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RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 25a0067p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MARYVILLE BAPTIST CHURCH; JACK ROBERTS, *Plaintiffs-Appellants*,	]	
v.	]	No. 24-5737
ANDY BESHEAR, in his official capacity as Governor of the Commonwealth of Kentucky, *Defendant-Appellee.*	]	

Appeal from the United States District Court for the Western District of Kentucky at Louisville.
No. 3:20-cv-00278–David J. Hale, District Judge.

Decided and Filed: March 25, 2025

Before: SUTTON, Chief Judge; McKEAGUE and NALBANDIAN, Circuit Judges.

COUNSEL

ON BRIEF: Mathew D. Staver, Daniel J. Schmid, LIBERTY COUNSEL, Orlando, Florida, for Appellants. Mitchel T. Denham, MCBRAYER, PLLC, Louisville, Kentucky, Travis Mayo, Taylor Payne,

Laura Tipton, OFFICE OF THE GOVERNOR, Frankfort, Kentucky, for Appellee.

OPINION

SUTTON, Chief Judge. Maryville Baptist Church sought, and obtained, a preliminary injunction against the Kentucky Governor's COVID-19 restrictions on religious gatherings. As time passed and the pandemic waned, the case became moot. In view of its early success in the case under the Free Exercise Clause of the United States Constitution and 42 U.S.C. § 1983, the Church sought attorney's fees as a "prevailing party" under 42 U.S.C. § 1988. The district court denied the motion, and the Church appealed. The U.S. Supreme Court recently answered the question. It held that a party who receives a preliminary injunction, and whose case becomes moot before the court reaches a final judgment, does not count as a prevailing party under § 1988. *See Lackey v. Stinnie*, 145 S. Ct. 659 (2025). Consistent with that decision, we affirm the district court's denial of attorney's fees.

I.

At the outset of the COVID-19 pandemic, Governor Andy Beshear declared a state of emergency in Kentucky and entered a series of orders intended to slow the virus's spread. Two of those orders bear on this case. The first order, issued on March 19, 2020, prohibited all "mass gatherings" in the Commonwealth. R.1-5 at 1. That included "faith-based" gatherings, but it exempted gatherings at

"airports, bus and train stations," and "shopping malls and centers," among other places. R.1-5 at 1. The second order, issued on March 25, closed all organizations that were not "life-sustaining." R.1-7 at 2. That included religious organizations, except when they provided "food, shelter, and social services," but it exempted laundromats, law firms, hardware stores, and several other businesses. R.1-7 at 2-4.

On April 12, 2020, Maryville Baptist Church held an Easter service. Some congregants sat inside the church for the service, while others sat in their cars and listened over loudspeakers. Kentucky State Police arrived and notified all of the congregants that their attendance violated the Governors orders.

The Church and its pastor sued the Governor under § 1983, alleging violations of the First and Fourteenth Amendments to the U.S. Constitution. The district court declined to issue a preliminary injunction. The Church appealed. We expedited the appeal and issued a partial stay during its pendency, which barred the Governor from enforcing his orders against the Church's outdoor worship. *See Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610, 616 (6th Cir. 2020) (per curiam). Six days later, while the underlying appeal remained pending, the district court granted a preliminary injunction prohibiting the Governor from enforcing his orders against the Church's indoor and outdoor worship. *See Maryville Baptist Church, Inc. v. Beshear*, No. 3:20-CV-278-DJH-RSE, 2020 WL 2393359, at *3-4 (W.D. Ky. May 8, 2020). After the Church obtained its desired preliminary relief, we dismissed its appeal as moot.

See Maryville Baptist Church, Inc. v. Beshear, 977 F.3d 561, 564-65 (6th Cir. 2020) (per curiam).

On May 9, 2020, a day after the district court awarded the Church its preliminary injunction, the Governor allowed places of worship to reopen. Less than a year after that, the Kentucky General Assembly limited the Governor's authority to issue similar COVID-19 orders in the future. *See Cameron v. Beshear*, 628 S.W.3d 61, 67, 78 (Ky. 2021). With the controversy at an end due to actions by the state executive and legislative branches, the third branch of the federal government dismissed the underlying action as moot on October 6, 2021.

