

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

*ELECTRONICALLY FILED*

RALPH BAZE, ET AL.

PLAINTIFFS

v.

KENTUCKY DEPARTMENT OF CORRECTIONS  
AND THE COMMONWEALTH OF KENTUCKY

DEFENDANTS

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COMMONWEALTH'S MOTION FOR RULINGS &  
MEMORANDUM IN SUPPORT

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Under CR 65.04(2), (4), and (5) and CR 52.01, the Commonwealth of Kentucky respectfully moves this Court to rule on (i) its motion to dissolve the injunction, and (ii) its motion to dismiss for the failure to exhaust administrative remedies. As outlined in the Commonwealth's motion to dissolve the injunction, all three of the Court's previously identified grounds for the injunction have now been resolved. And the Commonwealth's motion to dismiss has been fully briefed for four months. So both matters are ripe for adjudication.

Under Franklin County Rule of Court 3.01 and 4.01, the Commonwealth notices this motion for hearing on Wednesday, December 18, 2024.

**BACKGROUND**

On July 2, 2019, this Court partially granted the plaintiffs' motion for judgment on the pleadings. (Order Granting Plaintiff's Motion for Judgment on

the Pleadings at 1.) In that order, this Court identified only three grounds for an injunction:

1) because the administrative regulations prohibited the use of a single drug in a manner inconsistent with the lethal injection statute, the administrative regulations were in conflict with their authorizing statute in violation of KRS Chapter 13A; 2) the failure of the administrative regulations to prohibit the execution of insane inmates may illegally conflict with KRS 431.213 *et seq.*; and 3) the failure of the administrative regulations to prohibit the execution of intellectually disabled inmates may illegally conflict with KRS 532.135 *et seq.*

(*Id.* at 3.) At that time, the Court recognized that “[t]he first two grounds above have been resolved by DOC’s amendments to the execution regulations.” (*Id.*) That left only the third ground to continue supporting the Court’s temporary injunction.

On May 23, 2023, and in response to this Court’s July 2019 order, the Department of Corrections indicated it would undergo the rule-making process under KRS Chapter 13A with respect to its intellectual-disability regulations. (Notice of Filing at 1.) On March 5, 2024, the resulting amendment became effective. The new version of 501 KAR 16:310 provides in relevant part:

If the warden is notified by the psychologist described in Section 1(1)(c) of this administrative regulation concerning a diagnosis of an intellectual disability or an IQ test score of seventy-five (75) or less for the condemned person after adjustment for the applicable standard error of measurement, the . . . (3) Commissioner *shall suspend the execution* pursuant to KRS 532.140 to allow procedures consistent with KRS 532.135.

501 KAR 16:310 Section 4, 4(3) (emphasis added). Simply put, and as outlined in the Commonwealth’s motion to dissolve the injunction, the amendment fully resolves the third and final reason for the injunction.

After the plaintiffs filed a motion for leave to file a sixth amended complaint, the Commonwealth opposed it, in part, on the grounds that the plaintiffs had failed to exhaust their administrative remedies. (Commonwealth’s Response at 5–34.) On March 7, 2024, the Commonwealth moved this Court to dissolve the 2010 injunction. (Motion to Dissolve Injunction at 4.) The Court permitted the plaintiffs to file their sixth amended complaint without specifically addressing the Commonwealth’s exhaustion arguments. (Order on May 1, 2024, at 2.) The Court also stated that it was reserving ruling on the Commonwealth’s motion to dissolve the injunction. (*Id.*) On that issue, the Court worried that there was not a “present case or controversy” given the lack of an active death warrant. (*Id.*)

On May 13, 2024, the Commonwealth filed a motion to dismiss, again raising the failure to exhaust administrative remedies. (Motion to Dismiss at 38.) On August 28, 2024, after the issue was fully briefed, the Commonwealth filed an Administrative Office of the Courts (AOC) Form 280, which states that if a motion will be under submission more than 90 days, the Court must certify the

reasons for delay to the Kentucky Supreme Court. (Notice of Submission of Civil Matter for Final Adjudication at 1–2.)

