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APPELLATE COURT 5TH DISTRICT

No. 5-20-_____

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

DARREN BAILEY, Plaintiff-Respondent, v. GOVERNOR J.B. PRITZKER, in his official capacity, Defendant-Petitioner.	) Interlocutory Appeal from the Circuit) Court of the Fourth Judicial Circuit,) Clay County, Illinois))) No. 2020CH6)) The Honorable) MICHAEL D. McHANEY,) Judge Presiding.

SUPPORTING RECORD
VOLUME 2 OF 3

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VOLUME 2

VERIFICATION BY CERTIFICATION

I, NADINE J. WICHERN, state the following:

1. I am a citizen of the United States over the age of 18. My current business address is 100 West Randolph Street, 12th Floor, Chicago, Illinois 60601. I have personal knowledge of the facts stated in this verification by certification. If called upon, I could testify competently to these facts.

2. I am an Assistant Attorney General in the Civil Appeals Division of the Office of the Attorney General of the State of Illinois, and, along with others, I have been assigned to represent Defendant-Petitioner Jay Robert Pritzker, in his official capacity as Governor of the State of Illinois, in the interlocutory appeal under Illinois Supreme Court Rule 307(d) in *Bailey v. Pritzker*, No. 5-20-____ (Circuit Court for the Fourth Judicial Circuit, Clay County, Illinois No. 2020CH6), which now is pending before this court.

3. I am the attorney responsible for preparing the Supporting Record, which is three volumes, to be filed with this court in this interlocutory appeal.

4. I am familiar with the documents that have been filed with the circuit court, and the orders entered by the circuit court, in this case.

5. The documents included in the three volumes of Supporting Record are true and correct copies of documents that have been filed in the circuit court, and the orders entered by the circuit court, in this case.

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

Executed on April 29, 2020.

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IN THE CIRCUIT COURT
FOR THE FOURTH JUDICIAL CIRCUIT
CLAY COUNTY, ILLINOIS

DARREN BAILEY, Plaintiff, v. GOVERNOR J.B. PRITZKER, in his official capacity, Defendant.	Case No. 2020 CH 6 Judge McHaney

GOVERNOR'S OPPOSITION TO MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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INTRODUCTION

Faced with the unprecedented and ongoing COVID-19 public health emergency, Governor Pritzker exercised his legal authority under the Illinois Emergency Management Agency Act, 20 ILCS 3305/1 *et seq.* ("Act" or "Emergency Management Act"), and the Illinois Constitution to issue two emergency disaster proclamations and 29 executive orders to combat COVID-19 and protect Illinois residents throughout the State.

The Illinois General Assembly passed the Act to "insure that this State will be prepared to and will adequately deal with any disasters, preserve the lives and property of the people of this State and protect the public peace, health, and safety in the event of a disaster[.]" 20 ILCS 3305/2(a). The Act created the Illinois Emergency Management Agency as part of the executive branch, *id*. §§ 2, 4, and provides that the "Governor shall have general direction and control of the Illinois Emergency Management Agency and shall be responsible for the carrying out of the provisions of this Act," *id*. § 6(a). As more fully described below, Section 7 of the Act authorizes the Governor to exercise emergency powers for periods of 30 days. *Id.* § 7. Because disasters (like flooding and pandemics) do not adhere to calendars and may exist beyond 30 days, the Act allows the Governor to exercise emergency powers for multiple or successive 30-day periods whenever, in his judgment, the Governor determines that a disaster "exists." *Id*. The Act imposes no other condition or limitation on the authority of the Governor to issue a disaster proclamation and trigger emergency powers for the following 30 days.

As a result, since the Act became law, Illinois governors have repeatedly issued multiple and often successive emergency disaster proclamations that have allowed them to continue exercising emergency powers for the duration of one ongoing disaster. The General Assembly has certainly been aware of this longstanding practice by numerous governors. Bailey himself, in his communication with his constituents, positively cited Governor Pritzker's second disaster

proclamation for a flooding event in 2019. Against the background of this well-established practice by governors when handling significant disaster situations, the General Assembly has chosen not to amend the Act to incorporate the limitation suggested now by Bailey.

In response to threats posed by COVID-19, the Governor has used his authority under the Act and the Illinois Constitution to take a number of critical actions.[1] These actions include:

- Using emergency procurement to obtain ventilators needed to save lives of individuals in severe respiratory distress from COVID-19;
- Using emergency procurement to obtain equipment and supplies needed to test for COVID-19;
- Using emergency procurement to obtain personal protective equipment such as masks, gloves, and shields;
- Obtaining emergency funds from the federal government; and
- Using emergency powers to obtain hospital capacity and the availability of healthcare professionals to treat patients with COVID-19.

To prevent community spread of COVID-19 and save lives, the Governor also used his powers under the Act and the Illinois Constitution to require Illinois residents to adhere to social distancing and stay home except for essential travel and activities. Medical experts throughout the State, country, and world have made clear that requirements like these are critical to prevent the spread of COVID-19 (which can be transmitted by persons with no evident symptoms), to

[1] A court may take judicial notice of any fact that is "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." ILL. R. EVID. 201(b); *see also In re Linda B.*, 2017 IL 119392 ¶ 31 n.7 ("Public documents . . . fall within the category of 'readily verifiable' facts capable of instant and unquestionable demonstration of which a court may take judicial notice."); *Cordrey v. Prisoner Review Bd.*, 2014 IL 117155 ¶ 12 n.3 (taking judicial notice of information on Department of Corrections' website because it is a "public document"); *City of Centralia v. Garland*, 2019 IL App (5th) 180439 ¶¶ 8, 10 (taking judicial notice of Secretary of State's records).

protect existing hospital services from being overwhelmed, and to avoid deaths from a disease that has no cure.

Although the Governor's actions pertain to the State and all Illinois residents generally, Bailey seeks to portray those actions as being personal to him, alleging that the Governor "has acted to restrain Bailey within his residence, as well as limit his travel" within the State. (Compl. ¶ 19.) Bailey similarly seeks to portray his requested relief as limited to preventing the Governor from taking actions only against him personally under the executive order directing Illinois residents to stay at home except for essential travel or activities.

Contrary to his description, Bailey is in fact broadly asking this Court to find that the Governor's emergency powers under the Act are limited to one 30-day period per disaster. If successful, Bailey's claim threatens to nullify emergency actions since April 8, 2020, and also to prevent further action. This would sabotage the State's ability to procure desperately needed COVID-19 tests, as well personal protective equipment (including masks, gowns, and gloves) for medical personnel and first responders, and also prevent the State from working closely with hospitals to ensure they are prepared for any increase in critically ill patients. By upending the ability of the executive branch to respond to an unparalleled public health threat, Bailey's requested relief would threaten lives throughout the entire State.

Because the Act authorizes the successive disaster proclamations issued by the Governor, Bailey's lawsuit fails as a matter of law, and his motion for a temporary restraining order and preliminary injunction has no merit. The Court should deny Bailey's motion and dismiss his complaint with prejudice because it does not, and cannot, state a valid cause of action.

BACKGROUND

The COVID-19 Pandemic Ravages Illinois, the Nation, and the World.

On January 29, 2020, the World Health Organization ("WHO") reported over 7,700 cases of COVID-19 in 15 countries across Asia, Europe, Australia, and North America. The next day, the WHO declared a global health emergency.[2] COVID-19 continued to spread invisibly and indiscriminately throughout the world. On March 11, 2020, the WHO elevated COVID-19 to a pandemic.[3] As of April 26, 2020, the WHO reported over 2.8 million COVID-19 cases and almost 200,000 deaths across at least 207 countries.[4]

The United States has by far the most COVID-19 cases of any country.[5] Modeling by the U.S. government's COVID-19 taskforce released on March 31 showed that COVID-19 could kill 100,000 to 240,000 Americans even if aggressive interventions to stop its spread are maintained.[6] Widely cited projections from early April showed COVID-19 could break the U.S. health care system with patients projected to need more than 262,000 hospital beds, 39,700 ICU beds, and 31,700 invasive ventilators at the peak of the outbreak; meaning U.S. hospitals were

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[2] WHO, "Coronavirus," https://www.who.int/health-topics/coronavirus#tab=tab_1 (last visited Apr. 26, 2020); *see also* Derrick Bryson Taylor, "A Timeline of the Coronavirus Pandemic," N.Y. TIMES (Apr. 21, 2020), https://www.nytimes.com/article/coronavirus-timeline.html (last visited Apr. 2, 2020).

[3] WHO, "WHO Director-General's opening remarks at the media on COVID-19" (Mar. 11, 2020), https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020 (last visited Apr. 26, 2020).

[4] WHO, "Coronavirus (COVID-19)," https://covid19.who.int/ (last visited Apr. 26, 2020).

[5] *Id.* (almost 900,000 confirmed cases as of April 26, 2020); Johns Hopkins University & Medicine, "Corona Virus Resource Center," https://coronavirus.jhu.edu/map.html (last visited Apr. 26, 2020).

[6] "Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing" (Mar. 31, 2020), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-15/ (last visited Apr. 26, 2020); *see also* Philip Ewing, "Coronavirus Task Force Details 'Sobering' Data Behind Its Extended Guidelines," NPR (Mar. 31, 2020), https://www.npr.org/2020/03/31/823916343/coronavirus-task-force-set-to-detail-the-data-that-led-to-extension-of-guideline (last visited Apr. 26, 2020).

facing a projected shortfall of more than 84,600 beds, 18,900 ICU beds, and untold numbers of invasive ventilators.[7]

COVID-19 has spread with lethal speed across the State. No region of Illinois has been spared. The disease first appeared in Chicago and other urban areas and wrought devastation there despite the tremendous efforts of Illinois's courageous medical professionals and first responders, and the Governor's prevention measures. But COVID-19 is now spreading to small towns and rural communities in every corner of Illinois. In many ways, Illinois's sparsely populated counties are most vulnerable to COVID-19 because they lack the hospital infrastructure necessary to treat the overwhelming number of potential patients that could be infected if the disease surged.[8] And while the COVID-19 infection "curve" has begun to flatten in some parts of the State, the life-or-death challenge for rural Illinois is only just beginning. As the Clay County Health Department recently warned: "It is likely that the number of COVID-19 positive cases in Clay County will increase as testing becomes more available and as the virus makes its way into our community."[9]

At this time, one of the hardest hit places in this State is just next door in Jasper County, where three dozen residents of a Newton nursing home have been diagnosed with COVID-19

[7] Institute for Health Metrics and Evaluation, University of Washington, "COVID-19 Projections," http://www.healthdata.org/covid/updates (last visited Apr. 26, 2020).

[8] Jennifer Olsen, "Rural America Needs Help from the Rest of the Country to Face COVID-19," TIME (Apr. 23, 2020), https://time.com/5825708/rural-america-covid-19-pandemic/ ("[M]ost of rural America is without the tertiary care hospitals, intensive care units and other specialized services needed to treat those who become gravely ill, and even county or regional hospitals and health clinics are often small, under resourced, and far away.") (last visited Apr. 26, 2020); Eric Scigliano, " 'It Really Is the Perfect Storm': Coronavirus Comes for Rural America," POLITICO (Apr. 15, 2020), https://www.politico.com/news/magazine/2020/04/15/coronavirus-rural-america-covid-19-186031 ("And like opiate addiction, [COVID-19] has spread stealthily through the heartland, even as it was dismissed as a distant, urban problem.") (last visited Apr. 26, 2020).

[9] Clay County Health Department, https://www.healthdept.org/ (last visited Apr. 26, 2020).

within the last few weeks.[10] Jasper County—which lies entirely within the 109th District represented by Bailey in the Illinois House of Representatives—now has 42 confirmed cases and, with less than 10,000 residents, suffers one of the highest per capita infection rates in Illinois outside Chicago and its suburbs.[11] Moreover, Jasper County cases are doubling roughly every 3 days, which is significantly worse than Cook County's rate of 14.5 days and is one of the fastest paces in the entire State (nearby Jefferson County is among the few to exceed Jasper County in that metric; its cases are doubling roughly every 2.5 days).[12] Similarly, Randolph County has one of the highest COVID-19 infection rates in the State.[13] Public health officials have traced Randolph County's surge of cases "to a single event in mid-March. The ripple effect from that event illustrates how connected rural areas can be, and how miles of open space may provide a false sense of security about COVID-19's reach."[14]

Much of the concern with respect to rural areas—even those with few cases—is that the health care infrastructure has less surge capacity in the case of an outbreak. According to the Illinois vulnerability index,[15] in Cook County there is 1 primary care physician for every 1,046 people. In Bailey's Clay County that number is 1 for every 4,433 people; in Jasper County within

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[10] "Dozens infected by COVID-19 at Newton nursing home," PRESS MONITOR (Apr. 23, 2020), https:/www.pressmentor.com/news/20200423/dozens-infected-by-covid-19-at-newton-nursing-home (last visited Apr. 26, 2020).

[11] Illinois Department of Public Health, "COVID-19 Statistics," http://dph.illinois.gov/covid19/covid19-statistics (last visited Apr. 26, 2020); "Coronavirus in the U.S.: Latest Map and Case Count," N.Y. TIMES, https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html (last visited Apr. 26, 2020).

[12] "Coronavirus in the U.S.: Latest Map and Case Count," N.Y. TIMES, https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html (last visited Apr. 26, 2020).

[13] Molly Parker, "Rural Randolph County has one of the highest COVID-19 infection rates in Illinois. Here's what happened." THE SOUTHERN (Apr. 18, 2020), https://thesouthern.com/news/local/rural-randolph-county-has-one-of-the-highest-covid-19-infection-rates-in-illinois-here/article_420278d3-c36d-5fd1-98fe-b8bf6ef369e6.html (last visited Apr. 26, 2020).

