and 50 of the Kentucky Constitution. The Governor contends that this was required because the unemployment fund was depleted and but for this loan the Commonwealth would not have been able to pay unemployment claims, thereby causing chaos and harming thousands of Kentuckians.

This Committee notes that KRS 341.595, 341.611, and 341.612, and 341.614 grant the Governor authority to borrow money to shore up the unemployment fund when necessary. Most pertinent is KRS 341.595, which provides that “[t]he Governor is hereby authorized to apply for advances to the credit of this state’s account in the unemployment trust fund . . . when the balance of this state’s account requires such action.” Moreover, the Committee finds that the Governor was required by 26 U.S.C. § 3304 to seek the loan.

⁴⁵ Section 80 of the Kentucky Constitution: “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.”

This Committee, therefore, finds that the Governor acted with authority granted to him by the General Assembly. It, therefore, recommends that no further action be taken on Count VII.

G. Count VIII (Violation of Section 147 of the Kentucky Constitution) (Voting)

Petitioners claim that altering the manner in which elections were held in the primary and general elections of 2020 justifies impeachment of Governor Beshear. This claim derives from Section 147 of the Constitution, which states that ballots shall be “furnished by public authority to the voters at the polls, and marked by each voter in private at the polls, and then and there deposited, or any person absent from the county of his legal residence, or from the state, may be permitted to vote in a manner provided by law.”

On June 23, 2020 in the primary election and on November 3, 2020 in the general election, Governor Beshear and Secretary of State Michael Adams agreed to alter the manner of voting and allow many people to vote by mail who would not be absent from the county of his/her legal residence. Importantly, this was done pursuant to KRS 39A.090, which was amended by the General Assembly in 2020 to explicitly grant the Governor and the Secretary of State authority to alter the manner of voting to meet the exigencies of the COVID-19 pandemic. The Governor was acting with the Secretary of State pursuant to the authority granted by the legislature. This Committee, therefore, finds no violation of the law and recommends that no further action be taken on Count VIII of the Petition.

COSTS OF INVESTIGATION

KRS 63.070(1) provides in part that, upon the decision of this Committee to report against the petitioners’ petition of impeaching the Governor, and provided the Committee’s report is not overruled by the House, “the petitioner(s) shall be liable to witnesses and *to the accused* for the costs of investigation before the committee.” (Emphasis added). It thus appears clear from this

provision that Governor Beshear's costs are recoverable. Though there is no case law explicitly addressing whether "costs of investigation" includes the accused's attorney fees, there is also no basis precluding the Committee from allowing recovery of such costs. Indeed, there is relevant legal scholarship suggesting that inclusion of such fees were precisely the intent of the Kentucky legislature in implementing KRS 63.070.⁴⁶

Finally, the Committee's own costs of investigation will be taxed to the Petitioners. Although no single statute or case exists explicitly permitting the Committee to do so, such authority may be inferred from the Kentucky Constitution and various statutory provisions. Section 39 of the Kentucky Constitution provides that "Each House of the General Assembly may determine the rules of its proceedings." Ky. Const. § 39. KRS 63.030(2) provides that "[t]he House shall refer the petitions to a committee, with power to send for person and papers, to report thereon." (Emphasis added). In addition, the fact that the House is required to form a committee and compensate its members shows that the committee was meant to be compensated for its services, and as previously mentioned, these kinds of costs are precisely the disincentives intended by the Kentucky legislature in implementing KRS 63.070. The Committee will provide Petitioners with a complete bill of costs at a later time.

CONCLUSION

Impeachment is an important legislative tool to remove from office public officials, including governors, who act with true perfidy—far outside the bounds of decency or sound government. Although the question of what actions are impeachable is exceptionally difficult to define and, by its very nature, includes the considered judgment of individual legislators, impeachment is, and must remain, a very high hurdle. Impeachment overturns the election of the

⁴⁶ See Shawn D. Chapman, *Removing Recalcitrant County Clerks in Kentucky*, 105 KY. L.J. 261, 284 (2016).

accused; its abuse is itself anti-democratic. It must not be allowed to settle scores or relitigate policy disputes.

This Committee has thoroughly reviewed the petition and finds that no allegation rises to the level of impeachable conduct. This does not mean that individual members of this Committee agree with decisions made by the Governor. But it means that this Committee does not believe the proper response is impeachment, but rather for the legislature to enact policies to address its disagreements and for the people to weigh in by voting during the next gubernatorial election.

