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SUPREME COURT OF ILLINOIS**

DARREN BAILEY,*Plaintiff-Respondent,*

v.

GOVERNOR JAY ROBERT PRITZKER, in his official capacity,*Defendant-Petitioner.*

On Appeal from the
Circuit Court for the Fourth Judicial Circuit, Clay County, Illinois, No. 2020 CH 6, to the
Appellate Court of Illinois, Fifth Judicial District, No. 5-20-0148
The Honorable Michael D. McHaney, Judge Presiding

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* COOK COUNTY,
ILLINOIS AND THE CITY OF CHICAGO IN SUPPORT OF DEFENDANT-
PETITIONER GOVERNOR JAY ROBERT PRITZKER'S EMERGENCY MOTION
FOR DIRECT APPEAL UNDER ILLINOIS SUPREME COURT RULE 302(B) AND/OR
SUPERVISORY ORDER UNDER ILLINOIS SUPREME COURT RULE 383**

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Cook County, Illinois (“Cook County”) and the City of Chicago (“the City”) (collectively “*Amici*”) respectfully move for leave to file their brief as *Amici Curiae* in support of Petitioner’s Emergency Motion for Direct Appeal Under Illinois Supreme Court Rule 302(b) and/or Supervisory Order Under Illinois Supreme Court Rule 383. In support of this motion, the *Amici* state as follows:

I. INTRODUCTION

1. COVID-19 presents the greatest danger to the public health that we have encountered in our lifetimes. Its silent spread presents a danger to all Illinoisans, and the *Amici* join in the Governor’s request that this Court accept a direct appeal pursuant to S. Ct. R. 302(b) or exercise its supervisory authority under S. Ct. R. 383. “For every confirmed case of COVID-19, there are likely another five to 10 people with undetected infections.”¹ A new study by NIH-funded researchers, published in the journal *Science*, suggests that social distancing may be our best hope to slow the spread of COVID-19.² Illinois is a State comprised of communities, none of which stands, thrives, or suffers alone. The ease of transportation across the State, coupled with the silent transmission of COVID-19, require a unified strategy to combat the spread of this deadly disease.

2. There is a significant public interest in the prompt adjudication by this Court of the Governor’s powers to protect Illinoisans from this contagious disease. A public health emergency involving “the spread of dangerous communicable diseases,” presents questions of “supreme importance not only to the individuals involved, but to the citizens of the State of

¹ <https://directorsblog.nih.gov/2020/03/19/to-beat-covid-19-social-distancing-is-a-must/>

² Substantial undocumented infection facilitates the rapid dissemination of novel coronavirus (SARS-CoV2). Li R, Pei S, Chen B, Song Y, Zhang T, Yang W, Shaman J. *Science*. 16 March 2020. [Preprint ahead of publication].

Illinois and to the State itself.” *People ex rel. Baker v. Strautz*, 386 Ill. 360, 363-64 (1944); *see People ex rel. Barmore v. Robertson*, 302 Ill. 422, 427 (1922). Thus, there is precedent for this Court to directly review a matter impacting the public health in this way. *See Metro. Sanitary Dist. of Greater Chi. v. U.S. Steel Corp.*, 41 Ill. 2d 440, 441 (1968).

3. The County and the City, as the two most populated units of local government within the State (and among the most populated within the United States), have a vital interest in this appeal. On April 27, 2020, the circuit court entered an order preventing the Governor from enforcing or entering any executive order against Mr. Darren Bailey (“Mr. Bailey”) that “force[s] him to isolate and quarantine in his home” (the “TRO”). Further to this point, the TRO entered in Clay County causes a dangerous effect state-wide because it fosters ambivalence toward the Governor’s authority to manage this public health crisis. The resultant flouting of the Executive Order places all Illinois residents in danger.

4. Indeed, on April 29, 2020, the Richland County TB and Public Health Office was notified that a COVID-19-positive resident in Mr. Bailey’s own district violated the shelter-at-home order by visiting three stores in the span of an hour.³ Thus, it is clear that if left in place, the TRO will trigger a predictable chain of events: individuals who refuse to shelter at home will spread the virus throughout their communities, thousands will fall ill and require hospitalization, and those with particularly serious cases will die.

³ Capitol Fax, *Officials on alert in Rep. Darren Bailey’s district after COVID-positive resident violates self-isolation order*, Apr. 29, 2020, <https://capitolfax.com/2020/04/29/officials-on-alert-in-rep-darren-baileys-district-after-resident-violates-local-self-isolation-order/>.

II. BACKGROUND

A. The County

5. The County maintains a significant interest in the public health of its citizenry and the prevention of virus spread. The Cook County Board of Commissioners, serving as the Cook County Board of Health, Ill. Code. Art. II § 38-27, holds a statutory responsibility to “[i]nitiate and carry out programs and activities of all kinds, not inconsistent with the law, that may be deemed necessary or desirable in the promotion and protection of health and in the control of disease” for approximately 5 million residents of Cook County. 55 ILCS 5/5-25013(B)(1); *see also County of Macon v. Bd. of Education*, 165 Ill. App. 3d 1, 5 (4th Dist. 1987) (explaining that a county health department is “vested with the authority to promulgate regulations necessary for the protection and improvement of public health and enforce those regulations, as well as the rules, regulations and policies of the Illinois Department of Public Health.”).

6. The County Board of Health, in turn, governs the Cook County Department of Public Health (“CCDPH”), which similarly holds an interest in the community’s health. 55 ILCS 5/5-25012; Cook County, Ill. Code Art. II § 38-26. CCDPH serves as the state certified public health agency for the County, except for the City of Chicago, Evanston, Skokie, Oak Park, and Stickney Township. *Id.* at § 38-29. The Department strives to meet the public health needs of the suburban County jurisdiction through effective and efficient disease prevention and health promotion programs. Finally, the County operates Cook County Health and Hospitals Systems (“CCH”), one of the largest public hospital systems in the nation. Cook County, Ill. Code Art. V § 38-71.

7. CCH provides care to all County residents, regardless of their ability to pay, insurance status, or immigration status. CCH has a substantial interest in this case because its

nurses, doctors and other hospital staff will be treating the influx of critically ill COVID-19 patients. And without widespread availability of testing, sheltering-in-place remains the best method of preventing the spread of COVID-19 and preserving critical hospital resources.

