Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

CIVIL ACTION No. 22-CI-00047

DERRICK GRAHAM, JILL ROBINSON, MARY LYNN COLLINS, KATIMA SMITH-WILLIS, JOSEPH SMITH, and THE KENTUCKY DEMOCRATIC PARTY **PLAINTIFFS**

vs.

MICHAEL ADAMS, in his official capacity as Secretary of State of the Commonwealth of Kentucky and THE KENTUCKY STATE BOARD OF ELECTIONS **DEFENDANTS**

and

COMMONWEALTH OF KENTUCKY **INTERVENING DEFENDANT**

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ORDER

This matter is before the Court upon Plaintiffs' *Motion for Temporary Injunction*. This matter was called before the Court on Thursday, February 10, 2022, at 10:00 a.m. Upon review of the parties' briefs and papers, and after being sufficiently advised, the Court hereby **DENIES** Plaintiffs' *Motion for Temporary Injunction*.

STATEMENT OF FACTS

Every ten (10) years, in accordance with Section 33 of the Kentucky Constitution, the General Assembly undertakes apportioning representation through new boundaries for Senatorial and Representative Districts. Additionally, in light of population shifts, every ten (10) years the General Assembly is also tasked with drawing new boundaries for Congressional Districts. During the 2022 Regular Session, the General Assembly passed new maps for Representative Districts ("HB 2"), Senatorial Districts ("SB 2"), and

Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

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OD : 000001 of 000014

Congressional Districts ("SB 3") based on data from the 2020 Census.[1] The filing deadline for such offices is codified in KRS 118.165(2). However, on January 6, 2022, the General Assembly passed, and Governor Beshear signed into law, House Bill 172 ("HB 172), which extended the filing deadline to January 25, 2022.[2]

The General Assembly passed HB 2 on January 8, 2022, and it was then delivered to Governor Andy Besehar. On January 19, 2022, Governor Beshear exercised his constitutional authority and vetoed HB 2 opining that the redistricting plan is an unconstitutional political gerrymander, excessively splits counties, and dilutes the voices of certain minority communities. Veto Message, HB 2 (2022RS). The General Assembly overrode Governor Beshear's veto on January 20, 2022, and HB 2 became effective immediately due to the emergency clause contained within. Similarly, SB 3 was passed and delivered to Governor Beshear on January 8, 2022. On January 19, 2022, Governor Beshear exercised his constitutional authority and vetoed SB 3 claiming it was drafted without public input and is an unconstitutional political gerrymander noting that the First Congressional District uncharacteristically spans hundreds of miles from Fulton County to Franklin County. Veto Message, SB 3 (2022RS). The General Assembly overrode Governor Beshear's veto on January 20, 2022, and SB 3 became effective immediately due to the emergency clause contained within.

On January 20, 2022, Plaintiffs initiated this action against Secretary of State Michael G. Adams ("Secretary Adams") and the Kentucky State Board of Elections ("the

[1] Plaintiffs do not challenge the constitutionality of SB 2, however, the Court notes that SB 2 was passed and delivered to Governor Beshear on January 8, 2022. Governor Beshear failed to veto or sign SB 2, so SB 2 became law without Governor Beshear's signature and became effective immediately due to the emergency clause contained within.

[2] Plaintiffs do not challenge HB 172.

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OD : 000002 of 000014

Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

SBE") to challenge the constitutionality of HB 2 and SB 3.[3] With respect to HB 2, Plaintiffs allege that HB 2 violates Sections 1, 2, 3, 6, and 33 of the Kentucky Constitution. Plaintiffs state that HB 2 is the result of extreme partisan gerrymandering, which they believe is prohibited under Sections 1, 2, 3, and 6 of the Kentucky Constitution. Additionally, Plaintiffs contend that HB 2 violates Section 33 of the Kentucky Constitution because it excessively splits counties more times than necessary. With respect to SB 3, Plaintiffs assert that it also is the result of extreme partisan gerrymandering and violates Sections 1, 2, 3, and 6 of the Kentucky Constitution. On January 27, 2022, the Commonwealth of Kentucky, by and through Attorney General Daniel Cameron ("the Commonwealth"), moved to intervene to defend the constitutionality of HB 2 and SB 3. The Commonwealth's *Motion to Intervene* was orally granted at the February 10, 2022, hearing and by Order entered February 10, 2022.