In conclusion, this Committee will recommend that the House of Representatives take no further action on the question of this petition to impeach Governor Andrew Beshear. Furthermore, as required by KRS 63.070, this Committee requests the Governor to submit a bill of costs by a week from Wednesday, February 24, 2021, which will be taxed to the Petitioners, jointly and severally, unless objected to within five business days of its submission to this Committee. If an objection is made, this Committee will consider any objections and order the petitioners to pay a reasonable amount to the Clerk of the House of Representatives.

February 23, 2021

EXHIBIT

A

CONSTITUTIONAL AND STATUTORY IMPEACHMENT IN 50 STATES

Table 1: Grounds for Impeachment

<i>Grounds for Impeachment in State Constitutions</i>	<i>States</i>
Bribery	NH
Corrupt conduct in office	AL, MI, MN, MO, NH, ND, OK, SD, WV, WI
Crime	IN, MO, NM, ND, SD
Crime in official capacity requiring disqualification	TN
Crim or misdemeanors	MI, MN, WI
Crimes in office, serious	SC
Felony	LA, RI
Gross immorality	WV
High crime or misdemeanor	WV, WY
High crimes and misdemeanors and gross misconduct in office	AR
Incapacity	RI, IN
Incompetence	AL, MO, OK, WV
Intemperance or habitual drunkenness	AL, MO, ND, OK, SD
Maladministration in office	MA, NH, VT, WV
Malfeasance or gross misconduct in office	LA
Malfeasance or misfeasance in office	RI, SD
Malpractice in office	NH
Misbehavior in office	PA
Misconduct	MO
Misconduct in office	CA, MA
Misconduct in office, serious	SC
Misdemeanor in office	FL, KY, ME, NB, NJ, OH
Misdemeanor or malfeasance in office	IA, NV, NM, ND
Moral turpitude or oppression, offense of	MO
Moral turpitude in office	AL, OK, RI
Neglect of duty	WV
Neglect of duty, willful	AL, MO, OK
Negligence	IN
Offending against the Commonwealth by: malfeasance in office, corruption, neglect of duty, other high crime or misdemeanor	VA
Treason, bribery, or any high crime or misdemeanor	DE, KS, MS

Table 2: Grounds for Impeachment by State

<i>STATE</i>	<i>Grounds for Impeachment</i>	
	<i>Constitutional Provisions</i>	<i>Statutory Provisions</i>
Alabama	Willful neglect of duty; corruption in office; incompetency; intemperance (intoxicating liquors or narcotics); offense of moral turpitude while in office (Ala. Const. Art. VII, § 173)	
Alaska	No grounds listed, but a motion for impeachment must list fully the basis for the proceeding (Alaska Const. Art. II, § 20)	
Arizona	High crimes, misdemeanors, or malfeasance in office (Ariz. Const. Art. 8 Pt. 2 § 2)	High crimes, misdemeanors, or malfeasance in office (Ariz. Rev. Stat. Ann., § 38-311)
Arkansas	High crimes and misdemeanors and gross misconduct in office (Ark. Const. Art. 15, § 1)	(Ark. Code Ann., § 21-12-201 <i>et seq.</i>)
California	Misconduct in office (Cal. Const. Art. IV, § 18(b))	Misconduct in office (Cal. Gov. Code § 3020 <i>et seq.</i>)
Colorado	High crimes or misdemeanors or malfeasance in office (Colo. Const. Art. XIII)	
Connecticut	No grounds listed (Conn. Const. Art. IX)	
Delaware	Treason, bribery, or any high crime or misdemeanor in office (Del. Const. Art. VI)	
Florida	Misdemeanor in office (Fla. Const. Art. III, §17)	<p>A public officer who violates the state code of ethics is subject to a range of punishments, including impeachment, suspension, reprimand, salary reduction, and a civil penalty (Fla. Stat. Ann. § 112.317(1)(a))</p> <p>A public officer who knowingly violates the law on inspecting, examining, and duplicating public records is subject to impeachment and other penalties (Fla. Stat. Ann. § 119.02)</p>

