

COMMONWEALTH OF KENTUCKY
SUPREME COURT
CASE NO. 2015-SC-000144

MARY E. MCCANN INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS SIMILARLY SITUATED APPELLANTS

v. On Discretionary Review from the Kentucky Court of Appeals
Case No. 2014-CA-000392

Appeal from Jefferson Circuit Court
Case No. 10-CI-001130

THE SULLIVAN UNIVERSITY SYSTEM, INC.
D/B/A SULLIVAN UNIVERSITY COLLEGE OF
PHARMACY, et al. APPELLEES

**AMICI CURIAE BRIEF OF KENTUCKY JUSTICE ASSOCIATION;
KENTUCKY CHAPTER OF AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS; KENTUCKY STATE
BUILDING AND CONSTRUCTION TRADES COUNCIL; RIVER CITY
FRATERNAL ORDER OF POLICE LODGE 614, INC.; TEAMSTERS LOCAL
783; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA; AND UNITED
STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL
UNION IN SUPPORT OF APPELLANTS**

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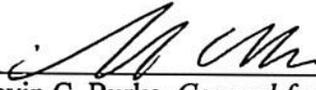
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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February, 2016, ten (10) originals of this brief and the \$150 filing fee were served via Federal Express upon Susan Stokley Clary, Clerk of the Supreme Court, State Capitol, Room 209, 700 Capitol Ave., Frankfort, KY 40601, with one (1) copy of the brief served upon: Sam Givens, Clerk of the Kentucky Court of Appeals, 360 Democrat Dr., Frankfort, KY 40601; Hon. Olu Stevens, Judge, Jefferson Circuit Court, 700 W. Jefferson St., Louisville, KY 40202; Grover C. Potts, Wyatt Tarrant & Combs, LLP, 500 W. Jefferson St., Ste. 2800, Louisville, KY 40202; Theodore W. Walton, Garry Adams, Clay Daniel Walton & Adams PLC, Meidinger Tower, Ste 101, 462 S. Fourth Street, Louisville, KY 40202.



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I. PURPOSE AND INTEREST OF AMICUS CURIAE

The following *amici curiae* hereby file this joint brief in support of the position of the Appellant:

Kentucky Justice Association (“KJA”), formerly Kentucky Academy of Trial Attorneys, is a non-profit organization founded in 1954 with over 1400 members dedicated to protecting the health, safety, and welfare of all Kentuckians, including Kentucky’s working men and women, and preserving every citizen’s access to the courts and right to trial by jury.

Kentucky Chapter of American Federation of Labor and Congress of Industrial Organizations (“Kentucky AFL-CIO”) and Kentucky State Building and Construction Trades Council (“Kentucky Building Trades Council”) are unincorporated federations of labor unions which represent employees working in Kentucky. Kentucky AFL-CIO is comprised of over 50 labor unions which together represent the interests of over 100,000 Kentucky working men and women who are members of unions. Kentucky Building Trades Council is comprised of 15 labor unions which together represent in excess of 35,000 persons working in the building and construction trades throughout Kentucky.

River City Fraternal Order of Police Lodge 614, Inc. (“River City FOP”) is the collective bargaining representative of Louisville Metro police officers, and has a membership of roughly 2,300 active and retired officers.

Teamsters Local 783 (“Teamsters”) represents approximately 9,000 Kentucky workers in a variety of industries, including public employment.

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (“UAW”) is an international labor union that represents

approximately 13,000 workers in Kentucky who perform work for 23 different employers.

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“United Steelworkers”) is an international labor organization whose chartered local unions represent workers in 73 different bargaining units in Kentucky and has a Kentucky membership of approximately 17,700 members.

This case is of substantial interest to *amici curiae* and the working men and women they represent. *Amici curiae* share a common interest in advocating for Kentucky working people and protecting the rights of Kentucky employees, including their right to be paid fairly and in accordance with KRS 337.385(2).

If the opinion of the Court of Appeals is affirmed, courts across the state will be barred from ever utilizing Kentucky Rule of Civil Procedure (CR) 23 in wage and hour actions in the future—no matter how efficient and judicially economical it may be—to the detriment of the courts and Kentucky workers.