[14] *Id.*

[15] http://www.healthcarereportcard.illinois.gov/maps (last visited Apr. 26, 2020)

his district it is 1 for every 9,536 people. There are no ventilators at Clay County Hospital. The Emergency Medical Services Regions that cover Bailey's district (Regions 5 and 6) are among the lowest in the State in terms of available ventilators and emergency room beds[16]—and thus have the potential to become overwhelmed by even a relatively small outbreak.[17]

The Act Provides the Governor with Emergency Powers During Disasters.

The General Assembly passed the Act to provide the Governor with the tools necessary to contend with precisely this sort of public health emergency. The statute's purpose is to "insure that this State will be prepared to and will adequately deal with any disasters, preserve the lives and property of the people of this State and protect the public peace, health, and safety in the event of a disaster[.]" 20 ILCS 3305/2(a). Section 7 of the Act authorizes the Governor to exercise emergency powers for periods of 30 days if he has proclaimed the existence of a disaster, and to continue to exercise those emergency powers for additional 30-day periods if he proclaims that a disaster still exists. *Id.* § 7.

The COVID-19 pandemic illustrates that emergencies do not fit neatly into a predetermined time frame—rising and resolving all within the span of a single month. In this sense, COVID-19 is not so extraordinary. Emergencies often span more than 30 days—floods, soil contamination, acts of terrorism, to name a few. Since the Act became law, Illinois

[16] Illinois Department of Public Health, "COVID-19 Hospital Resource Utilization," https://www.dph.illinois.gov/covid19/hospitalization-utilization (last visited Apr. 26, 2020).

[17] *See* Ella Koeze, Jugal K. Patel & Anjali Singhvi, "Where Americans Live Far From the Emergency Room," N.Y. TIMES (Apr. 26, 2020), https://www.nytimes.com/interactive/2020/04/26/us/us-hospital-access-coronavirus.html ("As the coronavirus outbreak spreads into rural parts of the United States, more people who live far from a hospital are increasingly likely to need one. That poses challenges for communities where hospitals are scarce and I.C.U. beds are in short supply—even a relatively small outbreak there could overwhelm medical resources, with potentially grim consequences for public health. Research shows people are less likely to seek health care, even emergency care, when they need to travel farther to get it, especially when they are more than about 30 minutes from a hospital.") (last visited Apr. 26, 2020).

governors have issued multiple and often successive proclamations regarding the same disaster. In just over the last decade, Governors Quinn, Rauner, and Pritzker each issued successive disaster proclamations related to a single event: in 2009 to address the H1N1 virus; and in 2011, 2017, and 2019 to respond to flooding.[18] In May 2019, when Governor Pritzker extended his flooding disaster declaration by an additional 30 days, his efforts were celebrated by none other than Bailey himself, who raised no objection then to a renewed disaster proclamation—the very thing he now claims to be ultra vires.[19]

The Governor's Response to the COVID-19 Pandemic.

As the COVID-19 pandemic reached Illinois, the State moved quickly and aggressively to combat the spread and prepare for an inevitable influx of patients. On March 9, 2020, "in response to the exponential spread of COVID-19," the Governor found that a disaster existed in all 102 Illinois counties and issued a disaster proclamation pursuant to his power under Section 7 of the Act, 20 ILCS 3305/7. (Compl. ¶¶ 1–6 & Ex. 1 § 1.)[20]

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[18] *See* Exhibit 1 (disaster proclamations by Governor Quinn relating to the H1N1 virus); Exhibit 2 (disaster proclamations by Governor Quinn relating to the same 2011 flooding in southern Illinois); Exhibit 3 (disaster proclamations by Governor Rauner relating to the same 2017 flooding in Clinton, Jackson, Marshall, Union, and Woodford counties); Exhibit 4 (disaster proclamations by Governor Pritzker relating to flooding across the State).

[19] Darren Bailey, "Springfield Update" (June 14, 2019), https://repbailey.com/2019/06/14/springfield-update-june-14/ (referring to the second disaster proclamation as bringing "welcome relief") (last visited Apr. 26, 2020), attached as Exhibit 5. The Governor's proclamation of a flood disaster suspends the portions of the Illinois Administrative Code related to levees and floodwalls. 17 Ill. Admin. Code Parts 3700 and 3704. This allows sandbags to be used to ameliorate flood damage. It is understandable why Bailey welcomed the Governor's actions to combat local flooding, but it is hard to understand why he is now changing his tune when the Governor's actions are geared to helping all Illinois residents. If Bailey were to prevail on his current theory of the Act—which limits the Governor to just one proclamation per disaster—then the next time Illinois's rivers overflow, all emergency efforts to respond to and remedy that flooding will have to cease once the first 30 days have passed.

[20] The federal government has also recognized the COVID-19 crisis in Illinois and provided aid to the State. On March 26, President Trump issued a disaster declaration for the State of Illinois, triggering the availability of federal emergency aid to the State. FEMA, "President Donald J. Trump Approves Major Disaster Declaration for Illinois" (Mar. 26, 2020), https://www.fema.gov/news-release/2020/03/26/president-donald-j-trump-approves-major-disaster-declaration-illinois (last visited Apr. 26, 2020).

The Governor followed his disaster proclamations with a series of executive orders designed to stop the spread of COVID-19, protect the health and safety of Illinois residents, and enhance the availability of testing and treatment for the disease.[21] The orders include closing bars, restaurants (to dine-in service), and public and private schools; suspending nonessential business, evictions, and gatherings larger than 10 people; ordering social distancing in public places; and requiring residents to stay at home except for essential activities.[22]

The latter directive—embodied in Executive Order 2020-10—is what drives Bailey to challenge the Governor's authority to act beyond the initial 30 days of a disaster. Executive Order 2020-10, commonly known as the "stay at home" order, was issued on March 20, 2020, pursuant to the Governor's authority under Section 7 of the Act. (Compl. ¶¶ 11–13 & Ex. 2.)[23] It was originally set to expire on April 7, 2020, less than 30 days after the Governor first issued his COVID-19 disaster proclamation on March 9, 2020. (*Id.*) But on April 1, 2020, the Governor took two steps to extend the order. First, he proclaimed that "circumstances surrounding COVID-19 constitute a continuing public health emergency under Section 4 of the [Act]" and that therefore "a continuing disaster exists within the State of Illinois." (*Id.* ¶¶ 14–15 & Ex. 3 at fourteenth whereas clause & § 1.)[24] Second, he issued Executive Order 2020-18 to extend the

[21] *See* "Gov. Pritzker Announces New Efforts to Expand Testing, Procure Personal Protective Equipment" (Apr. 16, 2020), https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21408 (last visited Apr. 26, 2020).

[22] Executive Order 2020-05 (Mar. 13, 2020), https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-05.aspx; Executive Order 2020-07 (Mar. 16, 2020), https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-07.aspx (both last visited Apr. 26, 2020); Compl. Ex. 2 (Executive Order 2020-10 (Mar. 20, 2020)).

[23] The copy of Executive Order 2020-10 attached as Exhibit 2 to Bailey's complaint is incorrectly formatted, which causes some of its text to be lost or not completely visible. The Court can view a complete copy of Executive Order 2020-10 at https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-10.aspx.

[24] The copy of the April 1 proclamation attached as Exhibit 3 to Bailey's complaint is incorrectly formatted, which causes some of its text to be lost or not completely visible. The Court can view a

relevant "stay at home" provisions of Executive Order 2020-10 through April 30, 2020. (*Id.* ¶¶ 16–19 & Ex. 4.)[25] Both the proclamation and the executive order reference additional developments that occurred between the first disaster proclamation and the second—including the fact that "current testing availability has identified further spread of confirmed cases throughout the State of Illinois, and it is expected that increased testing capacity would demonstrate that COVID-19 is circulating in communities across Illinois that currently have not identified a confirmed case." (*Id.* Ex. 4 at seventh whereas clause.)

Bailey focuses his attention on the "stay at home" order, but that is only the tip of the iceberg when it comes to the Governor's COVID-19 response. By proclaiming a disaster under the Act, the Governor was able to take numerous measures that were, are, and will remain critical components of the State's efforts to fight to disease. For example, the State was able to apply for and received a federal Major Disaster Declaration—which is accompanied by significant federal funds. Federal law requires that the Governor has "directed the execution of the State emergency plan" in order to declare a Major Disaster Declaration, 44 CFR § 206.35(c)(1), so this federal funding is at risk if the State is no longer under a disaster proclamation. Similarly, the disaster proclamation was a necessary condition for the State to access the Disaster Response and Recovery Fund, 15 ILCS 30. The disaster proclamation also triggered the Governor's ability to suspend provisions of the Illinois Procurement Code, which means the State can now utilize a fast and nimble process in order to buy quickly to address PPE

complete copy of the April 1 proclamation at https://www2.illinois.gov/sites/gov/Documents/APPROVED%20-%20Coronavirus%20Disaster%20Proc%20WORD.pdf.

[25] The copy of Executive Order 2020-18 attached as Exhibit 4 to Bailey's complaint is incorrectly formatted, which causes some of its text to be lost or not completely visible. The Court can view a complete copy of Executive Order 2020-10 at https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-18.aspx.

shortages, ventilator shortages, and limited testing for the virus. If the normal procurement rules were not suspended, the State would quickly run out of new equipment because the bidding and buying process would take too long and put the State at a competitive disadvantage to every other State seeking the same supplies—jeopardizing the health and safety of many Illinois residents.

And there is more. Declaring a disaster allowed the Governor to "prohibit increases in the prices of goods and services." 20 ILCS 3305/7(14). It allowed him to take possession of vacant health care facilities to build out overflow capacity in case the State needed additional hospital beds, *id.* § 3305/7(4), and call up the National Guard to provide assistance, *id.* § 3305/7(13). To date, there have been 29 executive orders responding to various aspects of the emergency—including school closures, waivers of liability for health care workers and volunteers, ceasing evictions for residential and non-residential properties, expanding telehealth access, altering notary and witness guidelines, and more.[26] By challenging the Governor's authority to proclaim a disaster, Bailey puts all of this on the line. It is no exaggeration to say that billions of dollars and countless people's lives hang in the balance.

In the weeks since the March 9 disaster proclamation, the numbers of cases and fatalities of Illinoisans to COVID-19 has continued to climb. IDPH confirmed the first death of a COVID-19 patient in Illinois on March 17.[27] As of April 26—barely a month after the first fatality—43,903 Illinoisans have tested positive for COVID-19 in 96 counties across the State and 1,933

[26] "Executive Orders Related to COVID-19," https://coronavirus.illinois.gov/s/resources-for-executive-orders (last visited Apr. 26, 2020).

[27] "Public Health Officials Announce First Illinois Coronavirus Disease Death" (Mar. 17, 2020), https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21262 (last visited Apr. 26, 2020).

Illinoisans with COVID-19 tragically have died.[28] On April 24, 2020, the State saw new cases of COVID-19 rise by more than 2,700, the largest one-day increase recorded to date.[29] And recent models project COVID-19 to peak in Illinois in early May.[30] Faced with these continuing increases in cases and deaths, on April 23, 2020, the Governor announced his intention to issue another disaster proclamation and further extend certain "stay at home" provisions of Executive Order 2020-10 through May, while relaxing other provisions relating to store pick-up and delivery, garden centers, and outdoor recreation. (Complaint ¶ 20.)[31]

Bailey's Lawsuit.

Plaintiff Darren Bailey resides in Clay County, Illinois. (Compl. ¶ 23.) Like all residents of Illinois, Executive Order 2020-10 permits Bailey to leave his home to go grocery shopping, pick up supplies for work at home, take care of relatives or friends, or just go for a walk. (*Id.* Ex. 2 ¶ 5.) As an elected member of the Illinois House of Representatives for the 109th District, Executive Order 2020-10 also permits Bailey to leave his home in order to perform "Essential Governmental Functions"—meaning he is free to carry out the legislative responsibilities he was elected to perform, and his constituents are free to access any legislative services he may

[28] Illinois Department of Public Health, "COVID-19 Statistics," http://dph.illinois.gov/covid19/covid19-statistics (last visited Apr. 26, 2020).

[29] "Public Health Officials Announce 2,724 New Cases of Coronavirus Disease," https://www.dph.illinois.gov/news/public-health-officials-announce-2724-new-cases-coronavirus-disease (last visited Apr. 26, 2020).

[30] "Gov. Pritzker Announces Modified Stay at Home Order Will Be Extended Through May to Continue Progress" (Apr. 23, 2020), https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21459 (last visited Apr. 26, 2020); *see also* Joe Mahr, "Illinois officials say the state is hitting its COVID-19 peak — and that's actually good news," CHI. TRIBUNE (Apr. 24, 2020), https://www.chicagotribune.com/coronavirus/ct-coronavirus-illinois-governor-projection-20200424-wd2bk4r4fbajxjsbzwcgdz2fiu-story.html (last visited Apr. 26, 2020).

[31] *See also* "Gov. Pritzker Announces Modified Stay at Home Order Will Be Extended Through May to Continue Progress" (Apr. 23, 2020), https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21459 (last visited Apr. 26, 2020).

provide. (Compl. Ex. 2 ¶ 10, stating: "Nothing in this Executive Order shall prohibit any individual from performing or accessing Essential Governmental Functions.")

While Bailey is suing solely in his personal capacity and seeks to portray his requested relief as limited to preventing the Governor from taking actions against him personally (TRO Motion at 2–3, ¶¶ A–B), Bailey is more broadly asking this Court to enjoin the Governor from taking any further actions that would have the effect of imposing any measures to prevent the spread of COVID-19 that would apply to him. (*Id.* ¶ 7; *see also* pages 2–3.) As shown below, that request should be denied.