Georgia	No grounds listed. (Ga. Const. Art. 3, § 7)	
Hawaii	“For causes that may be provided by law” (Haw. Const. Art. III § 19)	
Idaho	No grounds listed (Idaho Const. Art. V §§ 3 & 4)	(Idaho Code §§ 19-4013 to 19-4016)
Illinois	Legislative investigations conducted to determine cause for impeachment (Ill. Const. Art. IV § 14)	
Indiana	Crime, incapacity, or negligence (Ind. Const. Art. 6, §§ 7 & 8)	Misdemeanor in office (Ind. Code Ann., § 5-8-1-1 <i>et seq.</i>)
Iowa	Misdemeanor or malfeasance in office (Iowa Const. Art. III §§ 20 & 20)	Misdemeanor or malfeasance in office (Iowa Code Ann., § 68.1 <i>et seq.</i>)
Kansas	Treason, bribery, or other high crimes and misdemeanors	Misdemeanor in office (Kan. Stat Ann. § 37-101 <i>et seq.</i>)
Kentucky	Misdemeanor in office (Ky. Const. § 68)	
Louisiana	Felony, malfeasance of gross misconduct while in such office (La. Const. Art. X § 24)	
Maine	Misdemeanor in office (Me. Const. Art. IX § 5)	
Maryland	No grounds listed (Md. Const. Art. II § 7; Art. III §26)	
Massachusetts	Misconduct or maladministration in office (Mass. Gen. Laws Ann., Const. Pt. 2, C.1, § 2, Art. VIII § Pt. 2, C.1, § 3, Art. 6)	
Michigan	Corrupt conduct in office or crimes or misdemeanors (Mich. Const. Art. XI, § 1 XI (7))	Corrupt conduct in office or crimes or misdemeanors (Mich. Comp. Laws Ann., §§ 6.1 to 6.16)
Minnesota	Corrupt conduct in office or crimes or misdemeanors (Minn. Const. Art. VIII)	
Mississippi	Treason, bribery, or any high crime or misdemeanor in office (Miss. Const. Art. IV §§ 49 to 52)	

Missouri	Crimes, misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency, or any offense of moral turpitude or oppression in office (Mo. Const. Art. VII, §§ 1 to 3)	Crimes, misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency, or any offense of moral turpitude or oppression in office (Mo. Rev. Stat. § 106.020 <i>et seq.</i>)
Montana	Legislature must determine causes, manner, and procedure for impeachment (Mont. Const. Art. V, § 13)	(Mont. Code Ann. § 5-5-401 <i>et seq.</i>)
Nebraska	Misdemeanor in office. Alleged acts or omissions must be stated in impeachment resolution (Neb. Const. Art III, § 17, Art. IV §5)	(Neb. Rev. Stat. § 24-101 <i>et seq.</i>)
New Hampshire	Bribery, corruption, malpractice, or maladministration in office (N.H. Const. Pt. 2, Art. 17 & Art. 38 <i>et seq.</i>)	
New Jersey	Misdemeanor while in office (N.J. Const., Art. VII, Sec. III, Para. 1)	(N.J. Stat. Ann. § 52:13A-1 <i>et seq.</i>)
New Mexico	Crimes, misdemeanors or malfeasance in office (N.M. Const. Art. IV, § 36)	
New York	No grounds listed (N.Y. Const. Art. 5, § 4; Art. 6 § 24)	(N.Y. Jud. Law § 415 <i>et seq.</i>)
North Carolina	No grounds listed (N.C. Const. Art. 3, § 3; Art. 4, § 4)	Commission of a felony, a misdemeanor involving moral turpitude, malfeasance in office, or willful neglect of duty (N.C. Gen. Stat. §§ 123-1 to 123-13)
North Dakota	Habitual drunkenness, crimes, corrupt conduct or malfeasance or misdemeanor in office (N.D. Const. Art. XI, §§ 8 to 15)	Habitual drunkenness, crimes, corrupt conduct or malfeasance or misdemeanor (N.D. Cent. Code § 44-09-01 <i>et seq.</i>)
Ohio	Misdemeanor in office (Oh. Const. Art. I, §§ 24 to 24)	
Oklahoma	Willful neglect of duty, corruption in office, habitual drunkenness, incompetency or any offense involving moral turpitude while in office (Okla. Const. Art. 8, § 1)	Willful neglect of duty, corruption in office, habitual drunkenness, incompetency or any offense involving moral turpitude while in office (Okla. Stat. Ch. 2 § 51 <i>et seq.</i>)

