

COMMONWEALTH OF KENTUCKY  
McCRACKEN CIRCUIT COURT  
DIVISION NO. I  
CASE NO. 23-ci-00071



DAVID GUESS

APPELLANT/PLAINTIFF

v.

THE CITY OF PADUCAH, KENTUCKY

Serve: Mayor George Bray  
300 South 5th Street  
Paducah, Kentucky 42003

MAYOR GEORGE BRAY

*in his official and individual capacities*

Serve: 1020 Lone Oak Road  
Paducah, Kentucky 42003

COMMISSIONER SANDRA WILSON

*in her official and individual capacities*

Serve: 719 Whitney Drive  
Paducah, Kentucky 42001

COMMISSIONER RAYNARLDO HENDERSON

*in his official and individual capacities*

Serve: 650 North 24th Street  
Paducah, Kentucky 42001

COMMISSIONER ROBERT SMITH

*in his official and individual capacities*

Serve: 285 Cedar Lane  
Paducah, Kentucky 42001

COMMISSIONER JOHN/JANE DOE

*in his/her official and individual capacities*

GOVERNOR ANDY BESHEAR

APPELLEES/DEFENDANTS

*in his official capacity*

Serve: 700 Capitol Avenue, Suite 100  
Frankfort, Kentucky 40601  
Servethecommonwealth@ky.gov

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APPEAL PURSUANT TO KRS 83A.040(9)

AND

COMPLAINT FOR DAMAGES AND PROSPECTIVE RELIEF

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Comes now the Appellant/Plaintiff, David Guess (“Plaintiff” or “Mr. Guess”), by counsel, and states as follows for his Appeal Pursuant to KRS 83A.040(9) and Complaint for Damages and Prospective Relief.

### **INTRODUCTION AND BACKGROUND**

(1) On December 15, 2022, the Board of Commissioners (the “Board”) of the City of Paducah, Kentucky charged Mr. Guess with a single count of “misconduct pursuant to KRS 83A.040(9).” *See* Resolution of Board § 3 (Dec. 15, 2022).

(2) On January 17, 2023, the Board held a public hearing pursuant to KRS 83A.040(9) and tried Mr. Guess on the single charge before the Mayor and the remaining Commissioners.

(3) At the conclusion of the public hearing, the Mayor and the Commissioners voted to remove Mr. Guess from the office he held as a Commissioner for the City of Paducah.

(4) KRS 83A.040(9) provides Mr. Guess a “right to appeal to the Circuit Court of the county and the appeal shall be on the record.”

(5) In this action, Mr. Guess appeals the Board’s decision to remove him from the office he held as a Commissioner of the City of Paducah, and also brings claims for damages and prospective relief arising from that decision as detailed below.

### **THE PARTIES AND SERVICE**

(6) The Appellant/Plaintiff, David Guess, is a citizen of the Commonwealth of Kentucky and is a resident within the city limits of the City of Paducah, which lies entirely within McCracken County, Kentucky.

(7) The Appellee/Defendant, City of Paducah, Kentucky (the “City”), is a

municipality located wholly within the Commonwealth of Kentucky and McCracken County, Kentucky, is organized under the “City Manager Plan” form of government, and has the “capacity to sue and be sued.” *See* KRS 82.081; Paducah Ordinances § 2-31. At all times relevant hereto, the City was acting in its official capacity and can be found liable to Mr. Guess for damages and prospective relief under a theory of municipal liability. The City should be served by serving a copy of this Appeal, Complaint, and Summons to Mayor George Bray, 300 South 5th Street, Paducah, Kentucky 42003.

(8) The Appellee/Defendant, Mayor George Bray (“Mayor Bray”), was, at all times relevant to this action, the Mayor of the City. At all times relevant to this action, he was acting in both his official and individual capacities and under color of law. Mayor Bray should be served by serving a copy of this Appeal, Complaint, and Summons to him at 1020 Lone Oak Road, Paducah, Kentucky 42003.