LEGAL STANDARD

A temporary restraining order and a preliminary injunction are essentially the same type of relief, with the exception being that a TRO is of limited duration compared to a preliminary injunction. *See In re Estate of Wilson*, 373 Ill. App. 3d 1066, 1075 (1st Dist. 2007) (citing *Kable Printing Co. v. Mt. Morris Bookbinders Union Local 65-B*, 63 Ill. 2d 514, 524 (1976)); 735 ILCS 5/11-101. Either a TRO or a preliminary injunction constitutes an "extraordinary remedy" that "should be granted only in situations of extreme emergency or where serious harm would result if the preliminary injunction was not issued." *World Painting Co. v. Costigan*, 2012 IL App (4th) 110869 ¶ 11 (quoting *Clinton Landfill, Inc. v. Mahomet Valley Water Auth*., 406 Ill. App. 3d 374, 378 (4th Dist. 2010)). "A temporary restraining order is an extraordinary remedy of extremely brief duration which is employed only in emergency situations. The general purpose of a temporary restraining order is to preserve the status quo until a hearing can be had to determine whether a preliminary injunction should issue." *Bullard v. Bullard*, 66 Ill. App. 3d 132, 135–36 (5th Dist. 1978). *See also Clinton Landfill*, 406 Ill. App. 3d at 378 (holding that a preliminary injunction, limited to rare cases of extreme emergency, is intended to preserve the status quo and protect against irreparable harm until the merits of the case are decided).

To obtain a TRO or preliminary injunction, the plaintiff must establish the following: (1) he has a clearly ascertained right that needs protection; (2) there is a likelihood of success on the merits; (3) he is likely to suffer irreparable harm without the injunction; and (4) he has no adequate remedy at law. *See In re Estate of Wilson*, 373 Ill. App. 3d at 1075; *Bd. of Educ. v. Miller*, 349 Ill. App. 3d 806, 814 (1st Dist. 2004).

Even if the plaintiff is able to satisfy the four elements for preliminary injunctive relief, he has the additional burden of establishing that the benefits of granting the preliminary injunction exceed the injury to the defendant and the public. *Prairie Eye Ctr., Ltd. v. Butler*, 305 Ill. App. 3d 442, 445 (4th Dist. 1999). This means that the court must balance the harms in weighing the decision to award preliminary injunctive relief. *Liebert Corp. v. Mazur*, 357 Ill. App. 3d 265, 287 (1st Dist. 2005); *see also Kalbfleisch ex rel. Kalbfleisch v. Columbia Cmty. Unit Sch. No. 4*, 396 Ill. App. 3d 1105, 1119 (5th Dist. 2009) ("In balancing the equities, the court should also consider the effect of the injunction on the public."). "It is elemental that the court is obliged to consider the injury or inconvenience which may result to the defendant (especially where the defendant is a public body) or the public in general if the injunction is granted." *G. H. Sternberg & Co. v. Cellini*, 16 Ill. App. 3d 1, 6 (5th Dist. 1973).

As discussed below, Bailey has not alleged a protectable interest except in the most conclusory and inadequate fashion, Bailey cannot establish a likelihood of success on the merits, he cannot establish irreparable harm, and the enormous harm to the public in the form of thousands of lives lost and billions of dollars of aid threatened from his proposed relief far outweighs whatever relatively small inconvenience he would face if he were to comply with the executive orders limiting travel and social contact.

ARGUMENT

I. The Court Should Deny Bailey's Extraordinary Request for a TRO Because Bailey Has No Reasonable Likelihood of Success on the Merits of His Claim.

Bailey's request for a TRO fails at the outset because he does not even allege a valid cause of action. The Governor's actions are a valid exercise of the authority conferred on him under both Section 7 of the Act and the Illinois Constitution.

A. The Governor's Disaster Proclamations and Ongoing Exercise of Emergency Powers Are Valid Under Section 7 of the Act.

Bailey is not entitled to a TRO because the basis of his lawsuit—that the Governor's emergency powers lapsed on April 8, 2020—is wrong as a matter of law. (Compl. ¶¶ 26–31, 34(B)–(E); Plaintiff's Brief ¶ 27.) Bailey contends that Section 7 of the Act limits the Governor to one disaster proclamation for a particular disaster. (Plaintiff's Brief ¶¶ 28–38.) But Section 7 of the Act contains no such limitation. Section 7 authorizes the Governor to issue a disaster proclamation whenever, in his judgment, a disaster "exists" in the State. 20 ILCS 3305/7. That is the Act's only condition for the Governor to issue a disaster proclamation, and it expressly provides that when he does so, he has prescribed emergency powers for 30 days thereafter. *Id.* Bailey does not and cannot dispute that, as a factual matter, the COVID-19 pandemic constitutes an ongoing disaster in the state, and that this disaster "exist[ed]" on each of the dates on which the Governor issued his disaster proclamations. *Id.*[32] The Court should deny Bailey's motion because the Governor acted within his authority under Section 7 of the Act in issuing disaster

[32] For obvious reasons, courts give great deference to such executive determinations, limiting their review "to a determination of whether the [executive's] actions were taken in good faith and whether there is some factual basis for his decision that the restrictions he imposed were necessary to maintain order." *United States v. Chalk*, 441 F.2d 1277, 1281 (4th Cir. 1971).

proclamations on March 9 and April 1, 2020, and in exercising his emergency powers after those proclamations up to and including April 30, 2020.

1. Section 7 of the Act Permits the Governor to Issue a Disaster Proclamation, Including a Successive Disaster Proclamation, Whenever a Disaster Exists.

Bailey accuses the Governor of exceeding his authority under Section 7 of the Act, (Compl. ¶¶ 22–33), but Bailey misunderstands the statute. The Governor's disaster proclamations and exercise of emergency powers are consistent with the authority the General Assembly granted him in Section 7 of the Act.

The primary objective of statutory interpretation "is to ascertain and give effect to the legislature's intent." *Whitaker v. Wedbush Secs., Inc.*, 2020 IL 124792 ¶ 16 (citations omitted). "The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *Id.* Section 7 of the Act gives the Governor the ability to declare that a disaster exists in the State:

> In the event of a disaster, as defined in Section 4, the Governor may, by proclamation declare that a disaster exists.

20 ILCS 3305/7. Section 4 of the Act defines a "disaster" as follows:

> 'Disaster' means an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, public health emergencies, or acts of domestic terrorism.

Id. § 4. Bailey acknowledges that the COVID-19 pandemic is a "disaster" within the meaning of Section 4 of the Act. (Plaintiff's Brief ¶ 15.)

Upon the Governor's declaration of a disaster through a proclamation, Section 7 of the Act confers "emergency powers" on the Governor that are enumerated in Subsections 7(1)

through 7(14). Section 7 states the following regarding the time period in which the Governor may exercise the specified emergency powers:

> Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers . . . .

20 ILCS 3305/7. Critically, there is no limitation in Section 7 of the Act or elsewhere in the statute on the number of proclamations the Governor may issue regarding a particular "disaster."

Section 7 of the Act is unambiguous in establishing a single criterion necessary for the Governor to issue a disaster proclamation: that a disaster "exists." Section 7 of the Act vests the Governor with the authority to determine whether a disaster "exists." In this case, the Governor concluded that a disaster existed on March 9, 2020, when he issued his first proclamation. (Compl. ¶ 24 & Ex. 1 § 1; Plaintiff's Brief ¶ 17.) On April 1, 2020, when he issued his second proclamation, the Governor concluded that a disaster continued to exist. (Compl. ¶¶ 14–15 & Ex. 3 § 1; Plaintiff's Brief ¶ 28.) Bailey does not and cannot contest the validity of the Governor's factual determination that a disaster, in the form of the COVID-19 pandemic, existed in Illinois on those dates.

Because a disaster existed on March 9 and April 1, 2020, Section 7 of the Act conferred on the Governor the authority to issue a disaster "proclamation" on each of those dates. 20 ILCS 3305/7. By issuing such a proclamation on each of those dates, the Governor properly obtained the ability to exercise the "emergency powers" conferred on him by Section 7 of the Act. Section 7 of the Act permits the Governor to exercise these "emergency powers" for "a period not to exceed 30 days" following the issuance of "such proclamation." *Id.* In other words, Section 7 of the Act makes clear that the 30-day period during which the Governor may exercise the emergency powers is triggered by the Governor's proclamation declaring a disaster ("[u]pon such proclamation," *id.*), not by the date on which the disaster initially arises. If a disaster still

"exists," Section 7 of the Act permits the Governor to continue declaring its existence by proclamation and utilizing the emergency powers conferred on him for the 30-day period following each such proclamation.

The Governor's actions in response to the COVID-19 pandemic are consistent with Section 7 of the Act. When it became clear that the disaster associated with the pandemic would continue beyond the first 30-day timeframe set out in the March 9 proclamation, the Governor issued the April 1 proclamation to begin a second 30-day period under Section 7 of the Act. Under the April 1 proclamation, which is currently in effect, the Governor may exercise the emergency powers under Section 7 until April 30, 2020. If the Governor determines that the COVID-19 disaster continues to exist, the Governor is authorized under Section 7 of the Act to issue another disaster proclamation to be in effect for an additional 30 days from that date.

Multiple other sections of the Act affirm that the Governor's actions adhered to the statute. *See In re Detention of Lieberman*, 201 Ill. 2d 300, 308 (2002) (explaining that in statutory interpretation, "words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute"). For example, the Act's "Limitations" section contains no limitations on the Governor's authority to issue more than one proclamation per disaster. *See* 20 ILCS 3305/3. To the contrary, the section's only reference to the Governor requires that the Act not be construed to constrain the Governor's ability to "proclaim martial law or exercise any other powers vested in the Governor under the constitution, statutes, or common law of this State, independent of or in conjunction with any provisions of this Act." *Id.* § 3(d).

Elsewhere in the Act, the General Assembly demonstrated it was capable of creating limits on renewing disaster declarations—yet it declined to do so when it comes to the Governor.

Section 11 of the Act permits the principal executive officer of a political subdivision to declare a "local disaster." 20 ILCS 3305/11. However, such a local disaster declaration "shall not be *continued or renewed* for a period in excess of 7 days *except by or with the consent of the governing board of the political subdivision*." *Id.* § 11(a) (emphasis added). Thus, at the same time the General Assembly permitted the Governor to declare a disaster with no limitation on subsequent declarations, it explicitly precluded local executive officials from "continu[ing] or renew[ing]" such declarations without the intervention of the local legislative body. *Id.* The wisdom of this legislative scheme has never been more apparent than now, where the nature of the COVID-19 pandemic prevents the General Assembly from convening[33]—making it all the more vital for the Governor to exercise the emergency powers set forth in the text of the Act.

2. Bailey's Assertion that the Governor's Emergency Powers Lapsed on April 8, 2020 Has No Statutory Basis.

Accepting Bailey's argument that the Governor's emergency powers lapsed on April 8, 2020 (Compl. ¶ 34(B)) would violate multiple principles of statutory interpretation by disregarding relevant language in the Act; adding a restriction on the Governor's authority that the General Assembly did not intend to and did not include; and producing absurd, unjust, and profoundly harmful results that are contrary to the Act's express purpose. *See People v. Austin*, 2019 IL 123910 ¶ 15 ("Additionally, we must presume that the legislature did not intend to create absurd, inconvenient, or unjust results.").

Bailey contends that the Governor's ability to exercise the emergency powers in Section 7 of the Act is "limited to the 30-days from the initial declaration of the COVID-19 pandemic,"

[33] See Ben Orner, "State Lawmakers Adapt to New Reality During COVID-19 Pandemic," CAPITOL NEWS ILLINOIS (Apr. 3, 2020), https://capitolnewsillinois.com/NEWS/state-lawmakers-adapt-to-new-reality-during-covid-19-pandemic (last visited Apr. 26, 2020).

which, in this case, occurred on March 9, 2020. (Plaintiff's Brief ¶ 36.) Bailey purports to derive this argument from the statement in Section 7 of the Act that the Governor may exercise emergency powers "for a period not to exceed 30 days." 20 ILCS 3305/7. Bailey construes this phrase in isolation, however, without regard to what triggers the onset of any given 30-day period. *See Rushton v. Dep't of Corr.*, 2019 IL 124552 ¶ 19 ("[A]ll provisions of an enactment should be viewed as a whole and words and phrases should be read in light of other relevant provisions of the statute."). The sentence containing this phrase identifies the triggering event at the outset: "[u]pon such proclamation . . . ," 20 ILCS 3305/7. In referring to a "proclamation," the sentence does not limit the Governor to one proclamation per disaster. Although Bailey wishes to construe the phrase "proclamation" to mean and allow only the "initial declaration" of the COVID-19 pandemic on March 9, 2020 (Plaintiff's Brief ¶ 36), the word "initial" does not appear in Section 7 of the Act. Neither Bailey nor the Court may "depart from the plain language of a statute by reading in exceptions, limitations, or conditions conflicting with the expressed legislative intent." *Whitaker*, 2020 IL 124792 ¶ 16 (citing *Metropolitan Life Ins. Co. v. Hamer*, 2013 IL 114234 ¶ 18). Thus, while the Governor's actions conform to the Act's only express conditions, Bailey's interpretation of the Act improperly treats it as impliedly containing limitations the General Assembly did not enact.

Bailey's attempt to read into the Act a one-proclamation-per-disaster limitation on the Governor's statutory authority is also inconsistent with other provisions in the Act, including Section 11, in which the General Assembly expressly constrained the ability of local municipal executives to "continue[] or renew[]" local disaster declarations. 20 ILCS 3305/11(a). If the General Assembly had intended to similarly limit the Governor's ability to issue successive disaster proclamations, it could have said so. It did not. *See People v. Lloyd*, 2013 IL 113510

¶ 37 ("when the legislature wants to use the age of the victim as an element of the offense, it knows exactly how to do so.").