B. The City

8. The City is the largest city in the state with a population of approximately 2.7 million. At this point there has been a total of 19,624 positive cases of COVID-19 in Chicago and 826 deaths. As *Amici* explain in their proposed brief, the Governor's order is critical. Before the Governor's initial executive order went into effect, Chicago saw a doubling of COVID-19 cases every four days; but with the order in place, that rate has been greatly reduced to doubling every 19 days. As such, the circuit court's order threatens to trigger a return to uncontrolled community spread in the state's most populated urban area.

III. ARGUMENT

9. The Governor has moved under Rule 302(b) for a direct appeal, which this court may permit when "the public interest requires prompt adjudication by the Supreme Court." Ill. S. Ct. R. 302(b); *see also* Const. 1970, art. VI § 4(b). In addition, this Court has previously recognized that protecting the public health of Illinois citizens qualifies as an important public interest. *Price v. Philip Morris, Inc.*, 2015 IL 117687, ¶ 119 (2015). Moreover, this Court has unlimited supervisory authority that it may exercise "if the normal appellate process will not afford adequate relief and the dispute involves a matter important to the administration of justice, or where intervention is necessary to keep an inferior court or tribunal from acting beyond the scope of its authority." *Vasquez Gonzalez v. Union Health Servs., Inc.*, 2018 IL 123025, ¶ 17 (2018).

10. This court's intervention is urgently warranted here. *Amici* maintain that the public interest necessitates such prompt adjudication because: (1) the circuit court premised its TRO upon erroneous principles of statutory and constitutional interpretation; and (2) contrary to the circuit court's determination, the balance of harms weighs heavily against Mr. Bailey. *Amici* therefore urge the court to accept our proposed brief, which addresses the circuit court's errors and emphasizes the devastating impact that the circuit court's approach would have on its communities, as well as the health and hospital system that serves them.

11. In particular, the brief of *Amici* addresses Mr. Bailey's likelihood of success on the merits considering settled principles of statutory construction and constitutional interpretation—an analysis the circuit court did not meaningfully undertake. Under the plain language of the Illinois Emergency Management Act, for example, the Governor is permitted to issue more than one proclamation for an existing disaster. Similarly, Mr. Bailey's claimed constitutional right to intrastate travel does not preclude the Governor's disaster proclamations and exercise of ongoing emergency powers.

12. The proposed brief also explains how the circuit court seriously miscalculated the balance of harms and failed to make the requisite findings concerning Mr. Bailey's claim for a TRO. In particular, it demonstrates that Mr. Bailey's claimed harms fail to move the balance of equities in his favor by highlighting the enormous harm the TRO will cause to members of the City and County communities and its severe threat to one of the largest public health networks in the country.⁴

⁴ A copy of the BRIEF OF *AMICI CURIAE* COOK COUNTY, ILLINOIS AND THE CITY OF CHICAGO IN SUPPORT OF DEFENDANT-PETITIONER GOVERNOR JAY ROBERT PRITZKER'S EMERGENCY MOTION FOR DIRECT APPEAL UNDER ILLINOIS SUPREME COURT RULE 302(B) AND/OR SUPERVISORY ORDER UNDER ILLINOIS SUPREME COURT RULE 383 is attached hereto as Exhibit 1.

13. And by improperly restraining the Governor's authority to manage the emergency, the TRO raises critical separation of power concerns. *See, e.g., People ex rel. Smith v. Jenkins*, 325 Ill. 372, 377 (1927) ("Neither the court nor the Legislature has the power so to limit the authority conferred on the Governor by the Constitution.").

14. *Amici* rely upon the Governor's leadership in setting statewide guidelines for critical infrastructure and healthcare operations during the pandemic. Here, where the circuit court's order improperly restrains the Governor's authority, we ask the Court to resolve this motion consistent with its prior precedent. *See, e.g., Desnick v. Dep't of Prof'l Reg.*, 171 Ill. 2d 510, 516 (1996) ("[T]his court has jurisdiction to permit a direct appeal from other than final judgments."); *Chi. Nat'l League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 362 (1985) (granting defendant's Rule 302(b) motion in case raising separation of powers concerns); *Lunding v. Walker*, 65 Ill. 2d 516, 518 (1976) (allowing transfer of appeal under Rule 302(b) where plaintiff sued in circuit court to restrain gubernatorial action); *People ex rel. AFSCME v. Walker*, 61 Ill. 2d 112, 113 (1975) (*per curiam*) (granting direct appeal and consolidating cases where plaintiffs sought to compel gubernatorial action).

15. These are extraordinary times. This Motion and the proposed brief are filed prior to the Court accepting review. However, given the emergency nature of the matter and the possibility that this matter could be resolved on the briefs filed below, *Amici* request the Court consider this filing at this stage of the litigation.

IV. CONCLUSION

16. The danger to all Illinois residents is clear and present. The harm by way of loss of human lives cannot be reversed or undone. *Amici* respectfully request that this Court review

this matter of significant public interest by accepting the Governor's direct appeal, and grant leave to file the attached *Amicus Curiae* brief.

WHEREFORE, for the reasons set forth herein, the County and City request leave to file the attached *Amici Curiae* brief in this matter *instanter* and respectfully ask that the Court consider this brief in its resolution of the Governor's Motion.

Dated: April 30, 2020

Respectfully submitted,

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I. INTRODUCTION

The novel coronavirus SARS-CoV2 has triggered a devastating global pandemic, afflicting at least a million people in the United States with a potentially lethal virus, coronavirus disease 2019 (COVID-19). Over the past months, the State of Illinois has worked in concert with units of local government to increase medical capacity and avoid the silent spread of a vicious disease that can easily transmit through asymptomatic carriers. This matter concerns an order that, if left in place, will present substantial, irreparable harm to Cook County, Illinois (“the County” or “Cook County”) and the City of Chicago (“the City” or “Chicago”) (collectively *Amici*), their community members, and the health and hospital system that serves them during this pandemic.

The rapid and continuous spread of COVID-19 has caused a nationwide public health crisis. State and local authorities, including the State of Illinois and *Amici*, have joined in taking extraordinary efforts to stop the spread of COVID-19 and protect the health and well-being of our residents. And, due to these efforts—namely the Governor’s March 20, 2020 Executive Order (“the March 20th Order”) requiring individuals to stay at home when not performing essential activities—the State has averted even greater disaster. The circuit court’s TRO, by enjoining the Governor from enforcing the March 20th Order against Plaintiff Darren Bailey (“Mr. Bailey”), threatens to reverse this success and endanger countless lives.