The Church moved for attorney's fees. *See* 42 U.S.C. § 1988(b). The district court eventually denied the motion on the ground that the Church did not prevail. The Church appeals.

II.

In the American legal system, each party usually pays its own attorney's fees. *See Buckhannon Bd. & Care Home v. W. Va. Dep't of Health & Hum. Res.*, 532 U.S. 598, 602 (2001). Congress has created some exceptions to that default rule. The most conspicuous one covers lawsuits that vindicate constitutional and statutory rights under federal law. Under 42 U.S.C. §1988(b), courts may grant "a reasonable attorney's fee" to "the prevailing party" in a in a § 1983 action. For today's purposes, the key language is "prevailing party." That phrase frames the sole question on appeal: May we treat a party who receives a preliminary injunction, but never obtains a final judgment because the case becomes moot, as a prevailing party?

Until now, we "usually" answered no but made an "occasional exception[]" in discrete circumstances. *McQueary v. Conway*, 614 F.3d 591, 604 (6th Cir. 2010). "[W]hen a claimant wins a preliminary injunction and nothing more," we explained, "that usually will not suffice to obtain fees under § 1988." *Id.* That remained the rule in our court for over a decade. "Ordinarily," we said under that line of cases, "a preliminary injunction by itself does not suffice." *Roberts v. Neace*, 65 F.4th 280, 284 (6th Cir. 2023). During that time, we permitted attorney's fees in this situation a handful of times because the underlying preliminary injunction "mainly turn[ed] on the likelihood-of-success inquiry and change[d] the parties' relationship in a material and enduring way." *Id.*; *see, e.g.*, *Tenn. State Conf. of NAACP v. Hargett*, 53 F.4th 406, 411 (6th Cir. 2022); *Miller v. Caudill*, 936 F.3d 442, 450 (6th Cir. 2019); *Planned Parenthood Sw. Ohio Region v. Dewine*, 931 F.3d 530, 546 (6th Cir. 2019).

The U.S. Supreme Court recently decided that the "ordinar[y]" rule is the only rule. In *Lackey v. Stinnie*, a Virginia statute required state courts to suspend the licenses of drivers who failed to pay court fines. 145 S. Ct. at 664. A group of drivers challenged the law, and the district court preliminarily enjoined its enforcement. *Id.* at 664-65. The Virginia General Assembly repealed the statute before the district court reached a final judgment, which mooted the underlying case. *Id.* at 665. The drivers sought attorney's fees anyway. *Id.* The Supreme Court rejected the drivers' bid. A plaintiff "prevails," the Court explained, "when a court conclusively resolves a claim by granting enduring judicial relief on the

merits that materially alters the legal relationship between the parties." *Id.* at 669. A plaintiff who receives a preliminary injunction before the case becomes moot does not fit the bill, it concluded. *Id.* at 666-69. A preliminary injunction, the Court explained, reflects only "temporary success at an intermediary stage of the suit," not enduring relief based on a conclusive determination that the plaintiff won, and not relief that changes the relationship between the parties. *Id.* at 667 (quotation omitted).

Our line of cases that permitted attorney's fees in the context of a narrow set of preliminary injunctions cannot be reconciled with *Lackey*'s bright-line rule that the statute never authorizes them in that setting. It goes without saying, but we will say it anyway, that in a "hierarchical system of precedent," our decisions must yield to the Court's contrary decisions. *Hawver v. United States*, 808 F.3d 693, 694 (6th Cir. 2015). That means that *Lackey*, not any of our contrary precedents, determines whether the Church prevails with only a preliminary injunction to its name. Gauged by *Lackey*, the Church does not count as a prevailing party. The Church, like the drivers in *Lackey*, enjoyed only a "transient victory" when our court and the district court preliminarily enjoined the Governor from enforcing his orders against drive-in and in-person church services. 145 S. Ct. at 669. When events outside the courthouse, as in *Lackey*, mooted the dispute, that mooted any chance of obtaining attorney's fees. *See id.* at 665. Any ongoing relief the Church enjoys at this point comes from the Governor's revised orders and later legislation by the General Assembly, not from a federal court's orders. The same reality in *Lackey*

leads to the same conclusion here. Because the Church "gained only preliminary injunctive relief before this action became moot," it does not qualify as a prevailing party eligible for attorney's fees. *Id.* at 671.

