

5-20-0163

E-FILED
Transaction ID: 5-20-0163
File Date: 5/28/2020 8:50 AM
John J. Flood, Clerk of the Court
APPELLATE COURT 5TH DISTRICT

No. 5-20-0163

**IN THE APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT**

JAMES MAINER, in his individual)
capacity and on behalf of all citizens) Appeal from the Fourth Judicial
similarly situated and HCL DELUXE) Circuit, Clay County, Illinois
TAN, LLC, an Illinois limited liability)
company, on its behalf and on behalf of) Case No. 2020 CH 10
all businesses similarly situated,)
) Honorable Michael McHaney, presiding
Plaintiff-Appellee,)
)
v.) Notice of Appeal Filed: May 26, 2020
)
GOVERNOR J.B. PRITZKER,)
in his official capacity,)
)
Defendant-Appellant.)

**BRIEF OF AMICI CURIAE THE ILLINOIS HEALTH AND
HOSPITAL ASSOCIATION, ILLINOIS STATE MEDICAL SOCIETY,
AMERICAN NURSES ASSOCIATION-ILLINOIS, AND ILLINOIS
SOCIETY FOR ADVANCED PRACTICE NURSING IN OPPOSITION TO
TEMPORARY RESTRAINING ORDER AND IN SUPPORT OF GOVERNOR JB
PRITZKER**

Hal R. Morris (hal.morris@saul.com)
Joe Ourth (joe.ourth@saul.com)
Elizabeth A. Thompson (elizabeth.thompson@saul.com)
Saul Ewing Arnstein & Lehr LLP
161 North Clark Street, Suite 4200
Chicago, Illinois 60601
312.876.7100
*Attorneys for Illinois Health and Hospital Association, Illinois State Medical Society,
American Nurses Association-Illinois, and Illinois Society for Advanced Practice Nursing*

POINTS AND AUTHORITIES

INTEREST OF THE *AMICI CURIAE* 1

NATURE OF THE CASE 4

ISSUES PRESENTED..... 6

ARGUMENT 6

Jurco v. Stuart,
110 Ill. App. 3d 405 (1st Dist. 1982) 6

American Federation of State, County, & Mun. Employees v. Ryan,
332 Ill. App. 3d 965 (1st Dist. 2002) 6

Vasquez v. City of Woodstock,
242 Ill. App. 3d 766 (2d Dist. 1993)..... 6

Shodeen v. Chicago Title & Tr. Co.,
162 Ill. App. 3d 667 (2d Dist. 1987)..... 6

Kalbfleisch ex rel. Kalbfleisch v. Columbia Community Unit Sch. No. 4,
396 Ill. App. 3d 1105 (5th Dist. 2009)..... 7

Nw. Steel & Wire Co. v. Indus. Comm’n,
254 Ill. App. 3d 472 (1st Dist. 1993) 7

I. The Temporary Restraining Order Ignored Balancing the Equities. 7

Cassell v. Snyders,
No. 20-cv-50153, 2020 WL 2112374 (N.D. Ill. May 3, 2020)..... 7, 8, 13, 14

Elim Romanian Pentecostal Church v. Pritzker,
No. 20-cv-2782, 2020 WL 2468194 (N.D. Ill. May 13, 2020)..... 9, 13

Running Central v. Pritzker,
2020 CH 105 (Circuit Court for the Seventh Judicial Circuit,
Sangamon County, Illinois) 13

In re Abbott,
954 F.3d 772 (5th Cir. 2020) 7, 10

<i>Doe v. Barr</i> , No. 20-cv-02141, 2020 WL 1820667 (N.D. Cal. Apr. 12, 2020).....	7, 10
<i>Legacy Church, Inc. v. Kunkel</i> , No. CIV 20-0327 JB/SCY, 2020 WL 1905586 (D. N.M. Apr. 17, 2020)	13
<i>Castillo v. Barr</i> , No. CV 20-00605 TJH, 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020)	14
<i>Bent v. Barr</i> , No. 19-cv-06123-DMR, 2020 WL 1812850 (N.D. Cal. Apr. 9, 2020)	14
<i>Smith v. Pavlovich</i> , 94 Ill. App. 3d 458 (5th Dist. 2009).....	13
II. The Temporary Restraining Order Changed the Status Quo in a Substantially Negative Manner.....	15
<i>Baal v. McDonald’s Corp.</i> , 97 Ill. App. 3d 495 (1st Dist. 1982)	16
<i>Legacy Church, Inc. v. Kunkel</i> , No. CIV 20-0327 JB/SCY, 2020 WL 1905586 (D. N.M. Apr. 17, 2020)	16
<i>In re Abbott</i> , 954 F.3d 772 (5th Cir. 2020)	17
CONCLUSION.....	17