After the close of business on January 28, 2022, Plaintiffs filed the underlying *Motion for Temporary Injunction*. Plaintiffs noticed the matter to be heard at the Court's civil motion hour of February 2, 2022. On January 31, 2022, after receiving Plaintiffs' *Motion for Temporary Injunction*, the Court entered an Order finding that Plaintiffs' *Motion for Temporary Injunction* was not timely filed pursuant to Franklin Circuit Court Local Rule 4.01, and nevertheless, the Court was in the middle of a jury trial and was unavailable to hear Plaintiffs' *Motion for Temporary Injunction* until February 10, 2022.

Meanwhile, on February 4, 2022, the Commonwealth filed a cross-claim and counterclaim challenging the constitutionality of HB 302 (2012RS) and HB 1 (2013SS) (collectively "the 2013 districts"). The Commonwealth alleges the 2013 districts were

[3] The SBE takes no position on this litigation.

Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

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B2F1811B-97F6-4CED-B59D-B949D94D9517 : 000003 of 000014

OD : 000003 of 000014

enacted based on 2010 Census data and therefore violate Section 33 of the Kentucky Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Commonwealth also filed a *Motion for Temporary and Permanent Injunction* on its cross-claim and counterclaim. Additionally, on February 4, 2022, the Commonwealth and Secretary Adams jointly filed a *Motion to Dismiss*.

On February 10, 2022, the parties appeared before the Court and the Court heard oral argument on Plaintiffs' *Motion for Temporary Injunction* and the Commonwealth and Secretary Adams' joint *Motion to Dismiss*. This Order solely addresses Plaintiffs' *Motion for Temporary Injunction* due to the emergency relief requested. By separate Order, the Court will address the Commonwealth and Secretary Adams' *Motion to Dismiss*.

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STANDARD OF REVIEW

Under CR 65.04, the Court may grant a temporary injunction where it is clearly shown that the applicant's rights are being or will be violated by the adverse party and the applicant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action. Injunctions should only be granted if the applicant can show irreparable injury, if the equities involved are best served by granting the injunction and when the applicant has shown that a substantial question on the merits is presented. The landmark case in Kentucky on injunctive relief is *Maupin v. Stansbury*, 575 S.W.2d 695 (Ky. Ct. App. 1978). In *Bingo Palace v. Lackey*, 310 S.W.3d 215, 216 (Ky. 2009), the Kentucky Supreme Court discussed the standard for granting injunctive relief established by the Kentucky Court of Appeals in *Maupin*:

> In *Maupin*, the Court of Appeals stated: "Because the injunction is an extraordinary remedy, sufficiency of the evidence below must be evaluated in light of both substantive and equitable principles." *Maupin*, 575 S.W.2d at 697. CR 65.04 authorizes the granting of a

B2F1811B-97F6-4CED-B59D-B949D94D9517 : 000004 of 000014

OD : 000004 of 000014

Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

> temporary injunction (interlocutory relief) if the movant's rights are being violated and the movant will suffer immediate and irreparable injury pending a final judgment, or if waiting would render the final judgment meaningless. According to *Maupin*, "In order to show harm to his rights, a party must first allege possible abrogation of a concrete personal right." *Id*. at 698 (citing *Morrow v. City of Louisville*, 249 S.W.2d 721 (Ky. 1952)). "[D]oubtful cases should await trial of the merits." *Id*. (citing *Oscar Ewing, Inc. v. Melton*, 309 S.W.2d 760 (Ky. 1958)). And further, there must be "a clear showing that these rights will be immediately impaired." *Id*.

Pursuant to the *Maupin* standard, a party is not required to show success on the merits of a claim in order to be entitled to relief under CR 65.04. Rather, the balance-of-the-hardships test applies: "if the complaint shows a probability of irreparable injury and the equities are in favor of issuance, it is sufficient if the complaint raises a serious question warranting a trial on the merits." *Maupin*, 575 S.W.2d at 699 (internal citations omitted). In weighing the equities, the Court should consider such things as "possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo." *Id*. The overall merits of the case are not to be considered in CR 65.04 motions for temporary injunctive relief. "An injunction will not be granted on the ground merely of an anticipated danger or an apprehension of it, but there must be a reasonable probability that injury will be done if no injunction is granted." *Hamlin v. Durham*, 32 S.W. 2d 413, 414 (Ky. Ct. App. 1930).