We affirm.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-5737

MARYVILLE BAPTIST CHURCH; JACK ROBERTS,
Plaintiffs-Appellants,

v.

FILED
Mar 25, 2025
KELLY L STEPHENS, Clerk

ANDY BESHEAR, in his official capacity as Governor of the Commonwealth of Kentucky,
Defendant-Appellee.

Before: SUTTON, Chief Judge; McKEAGUE and NALBANDIAN, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Western District of Kentucky at Louisville.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the district court's denial of attorney's fees is AFFIRMED

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

MARYVILLE BAPTIST CHURCH, INC.
and DR. JACK ROBERTS,

Plaintiffs,

v. Civil Action No. 3:20-cv-278-DJH-RSE

ANDY BESHEAR, in his official capacity as
Governor of the Commonwealth of Kentucky,

Defendant.

* * * * *

MEMORANDUM AND ORDER

After the Court dismissed this action as moot (Docket No. 68), Plaintiffs Maryville Baptist Church, Inc. and its pastor, Dr. Jack Roberts, filed a bill of costs (D.N. 75) and a motion for attorney fees and nontaxable expenses (D.N. 74). The Court denied both (D.N. 92), and Plaintiffs appealed. (D.N. 93) While the appeal was pending, the Sixth Circuit decided a related case, *Roberts v. Neace*, 65 F.4th 280 (6th Cir. 2023). It then vacated and remanded this action for the Court "to apply *Roberts* in the first instance." (D.N. 95, PageID.1132) After careful consideration, the Court will again deny Plaintiffs' motion and request for costs.

I.

Early in the COVID-19 pandemic, Kentucky Governor Andy Beshear and the Cabinet for Health and Family Services (CHFS) used their emergency powers to implement various temporary measures

designed to prevent the spread of the virus. (*See* D.N. 1-2; D.N. 1-3; D.N. 1-4; D.N. 1-5; D.N. 1-6; D.N. 1-7) One such measure prohibited "[a]ll mass gatherings," including those for "faith-based" activities. (D.N. 1-5, PageID.66) On April 12, 2020, while the mass-gathering ban was in effect, Plaintiffs held an Easter service, during which congregants were "inside the Church building for the worship service or in their vehicles for the 'drive in' version of the service." (D.N. 1, PageID.2) After "receiv[ing] approximately six complaints regarding Maryville Baptist Church having in-person services on April 12, 2020," the Kentucky State Police arrived at the church to record the license-plate information of the vehicles in the parking lot during the service. (D.N. 31-4, PageID.459 ¶¶ 6–7) KSP also posted notices on the vehicles detailing "the potential consequences of participating in a mass gathering." (*Id.* ¶ 8; *see* D.N. 1-11) The owners of the vehicles subsequently received letters from the CHFS that expanded on the information and warnings in the notices. (D.N. 1-12)

On April 17, 2020, Plaintiffs filed this 42 U.S.C. § 1983 action against Governor Beshear, challenging the gathering restrictions. (D.N. 1) The same day, Plaintiffs moved for a temporary restraining order and preliminary injunction allowing them to hold church services otherwise barred by the mass-gathering ban. (D.N. 3) The Court denied Plaintiffs' motion for a TRO, Maryville Baptist Church, Inc. v. Beshear, 455 F. Supp. 3d 342, 347 (W.D. Ky. 2020), and Plaintiffs appealed. (D.N. 16) Plaintiffs also moved for an injunction pending appeal. (D.N. 17) The Sixth Circuit granted in part Plaintiffs' motion for injunction pending appeal, enjoining Beshear "and all

other Commonwealth officials . . . during the pendency of th[e] appeal, from enforcing orders prohibiting drive-in services at the Maryville Baptist Church if the Church, its ministers, and its congregants adhere to the public health requirements mandated for 'life-sustaining' entities." Maryville Baptist Church, Inc. v. Beshear, 957 F.3d 610, 616 (6th Cir. 2020). The Sixth Circuit left the issue of in-person services to this Court. Id. Following the Sixth Circuit's decision, Plaintiffs filed a renewed motion for injunction pending appeal with respect to in-person services. (D.N. 25) The Court granted Plaintiffs' renewed motion for injunction pending appeal, as well as Plaintiffs' initial motion for preliminary injunction, thereby enjoining enforcement of the mass-gathering ban as to in-person services. *Maryville Baptist Church, Inc. v. Beshear*, No. 3:20-CV-278-DJH-RSE, 2020 WL 2393359, at *3–4 (W.D. Ky. May 8, 2020).