INTEREST OF THE *AMICI CURIAE*

The Illinois Health and Hospital Association (the “Hospital Association”) is a state-wide not-for-profit, I.R.C. § 501(c)(6), organization dedicated to representing Illinois hospitals and health systems to foster professional healthcare, effective leadership, and responsible citizenship in communities across the State. The Hospital Association represents over 200 Illinois hospitals and nearly forty Illinois health systems. These hospitals and health systems include community hospitals, safety net hospitals, rural and critical access hospitals, as well as teaching and academic medical centers and specialty hospitals. The Hospital Association’s mission is to advance “optimal health and healthcare” throughout Illinois by “support[ing] each person’s quest for optimum health, [and to ensure that] all individuals and communities have access to high-quality healthcare at the right time and in the right setting.”

The Illinois State Medical Society (the “Medical Society”) is a state-wide organization dedicated to maintaining and increasing the professionalism of physicians engaged in the science and art of medicine, in all of its disciplines. The Medical Society is a non-profit, I.R.C. § 501(c)(6), professional society comprised of approximately 9,000 practicing physicians, medical residents and fellows, and medical students in Illinois. Membership encompasses practicing physicians from a broad range of specialties, geographic locations, and types of practice. The Medical Society, by virtue of being the most broadly-based professional association representing Illinois physicians, has a vital interest in the resolution of this case. Physicians, who are leading the State’s frontline healthcare workers in their response to the COVID-19 pandemic, would bear a disproportionate burden if Governor JB Pritzker’s (“Governor Pritzker”) Executive Order

2020-32 is enjoined while they treat those Illinois residents who have COVID-19, not to mention those suffering from other medical conditions.

The American Nurses Association-Illinois (“ANA-Illinois”) is a non-profit, I.R.C. § 501(c)(6), professional association of registered nurses in Illinois. ANA-Illinois represents the interests of over 180,000 licensed registered nurses from all areas of practice and academia. ANA-Illinois, as the representative membership organization of Illinois nurses, maintains a vital interest in this case as a negative outcome will detrimentally impact the ability of its members to practice in this State.

The Illinois Society for Advanced Practice Nursing (“Nursing Society”) is a non-profit, I.R.C. § 501(c)(6), professional association that represents the interests of advanced practice registered nurses in Illinois. The Nursing Society’s membership encompasses all four specialty areas of practice: nurse midwives, nurse practitioners, clinical nurse specialists, and nurse anesthetists. As the representative of advanced practice registered nurses throughout Illinois, the Nursing Society, like the Hospital Association, the Medical Society, and ANA-Illinois, has a profound interest in this case.

The Fourth Judicial Circuit Court’s (the “Circuit Court”) temporary restraining order entered in this case directly, negatively, and materially impacts Illinois hospitals, healthcare systems, physicians, registered nurses, and advanced practice registered nurses, including those represented by the Hospital Association, the Medical Society, ANA-Illinois, and the Nursing Society. For example, the *only* hospital in Clay County, Illinois, the county in which Plaintiff James Mainer (“Mainer”) resides and Plaintiff HCL Deluxe Tan, LLC (“HCL”) operates its business (collectively Mainer and HCL are referred to as “Plaintiffs”), has just twenty total beds and *no* intensive care beds and

would, therefore, be heavily impacted by any surge of cases in Clay County resulting from the Circuit Court's TRO allowing Plaintiffs to contravene the health and safety of other individuals. EMS Region 6, which includes neighboring Jasper County, has only fifty-five ICU beds and Jasper County alone has already seen forty-five positive COVID-19 cases and seven deaths. Additional COVID-19 cases that *will* result from the entry of the TRO could quickly overwhelm the hospitals, and the physicians, registered nurses, and advanced practice registered nurses working within them, in this region, causing them to have to operate at a "Crisis" level of care. Further, because COVID-19 knows no boundaries and is highly contagious through person to person transmission, the TRO seriously and materially impacts the public, hospitals, physicians, registered nurses, and advanced practice registered nurses throughout the entire State. On behalf of all hospitals, physicians, registered nurses, and advanced practice registered nurses in the State of Illinois, the Hospital Association, the Medical Society, ANA-Illinois, and the Nursing Society have an interest in preserving and protecting the safety of all Illinois residents that are impacted by the Circuit Court's ruling in this case.