Meanwhile, the Commonwealth sought relief in the Court of Appeals under RAP 20(B) to dissolve the injunction. *Dep’t of Corr. v. Baze*, --- S.W.3d ---, 2024 WL 4576305, at \*1 (Ky. Oct. 24, 2024). The case was eventually transferred to the Supreme Court, which subsequently dismissed the appeal as interlocutory. *Id.* at \*2, \*3. In doing so, the Supreme Court noted that the Commonwealth had not requested another hearing on its motion to dissolve the injunction, nor moved for mandamus to compel this Court to issue a ruling. *Id.* at \*3. The Court also suggested that the Commonwealth should request from this Court “a definitive ruling resolving whether the injunction should continue or be dissolved in which the circuit court would set forth specific findings of fact and conclusions of law.” *Id.*

Now, and in accordance with the Supreme Court’s decision, the Commonwealth requests that the Court rule on its motion to dissolve the injunction and provide findings of fact and conclusions of law. The Commonwealth also respectfully requests a ruling on its fully briefed motion to dismiss based on administrative exhaustion.

## **ARGUMENT**

Before delving into the motion to dissolve the injunction, the Commonwealth briefly addresses its pending motion to dismiss. As noted above,

this motion has been fully briefed for some time, and the Commonwealth has filed an AOC-280 form notifying the Court that the matter stands submitted for a decision. (Notice of Submission of Civil Matter for Final Adjudication at 1–2.) The Commonwealth’s motion to dismiss is therefore ripe for adjudication. Because this long-running case needs to move forward toward final resolution, and because the Commonwealth’s motion to dismiss raises a dispositive matter, the Commonwealth respectfully urges the Court to promptly rule on its motion so that the parties can proceed forward.

With that out of the way, the Commonwealth addresses its still-pending motion to dissolve the injunction, which it fully incorporates by reference here. To briefly reiterate, Kentucky courts use a three-part test to determine “whether to issue a temporary injunction” under CR 65.04(1). *Sturgeon Min. Co., Inc. v. Whymore Coal Co., Inc.*, 892 S.W.2d 591, 592 (Ky. 1995). First, the moving party must show an “irreparable injury.” *Cameron v. Beshear*, 628 S.W.3d 61, 71 (Ky. 2021) (quoting *Maupin v. Stansbury*, 575 S.W.2d 695, 699 (Ky. App. 1978)). Second, “the trial court should weigh the various equities involved.” *Cameron*, 628 S.W.3d at 71 (quoting *Maupin*, 575 S.W.2d at 699). Third, the complaint must present “a substantial question” on the merits. *Id.* (quoting *Maupin*, 575 S.W.2d at 699). If a party fails any part of the test, the injunction should be dissolved. *See Sturgeon*, 892 S.W.2d at 592.

Even accepting the Court’s conclusion that the plaintiffs previously satisfied the *Maupin* test, they can no longer do so. As the Supreme Court just noted, “it appears [this Court] acknowledged that the basis of 2010 temporary injunction may not remain warranted, or proper[.]” *Baze*, 2024 WL 4576305, at \*2. The Commonwealth agrees that an injunction is no longer “warranted” or “proper.” Five years ago, the Court plainly identified the three grounds for its injunction and acknowledged that two of them had been resolved. DOC’s recent regulation fully resolves the Court’s third and remaining ground. All that’s left is for the Court to simply follow through and dissolve the injunction. This Court’s July 2019 order is the roadmap for why that relief is proper.

In its May 5 order, this Court expressed concern that the Commonwealth’s motion to dissolve the injunction might not present a “case or controversy” because there is presently no active death warrant.<sup>1</sup> But if there is no continued reason for the injunction without an active death warrant (as the Court seemed to say), the proper remedy is to formally dissolve the injunction, not to leave it in place. In any event, the injunction still very much matters. Under CR 65.04(4), “[a] temporary injunction becomes effective and *binding on the party enjoined* when the order is entered.” “It shall remain in force until *modified or*

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<sup>1</sup> The Commonwealth notes that the “case or controversy” requirement goes to the Court’s jurisdiction to hear a case at all, not to its ability to rule on a motion in a case over which it has jurisdiction. See *Commonwealth Cabinet for Health & Family Servs., Dep’t for Medicaid Servs. v. Sexton*, 566 S.W.3d 185, 195 (Ky. 2018).