(9) The Appellee/Defendant, Commissioner Sandra Wilson (“Commissioner Wilson”), was, at all times relevant to this action, a Commissioner of the City. At all times relevant to this action, she was acting in both her official and individual capacities and under color of law. Commissioner Wilson should be served by serving a copy of this Appeal, Complaint, and Summons to her at 719 Whitney Drive, Paducah, Kentucky 42001.

(10) The Appellee/Defendant, Commissioner Raynarldo Henderson (“Commissioner Henderson”), was, at all times relevant to this action, a Commissioner of the City. At all times relevant to this action, he was acting in both his official and individual capacities and under color of law. Commissioner Henderson should be served by serving a copy of this Appeal, Complaint, and Summons to him at 650 North 24th Street, Paducah, Kentucky 42001.

(11) The Appellee/Defendant Commissioner Robert Smith (“Commissioner Smith”), was, at all times relevant to this action, a Commissioner of the City. At all times relevant to this action, he was acting in both his official and individual capacities and under color of law. Commissioner Smith should be served by serving a copy of this Appeal, Complaint, and Summons to him at 285 Cedar Lane, Paducah, Kentucky 42001.

(12) The Appellee/Defendant John/Jane Doe (“Commissioner Doe”) is or will be the individual selected by the City, the Board, and/or the Governor pursuant to KRS 83A.040(4) or KRS 83A.040(5) to fill the position vacated by Mr. Guess following the Board’s removal of him at the public hearing on January 17, 2023. Commissioner Doe is named in a fictitious and placeholder capacity, and Mr. Guess will amend this Appeal and Complaint to specifically and individually name that person as a party hereto if and when such individual is appointed. The actions taken by Commissioner Doe have been taken in both his/her official and individual capacities.

(13) The Appellee/Defendant, Governor Andy Beshear (the “Governor”), is the Governor of the Commonwealth of Kentucky. In the event the City and/or the Board fails to fill (or is restrained or enjoined from filling) the vacancy created by the Board’s removal of Mr. Guess following the public hearing on January 17, 2023, the Governor, acting pursuant to KRS 83A.040(6), may appoint Mr. Guess’s replacement. The Governor is sued in his official capacity. By adding the Governor as a party to this action, Mr. Guess seeks to prohibit the Governor from filling his vacancy in the event that the City does not or is restrained or enjoined from doing so. Pursuant to CR 4.04(6) and KRS 452.005, a copy of this Appeal, Complaint, and Summons should be served on the Governor by serving a copy to 700 Capital Avenue, Suite 100, Frankfort, Kentucky 40601 and by filing electronically

with the Kentucky Attorney General at [servethecommonwealth@ky.gov](mailto:servethecommonwealth@ky.gov).

(14) Because this Appeal and Complaint challenge the constitutionality of KRS 83A.040(9), a copy of this Appeal, Complaint, and Summons should be served on Daniel Cameron, Kentucky Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601 by filing electronically at [servethecommonwealth@ky.gov](mailto:servethecommonwealth@ky.gov). This service is made pursuant to and required by CR 24.03 and KRS 452.005.

### **JURISDICTION AND VENUE**

(15) The Circuit Court of McCracken County has jurisdiction over this matter pursuant to KRS 23A.010 and as a court of general jurisdiction.

(16) The Circuit Court of McCracken County also has jurisdiction over this matter pursuant to KRS 83A.040(9).

(17) Venue of this action is proper in the Circuit Court of McCracken County because the events leading to Mr. Guess's removal from the office of Commissioner for the City and the injuries arising from the deprivation of his constitutional rights occurred in McCracken County. Venue is proper in McCracken County pursuant to KRS 452.460(1).

(18) Venue of this action is also proper in the Circuit Court of McCracken County pursuant to KRS 452.005.

### **FACTS**

(19) On Tuesday, November 3, 2020, Mr. Guess was elected to the office of Commissioner for the City. The term of office for Mr. Guess's election occurring on November 3, 2020, ran from January 1, 2021, through December 31, 2022. Although Mr. Guess has previously served as a Commissioner, this term of office (January 1, 2021, through December 31, 2022) will be referred to herein as Mr. Guess's "First Term" as a

Commissioner.