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Moreover, the rule in Kentucky is well-settled that "the extraordinary remedy of injunction will not be granted for the protection of alleged rights, where the litigant seeking the injunction has an adequate remedy at law." *Heyser v. Brown*, 184 S.W.2d 893, 894 (Ky. 1945) *citing Commercial Credit Co., Inc., v. Martin, etc.*, 122 S.W.2d 135 (Ky. 1938); *Gregory et al. v. Crain*, 163 S.W.2d 289 (Ky. 1942). "[M]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not

Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

B2F1811B-97F6-4CED-B59D-B949D94D9517 : 000005 of 000014

OD : 000005 of 000014

Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

enough." *Norsworthy v. Kentucky Bd. of Medical Licensure*, 330 S.W.3d 58, 62 (Ky. 2009) (citing *Sampson v. Murray*, 415 U.S. 61, 90 (1974) (quoting *Virginia Petroleum Jobbers Ass'n v. Federal Power*, 259 F.2d 921, 925 (D.C.Cir. 1958))).

ANALYSIS

The purpose of a temporary injunction is to preserve the status quo for a party that presents a substantial question as to the merits and will likely suffer immediate and irreparable harm absent court intervention. Accordingly, before the Court can grant injunctive relief, Plaintiffs must satisfy all three (3) requirements of the *Maupin* standard. In this action, Plaintiffs seek injunctive relief to preclude the 2022 election cycle from being conducted under the districts enacted by HB 2 and SB 3. Plaintiffs ask the Court to create a new filing deadline and order the 2022 election cycle to be run under the 2013 districts or order "new, constitutional" districts be adopted by the General Assembly.

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I. The equities do not favor awarding a temporary injunction.

"[A] temporary injunction is designed to merely hold the status quo until the merits can be decided." *Curry v. Farmers Livestock Market*, 343 SW.2d 134, 135 (Ky. 1961). Although not an exclusive list, *Maupin* instructs the Court to balance the various equities involved such as "possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo." 575 S.W.2d at 699. In balancing the equities, the Court is mindful that the General Assembly enacted the challenged legislation in accordance with its Section 33 constitutional duty and to preserve the federal "one-person, one-vote" principle. *Envenwel v. Abbott*, 578 U.S. 54, 59 (2016) (citing *Kirkpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969)).

Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

B2F1811B-97F6-4CED-B59D-B949D94D9517 : 000006 of 000014

OD : 000006 of 000014

Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

Plaintiffs argue that injunctive relief will maintain the status quo and assert that the status quo is the 2013 districts. Plaintiffs generally express concern that injunctive relief is necessary to protect the public interest and assert that the public has a strong interest in preserving county integrity and curbing extreme partisan gerrymandering. Plaintiffs contend that absent injunctive relief, Kentucky Democrats will essentially be disenfranchised as their votes will be diluted by the districts enacted by HB 2 and SB 3. Plaintiffs reason that Secretary Adams and the SBE will not be harmed by injunctive relief as they are only responsible for administering Kentucky's elections.

The Commonwealth and Secretary Adams reason that it is not equitable or in the public interest to award Plaintiffs untimely injunctive relief that will upend the status quo. The Commonwealth and Secretary Adams assert that the status quo is proceeding with the 2022 election cycle under the districts enacted by HB 2 and SB 3 because Plaintiffs failed to seek injunctive relief prior to the expiration of the January 25, 2022, filing deadline. As a result, eligible candidates timely filed for office based on the districts created by HB 2 and SB 3. Further, the Commonwealth and Secretary Adams offer that the "election machinery" is well underway as county clerks and Secretary Adams have begun or completed their required actions by law. Accordingly, the Commonwealth and Secretary Adams argue that undoing this progress would result in considerable burden on state and local election officials.

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The Commonwealth and Secretary Adams also focus on the untimeliness of Plaintiffs' *Motion for Temporary Injunction* and note that despite filing this action on January 20, 2022, the same day the General Assembly overrode Governor Beashear's vetoes, Plaintiffs waited well over a week to seek injunctive relief, specifically three (3)

Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

B2F1811B-97F6-4CED-B59D-B949D94D9517 : 000007 of 000014

OD : 000007 of 000014

Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

days after the expiration of the filing deadline. Finally, the Commonwealth and Secretary Adams claim that it is not equitable and against public interest to proceed with the 2022 election cycle under the 2013 districts as the Commonwealth has filed a cross-claim and counterclaim, and sought injunctive relief on said claim, asserting that that 2013 districts are unconstitutional.

i. The status quo is the districts created by HB 2 and SB 3.

