

History of Kelly Administration's Actions Preceding and During *First Baptist Church v. Kelly*

1. On April 7, 2020, five days before Easter Sunday, Kansas Governor Laura Kelly issued Executive Order 20-18, which bans church gatherings of more than 10 non-performing people, while carving out broad exemptions for gatherings involving 26 types of secular activities.

2. On April 8, 2020, Kansas Attorney General Derek Schmidt issued a memorandum to all Kansas prosecutors and law enforcement stating that the religious gathering prohibitions of EO 20-18 “likely violate both state statute and the Kansas Constitution.”

3. Later that day, the Kansas Legislative Coordinating Council (hereinafter “LCC”) voted to rescind EO 20-18 under the ostensible authority of HCR 5025, citing the constitutionality concerns raised by Attorney General Schmidt’s memorandum.

4. As early as April 3, 2020, prior to the issuance of EO 20-18, legislative leadership had discussions with the Governor’s Office regarding the constitutionality of imposing a limitation on church gatherings. Those discussions continued after the issuance of EO 20-18 and after the LCC attempted to revoke EO 20-18. Indeed, prior to the Governor filing the Quo Warranto action, legislative leadership requested that the Governor merely remove the criminal penalties associated with EO 20-18 and they would allow the EO to stand. The Governor refused.

5. The Governor denounced the actions of the Attorney General and LCC as mere “partisan games.”

6. On April 9, 2020, the Governor brought suit in state court to reinstate her pre-Easter church ban based on a technicality of the LCC rescission process. The Court did not consider the grave constitutional questions raised by her discriminatory church ban.

7. On April 14, 2020, United States Attorney General William Barr issued a statement that “the First Amendment and federal statutory law” also prohibit governments from

impos[ing] special restrictions on religious activity that do not also apply to similar nonreligious activity. For example, if a government allows movie theaters, restaurants, concert halls, and other comparable places to assemble to remain open and unrestricted, it may not order houses of worship to close, limit their congregation size, or otherwise impede religious gatherings. Religious institutions must not be singled out for special burdens.

8. On April 15, 2020, counsel for First Baptist Church sent a letter to Clay Britton, general counsel for Governor Kelly, requesting that Governor Kelly incorporate more narrowly tailored restrictions into her statewide order prohibiting churches from holding worship services with more than 10 non-performing members. In the letter, counsel requested the Governor make specific allowance for churches to hold in-person, indoor worship services provided the church congregants follow rigorous social distancing and healthy safety protocol as set forth in the letter; requirements which exceed those imposed by EO 20-18 on other similar secular facilities.

9. On April 16, Mr. Britton responded but did not permit the church to meet nor rescind or modify the Order, but rather stated that the Governor’s Office was reviewing the request and “will reach a decision as soon as tomorrow.” Later that day, Counsel for the Plaintiffs replied that they were proceeding with a lawsuit, given the limited time frame before Sunday.

10. On April 17, 2020, in response to the Complaint, the Governor’s Office issued Executive Order 20-25 (“EO 20-25”) which revoked and replaced EO 20-18.

11. EO 20-25 removed “libraries” and “shopping malls” from the list of exceptions to the “mass gatherings” limitation and made clarifying comments related to the restrictions on retail establishments and retail food establishments but maintained the prohibition on religious gatherings of more than 10 non-performing people.

12. On April 18, the Court issued a temporary restraining order enjoining the Governor from enforcing her church ban against Plaintiffs provided that Plaintiffs continue to comply with the social distancing guidelines they had originally proposed to the Governor prior to filing suit.

13. After being enjoined by the Court, the Governor issued a statewide media release threatening to criminally enforce her church ban against all other churches in Kansas the following day, despite the Court's findings regarding the unconstitutionality of her church ban.

14. A week later, on April 25, 2020, and facing another court hearing, the Governor agreed to allow the court's injunction against her to be extended for an additional two weeks.

15. After agreeing to extend the court order, the Governor disingenuously stated in her media release that the churches had "agreed" to comply with safety protocols put in place by the court. However, these safety protocols were the same ones originally proposed and adopted by the Plaintiffs, but rejected by the Governor, prior to the filing of this lawsuit.

16. Finally, on April 30, the Governor announced that she planned to allow EO 20-25 expire on May 4 and issue a new mass gatherings ban that does not discriminatorily impose greater restrictions on churches and other religious activities than are imposed on similar secular activities.

17. Prior to and during the pendency of this lawsuit, the Governor and her administration in their public statements have routinely demeaned and targeted churches and people of faith in an attempt to cajole and intimidate them into complying with her church ban. Examples of such derogatory statements include:

- Governor Kelly comparing the devotion of fans of the University of Kansas basketball team to a religion when asked on national television to explain why her church ban is constitutional;
- Secretary Lee Norman on social media comparing a cancelled outdoor Easter gathering in Kansas to the 1978 Jonestown suicide cult;
- Secretary Lee Norman maligning members of a particular Lutheran church holding an Easter Service by tweeting: “Shameful leadership. Blind followers.”