(20) On Tuesday, November 8, 2022, Mr. Guess was elected to the office of Commissioner for the City. The term of office for Mr. Guess's election occurring on November 8, 2022, was to run from January 1, 2023, through December 31, 2024. This term of office (January 1, 2023, through December 31, 2024) will be referred to herein as Mr. Guess's "Second Term" as a Commissioner.

(21) On November 8, 2022, and beginning at 4:29pm, Mr. Guess exchanged three text messages with Mr. Greg Cherry, the City's Deputy Fire Chief for Fire Prevention. As more fully explained at the public hearing on January 17, 2023, those text messages arose from an Election Day dispute among several of the candidates seeking to be elected as Commissioners. In particular, one candidate, Mr. Dajuan Thomas, was in violation of the City's election sign ordinance. On Election Day, the Mayor and other Commissioners—but not Mr. Guess—asked Mr. Cherry and other City employees to remove Mr. Thomas's signs that violated the City's election sign ordinance.

(22) Mr. Thomas was upset by the removal of his signs and, when speaking with Mr. Cherry and other City employees, accused Commissioner Wilson, Commissioner Smith, and Commissioner Guess of also having election signs at illegal locations. Mr. Thomas accused them of receiving "special treatment" because they were sitting Commissioners (although Commissioner Smith was not a sitting Commissioner at the time).

(23) In reality, neither Commissioner Wilson, Commissioner Guess, nor Commissioner Smith had election signs in illegal locations.

(24) Mr. Thomas's false accusations were relayed by Commissioner Wilson to

Mr. Guess through his wife in the late afternoon of November 8, 2022.

(25) Sometime after learning of these false accusations, and beginning at 4:29pm, Mr. Guess sent Mr. Cherry three text messages.

(26) The first text message from Mr. Guess to Mr. Cherry was “you got dujan [*sic*] under control.” Mr. Cherry immediately responded, “he is mad at you lol.” There was no evidence or testimony presented at the public hearing on January 17, 2023, that Mr. Guess’s first text message to Mr. Cherry or this exchange was overtly racist or even had racist undertones or connotations. In fact, both Mr. Cherry and the City’s Human Resources Director, Ms. Stefanie Wilcox, testified that had this been Mr. Guess’s only text message to Mr. Cherry, the matter would never have resulted in a public hearing on a charge of misconduct pursuant to KRS 83A.040(9).

(27) At 4:39pm, Mr. Guess sent a second text message to Mr. Cherry, which read, “Whitey keeping a black man down.” One minute later, at 4:40pm, Mr. Guess sent his third text message to Mr. Cherry and immediately apologized for the second text message, writing, “Sorry. It just came out. I haven’t said one thing this whole election or any day that I’m alive[.]” Mr. Guess’s third text message (the apology) came before Mr. Cherry saw the second text message sent at 4:39pm. Mr. Cherry did not have an opportunity to respond to the second text message before Mr. Guess apologized for it.

(28) At 4:40pm, Mr. Cherry responded, “No comment lol.”

(29) No other text messages were exchanged between Mr. Guess or Mr. Cherry on Election Day.

(30) At the public hearing on January 17, 2023, Mr. Cherry testified that he was already “off the clock” when this text message exchange occurred, having taken a half-day.



(31) Mr. Cherry testified and admitted that he did not take any action, such as removing any of Mr. Thomas's signs, in response to Mr. Guess's text messages. Mr. Cherry testified and admitted that any signs that were removed on November 8, 2022, had already been removed by the time Mr. Guess contacted him. Mr. Cherry testified that he did not interpret Mr. Guess's text messages as giving him any orders or instructions. Mr. Cherry also testified and admitted that he did not instruct any of his employees to do anything in response to Mr. Guess's text messages. Mr. Cherry testified and admitted that no actions at all were taken as a result of Mr. Guess's text messages.

(32) Sometime after November 8, 2022, Mr. Cherry reported his text message exchange with Mr. Guess to Mr. Cherry's boss, Steve Kyle, the City's Fire Chief. Mr. Cherry and Mr. Kyle then reported the text message exchange to Daron Jordan, the City Manager, which eventually lead to the public hearing of January 17, 2023, and Mr. Guess's removal from office.