The Hospital Association's members, the Medical Society's physicians, ANA-Illinois registered nurses, and the Nursing Society's members (collectively, "*Amici*") treating those afflicted with COVID-19 and related conditions all have a specific interest in this matter because any erosion of the Governor's executive orders concerning COVID-19, especially those relating to requirements for Illinois residents to stay at home and non-essential businesses to limit their operations, place a disproportionate and potentially life-threatening burden on them, as well as on the health of the citizens of Illinois. The injunctive relief that was granted to Plaintiffs will directly and negatively

impact Illinois hospitals, healthcare systems, physicians, registered nurses, and advanced practice registered nurses, including those represented by *Amici* in this case. The very real and tangible effect of the relief granted by the Circuit Court is to negatively and materially impact the availability of healthcare for Illinois residents. Thus, this *Amici* Brief will assist the Court by providing a fuller context to the serious and negative implications created by the Circuit Court's decision to enjoin enforcement of Governor Pritzker's Executive Order as against Plaintiffs.

NATURE OF THE CASE

The Circuit Court's decision to grant a temporary restraining order in favor of Plaintiffs, allowing them to contravene Governor Pritzker's Executive Order 2020-32 (COVID Executive Order No. 30) (the "Executive Order"), opens the door to actions by Plaintiffs that will substantially and negatively impact Illinois residents' access to healthcare and endanger millions of lives. The Executive Order, among other things, continued requirements that all Illinois residents "stay at home" except as otherwise allowed therein and loosened restrictions on operations of non-essential businesses, like HCL. The Executive Order's notable exceptions to the stay at home requirement included allowing residents to seek medical attention, go grocery shopping or shopping for other necessities, take care of others, or to simply take a walk, bike ride, or run outside. Likewise, the Executive Order allowed non-essential businesses to operate in a limited fashion. The Executive Order's purpose, in part, was to "ensure that our healthcare delivery system is capable of serving those who are sick." The Circuit Court's TRO entirely exempts Plaintiffs from these restrictions.

As this Court is well aware, the state, country, and world are in the midst of a global COVID-19 pandemic, which remains ongoing. As of May 26, 2020, COVID-19

has affected over five million individuals worldwide with deaths surpassing 300,000 from the virus. As of May 26, 2020, the Illinois Department of Public Health reported 112,017 cases and a death toll of 4,884 from the pandemic in our State alone. These numbers are understated and continue to rise. Wu, McCann, Katz, Peltier, *40,000 Missing Deaths: Tracking the True Toll of the Coronavirus Outbreak*, available at <https://www.nytimes.com/interactive/2020/04/21/world/coronavirus-missing-deaths.html> (last accessed May 22, 2020). Such numbers have not been seen since the 1918 Spanish Flu pandemic.

Because of the seriousness of COVID-19 and the lack of vaccine or recognized therapeutic cure, the COVID-19 pandemic is placing undue strain on Illinois hospitals, health systems, physicians, registered nurses, and advanced practice registered nurses. The Executive Order, which is consistent with recommendations from the Centers for Disease Control and Prevention (the “CDC”), has helped to “flatten the curve.” However, the Circuit Court’s TRO preventing enforcement of that Executive Order increases the stress on already burdened Illinois hospitals, physicians, registered nurses, and advanced practice registered nurses. If the TRO remains in place, healthcare workers and healthcare generally in Illinois will be substantially and negatively impacted and many more healthcare workers will be infected. Thus, the real impact of the TRO is to embolden others to seek exemption from the Governor’s many executive orders and have free reign – like Plaintiffs – to infect countless others; thereby not only affecting the health of Illinois residents and the availability of healthcare, but also increasing the stress on hospitals, physicians, registered nurses, and advanced practice registered nurses

leading to an increased loss of life. For the reasons discussed below, the Circuit Court's TRO should be reversed.

ISSUES PRESENTED

1. Whether the Circuit Court properly balanced the equities by weighing the unspecified benefits alleged by Plaintiffs against the harm to Illinoisans' health and, more specifically, to frontline healthcare workers and the public during this worldwide COVID-19 pandemic.