Bailey contends that permitting the issuance of successive disaster proclamations under Section 7 of the Act would "render the 30-day limitation meaningless." (Plaintiff's Brief ¶ 37.) Not true. The Governor has not purported to exercise the emergency powers in Section 7 of the Act indefinitely. Instead, both disaster proclamations expressly acknowledge that they are in effect only for the 30-day period prescribed by Section 7 of the Act. (Compl. Ex. 1 § 11 ("This proclamation shall be effective immediately and remain in effect for 30 days."); *id.* Ex. 3 § 12 (same).) Consistent with Section 7 of the Act, the Governor publicly acknowledged that he intends to issue a new disaster proclamation on May 1, 2020, which, consistent with Section 7 of the Act, will be in effect only for 30 subsequent days. (Compl. ¶ 20; Plaintiff's Brief ¶ 30.)

The 30-day limitation in Section 7 of the Act compels the Governor to make the periodic determination required by the statute that a "disaster" still in fact "exists" in the State. 20 ILCS 3305/7. Bailey does not and cannot assert that a "disaster" no longer "exists" in Illinois as a result of the COVID-19 pandemic. But if the factual circumstances change in the future—as everyone in Illinois hopes they will—then there will come a time when the Governor will be unable to reasonably conclude that a disaster still "exists" in Illinois. In those circumstances, pursuant to Section 7 of the Act, the Governor's emergency powers would lapse 30 days after the issuance of his most recent disaster proclamation. Far from disregarding the time limitation in Section 7 of the Act, the Governor is conscientiously abiding by it.

Bailey's argument likewise ignores that in Section 4 of the Act, the General Assembly identified disaster phenomena that could reasonably be anticipated to outlast an arbitrary 30-day limit. These include "extended periods of severe and inclement weather," "hostile military or

paramilitary action," and "critical shortages of essential fuels and energy." 20 ILCS 3305/4. It is reasonable to assume the General Assembly selected these scenarios with the knowledge that the need for emergency authority to address them could persist for longer than 30 days. The rapid and devastating spread of COVID-19 throughout the State represents just such a disaster, requiring the continued exercise of the emergency powers the General Assembly conferred upon the Governor.

The General Assembly's intent with respect to the Governor's authority under Section 7 is further evidenced by a comparison with Sections 6 and 9 of the Act. These sections specify that the General Assembly must be involved in certain unrelated aspects of an emergency and address how the Governor can carry out that mandate even when the General Assembly is not in session. The General Assembly understood that if it wanted to preserve a role for itself in response to an emergency, it had to craft specific provisions to require this, and also to address the portion of the year when it is not in session. That the General Assembly did not insert this language in Section 7 indicates that it did not intend to play a role in declaring disasters, but rather intended for the Governor to exercise his powers precisely as he has done.

The State has been operating under the Act's provisions for more than 30 years. During that time, Illinois governors have issued multiple and often successive proclamations regarding the same disaster. In just over the last decade, Governors Quinn, Rauner, and Pritzker have issued such disaster proclamations: in 2009 to address the H1N1 virus; and in 2011, 2017, and 2019 to respond to flooding. *See* Exhibit 1 (disaster proclamations by Governor Quinn relating to the H1N1 virus); Exhibit 2 (disaster proclamations by Governor Quinn relating to the same 2011 flooding in southern Illinois); Exhibit 3 (disaster proclamations by Governor Rauner relating to the same 2017 flooding in Clinton, Jackson, Marshall, Union, and Woodford counties); Exhibit 4

(disaster proclamations by Governor Pritzker relating to flooding across the State). The General Assembly has amended the Act at least 11 times—most recently in 2018—but did not make any changes to prevent Illinois governors from maintaining their practice of renewing or continuing disaster proclamations.[34]

The judicial branch has also relied on the Governor's disaster proclamations, particularly those at issue relating to COVID-19. On April 2, 2020, the Illinois Supreme Court cited "the state of emergency that has been declared by the Governor of the State of Illinois in order to prevent the spread of the coronavirus" in its order authorizing the chief judges of each circuit to continue trials.[35] The Fourth Judicial Circuit cited the Supreme Court's order as authority for its own order issued on April 7, 2020, continuing all civil and criminal trials to June 15, 2020.[36]

"[A] reasonable interpretation of a statute by an agency charged with enforcement of that statute is entitled to great weight. Such a construction is even more persuasive if consistent, long-continued, and in conjunction with legislative acquiescence on the subject. Such acquiescence appears where the legislature, presumably aware of the administrative interpretation in question, has amended other sections of the act since that interpretation but left untouched the sections subject to the administrative interpretation in question." *Pielet Bros. Trading v. Pollution Control Bd.*, 110 Ill. App. 3d 752, 756 (5th Dist. 1982). This precisely describes the circumstances here. The law requires this Court to defer to, not upend, its coequal branches' consistent interpretation of the Act. The longstanding conduct of Illinois governors—who have

[34] *See* P.A. 88-606; P.A. 92-73; P.A. 94-733; P.A. 98-465; P.A. 98-756; P.A. 99-36; P.A. 100-508; P.A. 100-444; P.A. 100-587; P.A. 100-863; P.A. 100-1179.

[35] Order, *In re Illinois Courts Response to COVID-19 Emergency/ Impact on Trials*, M.R. 30370 (Apr. 3, 2020), https://courts.illinois.gov/SupremeCourt/Announce/2020/040320.pdf.

[36] Third Amended Administrative Order No. 2020-4 (Apr. 7, 2020), https://fourthcircuitil.com/wp-content/uploads/2020/04/2020-4-Regarding-COVID-19-and-Court-Operations-2-THIRD-AMENDED-4-6-20.pdf.

regularly renewed disaster proclamations under the Act with the General Assembly's knowledge and acquiescence—demonstrates not only that Bailey's contrary take is an aberration, but also that it is just plain wrong.

Finally, Bailey's interpretation of Section 7 of the Act would lead to absurd, unjust, and profoundly harmful results to a degree rarely, if ever, contemplated by an Illinois court. While Bailey contends he seeks relief only for himself, the declaratory relief he seeks attacks the foundation of the emergency powers the Governor has been compelled to exercise: the Governor's disaster proclamations. (Compl. ¶ 34(B)–(E).) The limitation Bailey proposes on Section 7 of the Act threatens to nullify the emergency actions the Governor has taken since April 8, 2020, when Bailey claims the Governor's emergency powers "lapsed." (*Id.*) Bailey would purport to have life in Illinois resume as it existed on March 8, 2020, the day before the first disaster proclamation. But in contrast to March 8, 2020, when there were 11 confirmed COVID-19 cases in Illinois (Compl. Ex. 1 at thirteenth whereas clause) and no confirmed fatalities related to the disease, there are, as of April 26, 2020, 43,903 confirmed COVID-19 cases and 1,933 confirmed fatalities in Illinois.[37] Accepting Bailey's argument means accepting the only possible result: COVID-19 would once again begin its exponential spread throughout the State. In the process, many, many lives would unnecessarily be lost. That cannot be the result the General Assembly intended in enacting Section 7 or any other provision in the Act.

On the contrary, the General Assembly articulated a very different purpose: "to insure that this State will be prepared to and will adequately deal with any disasters, preserve the lives and property of the people of this State and protect the public peace, health, and safety in the

[37] Illinois Department of Public Health, "COVID-19 Statistics," http://dph.illinois.gov/covid19/covid19-statistics (last visited Apr. 26, 2020).

event of a disaster[.]" 20 ILCS 3305/2(a). Consistent with that purpose, the Court should reject Bailey's argument and deny his request for a TRO.

B. The Governor's Disaster Proclamations and Ongoing Exercise of Emergency Powers Are Valid Under the Illinois Constitution.

In addition to the specific authority set forth in Section 7 of the Act, the Governor also possesses inherent and independent authority—derived from the Illinois Constitution—to order immediate measures necessary to protect the public health in the event of a crisis like the one currently sweeping this State. This conclusion derives from three indisputable premises:

> (1) The State's police powers authorize it to take action in response to contagious diseases, pandemics, and other threats to public health and safety.
>
> (2) The General Assembly has not prohibited the Governor from taking the specific actions to safeguard the public health embodied in the executive orders at issue in this lawsuit.
>
> (3) The COVID-19 pandemic presents urgent circumstances that require prompt action to protect the people of Illinois against serious harm.

The existence and vitality of the Governor's inherent constitutional authority is made clear by the text of the Act itself, which provides that the statute does not "[l]imit, modify, or abridge the authority of the Governor to . . . exercise any other powers vested in the Governor under the constitution, statutes, or common law of this State, independent of or in conjunction with any provisions of this Act." 20 ILCS 3305/3(d). In passing the Act, therefore, the General Assembly recognized and affirmed the Governor's independent power to take immediate action when necessary to protect the public health—even in the absence of a specific legislative mandate. Indeed, when the Governor issued Executive Order 2020-10, he invoked both "the powers vested in me as the Governor of the State of Illinois, ***and*** . . . Sections 7(1), 7(2), 7(8), 7(10), and 7(12) of the Illinois Emergency Management Agency Act." (Compl. Ex. 2 at therefore clause, emphasis added.)

First, it is blackletter law that the State's police powers authorize it—and indeed, require it—to implement preventive measures when the people are confronted by contagious diseases, epidemics, and other threats to public health and safety. "Among all the objects sought to be secured by governmental laws none is more important than the preservation of public health. The duty to preserve the public health finds ample support in the police power, which is inherent in the state, and which the state cannot surrender." *People ex rel. Barmore v. Robertson*, 302 Ill. 422, 427 (1922); *see also, e.g., Jacobson v. Massachusetts*, 197 U.S. 11, 24–25 (1905); *People v. Anderson*, 355 Ill. 289, 296-97 (1934).

The Governor plays a critical role in exercising the State's police powers to promote public health. The Illinois Constitution provides that he "shall have the supreme executive power, and shall be responsible for the faithful execution of the laws." Ill. Const. art. V, § 8. This grant of authority to the Governor must be interpreted in accordance with the purposes for which the Constitution was adopted—"to provide for the health, safety and welfare of the people." Ill. Const., preamble (first enumerated purpose); *see Wolfson v. Avery*, 6 Ill. 2d 78, 88–89 (1955) (Illinois Constitution must be interpreted in view of "the purpose sought to be accomplished"); *People v. Lawton*, 212 Ill. 2d 285, 301 (2004) (Illinois Constitution is written in broad outlines and "does not 'partake of the prolixity of a legal code'"). The Governor's constitutional authority to protect public health includes, for example, the power to develop a "plan or program for relocating the residents of [a facility for the developmentally disabled] after its closure." *Dixon Ass'n for Retarded Citizens v. Thompson*, 91 Ill. 2d 518, 533 (1982).

Second, the General Assembly has not prohibited the Governor from authorizing the emergency measures he has adopted to protect the public health and prevent the spread of COVID-19 in Illinois. There exists no statute that forbids these executive orders or identifies

another branch of government that possesses the exclusive authority to act in this realm. Even Bailey seems to acknowledge this. His argument is that the Act ***lacks*** affirmative authority for the Governor's actions, which is materially different from an argument that the Act ***prohibits*** the Governor's actions.

But the Governor's public health powers extend beyond the statute books. Our nation's leading authorities have long recognized that "[i]t may be fit and proper for the government, in the exercise of the high discretion confided to the executive, for great public purposes, ***to act on a sudden emergency***, or to prevent an irreparable mischief, by ***summary measures***, which are ***not found in the text of the laws***." *The Apollon*, 22 U.S. (9 Wheat.) 362, 366–67 (1824) (Story, J.) (emphasis added). The alternative would mean that the State could do nothing to protect the people from an unanticipated threat to their safety; the State would be paralyzed to act at the very time when its founding purpose—"to provide for the health, safety and welfare of the people"—is of the highest necessity. Ill. Const., preamble. This is an absurd and untenable outcome. *See People ex rel. Giannis v. Carpentier*, 30 Ill. 2d 24, 29 (1964) ("The constitution should whenever possible be construed to avoid such irrational, absurd, or unjust consequences.").

Third, there is no serious question that the COVID-19 pandemic represents an extraordinary public health crisis of proportions previously unknown to the people of this State. The background section of this brief establishes why the current situation is unique: The disease is not limited to an isolated outbreak or localized cluster of individual infections, but instead has spread throughout the State, our nation, and most of the world; it is highly contagious and can be transmitted by persons with no obvious symptoms; there is no clear evidence that people who recover from infection become immune to the disease; and it has dangerously high rates of serious complications and mortality. States, not the federal government, have the primary

responsibility to respond to public health threats of this nature. This statewide crisis demands a statewide response. And that is why the Governor has issued the executive orders at issue here. His targeted actions have helped to dampen, but not yet extinguish, the COVID-19 crisis. If he had not acted, or if his protective measures were discontinued prematurely, a staggering number of Illinois residents would die or become seriously ill as COVID-19 proliferates in every corner of this State.[38] To be effective, the public health guidelines embodied in the Governor's executive orders must be observed collectively.

These three uncontestable premises together lead to one logical conclusion: The Governor's executive orders are authorized not only by the Act, but also by his inherent and independent authority under the Illinois Constitution. That is at the very least true in the specific circumstances presented here, where urgent action is necessary to protect the public against serious harm, that action is not expressly prohibited by a valid legislative enactment, and the General Assembly cannot safely convene to deal with the crisis itself in a timely manner. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring).

