

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

MARYVILLE BAPTIST CHURCH, INC.,)		
and DR. JACK ROBERTS,))	
)	
Plaintiffs,))	CASE NO. 3:20-cv-00278-DJH
)	
v.))	
)	
ANDY BESHEAR, in his official capacity as))	
Governor of the Commonwealth of Kentucky,))	
)	
Defendant.))	

**PLAINTIFFS’ EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL
AND SUPPORTING MEMORANDUM OF LAW**

Plaintiffs, MARYVILLE BAPTIST CHURCH, INC. (“Maryville Baptist Church” or the “Church”), and DR. JACK ROBERTS (“Dr. Roberts”), pursuant to Local Rule 7.1 and Federal Rule of Appellate Procedure 8(a)(1)(C), and on an emergency basis, move the Court for an injunction pending appeal of this Court’s April 18, 2020 Order (ECF 9), which is the subject of Plaintiffs’ Notice of Appeal to the Sixth Circuit (ECF 16) filed contemporaneously herewith, in the form of the proposed order attached hereto.

MEMORANDUM OF LAW

Plaintiffs’ have appealed to the Sixth Circuit from this Court’s April 18, 2020 Order (ECF 9) denying Plaintiffs’ Emergency Motion for Temporary Restraining Order and Preliminary Injunction (ECF 3, Plaintiffs’ “TRO/PI Motion”). Although the Order verily denied Plaintiffs’ motion as to the requested temporary restraining order (TRO) (Order 7), and such denials are generally not appealable, Plaintiffs have appealed the TRO denial as an effective denial of their motion as to the requested preliminary injunction (PI) because the Court based its denial primarily on the likelihood of success and irreparable harm determinations common to both TRO and PI

motions. *See Overstreet v. Lexington-Fayette Urban County Gov't*, 305 F.3d 566, 572 (6th Cir. 2002) (“A district court's denial of a motion for a temporary restraining order generally is not appealable. Such a ruling is appealable, however, if it is tantamount to a ruling on a preliminary injunction.” (cleaned up)); *see also FCA US LLC v. Bullock*, 737 Fed. App'x 725, 727 (6th Cir. 2018) (“We have jurisdiction when the grant or denial of a TRO threatens to inflict irretrievable harms.” (cleaned up)).¹ The Court's TRO denial also effectively denied Plaintiffs' PI because, almost a full week after the Order, the Court has not set the status conference or expedited briefing schedule on the PI that was indicated in the Order.

Furthermore, although determining whether to grant a motion for injunction pending appeal (IPA) requires the same analysis as a motion for TRO or PI, *see Overstreet*, 305 F.3d at 572; *Workman v. Bredesen*, 486 F.3d 896, 905 (6th Cir. 2007); *EMW Women's Surgical Ctr., P.S.C. v. Beshear*, No. 3:19-cv-178-DJH, 2019 WL 1233575, *1 (W.D. Ky. Mar. 15, 2019), and this Court has already denied Plaintiffs' TRO/PI Motion under that analysis, Plaintiffs are nonetheless required by Fed. R. App. P. 8(a)(1)(C) to first seek an IPA in this Court before seeking it from the Sixth Circuit. Accordingly, Plaintiffs incorporate herein their reasons and legal argument in Plaintiffs' TRO/PI Motion in support of their motion for IPA.

In addition, however, Plaintiffs show the Court that, on the same day this Court entered its Order, the District of Kansas issued a TRO enjoining Kansas officials from enforcing executive orders prohibiting religious gatherings of more than ten persons as unconstitutional, even though the orders “begin with a broad prohibition against mass gatherings,” because “they proceed to

¹ This memorandum of law uses the parenthetical “(cleaned up)” to indicate that internal quotation marks, alterations, and citations have been omitted from quotations. *See, e.g., Ashford v. Raby*, 951 F.3d 798, 801 (6th Cir. 2020); *Smith v. Kentucky*, 520 S.W.3d 340, 354 (Ky. 2017).

carve out broad exemptions for a host of secular activities, many of which bear similarities to the sort of personal contact that will occur during in-person religious services.” *First Baptist Church v. Kelly*, No. 20-1102-JWB, 2020 WL 1910021, at *5 (D. Kan. Apr. 18, 2020) [hereinafter *First Baptist*]. The court found that religious gatherings were “targeted for stricter treatment due to the nature of the activity involved, rather than because such gatherings pose unique health risks that mass gatherings at commercial and other facilities do not, or because the risks at religious gatherings uniquely cannot be adequately mitigated with safety protocols,” and that “the disparity has been imposed without any apparent explanation for the differing treatment of religious gatherings.” *Id.* at *7. The court concluded, “churches and religious activities appear to have been singled out among essential functions for stricter treatment. **It appears to be the only essential function whose core purpose—association for the purpose of worship—had been basically eliminated.**” *Id.* (emphasis added). The *First Baptist* decision is on all fours with the issues in this case, and Plaintiffs commend it to this Court for consideration in ruling on Plaintiffs’ motion for IPA.

CONCLUSION

For all of the foregoing reasons, Plaintiffs request that the Court enter an injunction pending appeal, on an emergency basis, in the form of the proposed order attached hereto.

Respectfully submitted,

s/ Roger K. Gannam

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed via the Court's ECF system which will effect service upon all counsel or parties of record.

DATED this April 24, 2020.

s/ Roger K. Gannam

Roger K. Gannam

Attorney for Plaintiffs