2. Whether the Circuit Court's TRO improperly changed the status quo, which had been put in place and was to continue in place to stem the tide of infection, transmission, and sickness in Illinois from COVID-19.

ARGUMENT

Our courts have repeatedly emphasized that a request for a temporary restraining order is one for a "drastic, emergency remedy which may issue only in exceptional circumstances and for a brief duration." *Jurco v. Stuart*, 110 Ill. App. 3d 405, 408 (1st Dist. 1982); *see also American Federation of State, County, & Mun. Employees v. Ryan*, 332 Ill. App. 3d 965, 966 (1st Dist. 2002). Therefore, to be entitled to a temporary restraining order, a plaintiff must clearly demonstrate: (1) a certain and clearly ascertainable right in need of protection, (2) irreparable harm without the protection of an injunction, (3) no adequate remedy at law, (4) a substantial likelihood of success on the merits in the underlying action, and (5) a balance of the equities favors issuing the TRO. *Vasquez v. City of Woodstock*, 242 Ill. App. 3d 766, 771 (2d Dist. 1993).

In considering whether to grant a temporary restraining order, a court must balance the equities to determine the relative inconvenience to the parties and whether the burden upon the defendant, should the injunction issue, outweighs the burden to the plaintiff by denying it. *Shodeen v. Chicago Title & Tr. Co.*, 162 Ill. App. 3d 667, 673 (2d Dist. 1987). "In balancing the equities, the court should also consider the effect of the

injunction on the public.” *Kalbfleisch ex rel. Kalbfleisch v. Columbia Community Unit Sch. No. 4*, 396 Ill. App. 3d 1105, 1119 (5th Dist. 2009). As an initial matter, this Court should reverse the Circuit Court’s TRO because that court wholly failed to balance the equities and give consideration to the myriad serious implications its ruling would have on public health.

Second, the purpose of a temporary restraining order is to maintain, not change, the status quo. The status quo is defined by Illinois courts as the last actual, peaceable, uncontested status proceeding the action. *Nw. Steel & Wire Co. v. Indus. Comm’n*, 254 Ill. App. 3d 472, 476 (1st Dist. 1993). Here, the last actual, peaceable, uncontested status was significant social distancing protections, and a stay at home order, that were already in effect. Although these requirements had a markedly positive impact on the spread of the invidious COVID-19 virus, the TRO entered by the Circuit Court changed the landscape and opened the door to additional infections with possible deadly consequences. This Court should reverse.

I. The Temporary Restraining Order Ignored Balancing the Equities.

The Circuit Court’s decision to grant Plaintiffs’ requested TRO failed to adequately account for the balancing of the equities. As United States District Judge John Z. Lee stated in denying a TRO seeking an injunction prohibiting the enforcement of Governor Pritzker’s same executive orders challenged in this case, “without life, there can be no liberty or pursuit of happiness.” *Cassell v. Snyders*, No. 20-cv-50153, 2020 WL 2112374, *1 (N.D. Ill. May 3, 2020). There can be no serious question that both the State and the country (and in fact, the world) are in the grips of a medical disaster caused by COVID-19. *See, e.g., Doe v. Barr*, No. 20-cv-02141, 2020 WL 1820667, *1-2 (N.D. Cal. Apr. 12, 2020) (noting “[t]hese are extraordinary times.”); *In re Abbott*, 954 F.3d 772,

779 (5th Cir. 2020) (“[E]ven with mitigation efforts, between 100,000 and 240,000 people in the United States could die.”); *Cassell*, 2020 WL 2112374, *2 (“The virus has killed hundreds of thousands, infected millions, and disrupted the lives of nearly everyone on the planet.”). Indeed, Plaintiffs do not appear to question the Governor’s declaration that the COVID-19 pandemic constitutes a disaster, but rather challenge the Governor’s ability to recognize that the pandemic did not end within a thirty-day period. However, the impact on Illinois residents from the Circuit Court’s TRO will be devastating.

Without the requirement that Illinois residents stay at home and that non-essential businesses limit their operations, Illinois hospitals and healthcare resources, physicians, registered nurses, and advanced practice registered nurses would have been quickly overwhelmed. These healthcare workers would have faced the same devastating challenges with the same catastrophic outcomes seen in New York City, Europe, and in other locations confronted with fighting COVID-19. However, because of the mitigating efforts taken by Governor Pritzker through his various executive orders, Illinois has not seen these effects and has been able to better cope with the spread of COVID-19. But in order to continue to prevent these effects, persistent and uninterrupted vigilance by all Illinoisans to Governor Pritzker’s executive orders is necessary.