This Court has recognized the important public policies promoted by CR 23 class actions. The Court of Appeals’ opinion in this case and the unpublished opinion in *Toyota Motor Mfg., Kentucky, Inc. v. Kelley*, 2013 WL 6046079 (Ky. App., Nov. 15, 2013) are inconsistent with public policy. More than that, the opinions are not supported by the Kentucky Constitution, the Kentucky Rules of Civil Procedure, or the plain language of KRS 337.385(2). The reasoning of the Court of Appeals, if adopted, would place other statutory causes of action at risk of similar misinterpretation. For all these

reasons, *amici curiae* request that this Court reverse the Court of Appeals and remand the case to Jefferson Circuit Court.

II. CLASS ACTIONS SERVE PUBLIC POLICY

A “class action” is a court-created joinder device which authorizes “a representative with typical claims to sue on behalf of, and stand in judgment for,” a group of similarly situated litigants. 1 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 1.1 at 2 (4th ed. 2002). This “invention of equity,” see *Hansberry v. Lee*, 311 U.S. 32, 41 (1940), “saves the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion under Rule 23.” *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 155 (1982) (internal citation omitted).

“Class actions serve an important function in our system of civil justice.” *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99 (1981). According to the United States Supreme Court, the “principal purpose” of class actions is “the efficiency and economy of litigation.” *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 553 (1974). Other purposes include: the protection of the defendant from inconsistent obligations, the protection of the interests of absentees, the provision of a convenient and economical means of disposing of similar lawsuits, and the facilitation of the spreading of litigation costs among numerous litigants with similar claims. See *U.S. Parole Comm’n v. Geraghty*, 445 U.S. 338, 402–03 (1980). Kentucky courts, too, recognize the important purposes served by class actions. See *Revenue Cabinet v. St. Ledger*, 955 S.W.2d 539, 544 (Ky. App. 1997) (finding it against “the public interest” to discourage “class action suits which successfully vindicate the

rights of many individuals”); *Schnuerle v. Insight Communications Co., L.P.*, 376 S.W.3d 561, 569 (Ky. 2012) (noting the “important purpose served by class actions”).

III. THE OPINION OF THE COURT OF APPEALS IS CONTRARY TO PUBLIC POLICY

The Court of Appeals’ opinion advances none of the previously mentioned public policies. On the contrary, if the opinion is affirmed, courts in this state will be *prohibited* from ever joining KRS 337.385(2) wage and hour claims brought by workers—no matter how closely the claims are related—all at odds with the primary purpose of class actions: “efficiency and economy of litigation.” Similarly, without class actions, there will be no way to protect defendant-employers from inconsistent obligations, or protect the interests of absentees, or facilitate the spread of litigation costs among numerous litigants with similar claims.

Nothing in KRS 337.385(2) displaces the public policy favoring class actions. The relevant statutory language provides:

If, in any action commenced to recover such unpaid wages or liquidated damages, the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he or she had reasonable grounds for believing that his or her act or omission was not a violation of KRS 337.020 to 337.285, the court may, in its sound discretion, award no liquidated damages, or award any amount thereof not to exceed the amount specified in this section. Any agreement between such employee and the employer to work for less than the applicable wage rate shall be no defense to such action. Such action may be maintained in any court of competent jurisdiction by any one (1) or more employees for and in behalf of himself, herself, or themselves.

KRS 337.385(2).

Nonetheless, the Court of Appeals, in adopting the arguments advanced by Appellees in this case and *Kelley* held that the last sentence of KRS 337.385(2) “provides a clear expression of intent that class actions are not permitted.” See Court of Appeals

Opinion, p. 8. The Court of Appeals cited nothing in KRS 337.385(2) in direct conflict with CR 23. Appellees conceded as much in their Court of Appeals brief: “*KRS 337.385 does not state that class actions to recover unpaid wages cannot be filed.*” See Appellees’ Court of Appeals Brief, p. 7 fn 10 (emphasis added).

