

IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH JUDICIAL DISTRICT

---

JAMES MAINER, in his individual capacity and on behalf of all citizens similarly situated, and HCL DELUXE TAN, LLC, an Illinois limited liability company, on its behalf and on behalf of all businesses similarly situated,	)	Interlocutory Appeal from the Circuit Court of the Fourth Judicial Circuit, Clay County, Illinois
	)	
Plaintiff-Respondent,	)	No. 2020CH10
	)	
v.	)	
	)	
GOVERNOR J.B. PRITZKER, in his official capacity,	)	The Honorable
	)	MICHAEL D. McHANEY,
Defendant-Petitioner.	)	Judge Presiding.

---

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

Faced with the unprecedented and ongoing public health emergency created by COVID-19, Governor Pritzker exercised authority under the Illinois Emergency Management Agency Act, 20 ILCS 3305/1 *et seq.* (“Act”), and the Illinois Constitution to issue three emergency disaster proclamations and 37 executive orders to combat COVID-19 and protect people throughout Illinois. Relevant here, Executive Order 32 (“EO32”) limits nonessential business operations and directs Illinois residents to remain at home except for essential activities. This community-based approach—which relies on short-term personal sacrifice for long-term greater good—is essential to slow the spread of COVID-19. By responding to this call,

Illinoisans have slowed the progression of the virus, protected our healthcare system from becoming overburdened, and saved lives.

The circuit court, however, granted a temporary restraining order (“TRO”) enjoining the Governor from enforcing EO32 against plaintiffs on the theory that the Governor cannot issue successive disaster proclamations under section 7 of the Act. Besides being dangerous, this conclusion is flawed as a matter of law, conflicts with three recent decisions upholding the Governor’s authority against nearly identical challenges, and is belied by the longstanding practice of numerous governors. What is more, when the General Assembly convened last week in special session, it unanimously passed two pieces of legislation that acknowledge the Governor’s authority to issue successive disaster proclamations. That the legislature took these measures with the knowledge that the Governor issued successive disaster proclamations relating to COVID-19 provides further confirmation that the circuit court was wrong. Plaintiffs thus lack a likelihood of success on the merits, and the TRO should be vacated on this ground alone.

Furthermore, the TRO should be dissolved for the independent reason that it improperly disrupts the status quo and places undue weight on the harm to plaintiffs as compared with the immense public health crisis that will occur if the Governor is unable to exercise his statutory and constitutional powers to combat COVID-19.

## BACKGROUND

### A. The COVID-19 Pandemic

Since the World Health Organization (“WHO”) declared COVID-19 a global health emergency,<sup>1</sup> COVID-19 has spread throughout the world. The United States now has the most COVID-19 cases of any country: 1,662,768 as of May 26.<sup>2</sup> Illinois accounts for 112,017 of those, including 4,884 deaths.<sup>3</sup>

There is no vaccine or treatment available for COVID-19,<sup>4</sup> nor is there proof that recovered individuals are protected from a second infection.<sup>5</sup> On the contrary, the Centers for Disease Control (“CDC”) cautions that “[e]veryone is at risk of getting COVID-19” and “[t]he best way to protect yourself is to avoid being exposed to the virus.”<sup>6</sup> It therefore urges Americans to “stay home as much as possible and avoid close contact with others.”<sup>7</sup>

---

<sup>1</sup> Derrick Bryson Taylor, *How The Coronavirus Pandemic Unfolded: A Timeline*, N.Y. Times, <https://www.nytimes.com/article/coronavirus-timeline.html>. All websites were last visited May 26, 2020.

<sup>2</sup> Hopkins University & Medicine, *Corona Virus Resource Center*, <https://coronavirus.jhu.edu/map.html>.

<sup>3</sup> *Coronavirus (COVID-19) Resp.*, State of Illinois, <https://coronavirus.illinois.gov/s/>.

<sup>4</sup> WHO, *Q&A on coronaviruses (COVID-19)* (Apr. 17, 2020), <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>.