(33) In the course of the administrative proceeding that resulted in Mr. Guess's removal from his office of Commissioner, it was learned that beginning around June or July 2022, the City had implemented a so-called "zero tolerance" policy.

(34) In pre-hearing motion practice, the City admitted that the unwritten "zero tolerance" policy did not apply to Mr. Guess, since he was an elected official and not a City employee.

(35) At the public hearing on January 17, 2023, Ms. Wilcox—the City's Human Resources Director—admitted that the so-called "zero tolerance" policy was unwritten and there is not a published list of words or phrases that City employees may be terminated for using.



(36) In testimony and argument at the public hearing on January 17, 2023, the City, its employees, and the Special Prosecutor hired to pursue the charge against Mr. Guess, argued and admitted that the unwritten “zero tolerance” policy did not apply to Mr. Guess as a Commissioner.

(37) Yet, the City still allowed admission of this unwritten “policy” into evidence and argument.

(38) It was reversible error for the City to permit, admit evidence of, and rely upon the unwritten “zero tolerance” policy at the public hearing on January 17, 2023.

(39) The text message exchange described above and the so-called “zero tolerance” policy formed the basis of the City’s charge of “misconduct” against Mr. Guess and pursuant to KRS 83A.040(9).

(40) On January 17, 2023, Mr. Guess was tried before the Board on the single count of misconduct.

(41) Following the hearing, the Board (comprised of Mayor Bray, Commissioner Wilson, Commissioner Henderson, and Commissioner Smith) voted to remove Mr. Guess from his office as a Commissioner of the City.

### **BASIS FOR APPEAL**

(42) Each and every Paragraph of this Appeal and Complaint set forth above is incorporated by reference as if fully restated herein.

(43) On January 11, 2023, and as part of pre-hearing motion practice in the administrative setting, Mr. Guess filed a Motion to Dismiss the single charge of misconduct against him.

(44) Prior to the public hearing on January 17, 2023, the Board did not rule on

that motion. Rather, the Board summarily denied it and later explained that, among other reasons, it could not rule on the Motion to Dismiss because the Board was not comprised of lawyers.

(45) Mr. Guess believes that the charges against him should have been entirely dismissed and no public hearing should have been held because:

- (a) The Board violated his due process rights by not providing him sufficient notice of the charge against him;
- (b) The so-called “conduct” of sending a single controversial text message to Mr. Cherry at 4:39pm was not “misconduct” within the meaning of KRS 83A.040(9) and was not “in the performance of the duties of his office” within the meaning of KRS 83A.040(9) or the “power and duties” of the board of commissioners within the meaning of KRS 83A.150;
- (c) Use of the term “misconduct” in KRS 83A.040(9) is vague and undefined, thereby rendering the statute unconstitutionally vague;
- (d) The entire matter was moot and no public hearing should have ever been held because the alleged “misconduct” at issue occurred during Mr. Guess’s First Term as a Commissioner. The City and the Board only had the power to remove him from the First Term as a result of “misconduct” that occurred during that term. The City and the Board had no statutory authority to remove Mr. Guess from the Second Term for conduct that occurred in the First Term, which is exactly what occurred.

(e) Removal of Mr. Guess from his elected office for the alleged “misconduct” violated Mr. Guess’s First Amendment rights.

(46) In addition to the fact that the matter should have been dismissed and no public hearing should have been held in the first place, the Board’s decision to remove him from his office of Commissioner at the conclusion of the public hearing on January 17, 2023, was arbitrary and capricious and was not supported by substantial evidence. Stated another way, even if a hearing could properly be held (something Mr. Guess disputes), the evidence presented at the hearing was insufficient to convict him on the single count of “misconduct in the performance of the duties of his office.” The evidence presented was insufficient to reach that conclusion, and the Board was permitted to introduce and consider evidence that was wholly irrelevant to the proceeding and the removal decision. Doing so was prejudicial to Mr. Guess, and the Board’s decision against him was arbitrary and capricious and based on an improper motive.

### **REQUESTED RELIEF ON APPEAL**

(47) Each and every Paragraph of this Appeal and Complaint set forth above is incorporated by reference as if fully restated herein.