On May 8, 2020, before the Court entered the injunction regarding in-person services, Beshear promulgated public-health requirements for churches to safely resume in-person services by May 20, 2020. (D.N. 34; D.N. 34-1) Beshear also filed a motion to dismiss Plaintiffs' claims for lack of jurisdiction and for failure to state a claim. (D.N. 33) The next day, on May 9, 2020, Beshear and the CHFS issued an amended order removing the prohibition on in-person religious services. (D.N. 36-1) On May 12, 2020, Beshear filed an amended motion to dismiss, arguing that the May 9, 2020 order mooted Plaintiffs' claims. (D.N. 38) Beshear later moved to dissolve the injunctions. (D.N. 46)

While Beshear's motions were pending, the Sixth Circuit dismissed Plaintiffs' appeal for lack of

jurisdiction and instructed the Court to "consider in the first instance whether [the case had] become moot in light of the Governor's new orders." (D.N. 57-1, PageID.754) The Court then denied Beshear's motions without prejudice and ordered supplemental briefing on the mootness question. (D.N. 58)

In their supplemental briefing, Plaintiffs argued that the case was not moot because Beshear's "sudden change in policy [wa]s neither permanent nor irrevocable." (D.N. 61, PageID.784 (citing *City of L.A. v. Lyons*, 461 U.S. 95, 101 (1983))) The Court ultimately dismissed the case as moot "[i]n light of the Kentucky Supreme Court's decisions in *Cameron v. Beshear*, 628 S.W.3d 61 (Ky. 2021), and *Beshear v. Goodwood Brewing Co., LLC*, 635 S.W.3d 788 (Ky. 2021), and the legislation addressed therein," which limited the Governor's emergency powers. (D.N. 68) Plaintiffs then moved for an award of costs, attorney fees, and expenses, arguing that they were prevailing parties and thus entitled to such an award. (D.N. 74; D.N. 75)

In September 2022, the Court denied Plaintiffs' motion, concluding that Plaintiffs were not prevailing parties within the meaning of 42 U.S.C. § 1988.[1] (D.N. 92) Plaintiffs again appealed. (D.N. 93) While that appeal was pending, the Sixth Circuit decided *Roberts*, holding that the *Roberts* plaintiffs, who received preliminary injunctions against Beshear's gathering restrictions on faith-based services, were prevailing parties entitled to attorney fees. 65 F.4th at 283. The Sixth Circuit then vacated this Court's

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[1] 42 U.S.C. § 1988(b) provides that courts may award "the prevailing party" in a § 1983 action "a reasonable attorney's fee as part of the costs."

denial of Plaintiffs' motion and remanded for reconsideration in light of *Roberts*. (D.N. 95) The parties have fully briefed their positions regarding application of *Roberts* to this case. (*See* D.N. 105; D.N. 108; D.N. 109) The Court will briefly outline *Roberts* before determining whether Plaintiffs are entitled to an award of costs.

II.

In *Roberts*, congregants of Maryville Baptist Church sought to enjoin enforcement of the Governor's COVID-19 restrictions. 65 F.4th at 283. They challenged two of Beshear's orders in particular: one prohibiting mass gatherings—which Plaintiffs also challenged in this case—and another prohibiting most travel in or out of Kentucky. *Id.* "The congregants received preliminary injunctions against both orders." *Id.* But the district court ultimately dismissed the congregants' case as moot after this Court enjoined the Governor from prohibiting gatherings at Maryville Baptist Church (D.N. 35) and "the Kentucky legislature limited the Governor's authority to issue similar COVID-19 orders." *Roberts*, 65 F.4th at 283 (citing *Cameron v. Beshear*, 628 S.W.3d 61, 78 (Ky. 2021)). The congregants then moved for attorney fees, which the district court awarded. *Id.* The Governor appealed, arguing in part that the congregants were not prevailing parties. *Id.*