Additionally, because the virus remains active and, of yet, neither widespread testing nor a vaccine is available, the Circuit Court’s TRO enjoining enforcement of the Executive Order against the Plaintiffs presents an imminent risk to the health, safety, and lives of millions of Illinois residents. Indeed, without the Governor’s stay at home order or limitations on non-essential business operations in place, COVID-19 could rapidly

spread through person to person transmission, the State's supply of personal protective equipment will quickly be exhausted, needed hospital beds and equipment will be unavailable for the critically-ill, and hospitals will be short-staffed as healthcare workers, including physicians, registered nurses, and advanced practice registered nurses fall ill or are unable to obtain temporary licensure. The impact cannot be overstated: there will be a resurgence of the virus that will have devastating, wide-spread, and long-lasting effects on the people of the State of Illinois, as Illinois hospitals, physicians, registered nurses, and advanced practice registered nurses become unable to provide access to important healthcare to those that become afflicted by COVID-19 and others requiring hospitalization and medical intervention.

Other courts considering similar pleas to that of Plaintiffs in this case have likewise noted the serious consequences of the unmitigated spread of COVID-19, one judge going as far to call a similar request "ill-founded and selfish." *Elim Romanian Pentecostal Church v. Pritzker*, No. 20-cv-2782, 2020 WL 2468194, *6 (N.D. Ill. May 13, 2020). Another court, in granting the release of an immigrant held in detention, stated:

COVID-19 spreads "easily and sustainably" from person to person, infected people can spread it (even if they are asymptomatic), and COVID-19 can survive on surfaces for days....

There is no approved vaccine to prevent infection. Instead, to control the virus, the CDC (the Centers for Disease Control and Prevention) recommends that people stay at least six feet away from each other (a practice called "social distancing"), *stay at home*, wash their hands often, disinfect surfaces, and cover their mouths and nose with a cloth face cover when around others.

Doe, 2020 WL 1820667, at *2 (emphasis added). Similarly, in reversing a trial court’s entry of a TRO barring enforcement of the Texas Governor’s emergency response to the pandemic, the Fifth Circuit stated:

As all are painfully aware, our nation faces a public health emergency caused by the exponential spread of COVID-19, the respiratory disease caused by the novel coronavirus SARS-CoV-2. As of April 6, 2020, over 330,000 cases have been confirmed across the United States, with over 8,900 dead. The virus is “spreading very easily and sustainably” through the country, with cases confirmed in all fifty states, the District of Columbia, and several territories. Over the past two weeks, confirmed cases in the United States have increased by over 2,000%.

In re Abbott, 954 F.3d at 779. Under such circumstances, the Fifth Circuit held that states are allowed to “restrict, for example, one’s right to peaceably assemble, to publicly worship, to travel, and *even to leave one’s home.*” *Id.* at 778 (emphasis added).

COVID-19 knows no geographic boundaries and the pandemic it has created is not subject to a thirty-day schedule as urged by Plaintiffs. Without the Governor’s requirement in the Executive Order that Illinois residents stay at home and limiting non-essential business operations, the spread of COVID-19 will be both much more rapid and reach a far greater number of people, including individuals in previously relatively unaffected communities, such as Clay County. Hospitals, physicians, registered nurses, and advanced practice registered nurses throughout the State will be quickly overtaxed and the ability to provide patient care will be seriously compromised. Indeed, Clay County, where Mainer lives and HCL operates its business, has only one hospital and it does not have any intensive care beds and EMS Region 6, of which neighboring Jasper County is a part, has only fifty-five such beds, but Jasper County alone has already seen forty-five positive cases and seven deaths. Additionally, the only hospital in Clay County has only one ventilator, and such equipment plays an enormously important role in the

treatment of COVID-19. Some COVID-19 patients will become seriously ill as the virus causes critical lung damage making it exceedingly difficult to breathe, thereby requiring the use of a ventilator.¹ It is not just COVID-19 patients who need ventilators, however. They are necessary for the performance of certain surgeries, be they planned or emergent, and their absence has an immediate trickle-down effect: other ill patients will not be able to receive the healthcare services they need. An increase in cases, as a result of granting the TRO to permit Plaintiffs' contravention of well-recognized public health measures, could be devastating to hospitals in these communities, not to mention the people seeking care therefrom.

