

No. 23-5343

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UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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COMMONWEALTH OF KENTUCKY,  
Plaintiffs-Appellants,

v.

ENVIRONMENTAL PROTECTION AGENCY, et al.,  
Defendants-Appellees.

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On Appeal from the U.S. District Court for the Eastern District of Kentucky  
No. 3:23-cv-7 (Hon. Gregory F. Van Tatenhove, U.S. District Judge)

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**UNOPPOSED MOTION BY DEFENDANTS-APPELLEES  
TO CLARIFY ORDER OF APRIL 20, 2023**

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Federal Defendants-Appellees respectfully request that this Court clarify that the temporary relief that the Court ordered on April 20, 2023, Doc. No. 9-1, is limited in scope to the party-specific relief Plaintiffs-Appellants have sought.\* Specifically, Federal Defendants move that this Court clarify its order by adding the emphasized language below:

Accordingly, an administrative stay of enforcement of the Agency's final rule *inside the Commonwealth of Kentucky and against the Commonwealth and Plaintiff-Appellants in Case No. 23-5345 and their members* is GRANTED until May 10, 2023. Responses to the plaintiffs' motions for an injunction pending appeal are to be filed no later than May 1, 2023, and replies no later than May 5, 2023.

The proposed clarifying language tracks the relief Plaintiffs-Appellants have sought in these cases. *See* Kentucky's Proposed Order, *Commonwealth of Kentucky v. U.S. Environmental Protection Agency*, E.D. Ky. No. 3:23-cv-00007-GFVT (Feb. 22, 2023) (Exhibit A) (“[I]t is hereby ORDERED that the Commonwealth’s motion is GRANTED; it is further ORDERED that the Final Rule is ENJOINED. The Defendants may not implement, apply, enforce, or otherwise proceed on the basis of the Final Rule inside the Commonwealth or against the parties to this action.”); Motion for Injunction Pending Appeal of Kentucky Chamber of Commerce et al., Case No. 23-5345, at 22 (“This Court should

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\* Federal Defendants-Appellees will explain in their forthcoming response in opposition to the motions for injunction pending appeal why *no* relief is warranted. The instant motion, however, is limited to requesting clarification of the scope of relief ordered by this Court on April 20, 2023.

enjoin the Agencies from enforcing the Rule against Appellants and their members pending this appeal.”).

In light of governing law, Federal Defendants do not interpret the Court’s order of April 20, 2023, to grant relief against them that Plaintiffs-Appellants did not seek. *Cf. Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020) (“[B]y affording relief that the plaintiffs themselves did not ask for in their preliminary injunction motions, the District Court contravened this Court’s precedents and erred by ordering such relief.”). But clarification is still appropriate. Just as “[i]t is absolutely vital” that Federal Defendants-Appellees know which law to apply where, and against whom, while this Court’s order remains in effect, *Gunn v. Univ. Comm. to End War in Viet Nam*, 399 U.S. 383, 389 (1970) (discussing specificity requirements for injunction under Federal Rule of Civil Procedure 65(d)), it is vital that all members of the public know unequivocally which law governs their own conduct.

Therefore, Federal Defendants-Appellees ask that this Court clarify its order as described above. The undersigned conferred with counsel for Plaintiffs-Appellants, who represented that their clients do not oppose this request.

Respectfully submitted,

*s/ Brian C. Toth* \_\_\_\_\_

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April 21, 2023  
90-5-1-4-22350

### **CERTIFICATE OF COMPLIANCE**

I hereby certify:

1. This document complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the document exempted by Rule 32(f), this document contains 447 words.
2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Calisto MT font.

*s/ Brian C. Toth*

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