Indeed, Mr. Bailey’s case goes beyond the TRO as it applies to him as an individual. Since Mr. Bailey filed his case, several additional cases have been filed to invalidate the March 20th Order, including another by Mr. Bailey’s counsel.¹ And just yesterday, on April

¹ See Complaint, *Cabello v. Pritzker*, No. 2020 CH 0000210 (17th Judicial Circuit, Circuit Ct., Winnebago Cty., Apr. 29, 2020); Chicago Sun-Times, *Northwestern Illinois church sues Pritzker in federal court over*

29, 2020, the Richland County TB and Public Health Office was notified that a COVID-19-positive resident in Mr. Bailey’s district violated the shelter-at-home order by visiting three stores in the span of an hour.² Through the TRO, the circuit court and Mr. Bailey have inspired this reckless behavior and opened the floodgates to individuals seeking to venture out into the community *en masse* during a pandemic, satisfying their individual desires at the expense of the public health.

Here, where the lives of Illinoisans hang in the balance, *Amici* request that this Court grant Petitioner’s motion for direct appeal under Illinois Supreme Court Rule 302(b) and/or supervisory relief under Illinois Supreme Court Rule 383 and further reverse the TRO entered by the circuit court.

II. INTERESTS OF THE *AMICI*

A. *Cook County, Illinois Has A Vital Interest In This Case.*

Cook County is an Illinois governmental entity and the second largest county in the United States by population. The County is home to more than five million residents, or roughly 45 percent of the State’s population, and a number of vibrant and diverse communities.

The Cook County Health and Hospitals System (“CCH”), established by the County’s Board of Health, operates as an agency of and funded by the County. Cook

his stay-at-home order (Apr. 30, 2020), <https://chicago.suntimes.com/coronavirus/2020/4/30/21243024/northern-illinois-church-sues-pritzker-stay-at-home-order-federal-court>; see also Peoria Journal Star, *Luciano: Woodford County state’s attorney rejects governor’s order and says all businesses and churches can open* (Apr. 30, 2020), <https://www.pjstar.com/news/20200429/luciano-woodford-county-statersquos-attorney-rejects-governorrquos-order-and-says-all-businesses-and-churches-can-open>

² Capitol Fax, *Officials on alert in Rep. Darren Bailey’s district after COVID-positive resident violates self-isolation order*, Apr. 29, 2020, <https://capitolfax.com/2020/04/29/officials-on-alert-in-rep-darren-baileys-district-after-resident-violates-local-self-isolation-order/>.

County, Ill. Code Art. V § 38-71. *See also* Ill. Code. Art. II § 38-27 (explaining that the Cook County Board of Commissioners serves as the Cook County Board of Health). Through CCH in particular, the County possesses a substantial interest in this case. As one of the largest public hospital systems in the nation, CCH provides care to all County residents, regardless of their ability to pay, insurance status, or immigration status. Declaration of Dr. Kiran Joshi (“Joshi Decl.”), attached hereto as Exhibit 1, at ¶ 5. Absent the widespread availability of testing and contact tracing methods, sheltering-in-place remains the best and most realistic method of preventing the spread of COVID-19 and preserving critical hospital resources.³ The circuit court’s order, however, prevents the Governor from enforcing or entering any executive order against Mr. Bailey Darren Bailey (“Mr. Bailey”) that “force[s] him to isolate and quarantine in his home.” SR. 243.⁴ Accordingly, the circuit court’s order threatens the legitimacy of the Governor’s stay-at-home order as it applies to *all* Illinois residents, not just Mr. Bailey. Thus, if left in place, the circuit court’s order will trigger a predictable chain of events: individuals who refuse to shelter at home will spread the virus throughout their communities, causing an increase in County infections. Thousands will fall ill and require hospitalization, and those with particularly serious cases will die.⁵ Studies suggest that the County’s black and brown

³ *See, e.g.*, Substantial undocumented infection facilitates the rapid dissemination of novel coronavirus (SARS-CoV2). Li R, Pei S, Chen B, Song Y, Zhang T, Yang W, Shaman J. *Science*. 16 March 2020. [Preprint ahead of publication], <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7164387/>.

⁴ Cites to “SR” refer to the three-volume supporting record filed with the Governor’s motion before this Court.

⁵ *See, e.g.*, Office of the Governor, *Gov. Pritzker Announces Modified Stay at Home Order Will Be Extended Through May to Continue Progress*, Apr. 23, 2020, <https://www.2.illinois.gov/Pages/news-item.aspx?ReleaseID=21459> (State modeling showing that without the March stay-at-home order, Illinois could face 2,000 deaths each day).

residents will face a particularly heavy toll.⁶ And CCH, sitting on the frontline of COVID-19, will assume a disproportionate share of this burden.

Specifically, COVID-19 already threatens to overwhelm CCH's limited resources. As of this writing, Cook County has 35,800 confirmed cases of COVID-19 and has seen at least 1,516 deaths. Decl. at ¶ 17. And CCH provides care to a remarkably diverse population; only six percent of its patients possess commercial health insurance, and 40 percent lack any sort of health insurance whatsoever. *Id.* at ¶ 11. Low-income and uninsured populations not only suffer disproportionately adverse impacts during public health crises, but also are more likely to delay or forego necessary testing and treatment for COVID-19 because of the prohibitive costs of medical care and hospital stays. Decl. at ¶ 22. Thus, if COVID-19 spreads freely throughout the community, CCH stands ready to receive an influx of critically ill COVID-19 patients—patients who likely forewent treatment for as long as possible due to prohibitive medical costs and may not be able to pay for their care. *Id.* at ¶ 23. This will, in turn, further strain CCH's medical staff, equipment, and financial resources, thus threatening its ability to care for patients. *Id.*

B. *The City of Chicago Has A Vital Interest In This Case.*

Chicago is the largest city in the state with a population of approximately 2.7 million. Like the County, it has seen a rapid increase in positive COVID-19 cases. On April 28, 2020 the Chicago Department of Public Health reported 945 new positive cases and 53 new deaths, bringing the city-wide total to 19,624 cases and 826 deaths, respectively.⁷ The

⁶ Centers for Disease Control and Prevention, *COVID-19 in Racial and Ethnic Minority Groups*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

⁷ Chicago Department of Public Health, *Chicago COVID-19 Update*, Apr. 28, 2020, https://www.chicago.gov/content/dam/city/sites/covid/reports/2020-04-28/Chicago_COVID-19_Update_V5_4.28.2020.pdf.