<sup>5</sup> WHO, *‘Immunity passports’ in the context of COVID-19* (Apr. 24, 2020), <https://www.who.int/news-room/commentaries/detail/immunity-passports-in-the-context-of-covid-19>.

<sup>6</sup> CDC, *What you should know about COVID-19 to protect yourself and others*, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>.

<sup>7</sup> *Id.*

## **B. The Governor’s Emergency Powers**

The Act aims to “insure that this State will be prepared to and will adequately deal with any disasters, preserve the lives and property of the people of this State and protect the public peace, health, and safety in the event of a disaster[.]” 20 ILCS 3305/2(a). It defines “disaster” as a “an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including [an] epidemic . . . [and] public health emergencies.” *Id.* 3305/4. Under section 7, the Governor may proclaim that a disaster “exists” and exercise emergency powers under that proclamation for 30 days. *Id.* 3305/7. These powers include the authority to use “all available resources of the State government” and its political subdivisions, and “control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein.” *Id.*

The Act does not limit the number of proclamations that the Governor may issue for a single disaster. Past governors have issued multiple and often successive proclamations for the same disaster. In the last decade alone, Governors Quinn, Rauner, and Pritzker have issued such disaster proclamations: in 2009 to address the H1N1 virus; and in 2011, 2017, and 2019 in response to flooding. SR220.

### C. The Governor's Response to COVID-19

On March 9, 2020, the Governor proclaimed the COVID-19 pandemic a disaster under section 7. SR24-26.<sup>8</sup> He then entered executive orders designed to stop COVID-19's spread and enhance the availability of testing and treatment, including orders that suspended nonessential business and required residents to stay at home except for essential activities.<sup>9</sup> SR220.

On April 1, the Governor issued a second proclamation, recognizing that “circumstances surrounding COVID-19 constitute a continuing public health emergency under Section 4 of the [Act].” SR28. Throughout April, COVID-19 cases and fatalities continued to climb. Accordingly, on April 30, the Governor issued a new disaster proclamation and EO32, among other orders. SR30-36. EO32 reflects the evolving circumstances of COVID-19; it allows more personal and business activity than the previous orders, yet continues to emphasize the need to adhere to social distancing and other public health guidance. *Id.*

The Governor's use of his authority has enabled him to take many other critical measures beyond issuing EO32. For example, by proclaiming a disaster and executing an emergency plan, the State was able to apply for and receive significant federal funds. 44 C.F.R. § 206.35(c)(1). Similarly, the disaster proclamation allows the State to access the Disaster Response and Recovery Fund, 15 ILCS 30/0.01 *et seq.*, and enables the Governor to suspend provisions of the Illinois Procurement

---

<sup>8</sup> All gubernatorial proclamations and executive orders are available at <https://coronavirus.illinois.gov/s/resources-for-executive-orders>.

<sup>9</sup> *Id.*

Code that would put the State at a competitive disadvantage in purchasing necessary materials, including masks, ventilators, and testing supplies. 20 ILCS 3305/7(1). And it allows the Governor to build overflow capacity for hospital beds, *id.* 3305/7(4), and call on the National Guard for assistance, *id.* 3305/7(13).

#### **D. Procedural History**

Although plaintiffs have operated their business, a tanning salon, notwithstanding EO32, SR478, they filed an action in the circuit court challenging the Governor's exercise of his emergency powers, SR2. Specifically, they alleged that a "disaster" within the meaning of the Act did not exist on April 30; the Governor lacks authority to issue executive orders because his powers under the Act expired 30 days after the first disaster proclamation; and the procedures outlined in the Illinois Department of Public Health Act ("Public Health Act") provide the exclusive authority to address the current pandemic. SR2-21.

Plaintiffs filed a TRO motion seeking to enjoin the Governor from enforcing EO32 against them and any individuals or entities similarly situated within the State. SR187-90. Although the motion was entitled "Motion for Temporary Restraining Order Without Notice," SR187, plaintiffs provided notice to the Governor, and a hearing on the motion was held in the circuit court, SR192, 455.