The General Assembly anticipated the need for emergency action by the Governor when it passed the Act more than three decades ago. But the General Assembly simultaneously recognized that the Governor might also need to act urgently to protect the public health in ways not contemplated in advance by the statute. 20 ILCS 3305/3(d) (referencing "other powers vested in the Governor under the constitution, statutes, or common law of this State, independent of or in conjunction with any provisions of this Act"). In issuing the executive orders at issue here, the

[38] "Gov. Pritzker Announces Modified Stay at Home Order Will Be Extended Through May to Continue Progress" (Apr. 23, 2020), https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21459 (last visited Apr. 26, 2020). The State's recent modeling shows that without the Stay at Home Order, deaths per day would have been roughly 14 times higher; and that lifting the Stay at Home Order similarly would increase deaths exponentially—to the point that the nearly 2,000 total deaths now could be a daily occurrence.

Governor has acted within this authority under the Illinois Constitution to take immediate measures necessary to protect the public's health and safety. Apart from their authority under the Act, therefore, the Governor's actions are authorized by his independent and inherent constitutional powers.

C. Bailey's Supplemental Argument Regarding the Department of Public Health Act Fails Because That Statute Does Not and Cannot Alter the Governor's Authority Under Section 7 of the Emergency Management Act or the Illinois Constitution.

At 12:50 a.m. on April 27, 2020, Bailey's counsel served the Governor's counsel with a "Supplemental Legal Brief in Support of Darren Bailey's Request for Relief" ("Supplemental Brief"). Bailey cites Section 2 of the Department of Public Health Act, 20 ILCS 2305/2 ("Public Health Act"), which establishes procedures for IDPH and certified local health departments to issue isolation and quarantine orders, and contends that the "supreme authority" to issue such orders rests with IDPH, not the Governor. (Supplemental Brief ¶¶ 9, 17.) Bailey's supplemental brief asserts: "Not only was Pritzker entering executive orders in excess of his authority beyond the 30-day window allowed by the Illinois Emergency Management Act, he never had any authority to order the quarantine of Bailey, or any citizen of this State for that matter." (*Id.* ¶ 17.)

Bailey's supplemental argument is the best example yet of his attempt to confuse and obscure the issue before this Court. To be clear, Bailey's complaint asserts that Governor's authority to proclaim a disaster is limited to one 30-day period per disaster. To reach his request to address the impact of one executive order on his conduct, the Court must upend the entire statutory authorization to address disasters in Illinois. Bailey appears to understand that—and thus now tries to recast this case as about one individual challenging the issuance of a quarantine order pursuant to the Emergency Management Act instead of the Public Health Act. This attempt fails on the law and the facts as pled in the complaint.

First, as Bailey himself admits (Supplemental Brief ¶ 34), he is not subject to any actual "quarantine order." The "stay at home" order about which he complains (Compl. Ex. 2) is not a quarantine order at all and does not purport to be one. Far from it: under the "stay at home" order, Bailey is free to leave his home to do many, many things, including performing his essential work as a legislator, going to the grocery store and other essential businesses, exercising, and going for a walk with his family, among many others. (Compl. Ex. 2 §§ 1(5), (10), (16).) None of that would be permitted if he were subject to a quarantine order.

Second, the Public Health Act is a supplement to, not a substitute for, the Emergency Management Act. The Public Health Act does not and cannot alter the Governor's authority under Section 7 of the Emergency Management Act—the subject of Bailey's complaint—which includes the ability "[t]o control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein." 20 ILCS 3305/7(8). Moreover, the plain language of Section 2(m) of the Public Health Act refutes Bailey's argument, stating that "[n]othing in this Section shall supersede . . . procedures established pursuant to IEMA statutes." 20 ILCS 2305/2(m). The "IEMA statutes" include the Emergency Management Act, which establishes "procedures" for the Governor to declare a "disaster" by "proclamation," 20 ILCS 3305/7. In addition to preserving the authority conferred on the Governor through the Emergency Management Act, Section 2.1(d) of the Public Health Act, which addresses information sharing in response to infectious disease outbreaks, also makes clear that the Emergency Management Act is a separate statutory framework by stating: "The operation of the language of this Section is *not* dependent upon a declaration of disaster by the Governor pursuant to the Illinois Emergency Management Agency Act." 20 ILCS 2305/2.1(d) (emphasis added). In other words, the Public Health Act and the Emergency Management Act establish two separate

sources of authority that can function independently or as supplements to one another. The Public Health Act does not, however, substitute for or subtract from the Governor's authority under the Emergency Management Act.

Third, Bailey's misreading of the Public Health Act would create a significant constitutional problem by stripping the Governor of his executive authority to protect the public and vesting it exclusively in an unelected official such as the Director of IDPH. *See In re Parentage of John M.*, 212 Ill. 2d 253, 266 (Ill. 2004) (stating that courts have an obligation to construe statutes in a manner that avoids constitutional defects were reasonably possible). As noted, the Illinois Constitution states that the Governor "shall have the supreme executive power, and shall be responsible for the faithful execution of the laws." Ill. Const. art. V, § 8. This "executive power" includes the ability to exercise the State's police power to protect the public health. *See Barmore*, 302 Ill. at 427; *see also, e.g., Jacobson* 197 U.S. at 24–25; *Anderson*, 355 Ill. at 296–97.

The General Assembly did not and could not alter the Governor's executive power under the Illinois Constitution by enacting the Public Health Act. In this respect, Bailey is attaching a weight to Section 2 of the Public Health Act that it cannot bear. Section 2(a) of the Public Health Act states that IDPH "has supreme authority in matters of quarantine and isolation," 20 ILCS 2305/2(a). Even if the General Assembly had intended for this phrase to have the sweeping scope Bailey claims it does, the General Assembly could not use a statute to remove the Governor's executive power under the Illinois Constitution. Furthermore, this provision, when read in the context of the Public Health Act as a whole, as it must be, makes clear that this "supreme authority" relates to IDPH's supervision of local health departments. It does not and could not confine the authority of the Governor—who, of course, appoints the Director of IDPH—to

exercise his own authority to protect the public health. Section 2(a) of the Public Health Act means that IDPH can direct local health departments in matters of quarantine and isolation. It does not prohibit the Governor from exercising his authority under Section 7 of the Emergency Management Act or the Illinois Constitution.

The Court should reject Bailey's unsupported and constitutionally flawed interpretation of the Public Health Act.

II. The Court Should Deny Bailey's Extraordinary Request for a TRO Because He Does Not and Cannot Demonstrate He Is Likely to Suffer Irreparable Harm, and the Balance of Harms and Public Interests Weigh Against the Requested Relief.

To obtain emergency relief, Bailey must plead specific facts showing the irreparable harm which will result in the event injunctive relief is not provided. "A TRO is an extraordinary remedy and the party seeking it must meet the high burden of demonstrating, through well-pled facts, that [he] is entitled to the relief sought." *Capstone Fin. Advisors Inc. v. Plywaczyski,* 2015 IL App (2d) 150957 ¶ 10. And "to be considered 'well-pleaded' a party's factual allegations must be supported by allegation of *specific* facts." *Id*. (*citing Patrick Eng'g, Inc. v. City of Naperville*, 2010 IL 113148 ¶ 31) (emphasis in original).

Bailey alleges he "is being irreparably harmed each and every day beyond April 8, 2020 in which he continues to be subjected to Pritzker's ultra vires executive order." (Compl. ¶ 38.) He says the "March 20 Executive Order" limits his constitutionally protected freedoms in that it ordered him to stay at home, or at his place of residence, as well as limited his ability to travel within the state" (*id*. ¶ 12) as a "result of the COVID-19 pandemic" (*id*. ¶ 19). But these conclusory allegations are devoid of the required "specific facts." How is Bailey "being irreparably harmed each and every day" beyond April 8? How is his travel irreparably limited? Where does Bailey seek to go, such that he is barred from doing so? Has Bailey been imminently

threatened with sanction or consequence for proceeding as he wishes? These questions are unanswered because the complaint contains no specific facts relating to the claimed irreparable harm. The reason for this deficiency is that given the language of the March 20 and April 1 executive orders, Bailey cannot make the required specific allegations in good faith.

The executive orders provide that "individuals may leave their residence . . . to perform any" of the enumerated "Essential Activities," including travel for health and safety needs, personal or family supplies and services, outdoor activities, and to transport others relating to any of those activities. (Compl. Ex. 2 ¶ 5.) As an elected member of the Illinois General Assembly, Bailey is a "governmental employee," and when working as such is "categorically exempt from" the executive orders. (*Id.* Ex. 2 ¶¶ 10, 12.) Travel restrictions imposed by the executive orders simply do not apply to Bailey regarding travel done by him within the scope of his public employment. As a result, he cannot allege irreparable harm concerning his employment related activities. Although Bailey alleges the restrictions of the executive orders "lapsed on April 8, 2020" (Compl. ¶ 34(C)), he did not bring this action until April 23; this delay evidences that any restrictions imposed upon him did not result in irreparable harm. *See Schlicksup Drug Co. v. Schlicksup*, 129 Ill. App. 2d 181, 187–88 (3d Dist. 1970) ("This delay of itself raises a question as to the need for the preliminary injunction."); *Bridgeview Bank Grp. v. Meyer*, 2016 IL App (1st) 160042 ¶ 21 (applying this reasoning to a TRO application). Bailey does not allege any "specific facts" supporting the conclusion that those limitations will result in irreparable harm to him in the event a TRO does not issue. After all, a "TRO is an extraordinary remedy and the party seeking it must meet the high burden of demonstrating, through well-pled facts, that [he] is entitled to the relief sought." *Capstone Fin.,* 2015 IL App (2d) 150957 ¶ 10. Bailey has failed to satisfy the "high burden" required to show irreparable harm.

Not only has Bailey failed to make the required showing of irreparable harm, but given the undeniable and extraordinary public interests and public health risks at issue, the balance of equities weighs heavily against Bailey's request for emergency relief. This is critical because, when considering emergency requests for injunctive relief such as Bailey's, Illinois courts consider the balancing of equities, or the relative hardships, and the public interests at issue—provided a plaintiff first satisfies the initial four requirements for obtaining such relief. *Kalbfleisch*, 396 Ill. App. 3d at 1119 ("In balancing the equities, the court should also consider the effect of the injunction on the public."); *G. H. Sternberg*, 16 Ill. App. 3d at 6; *Wilson v. Wilson*, 217 Ill. App. 3d 844, 848 (1st Dist. 1991); *Guns Save Life, Inc. v. Raoul*, 2019 IL App (4th) 190334 ¶ 68, appeal denied, No. 125633, 2020 WL 1488364 (Ill. 2020) ("Accordingly, even when a plaintiff can raise a fair probability about the likelihood of success and the plaintiff probably will continue to endure irreparable harm, denying injunctive relief may still be appropriate to preserve the status quo. This is because courts should consider the status quo as it affects both parties, not merely the party seeking injunctive relief."). Here, even assuming Bailey satisfied all four traditional requirements for injunctive relief (and he has not), relief should be denied given the relative equities and the public interests at issue.

On Bailey's side of the equities ledger, his employment activities are in no way restricted by the executive orders—he is "categorically exempt." (Compl. Ex. 2 ¶¶ 10, 12.) As for his personal travel, the hardships are few as evidenced by the limited restrictions placed upon him as a result of his employment and the continuing ability for any person to travel for health and safety, to procure needed supplies, or to engage in outdoor activities. And (as noted) he alleges nothing to support the notion that even those restrictions cause him substantial personal hardship—on that front he alleges no specific facts at all.

The public interest side of the ledger tells a much different story. As detailed above, the public health consequences from the order Bailey seeks could be devastating. Illinois is in the midst of a public health emergency of proportions that never before existed. Bailey's unspecified hardship pales in comparison to the undeniable public hardship that will result if the requested relief is granted. The balancing of equities is not even close—the relative hardships and the public interests at issue militate against the emergency relief Bailey seeks.

The Court should also keep in mind the institutional reliance interests involved in this unusual situation. When the Governor acted on his interpretation of the Act weeks ago, no one challenged it, and the other branches of government appear to have assumed that he possesses that authority. The General Assembly's acquiescence in similar proclamations by prior governors has already been discussed; this likely explains too why the General Assembly has not taken the extraordinary measures necessary to convene immediately this month, at the risk of members' and staff members' health, to separately address the current crisis. Likewise, the judicial branch has relied on the Governor's exercise of his emergency powers to continue trials. Prudence therefore counsels against suddenly pulling the rug out from under the legal structure established by the Governor's recent orders where that structure is being relied on by so many public and private actors. Bailey's request for injunctive relief should be (and must be) denied.

CONCLUSION

Governor Pritzker has exercised the legal authority granted to him under the Illinois Emergency Management Agency Act and the Illinois Constitution to issue two emergency disaster proclamations and multiple executive orders to combat the COVID-19 virus and protect Illinois residents throughout the State. Bailey's complaint and motion are based on the erroneous premise that the Governor's authority lapsed even while the COVID-19 pandemic continued unabated. Bailey is wrong as a matter of law. Bailey has not identified either a likelihood of

success on the merits or any irreparable harm, and the relief he seeks is against the public interest. For all of these reasons, the Court should deny Bailey's motion for a temporary restraining order and preliminary injunction, and should grant the Governor's motion to dismiss Bailey's complaint with prejudice.

Dated: April 27, 2020

Respectfully Submitted,

/s/ Thomas J. Verticchio

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IN THE CIRCUIT COURT
FOR THE FOURTH JUDICIAL CIRCUIT
CLAY COUNTY, ILLINOIS

DARREN BAILEY, Plaintiff, v.	Case No. 2020 CH 6
GOVERNOR J.B. PRITZKER, in his official capacity, Defendant.	Judge McHaney

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned hereby certifies the statements set forth in this certificate of service are true and correct and that she has served an electronic copy of the *Governor's Opposition to Motion for Temporary Restraining Order and Preliminary Injunction* upon the following:

Thomas G. DeVore
tom@silverlakelaw.com

via email at the address noted above on April 27, 2020.