Furthermore, the supply chain for personal protective equipment ("PPE") has not fully stabilized. As has been seen throughout our country, physicians, registered nurses, and advanced practice registered nurses require PPE to adequately protect themselves against the virus while providing a range of healthcare services. In particular, as COVID-19 is transmitted by droplet and aerosol transmissions, physicians, registered nurses, and advanced practice registered nurses who are responsible for life-saving intubation are at high-risk for exposure.² Preventing enforcement of the Executive Order would result in a further depletion of PPE resources at a time when the ability to rapidly replenish such supplies is unavailable, leaving our already-stressed medical system at a further

¹ *Coronavirus: What are Ventilators and Why are They Important?*, BBC (Apr. 16, 2020), available at <https://www.bbc.com/news/health-52036948> (last accessed May 26, 2020).

² *Measuring the Risk Among Clinicians Who Intubate Patients with COVID-19*, Penn Medicine News (Apr. 14, 2020), available at <https://www.pennmedicine.org/news/news-releases/2020/april/measuring-the-risk-among-clinicians-who-intubate-patients-with-covid19> (last accessed May 26, 2020).

disadvantage and endangering physicians, registered nurses, and advanced practice registered nurses. The end result is that critically-ill Illinoisans' access to medical care will be decreased and physicians, registered nurses, and advanced practice registered nurses will be at great risk as they treat the sick.

For example, a surge in COVID-19 cases will endanger physicians and nurses by putting them at a greater risk of contracting the virus, thereby thinning the frontlines of professionals at hospitals and in health systems available to care for both COVID-19 patients and “regular” emergent medical situations. Replacing such physicians, registered nurses, and advanced practice registered nurses is difficult in the best of times, but is even more challenging in the current situation. If, as a result of the Circuit Court's TRO, the Governor's executive orders allowing retired and out-of-state professionals to quickly become licensed (or re-licensed) in Illinois are overturned, hospitals will lose additional clinical staff.

These serious implications that will burden the health of Illinoisans and Illinois hospitals, were presented to the Circuit Court. However, at the urging of Plaintiffs, they were trivialized as issues that do not impact them personally. In fact, that court cavalierly stated:

The balancing of equities weigh in great favor of [Mainer] and HCL, being granted this relief as the Plaintiffs are all still subject to the supreme authority which lies with the Illinois Department of Public Health, which oversight rests with each local department of public health, which administrative body can legally restrict the movement or activities of people, or force business closures, should a bona fide public health risk, specific to Plaintiffs, actually arise during the pendency of this order.

(TRO ¶ 9.)

This decision to not properly balance the equities has staggering consequences here. The Circuit Court abused its discretion in granting the temporary restraining order in light of the uncontestable burdens on the public health of Illinoisans and Illinois frontline warriors – hospitals, physicians, registered nurses, and advanced practice registered nurses – in the fight against COVID-19.³ No reasonable person could take the view asserted by Plaintiffs and adopted by the Circuit Court that Plaintiffs’ unspecified inconvenience during a health disaster outweighs the burdens on the health of each and every Illinoisan. *See Smith v. Pavlovich*, 94 Ill. App. 3d 458, 468 (5th Dist. 2009). Indeed, almost every other Illinois court considering similar challenges to Governor Pritzker’s executive orders has found the *exact opposite* of the Circuit Court here. *See, e.g., Elim Romanian Pentecostal Church*, 2020 WL 2468194 at *6 (“The harm to plaintiffs if the Order is enforced pales in comparison to the dangers to society if it is not.”); *Cassell*, 2020 WL 2112374 at *15 (“But, if anything, the balance of hardships tilts markedly the other way. Preventing enforcement of the latest stay-at-home order would pose serious risks to public health.”); *Running Central v. Pritzker*, 2020 CH 105 (Circuit Court for the Seventh Judicial Circuit, Sangamon County, Illinois) (denying a TRO seeking an injunction prohibiting enforcement of the Executive Order against a non-essential business in Peoria, Illinois).

Other courts around the country have also recognized that the balancing of equities in cases such as this one weigh *heavily* in favor of the public. For example, in *Legacy Church, Inc. v. Kunkel*, No. CIV 20-0327 JB/SCY, 2020 WL 1905586 (D. N.M.