On May 22, 2020, the circuit court granted the TRO and enjoined the Governor from "enforcing any provision of EO32" against plaintiffs. SR452-53. However, the court denied plaintiffs' request to extend the TRO to others. *Id.* Without engaging in any meaningful statutory interpretation, the court accepted

plaintiffs' arguments that the Governor's authority expired 30 days after the initial proclamation and that the Public Health Act was the sole source of authority to address a public health crisis, but rejected plaintiffs' theory that a disaster did not exist within the meaning of the Act. SR529-32. The TRO is effective until June 5, 2020. SR453.

## DISCUSSION

### I. A TRO Is An Extraordinary Remedy Designed To Preserve The Status Quo.

“A temporary restraining order is an emergency remedy issued to maintain the status quo while the court is hearing evidence to determine whether a preliminary injunction should issue.” *Delgado v. Bd. of Election Comm'rs*, 224 Ill. 2d 481, 483 (2007). To obtain relief, a plaintiff must establish (1) a protected right, (2) irreparable harm if injunctive relief is not granted, (3) an alternative remedy would be inadequate, and (4) a likelihood of success on the merits. *Jacob v. C & M Video, Inc.*, 248 Ill. App. 3d 654, 664 (5th Dist. 1993). The balance of hardships—which includes “the effect of the injunction on the public,” *Kalbfleisch ex rel. Kalbfleisch v. Columbia Cmty. Unit Sch. No. 4*, 396 Ill. App. 3d 1105, 1119 (5th Dist. 2009)—must also weigh in favor of an injunction, *S. Ill. Med. Bus. Assocs. v. Camillo*, 190 Ill. App. 3d 664, 672 (5th Dist. 1989).

In general, a decision granting a TRO is reviewed for abuse of discretion. *AFSCME v. Ryan*, 332 Ill. App. 3d 965, 967 (1st Dist. 2002). But *de novo* review applies to aspects of the appeal that present questions of law. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 63 (2006). The merits questions here present

matters of statutory and constitutional interpretation, which are questions of law subject to *de novo* review. *Gregg v. Rauner*, 2018 IL 122802 ¶ 23; *Hayashi v. Ill. Dep't of Fin. & Prof'l Reg.*, 2014 IL 116023 ¶ 16.

## **II. Plaintiffs Failed To Show That They Are Likely To Succeed On The Merits.**

As the Governor explained, SR231-33, 242-43, and the circuit court recognized, SR529-32, COVID-19 satisfies the definition of a “disaster” under the Act because it constituted both an epidemic and a public health emergency on April 30, when the Governor issued the current disaster proclamation. However, the circuit court erred because its determinations that the Governor’s emergency powers lapsed after the initial proclamation and that the Public Health Act provides the exclusive authority to address COVID-19 are wrong as a matter of law.

### **A. The Governor’s Disaster Proclamations And Ongoing Exercise Of Emergency Powers Are Valid Under Section 7.**

The primary objective of statutory interpretation “is to ascertain and give effect to the legislature’s intent.” *Whitaker v. Wedbush Secs., Inc.*, 2020 IL 124792 ¶ 16. “The most reliable indicator of legislative intent is the statutory language.” *Id.* Section 7 grants the Governor the authority to declare that a “disaster exists” in certain circumstances, including during a public health emergency or epidemic. 20 ILCS 3305/7. If the Governor determines that a disaster exists and issues a disaster proclamation, he may exercise “emergency powers” for 30 days thereafter; specifically: “[u]pon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers[.]” *Id.* Section 7

contains no limitation on the number of proclamations the Governor may issue to address a particular disaster. On the contrary, section 7 establishes a single criterion necessary: that a disaster “exists.”

Here, the Governor concluded that a disaster existed on March 9, and issued his first proclamation. In issuing new proclamations on April 1 and again on April 30, the Governor concluded that a disaster still existed and properly exercised the “emergency powers” conferred by section 7 for “a period not to exceed 30 days” after each issuance. *Id.* Each of these proclamations was authorized by the plain text of the Act.