Instead, the logic of the Court of Appeals goes like this: KRS 337.385(2) compares favorably with the Fair Labor Standards Act (FLSA). The FLSA includes the words “other employees similarly situated.” KRS 337.385(2) omits those words. Therefore, KRS 337.385(2) prohibits class actions. See Court of Appeals Opinion, pp. 8-9. That logic does not hold up under scrutiny.

IV. THE KENTUCKY RULES OF CIVIL PROCEDURE, INCLUSIVE OF CR 23, APPLY TO WAGE AND HOUR CASES

A. The Kentucky Constitution and CR 1 permit class actions.

The power to prescribe and enforce court rules lies exclusively with the Courts ever since the adoption of the Judicial Article in 1976:

The Supreme Court shall have the power to prescribe rules governing its appellate jurisdiction, rules for the appointment of commissioners and other court personnel, and rules of practice and procedure for the Court of Justice. The Supreme Court shall, by rule, govern admission to the bar and the discipline of members of the bar.

Ky. Const. § 116.

Kentucky’s rule-making process is very different from the federal system. Pursuant to the Rules Enabling Act, the federal rules are subject to final approval by Congress. In contrast, Section 116 in the Kentucky Constitution *prohibits* the legislature from impinging on the judiciary’s adoption of its own rules of procedure. Section 116, together with Kentucky’s express separation-of-powers provisions in Sections 27 and 28, create a unique state constitutional framework. See *O’Bryan v. Hedgespeth*, 892 S.W.2d

571, 578 (Ky. 1995) (holding KRS 411.188 unconstitutional in violation of Sections 27, 28, and 116). As this Court recently recognized: “perhaps no state forming part of the ... United States has a constitution whose language more emphatically separates and perpetuates what might be termed the American tripod form of government than does ... [the Kentucky] Constitution.” *Beshear v. Haydon Bridge Co., Inc.*, 416 S.W.3d 280, 295 (Ky. 2013).

Kentucky Rule of Civil Procedure 1(2) provides:

These Rules govern procedure and practice in all actions of a civil nature in the Court of Justice except for special statutory proceedings, in which the procedural requirements of the statute shall prevail over any inconsistent procedures set forth in the Rules.

To avoid CR 1(2) and state constitutional issues, the Court of Appeals concluded that KRS 337.385(2) is a “special statutory proceeding” because KRS 337.385(2) creates a statutory cause of action. See Court of Appeals Opinion, p. 7. But, as this Court recently confirmed, not every statutory cause of action is a “special statutory proceeding.”

In *C.C. v. Cabinet for Health and Family Services*, 330 S.W.3d 83 (Ky. 2011), at issue was whether the civil discovery rules apply to statutory dependency, neglect, and abuse (DNA) proceedings. This Court recognized: (1) the Court has exclusive rule-making authority; (2) the civil rules apply to all civil actions of any kind, and (3) the sole exception is for “special statutory proceeding” listed in CR 1(2). This Court defined “special statutory proceeding” as one that is “***complete within itself having each procedural detail prescribed.***” *Id.* at 87 (emphasis added) (citing *Swift & Co. v. Campbell*, 360 S.W.2d 213, 214 (Ky.1962)). This Court found that “the procedures for DNA actions are laid out in detail in KRS Chapters 610 and 620” and are therefore

“special statutory proceedings.” *Id.* (emphasis added). But that did not end the analysis. The civil rules still apply to “special statutory proceedings” under CR 1(2) so long as the statutory procedural details do not “*conflict.*” *C.C.*, 330 S.W.3d at 88 (emphasis added). Therefore, the civil discovery rules still applied in *C.C.* because the DNA procedures did not expressly conflict with the civil rules.