(48) Mr. Guess asks the Court to set a briefing schedule on his Appeal so that the parties may fully brief and then argue this Appeal before the Court. Mr. Guess requests that this schedule give the parties sufficient time to obtain the transcript of the public hearing on January 17, 2023.

(49) Mr. Guess asks the Court to place this Appeal on track for an “expedited” resolution similar to those used for challenges to a candidates bona fides under KRS 118.176.

(50) Mr. Guess asks that, during the pendency of this Appeal, the judgment of the City removing him from office being stayed in accordance with Kentucky Rule of Appellate Procedure (“RAP”) 21 and RAP 63. Mr. Guess requests that the Court hold a hearing to determine the amount and sufficiency of any bond he may be required to post under RAP 21 and RAP 63, which he requests to be waived.

(51) Mr. Guess asks that the Court grant him relief under CR 65 in the form of either a restraining order and/or injunction that (1) prohibits the City and the other Defendants in this lawsuit from filling his vacancy on the Board and (2) reinstates Mr. Guess on the Board during the pendency of this Appeal.

(52) In accordance with CR 10.03, Mr. Guess’s Motion for Restraining Order, Motion for Preliminary Injunction, and Motion for RAP 21 Relief—which are being filed contemporaneously with this Appeal and Complaint—are incorporated herein by reference, and, as shown by the verification included below, Mr. Guess states that those Motions and this Appeal and Complaint are true and correct to the best of his knowledge, information, and belief. Mr. Guess states and represents that, as shown in the Motions, his rights have been and will be violated by the Appellees/Defendants herein and that he has and will continue to suffer immediate and irreparable injury, loss, and damages.

(53) Contemporaneously with this Appeal and Complaint, Mr. Guess is filing Motions for relief under CR 65.03, CR 65.04, RAP 21, and RAP 63.

(54) Ultimately, and for this Appeal, Mr. Guess respectfully requests that the Court find that the City and the Commissioners had no power or authority to remove him from his office of Commissioner, that the City and the Commissioners decision to remove him was arbitrary and capricious and not based on substantial evidence, and that Mr. Guess

should be reinstated and restored to his office of Commissioner.

**COMPLAINT FOR DAMAGES AND PROSPECTIVE RELIEF**

(55) Each and every Paragraph of this Appeal and Complaint set forth above is incorporated by reference as if fully restated herein.

**COUNT I – MUNICIPAL LIABILITY (42 U.S.C. § 1983)**

(56) At all times relevant to this Appeal and Complaint, the City of Paducah was a “person” for the purposes of 42 U.S.C. § 1983.

(57) As a municipality, the City is mandated to comply with the First and Fourteenth Amendments to the U.S. Constitution.

(58) At all times relevant to this Appeal and Complaint, the City was acting under color of law.

(59) As shown in the pre-hearing motions and the testimony and evidence presented by the City at the public hearing on January 17, 2023, the City has developed, created, implemented, and enforced an unwritten “zero tolerance” policy concerning the use of language with racial connotations in the workplace, which is applicable to City employees.

(60) As admitted by the City, the “zero tolerance” policy does not apply to Mr. Guess, as a an elected official and Commissioner.

(61) Despite its inapplicability, the City used the unwritten “zero tolerance” policy as the basis for removing Mr. Guess from the office of Commissioner based on the text messages he exchanged with Mr. Cherry on November 8, 2022.

(62) There is an affirmative link between Mr. Guess’s removal from office of Commissioner and the City’s unwritten “zero tolerance” policy.

(63) The unwritten “zero tolerance” policy was the moving force behind the City’s removal from Mr. Guess from his office of Commissioner, which violated his First Amendment rights to freedom of speech.

(64) Application of the “zero tolerance” policy to Mr. Guess as a result of the text messages exchange with Mr. Cherry violated Mr. Guess’s First Amendment rights and ability to engage in free speech.

(65) Application of the City’s “zero tolerance” policy to Mr. Guess resulted in the City, its elected officials, and its employees retaliating against Mr. Guess as a result of him using, engaging in, and exercising his First Amendment rights to freedom of speech.