First, Plaintiffs cannot demonstrate that injunctive relief will merely preserve the status quo because the status quo is the districts created by HB 2 and SB 3. Accordingly, granting injunctive relief *will upend* the status quo. In this Order, the Court is in no way assessing the validity of Plaintiffs' claims, and Plaintiffs may ultimately prevail on the merits, but there was a time to seek injunctive relief, and that was *before* the expiration of the filing deadline on January 25, 2022, at 4:00 p.m. At the February 10, 2022, hearing, the Court stated that upon the filing of this action, the Court immediately cleared its schedule through January 25, 2022, fully expecting Plaintiffs to seek a restraining order to pause the filing deadline. Challenges are always made whenever district maps are redrawn. In fact, the last two (2) challenges both originated in this Court. On January 29, 2002, at 3:55 p.m., a mere five (5) minutes before the expiration of the filing deadline, the Court's predecessor, Judge William L. Graham, entered a restraining order halting the filing deadline. *Bickel v. Kentucky State Board of Elections*, 01-CI-01700, Restraining Order (Franklin Cir. Ct. Jan. 29, 2002). Similarly, on January 30, 2012, eight days before the February 7, 2012, filing deadline, Division I of this Court entered a restraining order enjoining the filing deadline. *Fischer v. Grimes*, Restraining Order, 12-CI-00109 (Franklin Cir. Ct. Jan. 30, 2012). In 2002 and 2012, the purpose of restraining the filing deadlines was to permit evidentiary

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Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

B2F1811B-97F6-4CED-B59D-B949D94D9517 : 000008 of 000014

OD : 000008 of 000014

hearings for injunctive relief based on the movants' challenges to the constitutionality of the new districts before the filing deadlines expired.

Notably, Plaintiffs cannot point to one instance in which a court has granted injunctive relief to reopen a filing deadline, or create a new filing deadline, and order candidates to refile based on outdated districts or districts not yet in existence. Nor can Plaintiffs cite to any authority that grants the Court such power. The General Assembly fixes filing deadlines for Kentucky elections. The Court respects Kentucky's strong separation of powers and will not usurp the role of the General Assembly and legislate from the bench. Kentucky's long history of "map challenges" provide that the judiciary may enjoin the filing deadline, but never has the judiciary taken the step to re-open or create a new filing deadline after certification. This is because doing so is not within the purview of the judiciary and nonetheless would cause utter chaos. The Court understands its role as a co-equal branch of Kentucky's government but the Court refuses to serve as the ringmaster of a three-ring circus by creating a new filing deadline and throwing the 2022 election cycle into turmoil.

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The reality is Plaintiffs' failure to timely enjoin the filing deadline has made the status quo the districts enacted by HB 2 and SB 3. Plaintiffs are asking the Court to undo the status quo and revert to districts that have been repealed. In fact, Plaintiffs' delay in seeking injunctive relief has afforded the Commonwealth the opportunity to file a cross- and counterclaim with respect to the constitutionality of the 2013 districts. Although the constitutionality of the 2013 districts is not presently before the Court, if the Court was to grant Plaintiffs' requested relief and revert to the 2013 districts, the Court anticipates that the Commonwealth would swiftly seek injunctive relief to restrain the use of the 2013

B2F1811B-97F6-4CED-B59D-B949D94D9517 : 000009 of 000014

OD : 000009 of 000014

Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

districts as being unconstitutional under Section 33 of the Kentucky Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. This would result in complete disorder and leave the 2022 election cycle in a state of despair. Candidates would not have districts to file for and Kentucky citizens would be left without representatives to vote for and be represented by. Additionally, the Court cannot order the General Assembly to draw new districts absent a finding on the merits that HB 2 and SB 3 are unconstitutional *and* that the 2013 districts are unconstitutional. The purpose of injunctive relief is to preserve the status quo and not to decide the merits of a case. Thus, any suggestion that the Court order the General Assembly to draw new districts is improper.

In hindsight, Plaintiffs should have sought a restraining order prior to January 25, 2022, at 4:00 p.m., and asked the Court to halt the filing deadline and expedite a hearing either on Plaintiffs' *Motion for Temporary Injunction* or on the merits of Plaintiffs' claims. Instead, Plaintiffs failed to timely act and waited to seek a temporary injunction until three (3) days after the filing deadline had passed and candidates had filed based on the districts enacted by HB 2 and SB 3. Accordingly, injunctive relief would not maintain the status quo.

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ii. A temporary injunction will unjustly harm Secretary Adams and election officials.