KRS 337.385(2) creates a cause of action “of a civil nature.” So the civil rules must apply consistent with CR 1(2) and the Kentucky Constitution. The next issue is whether KRS 337.385(2) is a “special statutory proceeding.” Nothing in KRS 337.385(2) is “complete within itself having each procedural detail prescribed” like DNA actions in *C.C.*, *supra*. In fact, KRS 337.385(2) fails to “detail” any procedure at all after the action is “commenced” or “maintained.” Moreover, the last sentence of KRS 337.385(2) is permissive (i.e. “*may*”) – not mandatory. *See* KRS 446.010(26) (“‘May’ is permissive”). KRS 337.385 therefore is not “complete within itself.” Even if KRS 337.385(2) could be labelled a “special statutory proceeding,” the permissive language “*may*” simply does not create the type of “conflict” sufficient to displace the civil rules – at least not the type of conflict envisioned in *C.C.*

The Court of Appeals failed to discuss or even cite *C.C.* in this case or in *Toyota Motor Mfg., Kentucky, Inc. v. Kelley*, 2013 WL 6046079 (Ky. App., Nov. 15, 2013). Neither opinion considered the actual meaning of “special statutory proceeding” as defined by this Court in the 2011. While CR 1(2) and the analysis in *C.C.*, *supra* are dispositive, nothing in the plain language, history, or context of KRS 337.385 suggest KRS 337.385 is “inconsistent” with the civil rules or CR 23.

B. The plain language of KRS 337.385 is compatible with CR 23.

In *Gateway Construction Co. v. Wallbaum*, 356 S.W.2d 247 (Ky. 1962), the Court noted “[t]he best way in most cases to ascertain such intent or to determine the meaning of the statute is to look to the language used.... Resort must be had first to the words, which are decisive if they are clear.” *Id.* at 249. “A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.” *Hall v. Hospitality Res., Inc.*, 276 S.W.3d 775, 784 (Ky. 2008).

The plain language of KRS 337.385(2) does not expressly prohibit class actions. Appellees concede this. See Appellees’ Court of Appeals Brief, p. 7 fn 10 (“***KRS 337.385 does not state that class actions to recover unpaid wages cannot be filed.***”). The statutory language referring to actions “by any one (1) or more employees for and in behalf of himself, herself, or themselves,” is also preceded by the word “may”—which is permissive. See KRS 446.010(26) (“‘May’ is permissive”). The Court of Appeals added the word “only” to the statute when it stated that KRS 337.385(2) actions “may ***only*** be maintained by one or more employees ‘for and in behalf of himself, herself, or themselves.’” See Court of Appeals Opinion, p. 8 (emphasis added).

The Court of Appeals in this case and in *Kelley* also failed to consult or reference additional and relevant statutory definitions. Specifically, the Court of Appeals did not consult KRS 337.010, the *definitional section* for KRS Chapter 337, or the *general definition* statute in KRS 446.010 applicable to Kentucky Revised Statutes at large. Otherwise, the Court of Appeals would have discovered that the term “employee” in KRS 337.385(2) is not simply an individual. Instead, “employee” in KRS 337.385 is defined as

“any person.” KRS 337.010(2)(a). Pursuant to KRS 446.010(33), “person” includes “communities, the public generally, individuals.” In addition, KRS 446.020(1) states that “a word importing the singular number only may extend and be applied to several persons or things.” Thus, anything one employee can do, such as assert a claim for unpaid wages under KRS 337.385, “employees” can do on behalf of communities or many individuals subject to CR 23 restraints. In light of these definitions—again, definitions not considered by the Court of Appeals in this case or in *Kelley*—the language of KRS 337.385 is entirely compatible with CR 23.¹

C. The legislative history of KRS 337.385 is compatible with CR 23.

“Only if a statute is ambiguous or otherwise frustrates a plain reading, does the Court resort to extrinsic aids such as the statute’s legislative history.” *Jefferson Cnty. Bd. of Educ. v. Fell*, 391 S.W.3d 713, 719 (Ky. 2012). The Court of Appeals did the opposite: it relied first on legislative history, and inapplicable legislative history at that. The Court of Appeals relied on an apples-and-oranges comparison between 29 U.S.C. § 216(b) of the Fair Labor Standards Act (FLSA) and KRS 337.385.