Oregon	Public officers may not be impeached. But, incompetency, corruption, malfeasance, or delinquency in office may be tried in the same way as a criminal matter and judgment may be dismissal from office (Or. Const. Art. 7 § 6).	
Pennsylvania	Misbehavior in office (Pa. Const. Art. 6, § 4 <i>et seq.</i>)	
Rhode Island	Commission of a felony or crim of moral turpitude, misfeasance, or malfeasance in office or found incapacitated (R.I. Const. Art. XI, § 1 <i>et seq.</i>)	(R.I. Gen. Laws § 22-6-2.2)
South Carolina	Serious crimes or serious misconduct in office (S.C. Const. Ann. Art. XV)	
South Dakota	Drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office (S.D. Const. Art. XVI)	
Tennessee	Commission of crime in official capacity requiring disqualification (Tenn. Const. Art. V)	Commission of crime in official capacity requiring disqualification (Tenn. Code Ann. §§ 8-46-101 to 8-46-205)
Texas	No grounds listed (Tex. Const. Art. 15, §§ 1 to 7)	(Tex. Government Code Ann. §§ 665.001 to 665.028)
Utah	High crimes, misdemeanors, or malfeasance in office (Utah Const. Art. VI, §§ 17 to 21)	High crimes and misdemeanors or malfeasance in office (Utah Code Ann. 1953 §§ 77-5-1 to 77-5-12)
Vermont	No grounds listed (Vt. Const. Ch. II, §§ 57 to 58)	
Virginia	Offending against the Commonwealth by malfeasance in office, corruption, neglect of duty, or other high crime or misdemeanor (Va. Const. Art IV, § 17)	
Washington	High crimes or misdemeanors, or malfeasance in office (Wash. Const. Art. V)	(Wash. Rev. Code Ann., § 42.04.040)
West Virginia	Maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor (W. Va. Const. Art. 7 § 9)	Maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor (W. Va. Code Ann. § 6-6-3)
Wisconsin	Corrupt conduct in office, crimes and misdemeanors (Wis. Const. Art. 7 § 1)	(Wis. Stat. Ann., §§ 750.01 & 750.02)

Wyoming	High crimes and misdemeanors, or malfeasance in office (Wyo. Const. Art. 3, §§ 17 & 18)	(Wyo. Stat. Ann., § 9-1-214)
---------	---	------------------------------

EXHIBIT

B

COUNT III – VIOLATION OF § 5:
LITIGATION TIMELINE

1. March 19, 2020, Secretary of the Cabinet for Health and Family Services Eric Friedlander issued an order prohibiting “mass gatherings.”
 - https://governor.ky.gov/attachments/20200319_Order_Mass-Gatherings.pdf
 - Press Release, Gov. Beshear: Strong Actions Required to Protect Kentuckians from COVID-19, Office of Governor Andy Beshear (Mar. 19, 2020), available at <https://kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prId=97>
2. Ky. Exec. Order 2020-246 (Mar. 22, 2020)
 - https://governor.ky.gov/attachments/20200322_Executive-Order_2020-246_Retail.pdf
3. Ky. Exec. Order 2020-257 (Mar. 25, 2020)
 - Governor Beshear issued an executive order mandating all businesses which are not “life-sustaining” close.
 - <https://chfs.ky.gov/News/Documents/nrrestrictionstighten.pdf>
4. On Fire Christian Ctr. v. Fischer, 453 F. Supp. 3d 901 (W.D. Ky. April 11, 2020)
 - Judge Walker GRANTED plaintiff’s motion for TRO Mayor Fischer’s restriction on drive-in Easter services.
5. Maryville Baptist Church v. Beshear, 455 F. Supp. 3d 342 (W.D. Ky. April 18, 2020)
 - Judge Hale DENIED plaintiff’s motion for TRO on Gov. Beshear’s order prohibiting mass gatherings.
 - Reversed by Sixth Circuit in Maryville Baptist Church v. Beshear, 957 F.3d 610 (6th Cir. May 2, 2020) (J.J. Sutton, McKeague, and Nalbandian).
6. Maryville Baptist Church, Inc. v. Beshear, 957 F.3d 610 (6th Cir. May 2, 2020)
 - Sixth Circuit grants plaintiff’s motion for injunction pending appeal; limited its holding to drive-in church services (J.J. Sutton, McKeague, and Nalbandian).
7. Roberts v. Neace, 457 F. Supp. 3d 595 (E.D. Ky. May 4, 2020)
 - Judge Bertelsman DENIED plaintiff’s motion for TRO on Gov. Beshear’s order prohibiting in-person services (relying on Sixth Circuit’s opinion in Maryville above)
8. Maryville Baptist Church v. Beshear, 2020 U.S. Dist. LEXIS 85179 (W.D. Ky. May 8 2020)
 - On remand from the Sixth Circuit, Judge Hale GRANTED plaintiff’s motion for TRO on Gov. Beshear from enforcing the ban on mass gatherings as to in-person services
9. Tabernacle Baptist Church v. Beshear, 459 F. Supp. 3d 847 (E.D. Ky. May 8, 2020)
 - Judge Van Tatenhove (recognizing the competing/contradictory orders among the district courts) GRANTED plaintiff’s motion for TRO to enjoin Gov. Beshear’s order restricting mass gatherings as to in-person church services.
 - “Public officials, including the defendants in this case, make minute by minute decisions with the best of intentions and the goal of saving the health and lives of our citizens.” *Id.* at 850.