As a result of Plaintiffs' failure to timely seek injunctive relief, eligible candidates have filed for office based on the districts enacted by HB 2 and SB 3. Since the expiration of the filing deadline, Secretary Adams and election officials have committed substantial time and efforts to meet their obligations for the 2022 election cycle as required by law. For example, they have handled all necessary paperwork, have conducted the lottery to

Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

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OD : 000010 of 000014

draw for ballot positions, have certified candidates, and are prepared to deliver ballots to the company that prints paper election ballots on or before the February 23, 2022, deadline. Thus, as the election machinery is well underway, enjoining HB 2 and SB 3 would undoubtedly cause harm to Secretary Adams and election officials and would throw the election process into disarray.

iii. It is not in the public interest to grant a temporary injunction.

In addition to the reasons stated above, public interest does not favor awarding injunctive relief. The public has a genuine interest in fairly and efficiently electing state and congressional representatives and granting injunctive relief would cause grave harm to said ability. Through this *Motion for Temporary Injunction,* Plaintiffs ask the Court to enjoin HB 2 and SB 3 and either revert to the 2013 districts or order the General Assembly to craft "new, constitutional" districts. However, "[t]he fact that a statute is enacted 'constitutes [the legislature's] implied finding' that the public will be harmed if the statute is not enforced." *Cameron v. Beshear*, 628 S.W.3d 61, 78 (Ky. 2021) (quoting *Boone Creek Props., LLC v. Lexington-Fayette Urban Cnty. Bd. of Adjustment*, 442 S.W.3d 36, 40 (Ky. 2014)). Pursuant to its constitutional duty, the General Assembly has a responsibility to enact new districts every ten (10) years to apportion representation based on population shifts. The Court must further note that candidates and the public have relied on the newly enacted districts. Candidates have filed for office based on HB 2 and SB 3 and are actively campaigning as this Order is crafted. Accordingly, public interest favors implementation of HB 2 and SB 3 pending an adjudication of the constitutionality.

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OD : 000011 of 000014

Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

II. It is irrelevant whether Plaintiffs present a substantial question as to the merits or whether they will suffer an irreparable injury absent injunctive relief.

The *Maupin* standard requires, as a prerequisite to injunctive relief, for Plaintiffs to present a substantial question as to the merits, demonstrate a probability of immediate and irreparable injury, and to persuade the Court that the equities balance in favor of issuance. 575 S.W.2d at 699. Failure to satisfy a single one of these requirements precludes the Court's ability to issue injunctive relief. The late filing of Plaintiffs' *Motion for Temporary Injunction* has necessarily placed balancing the equities at the forefront of the Court's consideration of this *Motion for Temporary Injunction*. Consequently, in failing to satisfy this critical element of the *Maupin* standard, the Court does not need to consider whether Plaintiffs present a substantial question as to the merits or whether Plaintiffs have made a showing of a likely irreparable injury.[4]

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CONCLUSION

A temporary injunction is an extraordinary remedy that may only be awarded upon a finding that the moving party presents a substantial question as to the merits, the injunction will not be inequitable, and the movants will be immediately and irreparable injured absent injunctive relief. *Id*. In this case, awarding injunctive relief would disrupt the status quo, would unduly harm Secretary Adams and other election officials, and would disserve the public. HB 2 and SB 3 became the status quo on January 25, 2022, at 4:00 p.m. as the result of Plaintiffs' failure to timely seek injunctive relief. Nevertheless, the election machinery is well underway and issuing injunctive relief would unduly harm

[4] Although an assessment of the merits is currently unwarranted, the Court does note that *Jensen v. Kentucky State Board of Elections*, 959 S.W.2d 771 (Ky. 1997) appears instructive as to the merits of Plaintiffs' Section 33 claim.

Entered 22-CI-00047 02/17/2022 Amy Feldman, Franklin Circuit Clerk

B2F1811B-97F6-4CED-B59D-B949D94D9517 : 000012 of 000014

OD : 000012 of 000014

Secretary Adams and other election officials who have diligently worked to meet their obligations for the 2022 election cycle. Finally, public interest demands that the Court deny injunctive relief as injunctive relief would interfere with the enactment of HB 2 and SB 3, which deserve an implied finding that the public will be harmed absent enactment of the legislation. Therefore, the equities do not support issuance of extraordinary injunctive relief.

WHEREFORE, Plaintiffs' *Motion for Temporary Injunction* is **DENIED**.

This Order is appealable pursuant to CR 65.

SO ORDERED, this 17th day of February, 2022.

Hon. Thomas Dawson Wingate
/s/ HON. THOMAS DAWSON WINGATE
electronically signed
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THOMAS D. WINGATE
Judge, Franklin Circuit Court

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OD : 000013 of 000014

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was mailed, this _____ day of February, 2022, to the following:

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