City represents more than 40 percent of the cases statewide and more than 39 percent of deaths statewide.⁸ The shelter-at-home order, however, has proved effective in containing even greater citywide spread. Before the Governor’s initial executive order became effective, for example, Chicago saw a doubling of COVID-19 cases every four days.⁹ Now, the number doubles every 15 days.¹⁰ As such, the circuit court’s order threatens to trigger a return to uncontrolled community spread in the state’s most densely populated and populous urban area.

Based upon the above interests, *Amici* submit this brief so as to: (1) highlight the gravely erroneous TRO; and (2) emphasize the devastating impact that the order would have on their community members, as well as the health and hospital system that serves them.

III. LEGAL STANDARD

A TRO constitutes a “drastic remedy which may issue only in exceptional circumstances.” *Cty. of Boone v. Plote Constr., Inc.*, 2017 IL App (2d) 160184 ¶ 2 (2d Dist. 2017) (internal quotations omitted); *see also Bullard v. Bullard*, 66 Ill. App. 3d 132, 135–36 (5th Dist. 1978). To obtain a TRO, a plaintiff must establish: (1) a protected right; (2) irreparable harm if injunctive relief is not granted; (3) that an alternative remedy would be inadequate; and (4) that there is a likelihood of success on the merits. *Kalbfleisch v. Columbia Cmty. Unit Sch. Dist. Unit No. 4*, 393 Ill. App. 3d 1105, 1113 (5th Dist. 2009); *see also Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62–63 (2006). And even where the plaintiff satisfies these four elements, the court must also ask whether the

⁸ *Id.*

⁹ City of Chicago, *Latest Data*, last updated Apr. 30, 2020, <https://www.chicago.gov/city/en/sites/covid-19/home/latest-data.html>.

¹⁰ *Id.*

benefits of granting the order to the plaintiff exceed any injury to the defendant and broader public. *Prairie Eye Ctr., Ltd. V. Butler*, 305 Ill. App. 3d 442, 445 (4th Dist. 1999); *Liebert Corp. v. Mazur*, 357 Ill. App. 3d 265, 287 (1st Dist. 2005).

Generally, a circuit court's decision to grant a TRO is reviewed for an abuse of discretion. *AFSCME v. Ryan*, 332 Ill. App. 3d 965, 967 (1st Dist. 2002). Courts apply *de novo* review, however, when the lower court resolves questions of law, even on review of an interlocutory injunction. *Mohanty, S.C.*, 225 Ill. 2d at 63; *see also Clinton Landfill, Inc. v. Mahomet Valley Water Auth.*, 406 Ill. App. 3d 374, 378–79 (4th Dist. 2010); *Bartlow v. Shannon*, 399 Ill. App. 3d 560, 567 (5th Dist. 2010) (noting that the proper standard of review for determining the constitutionality of the act at issue was *de novo*, even when reviewing a TRO). Here, Mr. Bailey's TRO challenges the Governor's authority under the Illinois Emergency Management Act and claims infringement of his constitutional rights—all questions of law that require statutory and constitutional interpretation, rather than factfinding. Accordingly, the circuit court's order should be reviewed *de novo*.

IV. ARGUMENT

The circuit court erred in its issuance of the TRO for several reasons. First, the court failed to grapple with Mr. Bailey's likelihood of success on the merits. Specifically, principles of statutory construction and constitutional interpretation instruct that: (1) the Illinois Emergency Management Act permits the Governor to issue more than one proclamation for an existing disaster; and (2) without question, in this time of crisis, the Governor's actions do not violate any claimed constitutional right. Second, with respect to irreparable harm, Mr. Bailey pled only threadbare allegations concerning how the Governor's shelter-at-home order has or will cause him harm in the future.

Additionally, the circuit court plainly miscalculated the balance of the harms in evaluating Mr. Bailey’s allegations. Here, *Amici* demonstrate that Mr. Bailey’s harms fail to move the balance of equities in his favor by highlighting the harm that the TRO will cause to *Amici*’s community members, with a focus on how the Order threatens to devastate one of the largest public health networks in the country, as well as the resources of the City of Chicago.

A. *Mr. Bailey Cannot Establish A Likelihood Of Success On The Merits.*

i. *The Governor’s Emergency Powers Did Not Lapse on April 8, 2020.*

The Governor issued his first disaster proclamation on March 9, 2020 pursuant to Section 7 of the Illinois Emergency Management Act (“the Act”), 20 ILCS 3305/7. The language of the Act grants the Governor emergency powers that he “may exercise for a period not to exceed 30 days” upon declaring an emergency. *Id.* In keeping with this provision, the Governor has issued two additional provisions on April 1 and April 30, respectively.¹¹ According to Mr. Bailey, however, the Government’s emergency powers to address the COVID-19 crisis ended on April 8, 2020—30 days after his first proclamation. SR 5–6. Not so. Contrary to Mr. Bailey’s assertion, the statute does not limit the Governor to just one proclamation per disaster. Indeed, such a limit defies common sense; as the spread of COVID-19 pandemic demonstrates, a single disaster can persist well beyond just 30 days.¹² Rather, the Act’s plain language conveys that the legislature intended to place no such limitation on the Governor’s authority. *See Whitaker v. Wedbush Secs., Inc.*, 2020

¹¹ State of Illinois Coronavirus (COVID-19 Response, Executive Orders (last updated Apr. 30, 2020), <https://coronavirus.illinois.gov/s/resources-for-executive-orders>.

¹² The President, for example, declared a state of national emergency concerning the COVID-19 outbreak well over 30 days ago on March 13, 2020. Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 13, 2020); see generally 50 U.S.C. 1601 et seq.

IL 124792, ¶ 16 (2020) (statutory interpretation is intended “to ascertain and give effect to the legislature’s intent.”).