10. Secretary amended the Mass Gatherings Order by removing "in-person services of faith-based organizations" from the prohibition on mass gatherings, so long as the services follow the guidelines for places of worship and social distancing guidance.
 - <https://www.lcdhd.org/wp-content/uploads/2020/05/Mass-Gathering-Order.pdf>
11. Roberts v. Neace, 958 F.3d 409 (6th Cir. May 9, 2020)
 - Sixth Circuit GRANTED Plaintiff's motion for injunction pending appeal on Gov. Beshear's orders prohibiting in-person services.
12. S. Bay United Pentecostal Church v. Newsom, 140 S. Ct. 1613 (May 29, 2020)
 - U.S. Supreme Court DENIED plaintiff's application for injunctive relief on California Gov. Newsom's executive orders restricting public gatherings including church services
 - C.J. Roberts, concurring, emphasized importance of district courts deferring to governmental action
13. Elim Romanian Pentecostal Church v. Pritzker, 140 S. Ct. 2823 (May 29, 2020)
 - U.S. Supreme Court DENIED plaintiff's application for injunction on Illinois Governor's restriction on mass gatherings since the Illinois Dept. of Health had issued new guidelines on May 28, which effectively removed limitations on religious gatherings.
14. Ramsek v. Beshear, 468 F. Supp. 3d 904 (E.D. Ky. June 24, 2020)
 - In GRANTING plaintiff's TRO on Gov. Beshear's mass gatherings order as to protests, Judge Van Tatenhove dismissed C.J. Roberts' concurring opinion in *S. Bay*, finding that it was not binding precedent.
 - The Court found that although the Governor had a significant interest in protecting Kentuckians from Covid-19, the order was not narrowly tailored because it served as a blanket ban on mass gatherings. *Id.* at 918. Because the order was not narrowly tailored, the Court granted plaintiffs' preliminary injunction. *Id.* at 921.
 - "Governor Beshear may disagree with the content of the protestors' message, but it cannot be said it was enacted with the intent to suppress Plaintiffs' political point of view. Nor has it been used to stifle the political expression of others." *Id.* at 916.
15. Calvary Chapel Dayton Valley v. Sisolak, 140 S. Ct. 2603 (July 24, 2020)
 - U.S. Supreme Court DENIED plaintiff's application of injunctive relief as to Nevada Governor's reopening directive which limited indoor worship services to "no more than fifty persons" but allowed casinos to reopen.
16. Maryville Baptist Church, Inc. v. Beshear, 977 F.3d 561 (6th Cir. Oct. 19, 2020)
 - Sixth Circuit DISMISSED Maryville Baptist church's appeal as moot, finding that the church may not appeal a decision that benefits it in order to obtain a court of appeals ruling that affirms an unchallenged decision (i.e., Beshear not appealing the district court's injunction)
17. Ky. Exec. Order 2020-968 (Nov. 18, 2020)
 - Limits all indoor social gatherings "to a maximum of two (2) households and a maximum of eight (8) people."
 - The order defines household as "individuals living together in the same home."
 - Expired on December 13, 2020.