The Sixth Circuit concluded that the congregants in *Roberts* were prevailing parties for purposes of § 1988(b) because the preliminary injunctions they received "mainly turn[ed] on the likelihood-of-success inquiry and chang[ed] the parties' relationship in a material and enduring way." *Id.* at 284 (citing *Miller v. Caudill*, 936 F.3d 442, 448 (6th Cir. 2019); *Dubuc v.*

Green Oak Twp., 312 F.3d 736, 753 (6th Cir. 2002)). The Sixth Circuit noted that "[o]ne 'touchstone' of th[e] la[tter] inquiry is a 'material alteration of the legal relationship of the parties.'" *Id.* (quoting *Tex. State Tchrs. Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792–93 (1989)). In affirming the district court's fee award, the Sixth Circuit concluded that "[b]oth injunctions changed the legal relationship between the congregants and Governor Beshear because they stopped the Governor from enforcing his orders and allowed the congregants to act in ways that he had 'previously resisted.'" *Id.* (quoting *McQueary v. Conway*, 614 F.3d 591, 600 (6th Cir. 2010)). The court also concluded that the injunctions "qualif[ied] as enduring" based on "[t]he nature of the injunctions, the longevity of the relief, and the irrevocability of the relief." *Id.*

Plaintiffs here argue that "'all features' of the *Roberts* decision are present in the instant action" and that *Roberts* thus "compels a finding that Plaintiffs are prevailing parties under Section 1988." (D.N. 105, PageID.1146 (quoting *Maryville Baptist Church v. Beshear*, No. 22-5952, 2023 WL 3815099, at *1 (6th Cir. June 5, 2023))) In response, Beshear contends that *Roberts* is distinguishable because the injunctions "in this case did not change the legal relationship between the parties" and did not result in "a court-ordered change." (D.N. 108, PageID.1160 (emphasis removed)).

Specifically, Beshear argues that Plaintiffs did not get the relief they sought because the Sixth Circuit enjoined enforcement of the mass-gathering order only as to drive-in services, which were already allowed. (*Id.*, PageID.1161) The Governor further

contends that "this Court's preliminary injunction extending the order to in-person services likewise did not result in a material, court-ordered change" because "the Governor voluntarily stopped enforcement of the relevant orders" before the Court issued the injunction. (*Id.*, PageID.1161–62) Finally, Beshear argues that "Plaintiffs conceded the relief they achieved was neither court ordered nor enduring" when they argued that "the case was not moot because neither the preliminary injunction nor the Governor's voluntary cessation of the challenged order was permanent or irrevocable." (*Id.*, PageID.1164 (citing D.N. 92, PageID.1123)).

In reply, Plaintiffs assert that Beshear mistakenly draws a distinction between themselves and the plaintiff-congregants in *Roberts*. (D.N. 109, PageID.1169) According to Plaintiffs, "[a]ll the people who exercised their First Amendment rights to assemble for worship under the Maryville Baptist steeple are prevailing parties." (*Id.*, PageID.1170–71) Plaintiffs also contend that drive-in services *were* prohibited by the mass-gathering order. (*Id.*, PageID.1174) And Plaintiffs argue that the injunctions issued in this case must be lasting and enduring because they were issued before the injunctions in *Roberts*, which the Sixth Circuit deemed lasting and enduring. (*Id.*, PageID.1176).

Contrary to Plaintiffs' contention, the preliminary injunctions in this case did not "change[] the parties' relationship in a material and enduring way." *Roberts*, 65 F.4th at 284. First, the injunctions did not allow Plaintiffs to act in ways that Beshear "previously resisted." *Id.* Despite the general prohibition on mass gatherings, Beshear permitted—and encouraged—

churches to offer drive-in services as an alternative to in-person gatherings, particularly for the Easter holiday. (*See* D.N. 31-2, PageID.456 ¶ 48 (explaining that leading up to Easter, "the Governor encouraged churches to explore other ways to worship, including online services and even drive-in church services")) During a COVID-19 briefing on March 20, 2020, for example, Beshear affirmed that drive-in church services were allowed under the mass-gathering restrictions, describing such services as "a creative solution." Governor Andy Beshear, *Update on COVID-19 in Kentucky – 3.20.2020 PM*, YouTube (March 20, 2020),https://www.youtube.com/watch?v=vG_nreWckWw. Similarly, during an April 11, 2020 briefing, Beshear stated that he had "been in favor of drive-in services" and detailed the social-distancing rules for drive-in services. Governor Andy Beshear, *Update on COVID-19 in Kentucky — 4.11.2020*, YouTube (April 11, 2020), https://www.youtube.com/watch?v=X_1NS02f0CI.[2]The Sixth Circuit's injunction against enforcement of the mass-gathering orders as to drive-in services thus merely reaffirmed Beshear's position that such services were permissible.[3]