Specifically, Section 4 of the Act defines disaster as the “occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause,” such as an “epidemic” or a “public health emergenc[y].” 20 ILCS 3305/4. Section 7, in turn, provides that “[i]n the event of a disaster, as defined in Section 4, the Governor may, by proclamation declare that a disaster exists.” 20 ILCS 3305/7. And “[u]pon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers.” *Id.* Accordingly, the only prerequisite for declaring a disaster proclamation is that a disaster “exists”; the Act contains no limitation on the number of proclamations the Governor may declare. *Whitaker v. Wedbush Secs., Inc.*, 2020 IL 124792 at ¶ 16 (2020) (when determining the plain meaning of a statutory provision, courts cannot “depart from the plain language of a statute by reading in exceptions, limitations, or conditions conflicting with the expressed legislative intent.”). In fact, Section 4’s reference to an “epidemic” indicates that the legislature had precisely the type of crisis at issue now in mind when it authored the legislation: a long-lasting pandemic requiring multiple proclamations. Therefore, Mr. Bailey fails to demonstrate that the Governor abruptly lost all authority to manage the present pandemic on April 8th.

ii. The Federal Constitution Does Not Limit Or Preclude The Governor’s Disaster Proclamations And Exercise Of Ongoing Emergency Powers

Mr. Bailey also alleges that the March 20th 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.” SR 3. As an initial matter, apart from intrastate travel, Mr. Bailey fails to identify the constitutionally protected freedoms he

claims the Executive Order impairs. And in any event, it is well established that “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.” *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 27 (1905). During such times of “great dangers,” individual liberties may be restrained, and thus “enforced by reasonable regulations, as the safety of the general public may demand.” *Id.* at 19.

Such emergency action is constitutional if it has a “substantial relation to” the protection of public health and is not “beyond all question, a plain, palpable invasion of rights secured by fundamental law.” *Id.* at 31. Here, the March 20th Order more than suffices under *Jacobson*. First, by promoting social distancing, sheltering at home operates as a critical tool and thus bears more than a “substantial relation,” to prevent community spread of the virus.¹³ Every state in the country has imposed some sort of restriction to prevent the spread of COVID-19, and Illinois’ restrictions are far from the most stringent.¹⁴ Indeed, courts have already applied *Jacobson* to other jurisdictions’ COVID-19 emergency responses. *See, e.g., Robinson v. Attorney General*, No. 20-11401-B, 2020 WL 1952370, at *8 (11th Cir. Apr. 23, 2020) (affirming that state restrictions imposed a plain, palpable infringement on the right to an abortion); *Gish v. Newsom*, No. EDCV20755JGBKXX, 2020 WL 1979970, at *5 (C.D. Cal. Apr. 23, 2020) (concluding that state restrictions bore

¹³ *See, e.g.,* George J Milne, Simon Xie, *The Effectiveness of Social Distancing in Mitigating COVID-19 Spread: a modelling analysis*, doi: <https://doi.org/10.1101/2020.03.20.20040055>, Univ. of W. Australia (preprint Mar. 21, 2020), <https://www.medrxiv.org/content/10.1101/2020.03.20.20040055v1.full.pdf> (finding that school closures, workplace non-attendance, increased case isolation, and community contact reduction is highly effective in flattening the epidemic curve, reducing the maximum daily case numbers, and lengthening outbreak duration).

¹⁴ *See, e.g.,* New York Times, *Coronavirus in the U.S.: Latest Map and Case Count*, (last updated Apr. 30, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

a substantial relation to the COVID-19 crisis and did not cause a plain, palpable violation of the right to free exercise of religion).

Second, the March 20th Order cannot qualify as a “plain, palpable invasion of rights secured by fundamental law.” Far from prohibiting individuals from leaving their home for any purpose, the order instead appropriately limits activities that would cause community spread of the virus, while allowing individuals to leave the house for essential activities. SR 15–16. Therefore, Mr. Bailey retains the right of necessary travel within the State. And regardless, the U.S. Supreme Court “has not addressed whether the right of intrastate travel is . . . fundamental,” *Ball v. Village of Streamwood*, 281 Ill. App. 3d 679, 683 (1st Dist. 1996), so Mr. Bailey has no basis to assert that it constitutes a right “secured by fundamental law.” *Jacobson*, 197 U.S. at 31.¹⁵

Aside from Mr. Bailey’s claimed right to intrastate travel, *Amici* can discern no rights upon which the circuit court believed the March 20th Order impinged. Rather, the court stated that it was “guided by, among other things, the following: There is no pandemic exception to the fundamental liberties the constitutions safeguards. Indeed, individual rights secured by the constitution do not disappear during a public health crisis.” Tr. 64:12–64:16. Like Mr. Bailey, the court omits to even *identify* the “fundamental liberties” upon which the March 20th Order allegedly impinges.

Given the March 20th Order’s close relationship to preventing the spread of COVID-19, and absent any right secured by fundamental law, the federal Constitution

¹⁵ This Court, too, has relied upon *Jacobson. Schuringa v. City of Chicago*, 30 Ill. 2d 504, 518 (1964).

cannot limit the Governor’s Disaster Proclamations and exercise of ongoing emergency powers.¹⁶

B. *Mr. Bailey Failed To Demonstrate That He Will Suffer Irreparable Harm.*

Mr. Bailey’s only allegation of harm states that he “is being irreparably harmed each and every day beyond April 8, 2020 in which he continues to be subjected to” the March 20th Order. SR 7; SR 38. As discussed above, he objects to the Order because it requires “him to stay at home, or at his place of residence, as well as limited his ability to travel within the state.” *Id.* at 3. But this vague statement cannot suffice to establish “irreparable” harm. First, the March 20th Order allows individuals to leave their residences for essential activities including travel for health and safety needs, personal or family supplies and services, and outdoor activities. *Id.* at 15–16. And as an elected member of the Illinois General Assembly, Mr. Bailey qualifies as a “governmental employee” who is “categorically exempt” from the Executive Orders while working. *Id.* at 16–17.

In effect, Mr. Bailey’s only alleged harm appears to be that the March 20th Order temporarily prohibits him from traveling wherever he wants within the State and for whatever private purpose in the midst of a pandemic. Mr. Bailey has failed to show irreparable harm.

C. *The Balance of Harms Weighs Against Mr. Bailey.*

When considering emergency requests for injunctive relief, Illinois courts consider the balancing of equities, or the relative hardships, and the public interests at issue *even if* a plaintiff has otherwise met the elements of a temporary restraining order. *Kalbfleisch*,

¹⁶ Amici note that for this same reason, Mr. Bailey fails to establish a protected right under the requisite TRO standard. *Kalbfleisch*, 393 Ill. App. 3d at 1113.