Section 216(b) of the FLSA provides in relevant part:

.... An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves ***and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a***

¹ The dicta in *Kelley* also concludes, without reasoning or analysis, that KRS 337.385 prohibits any claim brought in a “representative capacity.” But “representative capacity” includes much more than just class actions. Cases brought by next friends, guardians, conservators, or personal representatives are all brought in a “representative capacity.” Presumably, dicta in *Kelley* would preclude recovery in these situations as well. Such a result, like the implied statutory prohibition for class actions, is unreasonable and leads to absurd results.

party and such consent is filed in the court in which such action is brought.²

The Court of Appeals noted that the highlighted portion – particularly the “other employees similarly situated” language – is missing from KRS 337.385. According to the Court of Appeals, the General Assembly intended, by that omission, to eliminate CR 23 class actions when it enacted KRS 337.385. But the FLSA is not “legislative history” for KRS 337.385.

Legislative history includes the General Assembly’s “committee reports, prior drafts of the statute, bills presented but not passed and legislators’ comments in debates.” *Jefferson Cnty. Bd. of Educ. v. Fell*, 391 S.W.3d 713, 723 (Ky. 2012). Model or extra-jurisdictional legislation is not legislative history. The General Assembly’s failure to incorporate certain language from a model act is not an affirmative indication of legislative intent absent a “clear indication” the General Assembly considered it and “deliberately rejected it.” See *Shawnee Telecom Res., Inc. v. Brown*, 354 S.W.3d 542, 560 (Ky. 2011) (inaction with respect to Model Business Corporation Act’s revised “fair value” definition not indicative of legislative intent). In any event, as this Court has cautioned, “[l]egislative inaction [is] ... a weak reed upon which to lean and a poor beacon to follow in construing a statute.” *Id.* (emphasis added); Norman J. Singer, 2B *Statutes and Statutory Construction* § 49:10, p. 112–115 (6th ed.2000).

More importantly, the FLSA, enacted in 1938, allows collective actions, not class actions. In fact, unlike KRS 337.385, the FLSA ***expressly prohibits Rule 23 actions***, stating “[n]o employee shall be a party plaintiff to any such action unless he gives his

² 29 U.S.C. §216(b) (emphasis added).

consent in writing to become such a party and such consent is filed in the court in which such action is brought.” 29 U.S.C. §216(b). Unlike Rule 23 actions, FLSA collective actions are mandatory “opt-in” actions only. The United States Supreme Court has recognized the dual purposes of section 216(b): “to limit private FLSA claims to those affirmatively asserted by affected employees in their own right” and to “free employers of the burden of representative actions.” *Hoffman-La Roche, Inc. v. Sperling*, 493 U.S. 165, 173 (1989).

By omitting the FLSA’s “similarly situated” terminology, it is just as likely that the General Assembly sought to avoid limiting recovery in KRS 337.385 to FLSA-style *collective actions*.³ Moreover, the General Assembly enacted KRS 337.385 in 1974, long after the adoption of CR 23 in Kentucky. By that time, the General Assembly understood that civil causes of action and in particular unpaid wage claims were subject to CR 23, so there would be no need to reference CR 23 or any other civil rule in the statute.

Leadingham ex rel. Smith v. Smith, 56 S.W.3d 420, 426 (Ky. App. 2001) (“[t]he General Assembly is presumed to know the status of the law at the time a statute is enacted.”).

D. The absence of the words “similarly situated” in KRS 337.385 has no bearing on the applicability of CR 23.

The Court of Appeals assumed that the words “similarly situated” refer to class actions, and that the absence of the same words prohibits class actions. But the words

³ KRS 337.427, modeled on the FLSA’s Equal Pay provision, 29 U.S.C. § 206(d), has the “similarly situated” language while KRS 337.385 does not. The Appellees suggest that this is evidence that the General Assembly intended to eliminate class actions for KRS 337.385. But it is just a likely that the General Assembly intended to retain collective actions for certain Equal Pay violations, and allow the civil rules to fully apply to KRS 337.385. See *Wesley v. Board of Ed. of Nicholas County*, 403 S.W.2d 28, 30 (Ky. 1966) (“We have often said that statutes will not be given [such a] reading where to do so would lead to an absurd or unreasonable conclusion.”).

