

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FIRST BAPTIST CHURCH;
PASTOR STEPHEN ORMORD;
CALVARY BAPTIST CHURCH; and
PASTOR AARON HARRIS,

Plaintiffs,

v.

No. 20-1102-JWB

GOVERNOR LAURA KELLY,
in her official capacity,

Defendant.

TEMPORARY RESTRAINING ORDER

This matter is before the court on Plaintiffs’ “Motion for Expedited Hearing and Motion for Temporary Restraining Order.” (Doc. 7.) The motion was filed in conjunction with Plaintiffs’ verified complaint (Doc. 1), which alleges that enforcement of Defendant Governor Laura Kelly’s Executive Order 20-18 would violate Plaintiffs’ rights, including their First Amendment right to the free exercise of religion. The complaint seeks declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 and other provisions. The court held a telephonic hearing on the motion for temporary restraining order (“TRO”) on April 17, 2020, 4:00 p.m.

This court has jurisdiction over Plaintiffs’ claims under federal law pursuant to 28 U.S.C. § 1331. The court further finds the exercise of this court’s jurisdiction over such claims is proper under the rule of *Ex Parte Young*, 209 U.S. 123 (1908).¹

¹ This order is premised solely on Plaintiffs’ federal law claims and does not consider or apply to Plaintiffs’ claim that enforcement of Executive Order 20-18 violates Kansas law. (Doc. 1 at 14-15.)

Based on the materials presented and the arguments of counsel, the court finds: (1) Plaintiffs are likely to succeed on the merits of their claim alleging a violation of their First Amendment right to the free exercise of religion; (2) in the absence of preliminary relief, Plaintiffs are likely to suffer irreparable harm in the form of denial of their constitutional right to the free exercise of their religion, arising from state-imposed restrictions on religious exercises that are not narrowly tailored to further the compelling governmental interest in halting the spread of COVID-19, and which are more severe than restrictions on some comparable non-religious activities; (3) the balance of equities tips in Plaintiffs' favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (setting forth the elements required for preliminary injunctive relief.)

IT IS THEREFORE ORDERED that The Hon. Laura Kelly, in her capacity as Governor of the State of Kansas, is hereby enjoined and ordered to refrain from enforcing the prohibition in Executive Order No. 20-18 and Executive Order 20-25 prohibiting religious gatherings involving more than ten attendees, conducted by Plaintiffs First Baptist Church of Dodge City, Kansas, and Calvary Baptist Church of Junction City, Kansas, so long as those gatherings comply with the social distancing and public health protocols Plaintiffs have indicated in their complaint they are prepared to apply.

The protocols Plaintiff First Baptist Church of Didge City will adhere to include:

- Prior to and following the in-person service, the facility will be deep-cleaned;
- Invitations will be directed to regular church attendees for this in-person service;
- Individuals will be advised to continue to engage in "stay at home" protocols as directed by EO 20-16 in order to attend the service;
- No church members are known to have had any contact with known COVID-19 confirmed cases;
- Attendees will be advised to perform temperature checks at home on all attendees prior to attending the service. Individuals that are ill or have fevers will not attend;
- High-risk individuals will be advised not to attend the in-person service;

- Attendees will be advised to bring their own PPE, including masks and gloves;
- Attendees will be advised not to engage in hand shaking or other physical contact;
- Hand sanitizer will be available for use throughout the facility;
- The in-person service will be limited to 50 individuals in a space that has a capacity for 300 individuals (a cross-shaped auditorium 50 feet by 74 feet at the center; 2,950 square feet total, allowing almost 57 square feet available to each attendee at maximum social distancing);
- Co-habiting family units may sit closer together but otherwise the maximum social distancing possible will be used, however, at a minimum, the CDC recommended protocol will be observed with a minimum distance of at least 6 feet;
- A single point of entry and single point of exit on opposite sides of the building will be used, establishing a one-way traffic pattern to ensure social distancing;
- Ventilation will be increased as much as possible, opening windows and doors, as weather permits;
- These procedures will be communicated to church members in advance of the service;
- Church bulletin and offering plates will not be used during the service;
- Attendees will be advised to wash their clothes following the service;
- If Church leadership becomes aware of a clear, immediate, and imminent threat to the safety of the attendees or cannot follow the protocols listed above, the gathering will be immediately disbanded.

The protocols Plaintiff Calvary Baptist Church of Junction City will adhere to include:

- Splitting out pews and marking designated sitting areas to keep non-cohabiting congregants at least six feet apart before, during, and after the worship service;
- Marking multiple entrances to encourage socially distanced foot traffic;
- Propping doors open to prevent the need for congregants to touch doors while entering and exiting the church or sanctuary;
- Suspending passing offering plates and bulletins;
- Actively discouraging handshaking or other social touching;
- Offering hand sanitizer throughout the building;
- Providing face masks to offer to any interested persons.

SO ORDERED at 6:46 PM, April 18, 2020, at Wichita, Kansas. This order shall expire no later than May 2, 2020, unless extended by the court for good cause. The matter is hereby scheduled for a preliminary injunction hearing on April 23, 2020, at 9:00 a.m., in Courtroom 238, U.S. Courthouse, 401 N. Market, Wichita, Kansas.

s/ John W. Broomes
JOHN W. BROOMES
UNITED STATES DISTRICT JUDGE