396 Ill. App. 3d at 1119 (“In balancing the equities, the court should also consider the effect of the injunction on the public.”). In other words, “even when a plaintiff can raise a fair probability about the likelihood of success and the plaintiff will probably continue to endure irreparable harm, denying injunctive relief may still be appropriate to preserve the status quo.” *Guns Save Life, Inc. v. Raoul*, 2019 IL App (4th) 190334 ¶ 68, appeal denied, No. 125633, 2020 WL 1488364 (Ill. Mar. 25, 2020). Thus, courts must consider the status quo as it affects both parties to the litigation, not just the plaintiff. *Id.*

Here, the circuit court’s order prevents the Governor from enforcing or entering any executive order against Mr. Bailey that “force[s] him to isolate and quarantine in his home.” SR. 243. The court premised this order upon a finding that Mr. Bailey is likely to show that the Governor lacks authority to issue multiple disaster proclamations for a single, ongoing disaster. The basis of the order thus threatens the legitimacy of the Governor’s stay-at-home order as applied to *all* Illinois residents, not just Mr. Bailey. Accordingly, any harm that Mr. Bailey (or any individual) might suffer by following the Governor’s carefully calibrated restrictions pales in comparison to the toll that rampant community spread of COVID-19 will have on Illinois residents and the hospital systems, such as CCH, that treat them.

Without a shelter-in-place order, COVID-19 cases will skyrocket in the County. Early predictions suggested, for example, that without the March 20th Order, the State would have seen 10 to 20 times more deaths to date—15,160 to 30,320 compared to the current 1,516. *See Joshi Decl.* at ¶¶ 17, 20. And if faced with rampant community spread, CCH and its patients—particularly its low-income, minority, and immigrant patients—will

bear the costs. *Id.* at ¶ 21.¹⁷ Under- and uninsured individuals are, for example, much more likely to delay or forego necessary treatment for COVID-19 because of the prohibitive costs of medical care and hospital stays. *Id.* ¶ 22 (noting that the average cost of a six-day hospital stay for COVID-19 is approximately \$73,000). And those who suffer more severe symptoms or require longer hospital stays will face even higher costs. Given that forty percent of CCH’s patients lack insurance, CCH will receive an influx of patients who likely forewent treatment for as long as possible due to prohibitive costs, thus resulting in more serious, life-threatening cases of COVID-19.

Some of the burdens CCH and its patients will suffer due to this influx are predictable. Any rise in particularly critical COVID-19 cases will, for example, undoubtedly overtax CCH’s medical staff, their supplies of personal protective equipment, and general hospital equipment resources. *Id.* ¶ 23. But CCH’s unique status as the largest provider of charity care to the County presents additional financial harms that threaten to impact patient care. CCH operates both CountyCare, the largest Medicaid Managed Care program in Cook County, and CareLink, a financial assistance program for uninsured or underinsured County residents who lack access to affordable health insurance. *Id.* at ¶¶ 12–13. As of 2020, these programs had 321,184 and 28,799 enrollees, respectively. *Id.* And while the Affordable Care Act and Illinois’ implementation of Medicaid expansion and the Marketplace have allowed CCH to reduce its rate of uncompensated care, CCH still provides upwards of \$500 million dollars in uncompensated care, including nearly half of all charity care provided in the County. *Id.* ¶ 14; *see also id.* at ¶ 15 (CCH’s Fiscal Year

¹⁷ In fact, in suburban Cook County, where the Cook County Department of Public Health (“CCDPH”) has jurisdiction, 36 percent of the 2,953 COVID-19 patients they have treated identified as African-American/Black patients, and 16 percent as Hispanic/Latino. Joshi Decl. at ¶ 19.

2020 Budget includes \$590 million allotted for uncompensated care). As such, in addition to overtaxing CCH's medical staff, supplies, and equipment, a rapid rise in COVID-19 patients could exponentially increase its provisions of uncompensated and charity care to treat those patients to unsustainable levels. *Id.* ¶ 23. The TRO, by risking rampant community spread of COVID-19, thus threatens to undermine CCH's 18-year mission: to deliver health care services with dignity and respect regardless of a patient's ability to pay. *Id.* ¶ 24.

Within the County, Chicago is considered a "hotspot" given its number of cases.¹⁸ Many characteristics of large urban environments such as Chicago—high rates of housing density, comorbidities, homelessness, minority and immigrant populations who work in service sector jobs, among other factors—likewise contribute to high rates of infection and death. Based on these facts alone, any harm Mr. Bailey, or any individual, may incur while sheltering at home remains justified; it is no exaggeration to say that lives hang in the balance of this Court's decision. Accordingly, the State's interests in attempting to slow the pandemic dwarf Mr. Bailey's interest in leaving his house for non-essential activities. Plaintiff's desired exceptionalism cannot outweigh the health, safety, and welfare of the 45 percent of Illinoisans who reside in the City of Chicago and Cook County.

V. CONCLUSION

For the above reasons, *Amici* respectfully request that this Court grant Petitioner's motion for direct appeal under Illinois Supreme Court Rule 302(b) and/or supervisory relief under Illinois Supreme Court Rule 383 and further reverse the TRO entered by the circuit court.

¹⁸ The New York Times, *Case numbers spike in Midwestern meatpacking cities*, updated Apr. 30, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#hotspots>.

Dated: April 30, 2020

Respectfully submitted,

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EXHIBIT 1

DECLARATION OF DR. KIRAN JOSHI IN SUPPORT OF DEFENDANT-RESPONDENT GOVERNOR JAY ROBERT PRITZKER'S EMERGENCY MOTION FOR DIRECT APPEAL UNDER ILLINOIS SUPREME COURT RULE 303(B) AND/OR SUPERVISORY ORDER UNDER ILLINOIS SUPREME COURT RULE 383.

**IN THE
SUPREME COURT OF ILLINOIS**

DARREN BAILEY,

Plaintiff-Respondent,

vs.

GOVERNOR JAY ROBERT PRITZKER, in
his official capacity,

Defendant-Petitioner.

Case No. 125952

The Honorable
MICHAEL D. McHANEY,
Judge Presiding

**DECLARATION OF DR. KIRAN JOSHI IN SUPPORT OF DEFENDANT-RESPONDENT
JAY ROBERT PRITZKER'S EMERGENCY MOTION FOR DIRECT APPEAL UNDER
ILLINOIS SUPREME COURT RULE 303(B) AND/OR SUPERVISORY ORDER UNDER
ILLINOIS SUPREME COURT RULE 383**

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I, Dr. Kiran Joshi, hereby declare and state as follows:

1. I am over 18 years of age. I have personal knowledge of the facts set forth herein, and I am competent to testify thereto.