This reading of the statute—authorizing the Governor to issue successive disaster proclamations—was recently confirmed by the General Assembly, which unanimously passed two bills during its special session with the knowledge that the Governor had issued successive disaster proclamations. The first, which amended the Township Code to allow for postponement of annual township meetings due to a disaster declaration, included instructions for situations where “a subsequent disaster is declared under Section 7 of the [Act] prior to . . . the expiration of the disaster declaration[.]”<sup>10</sup> The second amended the Sexual Assault Survivors Emergency Treatment Act to allow health centers to provide medical forensic services relating to injuries or trauma resulting from a sexual assault for “the duration, and 90 days thereafter, of a proclamation issued by the Governor

---

<sup>10</sup> Bill Status of HB2096, [http://ilga.gov/legislation/billstatus.asp?DocNum=2096&GAID=15&GA=101&DocTypeID=HB&LegID=117721&SessionID=109&SpecSess=.](http://ilga.gov/legislation/billstatus.asp?DocNum=2096&GAID=15&GA=101&DocTypeID=HB&LegID=117721&SessionID=109&SpecSess=)

declaring a disaster, or a successive proclamation regarding the same disaster, in all 102 counties due to a public health emergency.”<sup>11</sup>

Three courts have also agreed with the plain reading of section 7. In a case brought by a business challenging the executive orders, the Sangamon County Circuit Court rejected the “narrow interpretation” urged by the plaintiff and was instead “persuaded by the plain reading of the statute.” *Running Central, Inc. v. Pritzker*, No. 2020-CH-105, slip op. 4-5 (7th Jud. Cir. Ct. Sangamon Cty. May 21, 2020); SR270-71. Similarly, in a rideshare driver’s challenge to the stay-at-home order, the Cook County Circuit Court held that “[w]hen an emergency epidemic of disease occurs and a pandemic ensues, the Governor has authority under the Act to utilize emergency powers beyond a single 30-day period to protect the community and residents of the State.” *Mahwikizi v. Pritzker*, No. 20 C 04089, slip op. ¶ 23 (Cook Cty. Cir. Ct. May 8, 2020); SR279. And in a pastor’s challenge to the order’s restrictions on large gatherings, a federal district court held that “so long as the Governor makes new findings of fact to determine that a state of emergency still exists, the Act empowers him to declare successive disasters, even if they stem from the same underlying crisis.” *Cassell v. Snyders*, No. 20 C 50153, 2020 WL 2112374, \*13 (N.D. Ill. May 3, 2020); SR292.<sup>12</sup>

---

<sup>11</sup> Bill Status of SB557, [www.ilga.gov/legislation/BillStatus.asp?DocNum=557&GAID=15&DocTypeID=SB&LegId=116494&SessionID=108&GA=101](http://www.ilga.gov/legislation/BillStatus.asp?DocNum=557&GAID=15&DocTypeID=SB&LegId=116494&SessionID=108&GA=101).

<sup>12</sup> Additionally, a federal district court and the Seventh Circuit denied injunctive relief in a constitutional challenge to EO32. *Elim Romanian Pentecostal Church v. Pritzker*, No. 20-1811, 2020 WL 2517093, \*1 (7th Cir. May 16, 2020); *Elim Romanian Pentecostal Church v. Pritzker*, No. 20 C 2782, 2020 WL 2468194, \*2-5 (N.D. Ill. May 13, 2020).

Nonetheless the circuit court ruled the Governor acted unlawfully because the 30-day period is triggered by the disaster’s initial date. That is belied by the Act’s plain text, which ties the period to the issuance of a proclamation (not the disaster). 20 ILCS 3305/7. Nor does allowing successive disaster proclamations render the 30-day limitation meaningless. SR198. The limitation requires the Governor to make the periodic determination that a disaster still exists. The Governor has not purported to exercise emergency powers indefinitely; he has issued proclamations for 30-day periods. But if the factual circumstances change, the Governor may no longer be able to reasonably conclude that a disaster still exists. *E.g., Mahwikizi*, slip op. ¶ 27. At that point, his emergency powers would expire 30 days after issuance of the most recent disaster proclamation.