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[2] Both YouTube videos were cited in Beshear's response to Plaintiffs' renewed motion for injunction pending appeal. (*See* D.N. 31, PageID.414 n.37)

[3] Plaintiffs argue that because the Kentucky State Police recorded the license plates of those attending the April 12 service, the mass-gathering order did not actually allow drive-in services. (*See* D.N. 109, Page.ID.1173) But as set out in the plaintiffs' verified complaint, the April 12 drive-in service was a live audio broadcast of an *in-person* service, attended by congregants inside the church, in violation of the Governor's prohibition on mass gatherings. (D.N. 1, PageID.2, 18; *see* D.N. 31, PageID.415–18; D.N. 31-2, PageID.456 ¶ 49) The Kentucky

Moreover, by the time this Court issued its injunction, Beshear had already announced that in-person services would be allowed to resume. (D.N. 34, PageID.570; *see* D.N. 34-1) And "[a] defendant's voluntary change, even one precipitated by litigation, does not amount to a 'court-ordered change in the legal relationship' between the plaintiff and defendant, as required to establish prevailing-party status." *McQueary*, 614 F.3d at 597 (quoting *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Hum. Res.*, 532 U.S. 598, 604 (2001)); *see also Miller v. Davis*, 267 F. Supp. 3d 961, 976–77 (E.D. Ky. 2017), *aff'd sub nom. Miller v. Caudill*, 936 F.3d 442 (6th Cir. 2019) ("A defendant's voluntary change in conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit, lacks the necessary judicial *imprimatur* on the change." (internal quotation marks omitted) (quoting *Buckhannon*, 532 U.S. at 605)); *Tennessee State Conf. of NAACP v. Hargett*, 53 F.4th 406, 412 (6th Cir. 2022) (Nalbandian, J., dissenting) ("[W]e must deny attorney's fees in preliminary-injunction cases if a defendant's voluntary action moots the case." (collecting cases)). Thus, the lifting of the ban on in-person services was not a "court-ordered change" because Beshear proactively created an exception for

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State Police recorded the license-plate numbers of all vehicles in the church's parking lot at the time of the offending gathering. (D.N. 1, PageID.2) Although the Sixth Circuit described the April 12 service as "a drive-in Easter service," *Maryville Baptist Church*, 957 F.3d at 611, the verified complaint makes clear that some congregants were inside the building for a concurrent in-person service. (D.N. 1, PageID.2 ¶ 2; *see also* D.N. 57-1, PageID.752 (stating that some congregants "enjoyed" the Easter sermon "from the pews of the church"))

in-person services. (*See* D.N. 34-1) Indeed, this Court's injunction noted Beshear's "new guidelines for in-person worship services." (D.N. 35, PageID.580 n.3) The injunctions in this case therefore did not materially alter the legal relationship between the parties. *Cf. Roberts*, 65 F.4th at 284.

Lastly, the relief granted to Plaintiffs was not enduring because it was revocable. *See Caudill*, 936 F.3d at 448 ("[F]or the change to have been enduring, it must have been irrevocable, meaning it must have provided plaintiffs with everything they asked for." (emphasis removed)). Plaintiffs themselves argued that the Governor's "change in policy [wa]s neither permanent nor irrevocable" (D.N. 61, PageID.784 (citing *City of L.A.*, 491 U.S. at 101)), noting that "absent a permanent injunction, the challenged policies c[ould have] be[en] reinstituted at any time." (*Id.* (emphasis removed)) Plaintiffs now contend that "[n]othing could be more enduring than the eternal nourishment Plaintiffs[] received" from being "able to attend church each Sunday during the pendency of those injunctions." (D.N. 105, PageID.1148) But the relief Plaintiffs received must have caused an "enduring change in the *legal* relationship between the parties." *Caudill*, 936 F.3d at 448 (emphasis added). The relief plaintiffs received through the legal process—the injunction allowing them to attend church in person each Sunday—was, by its own terms, temporary. As Magistrate Judge Regina S. Edwards previously explained in this case,

> [w]hen partially granting the injunctive relief Maryville Baptist sought, the Sixth Circuit explicitly limited it to "the pendency of this appeal" and limited its application to

> drive-in services so long as the church complied with public health requirements. And when the district court granted Maryville Baptist's preliminary injunction and allowed in-person services to resume, it required the same compliance with the state's public health directives.