2. I submit this Declaration in support of Governor Pritzker's litigation against Darren Bailey. I have compiled the information in the statements set forth below either through personal knowledge, through the Cook County Health ("CCH") personnel who have assisted me in gathering this information, or on the basis of documents kept in the regular course of CCH's business that I have reviewed.

3. I currently serve as a Senior Medical Officer with the Cook County Department of Public Health ("CCDPH"), and a Deputy Incident Commander for CCDPH's COVID-19 response. I am also an Attending Physician with the Department of Family Medicine at Stroger Hospital, a system affiliate of CCH, and an Assistant Professor of Clinical Family Medicine at the

Northwestern University Feinberg School of Medicine. I completed medical school at the University of Illinois at Chicago in 2003 and trained in Preventive Medicine at the Johns Hopkins School of Public Health (completed in 2008) and Family Medicine at Illinois Masonic Medical Center from (completed in 2006). Prior to joining CCDPH, I served as a faculty attending physician at the Northwestern McGaw Family Medicine Residency Program from 2011 to 2014, where I supervised Family Medicine residents in the inpatient setting; engaged residents in numerous hospital quality improvement and patient safety activities; and oversaw the hospital's electronic health record deployment. I also worked as a consultant to the World Health Organization from 2008 to 2010, where I provided technical assistance in the development of trainings for health workers in sub-Saharan Africa.

4. CCDPH, a System Affiliate of CCH under the governance of the Cook County Health Board of Commissioners, is the local public health department certified by the Illinois Department of Public Health ("IDPH") to serve all of suburban Cook County, Illinois, except those areas served by another IDPH-certified local health department.

5. CCH is one of the largest public hospital systems in the nation, serving the residents of the second most populous county in America. For over 180 years, Cook County and its health system have provided care to all Cook County residents, regardless of their ability to pay, insured status, or immigration status.

6. Pursuant to the "Ordinance Establishing the Cook County Health and Hospital Systems" (the "Enabling Ordinance"), CCH "shall: (1) Provide integrated health services with dignity and respect, regardless of a patient's ability to pay. . ." Ord. No. 08-O-35, 5-20-2008, Sec. 38-71(a)(1).

7. CCH delivers its patient services at a number of different locations, including hospitals, regional outpatient centers, community-based health centers, a comprehensive HIV and infectious disease center, and the Cook County Jail and Juvenile Temporary Detention Center. CCH also includes the Cook County Department of Public Health, which serves most of suburban Cook County, and CountyCare, the largest Medicaid managed care plan serving Cook County Medicaid beneficiaries.

8. Based on self-reported data, CCH serves a diverse population: 51% are African-American/Black, 12% are White, 3% are Asian, 2% are American Indian/Native Alaskan, and 32% are Other/Unable to Determine. Additionally, 32% of our patients self-report as Hispanic/Latino.

9. CCH is the largest safety-net provider of health care in the region, providing care for hundreds of thousands of patients. In fiscal year 2018, patient volumes at CCH included 142,735 Emergency Department visits; 29,117 inpatient observation visits; 873,822 outpatient registrations, including 217,152 primary care visits and 334,901 specialty care/diagnostic/procedure visits; and 93,435 correctional health visits.

CCH Provides Uncompensated & Charity Care

10. As part of CCH's obligation and commitment to serve all who need care, regardless of their ability to pay, insurance status, or immigration status, CCH serves a substantial number of uninsured and underinsured patients, including hundreds of millions of dollars per year in charity care.

11. In fiscal year 2019, 40% of our patients were uninsured, while only 6% of our patients were commercially insured. Another 39% of our patients were covered by Medicaid and 16% were covered by Medicare.

12. CCH is by far the largest provider of charity care to the County's most vulnerable populations. Since 2013, CCH has operated CountyCare, the largest Medicaid Managed Care program in Cook County, with 321,184 enrollees as of March 2020. County Care's membership constitutes approximately one third of all Medicaid managed care members in the County.

13. CCH also operates CareLink, a financial assistance program for uninsured or underinsured Cook County residents who do not have access to affordable health insurance. CareLink provides free or discounted care to qualified enrollees. CareLink is part of CCH's mission and longstanding commitment to provide care to all Cook County residents. As of February 29, 2020 CareLink had 28,799 enrollees.

14. While the Affordable Care Act and Illinois' implementation of Medicaid expansion and the Marketplace have allowed CCH to reduce its rate of uncompensated care, CCH still provides upwards of \$500 million dollars of uncompensated care, including nearly half of all charity care provided in Cook County.

15. CCH's Fiscal Year 2020 Budget includes \$590 million allotted for uncompensated care.¹

16. Because CCH provides approximately 50% of all charity care in Cook County, there is a 50% chance uninsured patients will seek their medical care from CCH, with no reasonable ability to pay for it.

CCH Response to COVID-19

¹ See Cook County Health FY2020 Proposed Preliminary Budget and Financial Forecast (Aug. 30, 2019), <https://cookcountyhealth.org/wp-content/uploads/Item-VIA-Proposed-FY20-Prelim-Budget-Financial-Forecast-2023-R-08-30-19.pdf>.

17. COVID-19 is spreading rapidly throughout Cook County. As of this writing, 34,880 individuals have confirmed cases of COVID-19 in Cook County, and at least 1,516 people have died from the disease in the County. These figures likely underrepresent the number of actual infections and related deaths because community spread has outpaced testing efforts here in Cook County as well as across the state and nation. The virus has been spreading through community contact largely undetected, as testing has been primarily limited to persons who are symptomatic, those who have been in close contact with persons who are symptomatic, or who are in residential settings where a cluster of infections has already been identified.

18. Currently, CCDPH is on the frontlines of the fight against COVID-19 in Cook County. This includes: case investigations; contact tracing and monitoring; disease surveillance and control; providing alternate housing for affected individuals; community outreach; distributing personal protective equipment; and providing situational updates and guidance to the public, media and partners.