As support for their theory, plaintiffs cite a 2001 informal letter drafted by a member of former Attorney General Jim Ryan’s staff. SR198. But this letter—which applied to an outbreak of foot and mouth disease affecting livestock in Illinois, SR176—has no binding effect and was superseded by a formal Attorney General opinion.<sup>13</sup> Furthermore, the position the letter espouses has been rejected by courts addressing the issue in the context of COVID-19. *E.g., Cassell*, 2020 WL 2112374, \*14 (“the Governor’s authority to exercise his emergency powers is [not] without restraint” because they trigger only if he can “identify an ‘occurrence or threat of widespread or severe damage, injury or loss of life’”); *Running Central*, slip

---

<sup>13</sup> File No. 20-002, Emergency Preparedness Opinion, <https://www.illinoisattorneygeneral.gov/opinions/2020/20-002.pdf>

op. 5 (Governor’s authority “is [not] without restraint” because “[o]nce the emergency has been abated, the Governor’s authority to issue Executive Orders will cease”).

Several other sections of the Act confirm that the circuit court’s reading was flawed. To begin, section 4 identifies disaster phenomena that could reasonably be anticipated to outlast a 30-day limit. These include “extended periods of severe and inclement weather,” “hostile military or paramilitary action,” and “critical shortages of essential fuels and energy.” 20 ILCS 3305/4. As *Cassell* explained, “[t]hose events pose a threat that may persist for long periods of time and certainly beyond a single 30-day period. It is difficult to see why the legislature would recognize these long-running problems as disasters, yet divest the Governor of the tools he needs to address them.” 2020 WL 2112374, \*13-14.

Moreover, section 3—which outlines the Act’s limitations—is consistent with section 7 in that it contains no restrictions on the Governor’s authority to issue more than one proclamation per disaster. 20 ILCS 3305/3. By contrast, section 11(a), which authorizes local officials to declare disasters in their areas and exercise emergency powers for short periods, expressly provides that the declaration of a local disaster “shall not be continued or renewed for a period in excess of 7 days except by or with the consent of the governing board of the political subdivision.” *Id.* 3305/11(a). Thus, when the General Assembly wanted to require legislative approval for a renewal or extension of emergency powers, it explicitly said so. *Running Central*, slip op. 5.

And in two other sections, the General Assembly granted itself an express oversight role. 20 ILCS 3305/6, 3305/9 (specifying that the General Assembly must be involved in certain aspects of emergency management). The fact that the General Assembly did not do the same in section 7 demonstrates that it intended to grant the Governor the authority to issue successive disaster proclamations.

Indeed, although the General Assembly has amended the Act at least 11 times, it has not added any language to stop governors from issuing multiple or successive disaster proclamations.<sup>14</sup> On the contrary, last week the General Assembly passed legislation specifically relying on the Governor’s authority to issue successive proclamations. The interpretation of a statute by the “agency charged with enforcement” of it—here, our governors—“is entitled to great weight.” *Pielet Bros. Trading v. Pollution Control Bd.*, 110 Ill. App. 3d 752, 756 (5th Dist. 1982). And “[s]uch a construction is even more persuasive if consistent, long-continued, and in conjunction with legislative acquiescence on the subject.” *Id.* “Such acquiescence appears where the legislature, presumably aware of the administrative interpretation in question, has amended other sections of the act since that interpretation but left untouched the sections subject to the administrative interpretation in question.” *Id.* This describes the circumstances here. The longstanding practice of governors—who have regularly renewed disaster

---

<sup>14</sup> P.A. 88-606; P.A. 92-73; P.A. 94-733; P.A. 98-465; P.A. 98-756; P.A. 99-36; P.A. 100-508; P.A. 100-444; P.A. 100-587; P.A. 100-863; P.A. 100-1179.

proclamations under the Act with the General Assembly’s knowledge and acquiescence—confirms that the circuit court was incorrect.