(66) The City’s application of the “zero tolerance” policy to Mr. Guess violated his First Amendment rights to freedom of speech.

(67) The First Amendment prohibits the City from retaliating against Mr. Guess after the fact for engaging in protected speech, and Mr. Guess’s speech contained in the text messages with Mr. Cherry on November 8, 2022, was speech protected by the First Amendment.

(68) The City unlawfully retaliated against Mr. Guess for exercising his First Amendment rights to freedom of speech by removing him from his office of Commissioner based on the unlawful and inappropriate application of the unwritten “zero tolerance” policy.

(69) The City has deprived Mr. Guess of his right to engage in protected speech in violation of his First Amendment rights to freedom of speech as applied to municipalities under the Fourteenth Amendment to the U.S. Constitution and 42 U.S. § 1983.

(70) The City’s unlawful restriction on Mr. Guess’s free speech rights is content-

and viewpoint-based, in violation of his First Amendment rights to freedom of speech.

(71) The City's true purpose of adopting the unwritten "zero tolerance" policy was to silence the viewpoint expressed by Mr. Guess's speech. Consequently, the true purpose of adopting the resolution was to silence disfavored viewpoints in violation of his First Amendment rights to freedom of speech.

(72) Mr. Guess's speech on November 8, 2022, was on a matter of public concern, namely, and among other things that may be proven in discovery, the violation of the City's election sign ordinances by other candidates.

(73) The City knew, should have known, and/or it was obvious that application of the "zero tolerance" policy to Mr. Guess created the circumstances in which Mr. Guess's First Amendment rights to freedom of speech would be, could have been, and were violated.

(74) The City disregarded the known and/or obvious risk that application of the unwritten "zero tolerance" policy would violate Mr. Guess's First Amendment rights to freedom of speech.

(75) The City was deliberately indifferent to the known or obvious consequences of applying the unwritten "zero tolerance" policy to Mr. Guess.

(76) The City encouraged, ratified, and/or approved of the acts and/or omissions alleged herein, and knew, and/or it was obvious that such conduct was unjustified and would result in the violation of Mr. Guess's First Amendment rights to freedom of speech.

(77) As a direct and proximate result of application of the aforementioned policy to Mr. Guess, Mr. Guess suffered injuries and damages as alleged herein, all in excess of the jurisdictional limits of this Court.



(78) As a direct and proximate result of the application of the aforementioned policy to Mr. Guess, Mr. Guess is entitled to prospective relief, including a restraining order and/or injunction, which will restore him to his office of Commissioner either at the conclusion of this litigation and/or during the pendency of this Appeal and Complaint.

**COUNT II – INDIVIDUAL LIABILITY (42 U.S.C. § 1983)**

(79) At all times relevant to this Appeal and Complaint, Mayor Bray, Commissioner Wilson, Commissioner Henderson, Commissioner Smith, and Commissioner Doe were each, acting individually, a “person” for the purposes of 42 U.S.C. § 1983.

(80) At all times relevant to this Appeal and Complaint, Mayor Bray, Commissioner Wilson, Commissioner Henderson, Commissioner Smith, and Commissioner Doe were each, acting individually, acting under color of law for the purposes of 42 U.S.C. § 1983.

(81) Mayor Bray, Commissioner Wilson, Commissioner Henderson, and Commissioner Smith were, at all times relevant to this Appeal and Complaint, mandated to comply with the First and Fourteenth Amendments to the U.S. Constitution.

(82) At all times relevant to this Appeal and Complaint, Mr. Guess’s speech through the text messages exchanged with Mr. Cherry on November 8, 2022, was protected conduct and protected speech.

(83) On January 17, 2023, Mayor Bray, Commissioner Wilson, Commissioner Henderson, and Commissioner Smith each, acting individually, deprived Mr. Guess of his right to engage in protected speech in violation of his First Amendment rights of freedom of speech by removing him from his office of Commissioner because of his text messages

exchanged with Mr. Cherry on November 8, 2022, and because of the unlawful application of the unwritten “zero tolerance” policy to him.

