

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CIVIL ACTION NO. 06-CI-00574

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RALPH BAZE, ET AL.,

PLAINTIFFS

V.

ORDER

KENTUCKY DEPARTMENT OF CORRECTIONS AND  
THE COMMONWEALTH OF KENTUCKY

DEFENDANTS

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This matter is before the Court on [Intervening] Plaintiff David Sanders’s *CR 24 Motion to Intervene as a Plaintiff* (file date April 14, 2019); *CR 24 Motions to Intervene as a Plaintiff* (file dates March 4, 2024) filed by [Intervening] Plaintiffs Ronnie Bowling, Johnathon Goforth, Donald Johnson, Victor Taylor, Karu Gene White, and Mitchell Willoughby; Plaintiffs’ *Motion for Leave to File Sixth Amended Petition for Declaratory Judgment that the Department of Corrections’ Execution Regulations are Invalid*; Defendant Commonwealth of Kentucky’s *Motion to Dissolve Injunction* (file date March 7, 2024), and the responsive pleadings thereto. The Court heard the parties’ arguments, by counsel, during a hearing on Thursday, April 25, 2024, at 10 a.m.

After hearing the parties’ arguments, reviewing their briefs and papers, and being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED:**

1. The Intervening Plaintiffs’ *Motions to Intervene* are **GRANTED**. They have sufficiently shown that they meet the CR 24 requirements for intervention in this action. Defendant Kentucky Department of Corrections (DOC) has no objection to these motions, and the Court finds that allowing the intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

2. Plaintiffs' *Motion for Leave to File Sixth Amended Petition* is also **GRANTED**. Under CR 15.04, Plaintiffs are permitted to supplement their Petition, setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented, which is what they seek to do here by adding claims that relate to DOC's amendment of 501 KAR 16:310. They further seek to amend their petition by removing claims and adjusting others to conform to the evidence, which is permitted under CR 15. Defendants shall have ten days to answer the Amended Petition.
3. The Court **RESERVES RULING** on the Commonwealth's *Motion to Dissolve Injunction* because it is unclear whether the temporary injunction entered by this Court on September 10, 2010, is still applicable. That injunction was entered as a result the motion of Plaintiff Gregory Wilson, who had an actively pending death warrant, signed by the Governor. At that time, the Court found that there were substantial questions of law regarding the validity of the administrative regulations that required the Court to issue an injunction to preserve the *status quo* until the entry of a final judgment. Those questions included issues concerning Mr. Wilson's allegations of mental disability, as well as unresolved issues concerning the lethal injection protocols. Since that time, Plaintiff Wilson's death sentence has been commuted by Governor Bevin, and DOC has made significant changes to the pertinent administrative regulations in question, so the regulations at issue in the temporary injunction are no longer in effect. There is no currently active death warrant at issue in this case, and it is unclear if the motion to dissolve the temporary injunction presents a present case or controversy.

The amended regulations may or may not satisfy Constitutional requirements; that issue has yet to be adjudicated. However, because the death warrant against Plaintiff

Wilson no longer exists, and the regulations have been amended, the Court can see no reason to address the issue of injunctive relief at this time.

Regarding the possibility that the Commonwealth may seek execution warrants under the amended regulations, that issue is not before the Court. No Plaintiff currently has a signed death warrant in place, as Plaintiff Wilson did, and the merits of the administrative regulations in their present form have not yet been litigated. As such, the Court declines to render an advisory opinion concerning whether and under what circumstances any potential injunctions would be appropriate, or whether the prior temporary injunction from September, 2010 has any continuing applicability to matters currently before the Court. The Supreme Court of Kentucky upheld this Court’s issuance of the temporary injunction in *Commonwealth, ex rel. Conway v. Shepherd*, 336 S.W.3d 98 (Ky. 2011), and the Court will continue to be guided by the principles set forth in that decision if and when the issue of injunctive relief becomes ripe for further action by this Court.

**SO ORDERED** this 30 day of April 2024.



PHILLIP J. SHEPHERD, JUDGE  
Franklin Circuit Court, Division I

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All Counsel