By: s/ Laura K. Bautista
Laura K. Bautista
Assistant Attorney General

Exhibit 1

Disaster Proclamations by Governor Quinn
Relating to the H1N1 Virus

PROCLAMATIONS

2009-156
Gubernatorial Proclamation

The federal government has declared a public health emergency and, therefore, in response, the State of Illinois will take steps to mitigate any potential health threat. Cases of a novel human virus known as Swine Influenza A (H1N1) have been confirmed in various locations throughout the United States. Although there are currently no confirmed cases of Swine Influenza A in the State of Illinois, an imminent threat of illness to Illinois citizens exists. Thus, it is critical that State agencies and local governments begin to prepare for the possibility of cases of Swine Influenza A in Illinois. Coordination among the federal government and State of Illinois agencies is necessary at this time to ensure the appropriate and timely response to any emergency that may occur related to swine flu.

In the interest of aiding the citizens of Illinois and the local governments responsible for ensuring public health and safety, I hereby proclaim that a threat of a public health emergency exists in the State of Illinois pursuant to the provisions of Section 3305/7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7.

This gubernatorial proclamation will assist the Illinois Emergency Management Agency and the Illinois Department of Public Health in coordinating State and Federal resources, including the Strategic National Stockpile of medicines and protective equipment, to support local governments in preparation for any action that may be necessary related to the potential impact of Swine Influenza A in the State of Illinois.

Date: April 28, 2009
Filed: April 28, 2009

2009-157
Automotive Service Professionals Week

WHEREAS, the automotive service professional, an invaluable member of the automotive service industry in Illinois, is a highly trained and skilled individual; and

WHEREAS, there are over 14,300 Automotive Service Excellence (ASE) Certified Automotive Service Professionals working in more than 5,000 automotive service and repair facilities in Illinois; and

WHEREAS, the goal of the automotive service and repair industry in Illinois is to provide motorists with the best possible vehicle repair and service; and

PROCLAMATIONS

2009-297
GUBERNATORIAL PROCLAMATION

The presence of the H1N1 influenza virus has been confirmed in the State of Illinois. Thus, it is critical that State agencies and local governments prepare for and attempt to prevent further spread of the H1N1 influenza virus. The State will receive its first allotment of the H1N1 influenza vaccine this month. The swift and efficient administration of this vaccine, beginning with the priority groups identified by the Centers for Disease Control and Prevention, is necessary to combat and prevent the spread of the H1N1 influenza virus and to protect the public health.

In the interest of aiding the citizens of Illinois and the State agencies and local governments responsible for ensuring public health and safety, and pursuant to the provisions of Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I hereby proclaim that a public health emergency exists in the State of Illinois.

This gubernatorial proclamation will assist the Illinois Emergency Management Agency and the Illinois Department of Public Health in coordinating State efforts in response to the H1N1 influenza virus, including the modification of scopes of practice for occupations with training to give vaccinations.

Date: October 14, 2009
Filed: October 14, 2009

PROCLAMATIONS

2009-325
GUBERNATORIAL PROCLAMATION

On October 24, 2009, the President of the United States declared a national emergency pursuant to section 201 of the National Emergencies Act to facilitate the country's ability to respond to the H1N1 influenza virus. The H1N1 epidemic is moving rapidly and, as with the rest of the country, it is necessary for the State of Illinois to be ready to combat and prevent the spread of the virus. The State has begun receiving shipments of the H1N1 influenza vaccine and hospitals and medical clinics are treating an increasing amount of cases of the H1N1 influenza virus.

Therefore, in the interest of aiding the citizens of Illinois, medical facilities, and the State agencies and local governments responsible for ensuring public health and safety, and pursuant to the provisions of Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I hereby proclaim that a public health emergency exists in the State of Illinois.

This gubernatorial proclamation will assist the Illinois Emergency Management Agency and the Illinois Department of Public Health in coordinating State efforts in accordance with the State emergency response plans. This proclamation will allow for modification of scopes of practice for occupations with training to give vaccinations as well as assist with patient treatment.

Issued: November 13, 2009
Filed: November 13, 2009

PROCLAMATIONS

2009-351
GUBERNATORIAL PROCLAMATION

On October 24, 2009, the President of the United States declared a national emergency pursuant to section 201 of the National Emergencies Act to facilitate the country's ability to respond to the H1N1 influenza virus. The H1N1 epidemic is moving rapidly and, as with the rest of the country, it is necessary for the State of Illinois to continue to combat and prevent the spread of the virus. Over the last two months, the State of Illinois has received shipments of the H1N1 influenza vaccine and the local health departments, hospitals and physicians have vaccinated individuals in the five priority groups identified by the Center for Disease Control's Advisory Committee on Immunization Practices, i.e., pregnant women, people who live with or care for children younger than 6 months of age, health care and emergency medical services personnel who provide direct patient care, persons between the ages of 6 months and 24 years, and people 25 through 64 years of age who are at higher risk for H1N1 because of chronic health disorders or compromised immune systems.

As a greater number of individuals in the federally identified priority groups become vaccinated, and as the supply of available H1N1 influenza vaccines increases, the Illinois Department of Public Health has decided to allow health care providers to begin vaccinating the general public for the H1N1 influenza on December 15, 2009. When the H1N1 influenza vaccine becomes available to the general public, the State of Illinois anticipates a significant surge in the demand for vaccination.

Therefore, in the interest of aiding the citizens of Illinois, medical facilities, and the State agencies and local governments responsible for ensuring public health and safety, and pursuant to the provisions of Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I hereby proclaim that a public health emergency exists in the State of Illinois.

This gubernatorial proclamation will assist the Illinois Emergency Management Agency and the Illinois Department of Public Health in coordinating State efforts in accordance with the State emergency response plans. This proclamation will allow for modification of scopes of practice for occupations with training to give vaccinations as well as assist with patient treatment.

Date: December 11, 2009
Filed: December 11, 2009

GUBERNATORIAL PROCLAMATION

2010-20
GUBERNATORIAL PROCLAMATION

The Federal Government has stressed that the H1N1 vaccination campaign must continue. This is in recognition that the H1N1 pandemic is still a threat. The flu season continues until the end of March or early April. Pharmacies provide a valuable resource by administering vaccinations to the community at large, including children down to the age of 9 years old. Paramedics augment the local health departments which need the support due to staff shortages. The need to continue vaccinating the citizens of the State of Illinois is imperative.

Therefore, in the interest of aiding the citizens of Illinois, medical facilities, and the State agencies and local governments responsible for ensuring public health and safety, and pursuant to the provisions of Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I hereby proclaim that a public health emergency exists in the State of Illinois.

This gubernatorial proclamation will assist the Illinois Emergency Management Agency and the Illinois Department of Public Health in coordinating State efforts in accordance with the State emergency response plans. This proclamation will allow for modification of scopes of practice for occupations with training to give vaccinations as well as assist with patient treatment.

Issued: February 5, 2010
Filed: February 5, 2010

Exhibit 2

Disaster Proclamations by Governor Quinn Relating to the Same 2011 Flooding in Southern Illinois

2011

ILLINOIS

REGISTER

RULES
OF GOVERNMENTAL
AGENCIES

Volume 35, Issue 20

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SR221

GUBERNATORIAL PROCLAMATION

2011-156
GUBERNATORIAL PROCLAMATION

The series of severe storms producing high wind, tornadoes and torrential rain that have moved through the lower Midwest during the past two weeks continue to impact the southern half of the State of Illinois. The repeated heavy rainfall is resulting in flash flooding as the storms move through the State. Rivers and streams are above flood stage due to the extensive runoff from the saturated ground, causing long-term flooding in low lying areas. The continued flooding in areas already impacted by the severe storms is causing widespread damage to homes, businesses, roads, bridges and other public infrastructure. Other areas along the Ohio and Mississippi Rivers have a high potential for further flooding in the next few weeks.

In the interest of aiding the citizens of Illinois and local governments responsible for ensuring public health and safety, I hereby proclaim that a disaster exists within the State of Illinois pursuant to the provisions of Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7.

This gubernatorial proclamation of disaster will aid the Illinois Emergency Management Agency in coordinating State resources to support the local governments impacted by the severe storms in their disaster response and recovery operations, including, but not limited to, emergency purchases necessary for response and other emergency powers as authorized by the Act. This includes the suspension of provisions of the Illinois Procurement Code that would in any way prevent, hinder or delay necessary action in coping with the disaster. Resources from all State agencies will be made available as reasonably necessary to assist those counties affected by the disaster in their effort to protect the public's safety and in preventing property damage to the extent possible.

Date: April 25, 2011
Filed: April 25, 2011

2011

ILLINOIS REGISTER

RULES OF GOVERNMENTAL AGENCIES

Volume 35, Issue 24

June 10, 2011

Pages 8615-8904

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SR223

PROCLAMATION

2011-195
GUBERNATORIAL PROCLAMATION

Since the first proclamation was issued on April 25, 2011, counties located in the southern half of the State of Illinois are continuing response efforts to stave off record level flooding. Homes, businesses, roads, bridges and other public infrastructure continue to be endangered. Further, storms with large amounts of precipitation are anticipated in the foreseeable future and will exacerbate the current flooding conditions. Specifically, counties already involved in the pumping of flood waters will need to continue and may need additional support.

Therefore, in the interest of aiding the citizens of Illinois and the local governments responsible for ensuring public health and safety, I hereby proclaim that a disaster continues to exist within the State of Illinois pursuant to the provisions of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7.

This gubernatorial proclamation of disaster will aid the Illinois Emergency Management Agency in coordinating State resources to support the local governments impacted by flooding and in further disaster response and recovery operations, including, but not limited to, emergency purchases necessary for response and other emergency powers as authorized by the Act. This includes the suspension of provisions of the Illinois Procurement Code that would in anyway prevent, hinder, or delay necessary action in coping with the disaster. Resources from all State agencies will be made available as reasonably necessary to assist those counties affected by the disaster in their effort to protect the public's safety and in preventing property damage to the extent possible.

Date: May 25, 2011
Filed: May 25, 2011

Exhibit 3

Disaster Proclamations by Governor Rauner Relating to the Same 2017 Flooding in Clinton, Jackson, Marshall, Union, and Woodford Counties

STATE OF ILLINOIS

EXECUTIVE DEPARTMENT

Proclamation

***WHEREAS**, beginning April 28, 2017, severe storms moved through Illinois generating heavy rainfall; and*

***WHEREAS**, according to the National Weather Service, some areas of the state received in excess of ten inches of rain over a three day period, causing flash flooding and widespread river flooding; and,*

***WHEREAS**, a second storm system that began affecting Illinois on May 3, 2017, produced significant rainfall, exacerbating the flood conditions; and,*

***WHEREAS**, the high precipitation totals resulted in near-record flooding on several rivers throughout the state, most notably the Big Muddy, Kaskaskia and Mississippi Rivers, as well as major and moderate flooding on numerous Illinois waterways; and,*

***WHEREAS**, the flooding has caused significant property damage and resulted in costly emergency protective measures and permanent infrastructure damages for state and local governments, especially damaged roadways; and,*

***WHEREAS**, based on reports received by the Illinois Emergency Management Agency, local resources and capabilities have been exhausted and State resources are needed to respond to and recover from the effects of the severe storms; and,*

***WHEREAS**, these conditions provide legal justification under Section 7 of the Illinois Emergency Management Act for the issuance of a proclamation of disaster.*

***NOW, THEREFORE**, in the interest of aiding the people of Illinois and the local governments responsible for ensuring public health and safety, I, Bruce Rauner, Governor of the State of Illinois, hereby proclaim as follows:*

Section 1. Pursuant to the provisions of Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I find that a disaster exists within the State of Illinois and specifically declare Clinton, Jackson, Marshall, Union and Woodford Counties as disaster areas.

Section 2. The Illinois Emergency Management Agency is directed to continue implementation of the State Emergency Operations Plan and to coordinate State resources to support local governments in disaster response and recovery operations.

Section 3. This proclamation shall be effective immediately and remain in effect for 30 days.

In Witness Whereof, *I have hereunto set my hand and caused the Great Seal of the State of Illinois to be affixed.*

Done at the Capitol in the City of Springfield, this TWENTY-FOURTH *day of* MAY, *in the Year of Our Lord, two thousand and* SEVENTEEN, *and of the State of Illinois, one hundred and* NINETY NINTH.

Jesse White
SECRETARY OF STATE

Bruce Rauner
GOVERNOR

SR226

STATE OF ILLINOIS

EXECUTIVE DEPARTMENT

FILED
INDEX DEPARTMENT
JUL 14 2017
IN THE OFFICE OF
SECRETARY OF STATE

2017-124
(Revised)

Proclamation

WHEREAS, beginning April 28, 2017, severe storms moved through Illinois generating heavy rainfall, and

WHEREAS, according to the National Weather Service, some areas of the state received in excess of ten inches of rain over a three-day period causing flash flooding and widespread river flooding; and,

WHEREAS, a second storm system that began affecting Illinois on May 3, 2017, produced significant rainfall, exacerbating the flood conditions; and,

WHEREAS, the high precipitation totals resulted in near-record flooding on several rivers throughout the state, most notably the Big Muddy, Kaskaskia and Mississippi Rivers, as well as major and moderate flooding on numerous Illinois waterways; and,

WHEREAS, the flooding has caused significant property damage and resulted in costly emergency protective measures and permanent infrastructure damages for state and local governments, especially damaged roadways; and,

WHEREAS, based on reports received by the Illinois Emergency Management Agency, local resources and capabilities have been exhausted and State resources are needed to respond to and recover from the effects of the severe storms; and,

WHEREAS, these conditions provide legal justification under section 7 of the Illinois Emergency Management Act for the issuance of a proclamation of disaster.

