

No. 5-20-_____

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

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

**DEFENDANT’S RULE 307(d) PETITION FOR REVIEW OF
TEMPORARY RESTRAINING ORDER**

Pursuant to Illinois Supreme Court Rule 307(d), Defendant-Petitioner Governor J.B. Pritzker requests that this court grant the petition and reverse and vacate the temporary restraining order (“TRO”) entered by the circuit court on April 27, 2020.

1. On March 9, 2020, the Governor proclaimed the COVID-19 pandemic a disaster in Illinois pursuant to his power under the Illinois Emergency Management Agency Act, 20 ILCS 3305/1 *et seq.* (“Act”), and the Illinois Constitution. SR2 ¶ 1; SR12. He then entered a series of executive orders designed to stop the spread of COVID-19 and enhance the availability of testing and treatment for the disease, including EO-2020-10, which directs individuals to remain at home except for essential activities. SR14-22. On April 1, 2020, the Governor issued a second disaster proclamation, recognizing that “circumstances

surrounding COVID-19 constitute a continuing public health emergency,” SR24, as well as EO-2020-18, which continued the stay-at-home directive, SR26-30. Because COVID-19 continues to infect individuals across the State, on April 23, 2020, the Governor announced his intention to issue another disaster proclamation and further extend the relevant stay-at-home directives for an additional 30 days, through May 30. SR4 ¶ 20.

2. On April 23, 2020, Plaintiff-Respondent Darren Bailey—a resident of Clay County, Illinois, and an elected member of the Illinois House of Representatives for the 109th District—filed suit in his personal capacity against the Governor. SR2. He sought a declaration that the Governor’s emergency powers lapsed 30 days after the initial disaster proclamation and an injunction preventing the Governor from enforcing the stay-at-home order against him. SR4-8. He then filed a motion for a TRO and preliminary injunction. SR37.

3. On April 27, 2020, the circuit court entered a TRO enjoining the Governor from “in anyway enforcing the March 20 Executive Order against Darren Bailey forcing him to isolate and quarantine in his home” and from “entering any further Executive Orders against Darren Bailey forcing him to isolate and quarantine in his home.” SR242; *see also* SR307-10. The court further held that the TRO “shall remain in full force and effect until a date to be agreed upon by the parties, not to exceed 30 days from [April 27, 2020], wherein a preliminary injunction will be heard on that date.” SR242.

4. On April 27, 2020, the Governor filed a timely notice of interlocutory appeal from that order. SR315.

5. This court should reverse and vacate the circuit court’s order of April 27, 2020, because Bailey did not satisfy the grounds to obtain a TRO. Specifically, Bailey failed to demonstrate a likelihood of success on the merits of his claims. Indeed, the basis of his lawsuit—that the Governor’s emergency powers lapsed 30 days after the Governor issued his initial proclamation—is wrong as a matter of law. The Act does not limit the number of disaster proclamations the Governor may issue. The only statutory requirement for such a proclamation is that a disaster “exists.” 20 ILCS 3305/7. And each proclamation triggers a new 30-day period under which the Governor may exercise emergency powers. *Id.* Alternatively, the Governor’s actions were a lawful exercise of his constitutional authority to protect the public health in an emergency.

6. The circuit court further erred in granting a TRO for several additional reasons: Bailey failed to show, as he was required to do, that he would suffer irreparable harm; any harm to him pales in comparison to the harm to the public and to the Governor; and the TRO disrupts, rather than preserves, the status quo. Indeed, the purported injury suffered by Bailey is extremely modest when compared to the significant harm the public will suffer if the Governor’s authority to enter the emergency orders is undercut by judicial order, and if Bailey and others cease compliance with those orders.

7. In support of this petition, the Governor submits and incorporates herein a memorandum in support.

WHEREFORE, Defendant-Petitioner Governor J.B. Pritzker asks that this court grant the petition, and reverse and vacate the TRO entered by the circuit court on April 27, 2020.

Respectfully submitted,

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Attorney General
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JANE ELINOR NOTZ
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By: /s/ Sarah A. Hunger
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Defendant-Petitioner.)	Judge Presiding.

PROPOSED ORDER

THIS CAUSE COMING TO BE HEARD on petition of Defendant-Petitioner Governor J.B. Pritzker for relief under Illinois Supreme Court Rule 307(d), due notice having been given, and the Court being fully advised,

IT IS HEREBY ORDERED that that the petition is GRANTED / DENIED;
and,

it is further ORDERED that the circuit court's April 27, 2020 temporary restraining order is REVERSED AND VACATED.

ENTER: _____
JUSTICE

JUSTICE

JUSTICE

DATED: _____

SARAH HUNGER, Deputy Solicitor General
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 29, 2020, I electronically filed the foregoing **Defendant's Rule 307(d) Petition For Review Of Temporary Restraining Order** and accompanying **Proposed Order** with the Clerk of the Illinois Appellate Court, Fifth District, by using the Odyssey eFileIL system.

I further certify that the other participant in this appeal, 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
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