



Kentucky Court Rejects Challenge to Restrictions on In-Person Religious Services

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On Saturday, April 18, 2020, a federal district judge in Louisville, Kentucky, denied a request by the Maryville Baptist Church for a temporary restraining order (“TRO”) to prevent application of the Kentucky Governor’s ban on “mass gatherings” to in-person religious services.^[1] The Court rejected the church’s arguments that prohibiting religious services as part of a ban on “mass gatherings” violated the First Amendment’s free speech, right of assembly and religious free exercise protections, as well as the Kentucky Religious Freedom Reformation Act (“RFRA”).

The court found that the restrictions in question did not target religious exercise for unequal treatment compared to other similar activities. Echoing concerns that had been raised in an earlier Louisville district court decision^[2] and a recent filing by the Department of Justice^[3], the church had argued that the orders discriminated against religion by prohibiting in-person religious services, while permitting people to gather in businesses like supermarkets and liquor stores.

The court, however, found that the two types of activities were not comparable from the perspective of the state’s interest in controlling the spread of the virus. The court explained that shopping at a supermarket or liquor store “is a singular and transitory experience” where people enter and move about the store individually at different times, and leave once they obtained the items they need; whereas religious services are “by design a communal experience” where individuals congregate together at the same defined period of time.^[4] The court explained that the more accurate comparison to religious services would be attendance at a group event, like a concert, sporting event or communal in-person dining at a restaurant. Since the order treated religious services the same as these types of more similar activities, the court concluded that the orders did not target religious speech or practice for unequal treatment, and therefore did not require

strict scrutiny under the First Amendment. Thus, the court found the plaintiffs had not shown a sufficient likelihood of eventual success in their suit to justify issuing a TRO.

The court reached the same conclusion with respect to plaintiffs' statutory claims under Kentucky's RFRA, which requires any law substantially burdening religion – including religion-neutral laws – to be narrowly tailored to a compelling state interest. The court explained that “[g]iven that COVID-19 is widely understood to be transmitted through person-to-person contact, including persons with and without symptoms of illness, [Governor] Beshear will likely be able to demonstrate that restricting large in-person gatherings is the least restrictive means of accomplishing the Commonwealth’s objective.”^[5]

For more information, please contact [Jason Renzelmann](#) or any attorney in Frost Brown Todd’s [Business Litigation](#) practice group.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

^[1] Order Denying TRO, *Maryville Baptist Church, Inc. v. Beshear*, Civ. Action No. 3:20-cv-278-DJH (W.D. Ky. April 18, 2020).

^[2] Order Granting TRO, *On Fire Christian Center, Inc. v. Fischer*, Civ. Action No. 3:20-CV-264 (E.D. Ky., April 11, 2020).

^[3] United States’ Statement of Interest in Support of Plaintiffs, *Temple Baptist Church v. City of Greenville*, Case No. 4:20-cv-64-DMB-JMV (filed April 14, 2020)

^[4] Order Denying TRO at 4, *Maryville Baptist Church, Inc. v. Beshear*.

^[5] *Id.* at 6.

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