“similarly situated” are found nowhere in CR 23.01 *et seq.* It is a tortured statutory interpretation to glean the elimination of a court rule—not just by loosely comparing a state statute to inapposite federal legislation—but by relying on words that do not parallel the supposedly-targeted court rule. Again, the Court of Appeals in this case and in *Kelley* failed to acknowledge that the omitted “similarly situated” language does even appear in CR 23.

E. As a whole, Chapter 337 is compatible with CR 23.

Our Courts “read the statute as a whole and in context with other parts of the law... In addition, an act is to be read as a whole, and any language in the act is to be read in light of the whole act.” *Petitioner F v. Brown*, 306 S.W.3d 80, 85-86 (Ky. 2010). KRS 337.395 incorporates any standards that pre-exist KRS 337.385 and are more favorable to the employee:

KRS 337.395 states:

Any standards relating to minimum wages, maximum hours, overtime compensation, or other working conditions, in effect under any other law of this state which ***are more favorable to employees*** than standards applicable hereunder shall not be deemed to be amended, rescinded or otherwise affected by KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405, but ***shall continue in full force and effect until they are specifically superseded by standards more favorable to such employees by operation of*** or in accordance with KRS 337.275 to 337.325, 337.345, and ***337.385*** to 337.405 or regulations issued thereunder. (Emphasis added).

KRS Chapter 337 is not a state-law regurgitation of the FLSA. KRS Chapter 337 is remedial legislation. *Kentucky Ins. Guar. Ass'n v. Jeffers ex rel. Jeffers*, 13 S.W.3d 606, 611 (Ky. 2000) (“Remedial statutes are liberally construed to suppress the evil and advance the remedy.”). And KRS Chapter 337 provides greater protections for workers than the FLSA, including all rights that preceded the enactment of KRS 337.385. Well

before KRS 337.385, our courts not only recognized, but directed, that unpaid wage claims be pursued as class action under the Civil Code predecessor to CR 23. See, e.g. *Gorley, et al. v. City of Louisville*, 23 Ky.L.Rptr. 1782, 65 S.W. 844, 847 (1901). KRS 337.395 codifies this and other pre-statutory rights as a floor. KRS Chapter 337 may exceed those rights, but it may not reduce them. Again, the Court of Appeals does not mention KRS 337.395 in this case or in *Kelley*.

V. CONCLUSION

This Court has recognized the important public policies promoted by CR 23 class actions. The Court of Appeals' opinion is inconsistent with those public policies. More than that, the reasoning in the opinion is not supported by the Kentucky Constitution, the Kentucky Rules of Civil Procedure, plain statutory language, appropriate legislative history, or KRS Chapter 337 as a whole. If the opinion of the Court of Appeals is affirmed, courts across the state will be barred from ever utilizing CR 23 in wage and hour actions—no matter how efficient and judicially economical it may be—to the detriment of both the courts and Kentucky workers. The reasoning of the Court of Appeals, if adopted, could also limit courts from utilizing CR 23 for other statutory causes of action simply because the statutes do not expressly reference CR 23. For all these reasons, *amici curiae* request that this Court reverse the Court of Appeals and remand the case to Jefferson Circuit Court.

Respectfully submitted,



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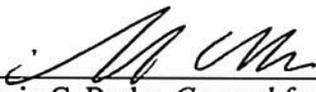
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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February, 2016, ten (10) originals of this brief and the \$150 filing fee were served via Federal Express upon Susan Stokley Clary, Clerk of the Supreme Court, State Capitol, Room 209, 700 Capitol Ave., Frankfort, KY 40601, with one (1) copy of the brief served upon: Sam Givens, Clerk of the Kentucky Court of Appeals, 360 Democrat Dr., Frankfort, KY 40601; Hon. Olu Stevens, Judge, Jefferson Circuit Court, 700 W. Jefferson St., Louisville, KY 40202; Grover C. Potts, Wyatt Tarrant & Combs, LLP, 500 W. Jefferson St., Ste. 2800, Louisville, KY 40202; Theodore W. Walton, Garry Adams, Clay Daniel Walton & Adams PLC, Meidinger Tower, Ste 101, 462 S. Fourth Street, Louisville, KY 40202.



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