**B. The Public Health Act Does Not Apply To The Governor’s Executive Orders.**

The circuit court also incorrectly concluded that plaintiffs were likely to succeed on their theory that EO32 is unlawful because it was not issued pursuant to the Public Health Act. SR532. Section 2 of that Act establishes procedures by which the Illinois Department of Public Health (“IDPH”) “may order a person or group of persons to be quarantined or isolated or may order a place to be closed and made off limits to the public to prevent the probable spread of a dangerously contagious or infectious disease.” 20 ILCS 2305/2(b). But because EO32 is not (and does not purport to be) an isolation, quarantine, or business closure order, section 2 does not apply.

EO32 allows Illinois residents to leave their homes to engage in the many essential activities outlined therein—for example, to perform tasks that are essential to the health and safety of, or to obtain necessary services or supplies for, themselves or their family members. SR36-44. Similarly, EO32 allows essential businesses to operate and nonessential businesses to provide certain services, such as pickup and delivery. *Id.* None of this would be possible under an order issued pursuant to the Public Health Act. *Cassell*, 2020 WL 2112374, \*14 (“The problem for Plaintiffs is that the challenged Order does not impose restrictions that fall within the meaning of the [Public Health] Act.”).

Indeed, the Public Health Act supplements the Governor’s authority under section 7 of the Act “[t]o control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein.” 20 ILCS 3305/7(8). In fact, the Public Health Act specifically provides that “[n]othing in this Section shall supersede . . . procedures established pursuant to IEMA statutes.” *Id.* 2305/2(m).

Nevertheless, plaintiffs made much of the fact that section 2(a) of the Public Health Act states that IDPH “has supreme authority in matters of quarantine and isolation.” *Id.* 2305/2(a). But when read in context, this statement is referring to IDPH’s supreme authority in its supervision of local health departments. The Public Health Act authorizes IDPH to direct local health departments in matters of quarantine and isolation. It does not confine the authority of the Governor—who appoints the Director of IDPH—to exercise his own authority to protect the public health.

**C. The Governor’s Continuing Exercise of Emergency Powers Is Independently Valid Under the Illinois Constitution.**

Finally, the Governor has independent authority under the Illinois Constitution to protect the public health in a crisis. Our Constitution vests in the Governor the State’s “supreme executive power.” Ill. Const. art. V, § 8. And in the current extraordinary circumstances, the Governor’s constitutional authority allows him to take immediate measures necessary to protect the public health. In the Act itself, the General Assembly recognized that the Governor’s statutory authority was

in addition to his authority “under the constitution, statutes, or common law of this State.” 20 ILCS 3305/3(d).

The State has long possessed police power “to preserve the public health,” which includes the power “to pass and enforce quarantine, health, and inspection laws to prevent the introduction of disease.” *People ex rel. Barmore v. Robertson*, 302 Ill. 422, 427 (1922). Illinois courts have refrained from interfering with this power “except where the regulations adopted for the protection of the public health are arbitrary, oppressive and unreasonable.” *Id.*

Regarding the Executive Branch specifically, Justice Story, writing for a unanimous Supreme Court, recognized that “[i]t may be fit and proper for the government, in the exercise of the high discretion confided to the executive, . . . to act on a sudden emergency . . . by summary measures, which are not found in the text of the laws.” *The Apollon*, 22 U.S. (9 Wheat.) 362, 366-67 (1824). Our Constitution is written in broad outlines, *People v. Lawton*, 212 Ill. 2d 285, 301 (2004), and its provision giving the Governor the State’s “supreme executive power,” Ill. Const. art. V, § 8, must be interpreted in view of “the purpose[s] sought to be accomplished,” *Wolfson v. Avery*, 6 Ill. 2d 78, 88–89 (1955), chief among which are “to provide for the health, safety and welfare of the people,” Ill. Const., preamble.

Moreover, the General Assembly has not prohibited the Governor from taking the actions that plaintiffs challenge. Thus, the Governor’s independent constitutional powers are fully intact. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring).