19. Of the residents of suburban Cook County in which CCDPH has jurisdiction who have been diagnosed with COVID-19, 2,953 have been hospitalized due to the illness, of which 36% are African-American/Black and 16% are Hispanic/Latino. Of those 2,953 patients who have been hospitalized, 839 have been or are currently being treated in the intensive care unit.

Lifting the Stay at Home Order Would Overtax CCH

20. Without the Governor's shelter at home order, Executive Order Number 2020-10, the spread of COVID-19 would have been much more rapid in Cook County. For example, the models upon which the State of Illinois relied suggest that without the order, there would have

been 10 to 20 times as many deaths to date and that peak hospital resource usage would have been 20 to 30 times what it is now.²

COVID-19 will disproportionately impact CCH's most vulnerable patients

21. Studies show that low-income, minority and immigrant populations have greater rates of uninsurance and generally have disproportionately adverse impacts during public health crises.³ Available data suggest that an increased risk of adverse health outcomes is likely among uninsured and minority populations during a pandemic.⁴ These populations experience disproportionately poor health outcomes and greater barriers to care during pandemics and during increases in pneumonia and influenza-like illnesses. These poorer health outcomes include increased mortality, more complications, limited access to health care, lower vaccination rates, and greater socioeconomic, cultural, educational, and linguistic obstacles to adoption of pandemic interventions.⁵

22. Individuals who lack health insurance are also much more likely to delay or forego necessary testing and treatment for COVID-19 because of the prohibitive costs of medical care and hospital stays.⁶ A recent report from a nonprofit organization that analyzes healthcare costs estimated that a six-day hospital stay for COVID-19 treatment will cost approximately \$73,000.⁷

² Illinois Department of Commerce & Economic Opportunity, Media Release (Apr. 23, 2020)

<https://www2.illinois.gov/dceo/Media/PressReleases/Pages/PR20200423.aspx>.

³ See e.g. Jürgen Maurer, *Inspecting the Mechanism: A Longitudinal Analysis of Socioeconomic Status Differences in Perceived Influenza Risks, Vaccination Intentions and Vaccination Behaviors during the 2009-2010 Influenza Pandemic*, doi: 10.1177/0272989X15608379 (Oct. 2016),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4809795/pdf/nihms721441.pdf>.

⁴ Centers for Disease Control and Prevention, *COVID-19 in Racial and Ethnic Minority Groups*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

⁵ See e.g. Maurer, *supra* note 3.

⁶ See, e.g., Tolbert J., *What Issues Will Uninsured People Face with Testing and Treatment for COVID-19?*, Kaiser Family Foundation (Mar. 18, 2020), <https://www.kff.org/uninsured/fact-sheet/what-issues-will-uninsured-people-face-with-testing-and-treatment-for-covid-19/>.

⁷ FAIR Health, *COVID-19: The Projected Economic Impact of the COVID-19 Pandemic on the US Healthcare System* 2, 8, 13, 16 (Mar. 25, 2020), <https://s3.amazonaws.com/media2.fairhealth.org/brief/asset/COVID-19%20-%20The%20Projected%20Economic%20Impact%20of%20the%20COVID-19%20Pandemic%20on%20the%20US%20Healthcare%20System.pdf>.

And the cost of treatment will be higher for patients who suffer more severe symptoms or require longer hospital stays.⁸

23. Because many of CCH's patients are under- or un-insured, CCH is more likely to see and treat patients with serious, life-threatening cases of COVID-19. In addition to harming these patients and their families, this disproportionate impact could be devastating for CCH's resources and finances. An influx in particularly serious COVID-19 cases will overtax CCH's medical staff, personal protective equipment, and equipment resources. Moreover, an influx in serious cases among under- or un-insured patients will force CCH, as the largest provider of charity care to the County's most vulnerable populations, to be further disproportionately impacted in the provision of uncompensated care and charity care to treat those patients.

24. For more than 180 years, CCH's core mission has been to deliver health care services with dignity and respect regardless of a patient's ability to pay. If COVID-19 were allowed to rapidly spread throughout the County, the resulting burden on CCH's resources and budget would severely undermine this mission.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I hereby certify that the statements set forth in this instrument are true and correct, except as to matter therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

⁸ See Center for Disease Control & Prevention, Coronavirus Disease 2019 (COVID-19): Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html> (median time in intensive care unit for severely ill COVID-19 patient ranges from ten to twelve days, and median length of hospitalization among survivors ranges from ten to thirteen days).

Executed this 30 day of April, 2020 in Chicago, Cook County, Illinois.



Kiran Joshi, M.D.
Senior Medical Officer
Cook County Department of Public Health
Cook County Health

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms with the requirements of Rules 341(a) and (b). The length of this brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 4,292 words.

By: s/ Jessica M. Scheller
JESSICA M. SCHELLER
ASSISTANT STATE'S ATTORNEY

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies under penalty of law as provided in 735 ILCS 5/1-109 that the statements set forth in this instrument are true and correct and that the foregoing brief was electronically filed with the Illinois Supreme Court using the Odyssey eFileIL system and was served by emailing a PDF copy to the persons named below at the email addresses indicated on April 30, 2020.

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No. 125952

**IN THE
SUPREME COURT OF ILLINOIS**

DARREN BAILEY,

Plaintiff-Respondent,

v.

GOVERNOR JAY ROBERT PRITZKER, in his official capacity,

Defendant-Petitioner.

On Appeal from the
Circuit Court for the Fourth Judicial Circuit, Clay County, Illinois, No. 2020 CH 6, to the
Appellate Court of Illinois, Fifth Judicial District, No. 5-20-0148
The Honorable Michael D. McHaney, Judge Presiding

NOTICE OF FILING

TO: See attached service list.

PLEASE TAKE NOTICE that on April 30, 2020, I shall electronically file with the Supreme Court of Illinois, a Motion for Leave to File Brief of Amici Curiae Cook County, Illinois and City of Chicago, MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* COOK COUNTY, ILLINOIS AND THE CITY OF CHICAGO IN SUPPORT OF DEFENDANT-PETITIONER GOVERNOR JAY ROBERT PRITZKER'S EMERGENCY MOTION FOR DIRECT APPEAL UNDER ILLINOIS SUPREME COURT RULE 302(B) AND/OR SUPERVISORY ORDER UNDER ILLINOIS SUPREME COURT RULE 383, an electronic copy of which is today served upon you, together with an electronic copy of the proposed amici curiae brief.

Dated: April 30, 2020

Respectfully submitted,

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