³ The consequences of the Circuit Court’s TRO will be even more far reaching and will impact first responders, caregivers, neighbors, and family members.

Apr. 17, 2020), the New Mexico District Court considered a challenge to similar orders in New Mexico prohibiting the gathering of more than five people at, among other spaces, places of worship, in order to slow the spread of COVID-19. In denying the injunctive relief sought by the church to find the orders unenforceable, that court carefully considered the public’s “strong” interest in denying the injunctive relief. *Id.* at

*43. It stated:

New Mexico argues in response that the state is “in the midst of a public health crisis of a scale and severity unprecedented in modern times,” and that “the most potent weapon the State and local communities can wield against this significant health threat is through individuals choosing to stay in their homes as much as possible and avoiding physical proximity to other people and public spaces....

The public’s interest in limiting the COVID-19 outbreak in the state, a compelling interest, outweighs the right to gather.

Id. at *44; *see also Castillo v. Barr*, No. CV 20-00605 TJH (AFMx), 2020 WL 1502864, *6 (C.D. Cal. Mar. 27, 2020) (“The public has a critical interest in preventing the further spread of the coronavirus.”); *Bent v. Barr*, No. 19-cv-06123-DMR, 2020 WL 1812850, *7 (N.D. Cal. Apr. 9, 2020) (“Given that additional burdens on the health system in this crisis may lead to a greater number of deaths among the public, public health considerations cannot be ignored....”).

In this case, the Circuit Court completely ignored the substantial public interest in granting the Plaintiffs’ requested relief. Its refusal to consider the significant harm that would result from its entry of a TRO was an abuse of discretion and this Court should reverse.

II. The Temporary Restraining Order Changed the Status Quo in a Substantially Negative Manner.

COVID-19 is a virus that is spread from person to person. The CDC has made clear that:

- You can become infected by coming into close contact (about 6 feet or two arm lengths) with a person who has COVID-19. COVID-19 is primarily spread from person to person.
- You can become infected from respiratory droplets when an infected person coughs, sneezes, or talks.
- You may also be able to get it by touching a surface or object that has the virus on it, and then by touching your mouth, nose, or eyes.

CDC, COVID-19 Fact Sheet, available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf> (last accessed May 26, 2020). The CDC went further and stated that the very prohibitions in place through the Governor's Executive Order requiring Illinois residents to stay at home are the most effective and instrumental actions that can be taken to stem the tide of COVID-19:

Protect yourself and others from COVID-19

- There is currently no vaccine to protect against COVID-19. The best way to protect yourself is to avoid being exposed to the virus that causes COVID-19.
- Stay home as much as possible and avoid close contact with others.
- Wear a cloth face covering that covers your nose and mouth in public settings.

Id. The status quo in place prior to the filing of the Motion for Temporary Restraining Order included these important safety guidelines. Furthermore, on March 9, 2020, Governor Pritzker declared a state-wide disaster as a result of the COVID-19 pandemic. On March 13, 2020, President Donald Trump declared a national emergency and

encouraged social distancing as a measure to prevent the further spread of COVID-19. On March 13, 2020, Governor Pritzker barred large gatherings in the State of Illinois (Executive Order 2020-04) and closed all public and private schools in the State (Executive Order 2020-05). On March 16, 2020, Governor Pritzker closed all bars and restaurants in the State (Executive Order 2020-07) and on March 20, 2020, all Illinois residents were ordered to stay at home and all non-essential business were required to cease operations. And, on April 30, 2020, Executive Order 2020-32 continued many of these important public health measures.

These peaceable and well-reasoned responses to the virus were changed by the Circuit Court's entry of a TRO allowing Plaintiffs to contravene months of successful government response to the healthcare crisis. Standing alone, that change was legally improper and the TRO should be reversed. *See Baal v. McDonald's Corp.*, 97 Ill. App. 3d 495, 502 (1st Dist. 1982) (The issuance of injunctive relief is "not proper where it tends to change the status quo of the parties rather than preserve it.").

Legacy Church, 2020 WL 1905586, is instructive here. There, the court considered a church's request for a TRO to enjoin enforcement of New Mexico's orders prohibiting large gatherings in places of worship. Although the court ultimately held that the requested relief did not change the status quo (but ultimately denied the TRO), it set forth the applicable principles to be considered:

The second disfavored category is "preliminary injunctions that alter the status quo." The status quo is "the last uncontested status between the parties which preceded the controversy until the outcome of the final hearing." When evaluating whether the issuance of a requested injunction would alter the status quo between the parties, the court should look at "the reality of the existing status and relationship between the parties, regardless of whether the existing status and relationships may ultimately be found to be in accord or not in accord with the parties' legal rights."