(D.N. 87, PageID.1087) Plaintiffs' relief was therefore conditional; the Court retained the power to revoke it at any time. *Cf. Dubuc*, 312 F.3d at 754 ("This Court agrees with the district court that the injunction was not a clear victory for Appellant. The injunction was specifically called temporary, and was only issued subject to Appellant applying with seven conditions.").

Because the injunctions here did not result in a "court-ordered, material, enduring change in the legal relationship between the parties," *Caudill*, 936 F.3d at 448, this case is distinguishable from *Roberts*. In *Roberts*, the Commonwealth made an exception to the challenged gathering restrictions for in-person services *after* the preliminary injunctions had issued. 65 F.4th at 285. The Sixth Circuit rejected Beshear's argument that he "voluntarily changed the orders"; on the contrary, as the court observed, he changed them because "[a]n immediately enforceable preliminary injunction compelled [him] to" do so. *Id.* (internal quotation marks omitted) (quoting *McQueary*, 614 F.3d at 599). In contrast, the first injunction issued here conformed with Beshear's ongoing acceptance—and encouragement—of drive-in services (*see* D.N. 31-2, PageID.456), and by the time the second injunction issued, Beshear had already released guidelines for in-person worship services to resume. (D.N. 34, PageID.570; *see* D.N. 34-1) Thus, in this case—unlike

Roberts—Beshear "relent[ed] of his own accord." 65 F.4th at 285 (citing *Buckhannon*, 532 U.S. at 605). Additionally, the relief the congregants in *Roberts* received was enduring, while the relief Plaintiffs received in this case was not. In *Roberts*, the congregants requested an injunction shielding them from prosecution for attending Maryville Baptist's Easter service. *See Roberts v. Beshear*, No. 220CV054WOBCJS, 2022 WL 4592538, at *2 (E.D. Ky. Sept. 29, 2022), *aff'd sub nom. Roberts v. Neace*, 65 F.4th 280 (6th Cir. 2023). The congregants' injunction thus became irrevocable once the Easter service had occurred. *Id.* at *3 (citing *McQueary*, 614 F.3d at 598). Here, in contrast, the mere passage of time was insufficient to make Plaintiffs' relief permanent, as the district court in *Roberts* explained:

> In [*Maryville Baptist Church v. Beshear*], the plaintiff church sought and received preliminary injunctive relief to permit it to continue its regular services for an indefinite period but did not seek injunctive relief regarding any specific service. Thus, that relief could have been revoked had the case not been dismissed as moot. However, here, plaintiffs sought relief from prosecution for a specific violation, which could not be revoked after the statute of limitations ran.

Id. Because Plaintiffs' relief had no built-in end date, this case less like is *Roberts* and more like *McQueary*.

In *McQueary*, a religious protestor challenged certain provisions of a Kentucky law that he claimed infringed on his right to protest at military funerals. 614 F.3d at 595. He had protested such funerals in the

past and wanted to continue doing so. *Id.* at 596. The district court preliminarily enjoined enforcement of the challenged provisions, and the Kentucky legislature later voluntarily repealed those provisions. *Id.* The protestor moved for attorney fees, but the district court denied his motion. *Id.* On appeal, the Sixth Circuit considered "whether or when the winner of a preliminary injunction may be treated as a 'prevailing party' entitled to attorney's fees." *Id.* The Sixth Circuit held that "when a claimant wins a preliminary injunction and nothing more, that usually will not suffice to obtain fees under § 1988," but the court remanded the case for the district court to determine "when the occasional exceptions to that rule should apply" using a "contextual and case-specific inquiry[.]" *Id.* at 604.

