

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

ON FIRE CHRISTIAN CENTER, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:20-cv-00264-JRW
)	
GREG FISCHER, in his official)	
capacity as Mayor of Louisville Metro,)	
<i>et al.</i> ,)	
)	
Defendants.)	
)	

GOVERNOR ANDY BESHEAR’S AMICUS BRIEF

On April 13, 2020, the Court invited Andy Beshear, the Governor of the Commonwealth of Kentucky, to file an amicus brief in the above-styled action regarding one of the questions presented in the action: Does the March 19, 2020 Order of the Cabinet for Health and Family Services (DN 10-2) signed by Acting Secretary of the Cabinet for Health and Family Services Eric Friedlander, the Governor’s Designee, and Commissioner of the Department for Public Health Steven J. Stack prohibit drive-in religious services? Pursuant to the Court’s Notice (DN 17) of invitation to file an amicus brief on this question, Governor Andy Beshear provides the following amicus brief.

In short, no, the March 19, 2020 Order prohibiting mass gatherings does not prohibit drive-in religious services. Consistent with recommendations of the Centers for Disease Control and Prevention (CDC), the White House, and surrounding states, the March 19 Order prohibits in-person mass gatherings that violate social distancing recommendations of public health officials. Although the Order does not expressly exclude drive-in religious services, the plain language reveals that the intent is to prohibit person-to-person interaction, not interactions where

people remain in a vehicle. This is further illustrated by other Executive Branch orders issued during the COVID-19 pandemic that allow drive-thru and curbside food service. In fact, no order targets any vehicular activity, and the Governor has specifically designated auto repair and maintenance businesses as life-sustaining in order to remain open. Moreover, Governor Beshear and Dr. Stack have repeatedly voiced public support for drive-in religious services, so long as the following directives are followed:

- Vehicles must contain only people from the same household;
- All individuals must remain in their vehicles;
- The vehicles must be at least six feet away from each other;
- Church staff must be at least six feet away from each other and at least six feet away from the vehicles; and
- Proper hygiene measures recommended by the Centers for Disease Control and Prevention must be implemented.¹

Many faiths and denominations have held drive-in religious services across the Commonwealth.

The foregoing explanation notwithstanding, Governor Beshear's Orders, and Orders entered by Cabinet Secretaries and other designees pursuant to KRS 39A.100, do not expressly limit the powers of local officials to implement additional restrictions when necessary to protect the public and when not inconsistent with the Governor's Orders. Under KRS 39A.100(2), local chief executive officers are empowered to take their own measures during a state of emergency.

¹ See, e.g., Governor Andy Beshear, *Update on COVID-19 in Kentucky – 3.20.2020 PM*, YouTube (Mar. 20, 2020), at 46:45-47:15 (“I believe that this is a creative solution, as long as there is the distancing between those cars We want to see creativity, we want to see ways that they can connect My Commissioner of Public Health says that’s good.”)(available at https://youtu.be/vG_nreWckWw) (last visited Apr. 15, 2020); Governor Andy Beshear, *Update on COVID-19 in Kentucky – 4.11.2020*, YouTube (Apr. 11, 2020), at 52:08-55:27 (“I have been in favor of drive-in services, a chance for people to get together and worship while being apart. . . . We’ve had great buy-in from our faith community around the state. . . . We have had churches working really hard on that and we appreciate it.”)(available at https://youtu.be/X_1NS02f0CI) (last visited Apr. 15, 2020).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2020, I electronically filed the foregoing Amicus Brief via the Court's CM/ECF system, causing counsel of record to be served.

/s/ S. Travis Mayo
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