Id. at *29 (citations omitted); *see also In re Abbott*, 954 F.3d at 791 (“The *status quo* Texas faces, along with the rest of the nation, is a public health crisis that is making once-in-a-lifetime demands on citizens, government, industry, and the medical profession.”).

Here, the Circuit Court changed the status quo by removing the many protections afforded by the Executive Order already in place as a result of the CDC’s guidelines, the President’s emergency proclamation, Governor Pritzker’s disaster declaration, and the many other executive orders previously entered. For this reason, as well, reversal of the Circuit Court’s TRO is warranted.

CONCLUSION

The Executive Order provided and continues to provide greatly needed protections from a real and negative healthcare crisis in Illinois. The Circuit Court’s TRO creates a dangerous situation regarding the availability of medical care for Illinois residents at a time of serious need and saddles Illinois hospitals, physicians, registered nurses, and advanced practice registered nurses with additional irreversible burdens. The Circuit Court ignored the very serious and negative implications from the temporary restraining order and failed to engage in the requisite balancing of equities. These material deleterious impacts outweigh any claimed benefit to Plaintiffs. Further, the temporary restraining order changed the status quo by lifting, for Plaintiffs, the very public health protections that have been put in place and are successfully stemming the tide of COVID-19.

Dr. Emily Landon, Associate Professor at University of Chicago Medicine and an infectious disease specialist and epidemiologist, perhaps best summed up the threat caused by the TRO and why staying at home, as provided for in the Executive Order, is crucial:

We all acknowledge that this is the only way forward. This virus is unforgiving. It spreads before you even know you've caught it. And it tricks you into believing that it's nothing more than a little influenza. For many of us, it may not be much more than the flu. All we have to slow the spread is social distance. And if we let every single patient with this infection infect three more people and then each of them infect two or three more people, there won't be a hospital bed when my mother can't breathe very well or when yours is coughing too much.

See <https://news.uchicago.edu/story/uchicago-doctor-covid-19-virus-unforgiving>.

WHEREFORE, the Illinois Health and Hospital Association, the Illinois State Medical Society, the American Nurses Association-Illinois, and the Illinois Society for Advanced Practice Nursing respectfully request that this Court reverse the grant of a temporary restraining order; thereby protecting the health of Illinois residents and the ability of Illinois hospitals, physicians, registered nurses, and advanced practice registered nurses to provide available health care, and for such other and further relief as the Court deems just and equitable.

Saul Ewing Arnstein & Lehr LLP
Counsel for *Amici Curiae*
161 North Clark Street, Suite 4200
Chicago, Illinois 60601
(312) 876-7100
Of Counsel:
Hal Morris
Joe Ourth
Elizabeth A. Thompson

Respectfully submitted,

Illinois Health and Hospital Association,
Illinois State Medical Society, American
Nurses Association-Illinois, and Illinois
Society for Advanced Practice Nursing

By: /s/ Hal R. Morris
One of their attorneys

SUPREME COURT RULE 341(c) CERTIFICATION OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is 18 pages.

By: /s/ Hal R. Morris

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies pursuant to penalties of perjury as set forth in Section 1-109 of the Illinois Code of Civil Procedure that he caused to be served the attached **Brief of Amici Curiae the Illinois Health and Hospital Association, Illinois State Medical Society, American Nurses Association-Illinois, and Illinois Society for Advanced Practice Nursing in Opposition to Temporary Restraining Order and in Support of Governor Jay Robert Pritzker** via email to:

Thomas G. DeVore (tom@silverlakelaw.com)
Erik Hyam (erik@silverlakelaw.com)
DeVore Law Offices, LLC
118 N. Second Street
Greenville, Illinois 62246

Thomas J. Verticchio (tverticchio@atg.state.il.us)
R. Douglas Rees
Christopher G. Wells
Darren Kinhead
Office of the Illinois Attorney General
100 West Randolph Street
Chicago, Illinois

Laura K. Bautista (lbautista@atg.state.il.us)
Office of the Illinois Attorney General
500 South Second Street
Springfield, Illinois 62701

on this 26th day of May, 2020.

/s/ Hal R. Morris