NOW, THEREFORE, in the interest of aiding the people of Illinois and the local governments responsible for ensuring public health and safety, I Bruce Rauner, Governor of the State of Illinois, hereby proclaim as follows:

Section 1. Pursuant to the provisions of Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I find that a disaster exists within the State of Illinois and specifically declare Alexander, Clinton, Jackson, Marshall, Union and Woodford Counties as disaster areas.

Section 2. The Illinois Emergency Management Agency is directed to continue implementation of the State Emergency Operations Plan and to coordinate State resources to support local governments in disaster response and recovery operations.

Section 3. This proclamation shall be effective immediately and remain in effect for 30 days.

In Witness Whereof, *I have hereunto set my hand and caused the Great Seal of the State of Illinois to be affixed.*

Done at the Capitol in the City of Springfield, this THIRTEENTH *day of* JULY, *in the Year of Our Lord, two thousand and* SEVENTEEN, *and of the State of Illinois,* NINETY NINTH *one hundred and* .

Jesse White

SECRETARY OF STATE

Bruce Rauner

GOVERNOR

Exhibit 4

Disaster Proclamations by Governor Pritzker
Relating to Flooding Across the State

STATE OF ILLINOIS

EXECUTIVE DEPARTMENT

Proclamation

WHEREAS, *beginning on April 23, 2019, multiple waves of storms generating moderate to heavy rainfall moved through Illinois, causing ground saturation, flash flooding and river flooding; and*

WHEREAS, *already-elevated river levels across the State caused by excessive rain totals and significant snowmelt in recent months have been exacerbated by these recent storms; and*

WHEREAS, *the Mississippi and Illinois Rivers are experiencing record and near-record crests in some locations and major flooding along the entire length of the Mississippi River in Illinois, as well as along most of the Illinois River, is expected; and*

WHEREAS, *on May 2, the Mississippi River reached an all-time record crest at Rock Island of 22.64 feet, surpassing the historic flood levels of the Great Flood of 1993; and*

WHEREAS, *the Louisiana river gauge along the Mississippi River reflects that the water level rose nearly six feet over an eight-day period; and*

WHEREAS, *the flooding has necessitated evacuations across the State, caused widespread impacts to residential and commercial properties, resulted in costly emergency protective measures, and damaged public works infrastructure; and*

WHEREAS, *the flooding of transportation routes has triggered the closure of hundreds of state and local roadways, resulting in a disruption of essential services and threatening public health and safety, and*

WHEREAS, *based on reports received by the Illinois Emergency Management Agency, local resources and capabilities have been exhausted, and state resources are needed and have been deployed across the State to respond to and recover from the effects of the severe storms and flooding; and*

WHEREAS, *these conditions provide legal justification under section 7 of the Illinois Emergency Management Act for the issuance of a proclamation of disaster.*

THEREFORE, *in the interest of aiding the people of Illinois and the local governments responsible for ensuring public health and safety, I, JB Pritzker, Governor of the State of Illinois, hereby proclaim as follows:*

SECTION 1: *Pursuant to the provisions of Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I find that a disaster exists within the State of Illinois and specifically declare Adams, Alexander, Brown, Bureau, Calhoun, Carroll, Cass, Fulton, Greene, Grundy, Hancock, Henderson, Jackson, Jersey, Jo Daviess, LaSalle, Madison, Marshall, Mason, Mercer, Monroe, Morgan, Peoria, Pike, Putnam, Randolph, Rock Island, Schuyler, Scott, St. Clair, Tazewell, Union, Whiteside and Woodford Counties as disaster areas.*

SECTION 2: *The Illinois Emergency Management Agency is directed to continue implementation of the State Emergency Operations Plan and to coordinate State resources to support local governments in disaster response and recovery operations.*

SECTION 3: *To aid with emergency purchases necessary for response and other emergency powers as authorized by the Illinois Emergency Management Agency Act, the provisions of the Illinois Procurement Code that would in any way prevent, hinder or delay necessary action in coping with the disaster are suspended to the extent they are not required by federal law.*

SECTION 4: *In order to alleviate any impediments to flood-fighting activities in these counties, the provisions of 17 Illinois Administrative Code Parts 3700 and 3704 related to levees and floodwalls are suspended.*

SECTION 5: *This proclamation can facilitate a request for Federal disaster assistance if a complete and comprehensive assessment of damage indicates that effective recovery is beyond the capabilities of the State and affected local governments.*

SECTION 6: *This proclamation shall be effective immediately and remain in effect for 30 days.*

In Witness Whereof, *I have hereunto set my hand and caused the Great Seal of the State of Illinois to be affixed.*

Done at the Capitol in the City of Springfield, this THIRD *day of* MAY*, in the Year of Our Lord, two thousand and* NINETEEN*, and of the State of Illinois, two hundred and* FIRST*.*

Jesse White
SECRETARY OF STATE

JBP
GOVERNOR

SR229

STATE OF ILLINOIS

EXECUTIVE DEPARTMENT

Proclamation

WHEREAS, *over the last two months, Illinois has been victim to a seemingly constant wave of storms that have generated significant rainfall, triggering ground saturation and river flooding; and*

WHEREAS, *already-elevated river levels across the State caused by excessive rain totals and significant snowmelt from northern states have been exacerbated by these ongoing storms; and*

WHEREAS, *the Mississippi and Illinois Rivers have experienced record and near-record crests in many locations, with major flooding along the entire length of the Mississippi River in Illinois, as well as along most of the Illinois River; and*

WHEREAS, *the Mississippi River has been at major flood stage continuously since March 16; and*

WHEREAS, *on May 2, the Mississippi River reached an all-time record crest at Rock Island of 22.7 feet, surpassing the historic flood levels of the Great Flood of 1993, while on the same day the Illinois River entered into major flood stage, where it has remained continuously; and*

WHEREAS, *the Illinois River at Valley City is expected to top the current record flood level set in 1943; and*

WHEREAS, *levees along both rivers are saturated from the extended duration of elevated water levels, and 200 Illinois National Guard troops have been activated for needed flood-fighting activities; and*

WHEREAS, *the flooding has necessitated evacuations across the State, caused widespread impacts to residential and commercial properties, resulted in costly emergency protective measures, and damaged public works infrastructure; and*

WHEREAS, *the flooding of transportation routes has triggered the closure of hundreds of state and local roadways and bridges, resulting in a disruption of essential services and threatening public health and safety, and*

WHEREAS, *based on reports received by the Illinois Emergency Management Agency, local resources and capabilities have been exhausted, and state resources are needed and have been deployed across the State to respond to and recover from the effects of the severe storms and flooding; and*

WHEREAS, *these conditions provide legal justification under section 7 of the Illinois Emergency Management Act for the issuance of a proclamation of disaster.*

NOW, THEREFORE, *in the interest of aiding the people of Illinois and the local governments responsible for ensuring public health and safety, I, JB Pritzker, Governor of the State of Illinois, hereby proclaim as follows:*

Section 1. *Pursuant to the provisions of section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I find that an ongoing disaster exists within the State of Illinois and specifically declare Adams, Alexander, Brown, Bureau, Calhoun, Carroll, Cass, Fulton, Greene, Grundy, Hancock, Henderson, Jackson, Jersey, Jo Daviess, LaSalle, Madison, Marshall, Mason, Mercer, Monroe, Morgan, Peoria, Pike, Putnam, Randolph, Rock Island, Schuyler, Scott, St. Clair, Tazewell, Union, Whiteside and Woodford Counties as disaster areas.*

Section 2*. The Illinois Emergency Management Agency is directed to continue implementation of the State Emergency Operations Plan and to coordinate State resources to support local governments in disaster response and recovery operations in these counties.*

Section 3. *To aid with emergency purchases necessary for response and other emergency powers as authorized by the Illinois Emergency Management Agency Act, the provisions of the Illinois Procurement Code that would in any way prevent, hinder or delay necessary action in coping with the disaster are suspended to the extent they are not required by federal law.*

Section 4. *In order to alleviate any impediments to flood-fighting activities in these counties, the provisions of 17 Illinois Administrative Code Parts 3700 and 3704 related to levees and floodwalls are suspended.*

Section 5. *This proclamation can facilitate a request for Federal disaster assistance if a complete and comprehensive assessment of damage indicates that effective recovery is beyond the capabilities of the State and affected local governments.*

Section 6. *This proclamation shall be effective immediately and remain in effect for 30 days.*

In Witness Whereof, *I have hereunto set my hand and caused the Great Seal of the State of Illinois to be affixed.*

Done at the Capitol in the City of Springfield, this THIRTY-FIRST *day of* MAY*, in the Year of Our Lord, two thousand and* NINETEEN*, and of the State of Illinois, two hundred and* FIRST*.*

SECRETARY OF STATE

GOVERNOR

SR230

STATE OF ILLINOIS

EXECUTIVE DEPARTMENT

Proclamation

***WHEREAS**, multiple waves of spring storms generating moderate to heavy rainfall moved through Illinois, causing ground saturation, flash flooding and river flooding; and*

***WHEREAS**, already-elevated river levels across the State caused by excessive rain totals and significant snowmelt in recent months have been exacerbated by these recent storms; and*

***WHEREAS**, flooding in Illinois has necessitated evacuations across the State, caused widespread impacts to residential and commercial properties, resulted in costly emergency protective measures, and damaged public works infrastructure; and*

***WHEREAS**, the flooding of transportation routes has triggered the closure of hundreds of state and local roadways, resulting in a disruption of essential services and threatening public health and safety, and*

***WHEREAS**, these conditions already have contributed to the issuance of disaster proclamations on May 3, 2019 and May 31, 2019, covering 34 Illinois counties located along the Illinois and Mississippi Rivers; and*

***WHEREAS**, the Rock River and Green River both experienced flooding at or above the major flood level for an extended period of time continuing during the months of May and June, as result of the spring rains that inundated the State of Illinois and other conditions that contributed to the issuance of the May 3 and May 31 disaster proclamations; and*

***WHEREAS**, there are approximately seven breaches along the Green River and Hennepin Canal that are in need of repair and water pumps are being used continuously to mitigate seepage; and*

***WHEREAS**, extensive personnel hours and fuel supplies are needed to keep generators running for a water treatment facility affected by the flooding from the Mississippi River; and*

***WHEREAS**, based on reports received by the Illinois Emergency Management Agency, local resources and capabilities have been exhausted, and state resources are needed and have been deployed across the State to respond to and recover from the effects of the severe storms and flooding; and*

***WHEREAS**, these conditions provide legal justification under section 7 of the Illinois Emergency Management Act for the issuance of a proclamation of disaster.*

***NOW, THEREFORE**, in the interest of aiding the people of Illinois and the local governments responsible for ensuring public health and safety, I, JB Pritzker, Governor of the State of Illinois, hereby proclaim as follows:*

***Section 1**. Pursuant to the provisions of Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I find that a disaster exists within the State of Illinois and specifically declare Henry County and Knox County as disaster areas.*

***Section 2**. The Illinois Emergency Management Agency is directed to continue implementation of the State Emergency Operations Plan and to coordinate State resources to support local governments in disaster response and recovery operations.*

***Section 3**. To aid with emergency purchases necessary for response and other emergency powers as authorized by the Illinois Emergency Management Agency Act, the provisions of the Illinois Procurement Code that would in any way prevent, hinder or delay necessary action in coping with the disaster are suspended to the extent they are not required by federal law.*

***Section 4**. In order to alleviate any impediments to flood-fighting activities in these counties, the provisions of 17 Illinois Administrative Code Parts 3700 and 3704 related to levees and floodwalls are suspended.*

***Section 5**. This proclamation can facilitate a request for Federal disaster assistance if a complete and comprehensive assessment of damage indicates that effective recovery is beyond the capabilities of the State and affected local governments.*

***Section 6.** This proclamation shall be effective immediately and remain in effect for 30 days.*

In Witness Whereof, *I have hereunto set my hand and caused the Great Seal of the State of Illinois to be affixed.*

Done at the Capitol in the City of Springfield, this TWENTIETH *day of* JUNE*, in the Year of Our Lord, two thousand and* NINETEEN*, and of the State of Illinois, two hundred and* FIRST*.*

SECRETARY OF STATE

GOVERNOR

SR231

STATE OF ILLINOIS

EXECUTIVE DEPARTMENT

Proclamation

WHEREAS, over the last several months, Illinois has been victim to a seemingly constant wave of storms that have generated significant rainfall, triggering ground saturation and river flooding; and,

WHEREAS, already-elevated river levels across the State caused by excessive rain totals and significant snowmelt from northern states have been exacerbated by these ongoing storms; and,

WHEREAS, the Mississippi and Illinois Rivers have experienced record and near-record crests in many locations, with major flooding along the entire length of the Mississippi River in Illinois, as well as along most of the Illinois River; and,

WHEREAS, the Mississippi River has been at major flood stage continuously for several months; and,

WHEREAS, extensive personnel hours and fuel supplies are needed to keep generators running for a water treatment facility affected by the flooding from the Mississippi River; and,

WHEREAS, on May 2, the Mississippi River reached an all-time record crest at Rock Island of 22.7 feet, surpassing the historic flood levels of the Great Flood of 1993, while on the same day the Illinois River entered into major flood stage, where it has remained continuously; and,

WHEREAS, the Illinois River at Hardin is expected to remain above major flood stage into the first week of July; and,