*dissolved on motions* or until a permanent injunction is granted or denied.” *Id.* (emphasis added). The 2010 injunction is still “binding” on the parties to this case in 2024—the same as it was the day it was issued almost 15 years ago. Indeed, the Supreme Court has interpreted that injunction to “essentially forbid[] the Commonwealth from performing any more executions until the Franklin Circuit Court enters final judgment in the declaratory judgment action.” *Commonwealth ex rel. Conway v. Shepherd*, 336 S.W.3d 98, 105 (Ky. 2011). Notably, the Kentucky Supreme Court’s recent ruling in this case reiterated that very aspect of *Conway. Baze*, 2024 WL 4576305, at \*1.

It follows that the injunction, as described by the Supreme Court, continues to prevent the Commonwealth from taking any action to enforce its duly enacted laws regarding the death penalty—the same as it has for almost 15 years. The Commonwealth has an ongoing interest in enforcement of its laws. *Cameron*, 628 S.W.3d at 73 (“[N]on-enforcement of a duly-enacted statute constitutes irreparable harm to the public and the government.”). Thus, as long as the injunction remains in place, the Commonwealth suffers ongoing irreparable harm from the Court’s long-running injunction.

Moreover, requiring an active death warrant to revisit this Court’s temporary injunction is tantamount to continuing the injunction in perpetuity. Because the temporary injunction prevents the Commonwealth from enforcing its death-penalty statutes, there is no reason to issue a death warrant in the first

place. The injunction ensures that any death warrant will go nowhere. This has the effect of transforming a temporary injunction into a permanent one. In so doing, the Court’s perpetual injunction blurs the clearly established lines between the judiciary, which decides justiciable cases, our legislature, which sets public policy. And our separation of powers is one of the most “emphatically cherished and guarded principles in our Constitution.” *Prater v. Commonwealth*, 82 S.W.3d 898, 901 (Ky. 2002) (internal quotation marks omitted) (quoting *Bloemer v. Turner*, 137 S.W.2d 387, 390 (Ky. 1940) and *Arnett v. Meredith*, 121 S.W.2d 36, 38 (Ky. 1938)).”

One final point on the need to dissolve the injunction. The victims of the crimes perpetrated by the plaintiffs need an up-or-down ruling on whether the injunction will remain in place. As the Commonwealth noted in its motion to dissolve the injunction, the family of the victims of one of the plaintiff’s crimes recently said: “We’re fed up with the delays. Fed up. Totally fed up. It’s like the state of Kentucky has forgotten how heinously my brother and brother-in-law were murdered.” R.G. Dunlop, *Review of KY death row system shows delays, disparities, costs many say must be addressed*, Louisville Public Media (Jan. 29, 2024), <https://perma.cc/73FK-VCFG>. On behalf of crime victims like these, the Commonwealth respectfully asks the Court to rule on its motion so that this case is not further delayed by this Court’s refusal to rule on a motion that, in the



Commonwealth's view, it should readily win based on what this Court has already said.

The plaintiffs might respond that lifting the injunction will simply prompt them to request an injunction on different grounds. While such a motion would fail, that's at least how the process should work. The plaintiffs are not entitled to have an injunction in place prohibiting the death penalty indefinitely for reasons that no longer exist. Such an untouchable injunction effectively overrules the General Assembly's policy decision to allow the death penalty. To the extent that the plaintiffs move for an injunction on different grounds, the parties can litigate the appropriateness of that relief at that time.

For these reasons and those stated in its earlier motion, the Commonwealth respectfully asks the Court to issue a definitive ruling as to whether to dissolve its 2010 injunction. In its recent decision in this matter, the Supreme Court stated that the Commonwealth should request "a definitive ruling resolving whether the injunction should continue or be dissolved in which the circuit court would set forth specific findings of fact and conclusions of law." *Baze*, 2024 WL 4576305, at \*3. The Commonwealth now makes that formal ask of the Court. The Commonwealth is entitled—the same as any other litigant—to a ruling on its motion along with reasons why the Court is granting or denying the motion.

## CONCLUSION

In short, all the grounds for this Court's temporary injunction prohibiting the enforcement of Kentucky's lethal-injection protocols have been resolved. And the Commonwealth's motion to dismiss based on administrative exhaustion is ripe for resolution. For these reasons, the Commonwealth requests a ruling on both motions.

Respectfully submitted,

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**CERTIFICATION**

This is to certify that a copy of the Commonwealth of Kentucky’s Motion to Rule was filed with the clerk of this Court on this 4th day of December 2024 and sent via email to:

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/s/ J. Grant Burdette  
J. Grant Burdette  
ASSISTANT SOLICITOR  
GENERAL