(84) On January 17, 2023, Mayor Bray, Commissioner Wilson, Commissioner Henderson, and Commissioner Smith each, acting individually, retaliated against Mr. Guess for engaging in protected speech in violation of his First Amendment rights of freedom of speech by removing him from his office of Commissioner because of his text messages exchanged with Mr. Cherry on November 8, 2022, and because of the unlawful application of the unwritten “zero tolerance” policy to him.

(85) As a direct and proximate result of application of the aforementioned actions by Mayor Bray, Commissioner Wilson, Commissioner Henderson, and Commissioner Smith, Mr. Guess suffered injuries and damages as alleged herein, all in excess of the jurisdictional limits of this Court.

(86) As a direct and proximate result of the application of the aforementioned, unwritten “zero tolerance” policy to Mr. Guess and the retaliation against him by Mayor Bray, Commissioner Wilson, Commissioner Henderson, and Commissioner Smith, Mr. Guess is entitled to prospective relief, including a restraining order and/or injunction, which will restore him to his office of Commissioner either at the conclusion of this litigation and/or during the pendency of this Appeal and Complaint.

#### **PRAYER FOR RELIEF**

WHEREFORE, and for all of the foregoing reasons and those to be shown in the course of these proceedings and developed in discovery, Mr. Guess prays for and requests the following relief:

(1) That the Order of the Board of Commissioners of the City of Paducah dated

January 17, 2023, removing Mr. Guess from his office of Commissioner be reversed and Mr. Guess be restored to his office of Commissioner;

(2) That the enforcement of the Order of the Board of Commissioners of the City of Paducah dated January, 17, 2023, removing Mr. Guess from his office of Commissioner be stayed during the pendency of this Appeal and Complaint;

(3) That, during the pendency of this Appeal and Complaint, Mr. Guess be restored to his office of Commissioner;

(4) That any individual selected by the Board and/or the Governor, including Commissioner Doe, to assume and fill the position created by Mr. Guess's removal be removed from that position and/or restrained and/or enjoined from filling it;

(5) That the Board and/or the Governor be restrained and/or enjoined from filling the vacancy created by the Board's unlawful removal of Mr. Guess from his office of Commissioner;

(6) That Mr. Guess be awarded compensatory damages in an amount according to proof to be presented at trial, but in excess of the jurisdictional limits of this Court, as a result of the violation of his constitutional rights in accordance with 42 U.S.C. § 1983.

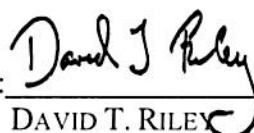
(7) That Mr. Guess be awarded all of his fees, costs, and expenses incurred herein, including reasonable attorneys' fees, for the violation of his constitutional rights in accordance with 42 U.S.C. § 1988.

(8) For trial by jury on all triable issues but especially those involving a violation of Mr. Guess's constitutional rights; and

(9) For all other relief to which Mr. Guess may be entitled.

Respectfully submitted,

GRUMLEY, RILEY & STEWART, P.S.C.

By:   
\_\_\_\_\_  
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**VERIFICATION**


I, David Guess, state that I have read the foregoing Appeal Pursuant to KRS 83A.040(9) and Complaint for Damages and Prospective Relief and, after first being duly sworn, do hereby state that the facts and averments and statements contained therein are true and correct to the best of my knowledge, information, and belief.



David Guess

COMMONWEALTH OF KENTUCKY    )  
  )  
COUNTY OF McCRACKEN        )

Subscribed, sworn to, and acknowledged before me by David Guess, on this the 23rd day of January, 2023.



Notary Public, State at Large  
My commission expires: 03/15/2026  
Notary Public No.: KYNP47093

## CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was sent to the following in the manner described below on this the 23rd day of January 2023:

**Hon. Stacy Blankenship**  
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*Counsel for the City of Paducah*

**Ms. Lindsay Parish**  
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*Clerk of the City of Paducah*

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**Governor Andy Beshear**  
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*Governor of the Commonwealth of Kentucky*

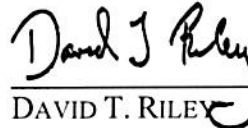
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*General Counsel, Office of the Governor*

  
\_\_\_\_\_  
DAVID T. RILEY