- [https://governor.ky.gov/attachments/20201118 Executive-Order 2020-968 State-of-Emergency.pdf](https://governor.ky.gov/attachments/20201118%20Executive-Order%2020-968%20State-of-Emergency.pdf)

18. Ky. Exec. Order 2020-969 (Nov. 18, 2020)

- (1) requires all public and private K-12 schools in the state to cease in-person instruction and transition to virtual learning starting on November 23, 2020;
- (2) requires all middle and high schools to remain virtual until at least January 4, 2021; &
- (3) allows some elementary schools to resume in-person instruction between December 7, 2020, and January 4, 2021, but only if the school is not located in a "Red Zone County" and follows all expectations and best practices.
- [https://governor.ky.gov/attachments/20201118 Executive-Order 2020-969 State-of-Emergency.pdf](https://governor.ky.gov/attachments/20201118%20Executive-Order%2020-969%20State-of-Emergency.pdf)

19. *Danville Christian Acad. v. Beshear*, 2020 U.S. Dist. LEXIS 221366 (E.D. Ky. Nov. 25, 2020)

- The district court GRANTED plaintiffs' motion for preliminary injunctive relief and enjoined the Governor from enforcing Ky. Exec. Order 2020-969 against any private, religious school in the Commonwealth that otherwise adheres to Commonwealth's public health measures.

20. *Ky. ex rel. Danville Christian Acad., Inc. v. Beshear*, 981 F.3d 505 (6th Cir. Nov. 29, 2020)

- The Sixth Circuit GRANTED Gov. Beshear's motion to stay the district court's preliminary injunction on Ky. Exec. Order 2020-969.
- The Sixth Circuit agreed with the district court that Danville Christian was unlikely to succeed on the merits with respect to its Establishment Clause claim, but the Sixth Circuit also found that Danville Christian was unlikely to succeed on its Free Exercise claim and granted a motion to stay the preliminary injunction, pending appeal.
- Specifically, the Sixth Circuit held that the order in question was neutral and of general applicability and therefore did not need to be justified by a compelling government interest.

21. *Pleasant View Baptist Church v. Saddler*, 2020 U.S. Dist. LEXIS 233261 (E.D. Ky. Dec. 11, 2020)

- Judge Van Tatenhove DENIED plaintiff's MPI on Ky. Exec. Order 2020-968, finding that at that time, an injunction was not supported given the Sixth Circuit's ruling in *Ky. ex rel. Danville Christian Academy*, and the fact that the Supreme Court had yet to give its decision on the matter.
- Also DENIED plaintiff's MPI on Ky. Exec. Order 2020-969, finding that the Governor can limit social gatherings in homes since the limitations were both narrow and temporary.
- "It is clear that neither the plain language nor the intent of the executive order is to split up families that have more than eight members and the Court finds that it is not likely that Plaintiffs would succeed on their violation of the right to live together as a family claim." *Id.* at *23.

22. Danville Christian Acad., Inc. v. Beshear, 141 S. Ct. 527 (Dec. 17, 2020)

- U.S. Supreme Court DENIED plaintiffs' application to vacate Sixth Circuit's stay, finding that the timing and the impending expiration of Ky. Exec. Order 2020-969 did not warrant any action.
- Justices Alito and Gorsuch, dissenting, would have chosen to vacate the Sixth Circuit's stay and then remanded the matter back to the Sixth Circuit based on the reasoning that the issue was ultimately still unresolved since the Governor explicitly stated that he reserved the right to issue similar orders in the future. *Id.* at 530.

23. Pleasant View Baptist Church v. Beshear, 2020 U.S. App. LEXIS 40077 (6th Cir. Dec. 21, 2020)

- The Sixth Circuit DENIED plaintiffs' MPI pending appeal as to Ky. Exec. Order 2020-969 due to the U.S. Supreme Court's decision in *Danville*, and that the order was set to expire soon.
- The Sixth Circuit also found the Plaintiffs' challenge to Ky. Exec. Order 2020-968 to be moot because the social-gathering ban had expired, the Commonwealth of Kentucky had not reinstated it, and plaintiffs' reliance on the Cuomo decision was unavailing.