On remand, the district court concluded that the protestor was not entitled to a fee award because he was not a prevailing party. *McQueary v. Conway*, No. 06-CV-24-KKC, 2012 WL 3149344, at *3 (E.D. Ky. Aug. 1, 2012), *aff'd*, 508 F. App'x 522 (6th Cir. 2012). The court noted that "the [protestor's] claim did not become moot when a particular event occurred . . . . nor did the [protestor's] claim become moot because the preliminary injunction granted him all the relief he sought." *Id.* at *2. "Instead," his claim "became moot because the [legislature] voluntarily repealed the challenged provisions," but "the [legislature's] voluntary conduct cannot serve as the basis for an award of attorney's fees." *Id.* (citing *Buckhannon*, 532 U.S. at 600, 605). As the court further explained,

> where a plaintiff is granted preliminary injunctive relief that enjoins the government from acting at a particular time

> and place, the preliminary relief becomes, in effect, permanent relief after the event occurs. After the passage of the event, the preliminary injunction can no longer be meaningfully revoked. In contrast, preliminary injunctive relief like that granted by the Court in this case that enjoins the defendant only while the case is pending is truly temporary and revocable. Such relief cannot confer prevailing-party status because it is not "'enduring' and irrevocable." *McQueary*, 614 F.3d at 597 (citing *Sole v. Wyner*, 551 U.S. 74, 86 (2007)). Section 1988 "requires lasting relief, not the temporary 'fleeting success'["] that an injunction effective only while the case is pending represents. *Id.* (citing *Sole*, 551 U.S. at 83).

Id. at *3; *see also McQueary*, 508 F. App'x at 524 (affirming that "[t]he nature of the relief [the protestor] sought . . . was permanent[, but] the relief he received from the court was temporary").

Like the protestor's relief in *McQueary*, the injunctions in this case did not provide Plaintiffs relief that became permanent after a specific event. Instead, their relief was temporary. As mentioned previously, Plaintiffs themselves recognized that "absent a permanent injunction, the challenged policies c[ould have] be[en] reinstituted at any time." (D.N. 61, PageID.784 (emphasis removed)) In other words, Plaintiffs did not receive "everything they asked for." *Caudill*, 936 F.3d at 448. And Plaintiffs' claims became moot when Beshear, like the legislature in *McQueary*, voluntarily amended the mass-gathering

order—an action that "cannot serve as the basis for an award of attorney's fees." 2012 WL 3149344, at *2. Indeed, under applicable Supreme Court and Sixth Circuit precedent, the Court may not award fees if the plaintiff "achieved the desired result because the lawsuit brought about a voluntary change in the defendant's conduct." *Buckhannon*, 532 U.S. at 600; *see McQueary*, 614 F.3d at 597 ("[A] prevailing-party victory must create a lasting change in the legal relationship between the parties and not merely 'catalyze' the defendant to voluntary action . . . ."). In sum, *Roberts* is distinguishable, and Plaintiffs are not prevailing parties under 42 U.S.C. § 1988. *See McQueary*, 614 F.3d at 597. Accordingly, Plaintiffs are not entitled to fees or costs.[4]

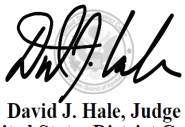
III.

For the reasons set forth above, and the Court being otherwise sufficiently advised, it is hereby **ORDERED** as follows:

(1) Plaintiffs' motion for attorney fees and expenses (D.N. 74) and their bill of costs (D.N. 75) are **DENIED.**

(2) Plaintiffs' motion for an expedited supplemental-briefing schedule, or in the alternative, a hearing (D.N. 110),is **DENIED** as moot.

(3)This matter remains **CLOSED** and **STRICKEN** from the Court's docket.



David J. Hale, Judge
United States District Court

[4] In light of this conclusion, the Court need not reach Beshear's alternative argument that the requested fees are excessive. (*See* D.N. 108)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-5737

MARYVILLE BAPTIST CHURCH; JACK ROBERTS,
Plaintiffs-Appellants,

v.

FILED
Apr. 24, 2025
KELLY L STEPHENS, Clerk

ANDY BESHEAR, in his official capacity as Governor of the Commonwealth of Kentucky,
Defendant-Appellee.

Before: SUTTON, Chief Judge; McKEAGUE and NALBANDIAN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk