

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CIVIL ACTION NO. 06-CI-574



THOMAS C. BOWLING, et al.

PLAINTIFFS

v.

ORDER

KENTUCKY DEPARTMENT OF CORRECTIONS, et al.

DEFENDANTS

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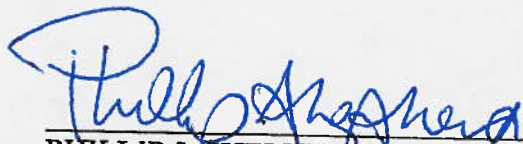
This matter is before the Court on Plaintiffs' Motion for Leave to Amend Petition for Declaratory Judgment, and a number of discovery disputes including Plaintiffs' Motion to Compel, and Defendants' Motion to Compel. A status conference was held on Wednesday, July 9, 2014. After the hearing, the Court took the Motion to Amend under submission. The Court having considered the arguments and being otherwise sufficiently advised, hereby **GRANTS** the Plaintiffs' Motion to Amend.

Plaintiffs, in its Motion, argue that two recent developments warrant amending their petition. The first development comes in light of the January 2014 execution of Dennis McGuire in Ohio. Plaintiffs assert that the current dosage of midazolam and hydromorphone used for execution is not enough to prevent the condemned from feeling pain. The second issue comes after the execution of Clayton Lockett in Oklahoma and involves the IV insertion that took place behind closed curtains. Because of these subsequent developments, legitimate questions have been raised as to the constitutionality of Kentucky's two-drug execution protocol based on the experiences in Ohio and Oklahoma.

CR 15.01 allows a party to amend his pleading by leave of court or "when justice so requires." Plaintiffs are not seeking to amend in bad faith or to delay, and have valid constitutional claims that should be litigated. *See Ashland Oil & Ref. Co. v. Phillips*, 404 S.W.2d

449, 450-51 (Ky. 1966). Allowing the new claims does not unduly burden or prejudice the Defendants in this case. In light of the new evidence in the two executions in Ohio and Oklahoma, legitimate issues have been raised that have not been litigated in the context of this case. Accordingly, the Court **GRANTS** the Plaintiff's Motion to Amend in light of the recent executions and allows the Plaintiff to file its Amended Claims A, B, & C. The parties may conduct discovery concerning the three amended claims.

**SO ORDERED** this 2nd day of September, 2014.

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

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