WHEREAS, the Kaskaskia River, a tributary of the Mississippi River, is expected to remain above major flood stage at New Athens into the first week of July; and,

WHEREAS, levees along both the Mississippi and Illinois Rivers are saturated from the extended duration of elevated water levels; and,

WHEREAS, the Rock River and Green River both experienced flooding at or above the major flood level for an extended period of time continuing during the months of May and June; and,

WHEREAS, there are approximately seven breaches along the Green River and Hennepin Canal that are in need of repair and water pumps are being used continuously to mitigate seepage; and,

WHEREAS, the flooding has necessitated evacuations across the State, caused widespread impacts to residential and commercial properties, resulted in costly emergency protective measures, and damaged public works infrastructure; and,

WHEREAS, the flooding of transportation routes has triggered the closure of hundreds of state and local roadways and bridges, resulting in a disruption of essential services and threatening public health and safety, and,

WHEREAS, significant flood response activities will continue to be necessary even after river levels have receded below major flood stage, including dewatering of flooded areas and working to open critical roadways and bridges that are currently flooded; and,

WHEREAS, based on reports received by the Illinois Emergency Management Agency, local resources and capabilities have been exhausted, and state resources are needed and have been deployed across the State to respond to and recover from the effects of the severe storms and flooding; and,

WHEREAS, these conditions provide legal justification under section 7 of the Illinois Emergency Management Act for the issuance of a proclamation of disaster;

NOW, THEREFORE, in the interest of aiding the people of Illinois and the local governments responsible for ensuring public health and safety, I, JB Pritzker, Governor of the State of Illinois, hereby proclaim as follows:

Section 1. Pursuant to the provisions of section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I find that an ongoing disaster exists within the State of Illinois and specifically declare Adams, Alexander, Brown, Bureau, Calhoun, Carroll, Cass, Fulton, Greene, Grundy, Hancock, Henderson, Henry, Jackson, Jersey, Jo Daviess, Knox, LaSalle, Madison, Marshall, Mason, Mercer, Monroe, Morgan, Peoria, Pike, Putnam, Randolph, Rock Island, Schuyler, Scott, St. Clair, Tazewell, Union, Whiteside and Woodford Counties as disaster areas.

Section 2. The Illinois Emergency Management Agency is directed to continue implementation of the State Emergency Operations Plan and to coordinate State resources to support local governments in disaster response and recovery operations.

Section 3. To aid with emergency purchases necessary for response and other emergency powers as authorized by the Illinois Emergency Management Agency Act, the provisions of the Illinois Procurement Code that would in any way prevent, hinder or delay necessary action in coping with the disaster are suspended to the extent they are not required by federal law.

Section 4. In order to alleviate any impediments to flood-fighting activities in these counties, the provisions of 17 Illinois Administrative Code Parts 3700 and 3704 related to levees and floodwalls are suspended.

Section 5: This proclamation can facilitate a request for Federal disaster assistance if a complete and comprehensive assessment of damage indicates that effective recovery is beyond the capabilities of the State and affected local governments.

Section 6: This proclamation shall be effective immediately and remain in effect for 30 days.

In Witness Whereof, *I have hereunto set my hand and caused the Great Seal of the State of Illinois to be affixed.*

Done at the Capitol in the City of Springfield,

this TWENTY-EIGHTH *day of* JUNE, *in the Year of Our Lord, two thousand and* NINETEEN, *and of the State of Illinois, two hundred and* FIRST.

SECRETARY OF STATE

GOVERNOR

SR232

STATE OF ILLINOIS

EXECUTIVE DEPARTMENT

Proclamation

***WHEREAS**, over the last several months, Illinois has been victim to a seemingly constant wave of storms that have generated significant rainfall, triggering ground saturation and river flooding; and,*

***WHEREAS**, already-elevated river levels across the State caused by excessive rain totals and significant snowmelt from northern states have been exacerbated by these storms; and,*

***WHEREAS**, the Mississippi and Illinois Rivers have experienced record and near-record crests in many locations, with major flooding along the entire length of the Mississippi River in Illinois, as well as along most of the Illinois River; and,*

***WHEREAS**, portions of the Mississippi River and Illinois River have only recently receded below major flood stage; and,*

***WHEREAS**, levees and the areas behind the levees along both the Mississippi and Illinois Rivers are saturated from the extended duration of elevated water levels; and,*

***WHEREAS**, the flooding has necessitated evacuations across the State, caused widespread impacts to residential and commercial properties, resulted in costly emergency protective measures, and damaged public works infrastructure; and,*

***WHEREAS**, the flooding of transportation routes has triggered the closure of hundreds of state and local roadways and bridges, resulting in a disruption of essential services and threatening public health and safety, and,*

***WHEREAS**, significant flood response activities and emergency protective measures, including but not limited to dewatering behind levees, increasing the height of levees, and working to open critical roadways and bridges that are currently underwater, are still ongoing and will continue to be necessary to reduce an immediate threat to life, public health and safety in portions of the impacted area; and,*

***WHEREAS**, based on reports received by the Illinois Emergency Management Agency, local resources and capabilities have been exhausted, and state resources are needed and have been deployed to respond to and recover from the effects of the severe storms and flooding; and,*

***WHEREAS**, these conditions provide legal justification under section 7 of the Illinois Emergency Management Act for the issuance of a proclamation of disaster;*

***NOW, THEREFORE**, in the interest of aiding the people of Illinois and the local governments responsible for ensuring public health and safety, I, JB Pritzker, Governor of the State of Illinois, hereby proclaim as follows:*

***Section 1**. Pursuant to the provisions of section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I find that an ongoing disaster exists within the State of Illinois and specifically declare Adams, Alexander, Brown, Bureau, Calhoun, Carroll, Cass, Fulton, Greene, Grundy, Hancock, Henderson, Henry, Jackson, Jersey, Jo Daviess, Knox, LaSalle, Madison, Marshall, Mason, Mercer, Monroe, Morgan, Peoria, Pike, Putnam, Randolph, Rock Island, Schuyler, Scott, St. Clair, Tazewell, Union, Whiteside and Woodford Counties as disaster areas.*

***Section 2**. The Illinois Emergency Management Agency is directed to continue implementation of the State Emergency Operations Plan and to coordinate State resources to support local governments in disaster response and recovery operations.*

***Section 3**. To aid with emergency purchases necessary for response and other emergency powers as authorized by the Illinois Emergency Management Agency Act, the provisions of the Illinois Procurement Code that would in any way prevent, hinder or delay necessary action in coping with the disaster are suspended to the extent they are not required by federal law.*

***Section 4**. In order to alleviate any impediments to flood-fighting activities in these counties, the provisions of 17 Illinois Administrative Code Parts 3700 and 3704 related to levees and floodwalls are suspended.*

***Section 5**: This proclamation can facilitate a request for Federal disaster assistance if a complete and comprehensive assessment of damage indicates that effective recovery is beyond the capabilities of the State and affected local governments.*

***Section 6**: This proclamation shall be effective immediately and remain in effect for 30 days.*

In Witness Whereof, *I have hereunto set my hand and caused the Great Seal of the State of Illinois to be affixed.*

Done at the Capitol in the City of Springfield,

this TWENTY-SIXTH *day of* JULY, *in*

the Year of Our Lord, two thousand and

NINETEEN, *and of the State of Illinois,*

two hundred and FIRST.

Jesse White

SECRETARY OF STATE

GOVERNOR

SR233

Exhibit 5

Darren Bailey, “Springfield Update” (June 14, 2019)

DARREN BAILEY
STATE REPRESENTATIVE • DISTRICT 109

Springfield Update: June 14

June 14, 2019

- **Governor Pritzker approves massive abortion expansion law.** Governor JB Pritzker signed legislation Wednesday that will massively expand abortion access in Illinois.

Senate Bill 25, the so-called "Reproductive Health Act," makes many sweeping changes to Illinois' abortion laws, establishing abortion as a fundamental right in Illinois. It further provides that a fertilized egg, embryo, or fetus does not have independent rights under the

law. It repeals the Illinois Abortion Law of 1975, the Partial-birth Abortion Ban Act, and the Abortion Performance Refusal Act, which specifies that a medical professional who declines to recommend or perform an abortion procedure cannot be held liable for damages. The new law contains intentionally vague definitions that will provide for a significant expansion of post viability abortions. Establishing abortion as a fundamental right means Illinois will not be able to enforce its parental notification law that requires parents of minor children to be notified if their daughter seeks and obtains an abortion.

Senate Bill 25 passed the Illinois House of Representatives by a vote of 65-50-4, with every Republican voting 'No.' Governor Pritzker signed the bill into law as Public Act 101-0013.

AGRICULTURE

- **Illinois planting season affected by wet weather**. The exceptionally wet spring 2019 season made work in many fields very difficult during the usual planting weeks of April and May. Days suitable for fieldwork finally appeared through much of Illinois in early June, with farm observers reporting a mean of 4.5 days suitable for fieldwork during the week ending Sunday, June 9. The U.S. Department of Agriculture reports that as of June 9, 73% of the Illinois corn crop had been planted; this compares with 100% planting at the comparable date one year earlier. The report for Illinois soybeans shows a similar picture, with 49% of the Illinois bean crop planted as of June 9 as compared to 96% on the comparable day one year earlier.

The slow planting progress has created a developing picture of a challenging grow cycle and possible challenging harvest conditions. As of June 9, 53% of the Illinois corn crop was ranked as fair, poor, or very poor, with only 47% of the crop ranked as good or excellent. With regard to Illinois farm fields, 42% of the acreage was ranked as having surplus topsoil moisture, a condition that can include patches of persistent mud and crop death in low-lying stretches of the fields. Dry, sunny conditions could create some improvements in these numbers.

DOWNSTATE

- **Flooding conditions continue along Illinois, Mississippi Rivers**. High water marks not seen since the Great Flood of 1993 are straining levees and forcing the sandbagging of riverfront properties up and down Illinois' largest waterways. Some of the levees that protect the Illinois River and Mississippi River bottomlands have given way, creating property damage and forcing evacuations. Areas where two or more rivers come together, such as Alexander County in far Southern Illinois where the Ohio and Mississippi Rivers meet, face particular challenges.

In addition to losses of some bottomland homes and businesses, Illinoisans are affected by the closure of key roads and bridges. The Illinois Emergency Management Agency (IEMA), which has jurisdiction over Illinois disaster relief, has been mobilized since mid-March, and has focused an increased level of disaster relief operations in East Cape Girardeau in hard-hit Alexander County. On May 31, Gov. Pritzker issued a flooding disaster declaration in response to the emergency. The disaster declaration covers human and property damage in 34 listed counties within central, western, and southern Illinois. Some flood relief may come over the next few weeks, as water levels farther up the Mississippi River have begun to drop back towards normal levels. The welcome relief affects towns and cities in eastern Iowa and northwestern Illinois.

OUTDOOR SPORTS

- **Free Fishing Days declared for Friday, June 14 through Monday, June 17**. The no-license-required declaration was posted by the Illinois Department of Natural Resources (IDNR). IDNR often celebrates the end of the school year with a family-friendly holiday from fishing license requirements to encourage families to take up the sport and to bring young people into the fishing experience. Many lakes, ponds, and streams are publicly stocked with fish to catch and keep or to return to the water. IDNR has posted a list of recommended lakes and ponds for youth fishing.

STANLEY CUP

- **The St. Louis Blues win their first-ever Stanley Cup**. The Blues join the Chicago Blackhawks as National Hockey League (NHL) champions with many fans in Illinois. Many northern Illinoisans may not know that greater St. Louis is the second-most-populous metropolitan area in Illinois. The eight counties of southeastern Illinois that make up the Illinois part of what the U.S. Census calls the St. Louis "combined statistical area" have more than 700,000 people living in them. Even outside this area, many residents of southern and central Illinois are fans of St. Louis sports teams.

The St. Louis Blues, which had not played in a Stanley Cup finals match since 1970, defeated the Boston Bruins by a finals total of four games to three to win the Cup in 2019. The deciding Game 7 was broadcast on national television on Wednesday, June 12.

TRANSPORTATION

- **Twelve-year-old Illinoisan creates Facebook page in support of Scott's Law**. The Facebook page of 12-year-old Lucy Kuelper shares the meme "#MoveOverForMyDad" and pays tribute to her father, a member of the Illinois State Police. Many facets of the Illinois press have worked with Facebook, Twitter, and other social media platforms to spread awareness for Scott's Law.

The Illinois General Assembly joins Lucy Kuelper in urging Illinois drivers to "Move Over" when they see a stopped emergency vehicle by the side of the road with its lights flashing. A two-bill package passed by the House and Senate in 2019, SB 1862 and SB 2038, contains new provisions of Illinois law. The new "Move Over" laws, also referred to as "Scott's Law" in honor of fallen Chicago first responder Lt. Scott Gillen, increase penalties for violations and add a "Move Over" question to the mandatory drivers' knowledge tests given by the Office of the Secretary of State to applicants for drivers' licenses in Illinois.

District Office

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Louisville, IL 62858
618-665-4109

Springfield Office

228-N Stratton Building
Springfield, IL 62706
217-782-2087

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 29, 2020, I electronically filed the foregoing Supporting Record Volume 2 of 3 with the Clerk of the Illinois Appellate Court, Fifth Judicial District, by using the Odyssey eFileIL system.

I further certify that the other participant in this action, named below, is not a registered service contact on the Odyssey eFileIL system, and thus was served by transmitting a copy from my e-mail address to the e-mail address of record indicated below on April 29, 2020.

Thomas G. DeVore
tom@silverlakelaw.com

Under penalties, as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Sarah A. Hunger
SARAH A. HUNGER
Deputy Solicitor General
100 West Randolph Street
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