### **III. Plaintiffs Did Not Establish That Their Alleged Injury Outweighs The Harm To The Governor And The Public.**

Merits aside, the circuit court erred in granting the TRO because plaintiffs did not show that they would “suffer greater harm without the injunction” than the Governor and the public would suffer if it issued. *Gannett Outdoor of Chi. v. Baise*, 163 Ill. App. 3d 717, 724 (1987). The failure is critical because the purpose of a TRO is to “prevent a threatened wrong or continuing injury and preserve the status quo with the least injury to the parties concerned.” *In re Marriage of Jawad*, 326 Ill. App. 3d 141, 154 (2d Dist. 2001).

Plaintiffs made no attempt to demonstrate that they would suffer irreparable harm from complying with EO32. They did not identify the provisions of the order causing them injury or describe their injuries. SR195-96. But in any event, any injury suffered by plaintiffs is minimal when compared to the significant public harm if the Governor’s authority to issue emergency orders is undercut by judicial order.

Indeed, allowing even a few individuals to cease compliance with the executive orders would implicate significant public health concerns. Because COVID-19 is highly contagious and can be spread by asymptomatic persons, a

single infected individual can quickly spread the virus.<sup>15</sup> As one example, a surge in cases in Randolph County can be traced “to a single event in mid-March.”<sup>16</sup>

But as a practical matter, the harm caused by the circuit court’s order will not be limited to plaintiffs and those they could infect. The effectiveness of the COVID-19 response is dependent on every person deciding to sacrifice individual desires for the greater good. Illinoisans have met this challenge with resolve, and the number of infections and deaths is far fewer than would have otherwise occurred.<sup>17</sup> Judicial exemptions to these collective efforts could inject uncertainty into the need to comply with the Governor’s directives. And such a disruption could undo much of the progress already made, placing those who do not have the luxury of staying at home—including medical professionals and other essential workers—in harm’s way.

Additionally, if the Governor cannot proclaim that a disaster continues to exist, he will lose emergency authority under the Act, which has allowed him to take such measures as preventing evictions for residential tenants and small

---

<sup>15</sup> Sigal Samuel, *How you can keep thousands of people from getting coronavirus, in one GIF*, Vox (Mar. 26, 2020), <https://www.vox.com/future-perfect/2020/3/26/21193851/coronavirus-covid-19-staying-home-social-distancing>.

<sup>16</sup> Molly Parker, *Rural Randolph County has one of the highest COVID-19 infection rates in Illinois. Here’s what happened*, The Southern (Apr. 18, 2020), [https://thesouthern.com/news/local/rural-randolph-county-has-one-of-the-highest-covid-19-infection-rates-in-illinois-here/article\\_420278d3-c36d-5fd1-98fe-b8bf6ef369e6.html](https://thesouthern.com/news/local/rural-randolph-county-has-one-of-the-highest-covid-19-infection-rates-in-illinois-here/article_420278d3-c36d-5fd1-98fe-b8bf6ef369e6.html).

<sup>17</sup> See, e.g., *Gov. Pritzker Announces Modified Stay at Home Order Will Be Extended Through May to Continue Progress* (Apr. 23, 2020), <https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21459>.

businesses and preventing price gouging for critical supplies. *Supra* pp. 5-

6. Without a disaster proclamation, the State risks losing federal disaster funding and may be unable to procure vital supplies, including personal protective equipment for first responders. *Id.* The circuit court's order thus threatens to nullify the actions the Governor has taken and means COVID-19 may once again begin its exponential spread throughout the State.

Finally, the circuit court's order should be reversed for the independent reason that it failed to account for the disruption of the status quo and reliance interests involved. When the Governor issued his second disaster proclamation, nobody challenged it for nearly two weeks. Plaintiffs then waited weeks after the third proclamation was issued before filing their suit and claiming an emergency. Prudence thus counsels against pulling the rug out from under the Governor's orders where they are being relied on by so many. Illinoisans have been working together to protect our families, friends, and neighbors, our health care workers and emergency responders, and the vulnerable among us. The TRO threatens our collective efforts and puts the lives of our fellow Illinoisans at great risk.

## CONCLUSION

The Governor requests that this court grant the petition, reverse and vacate the temporary restraining order, and grant any other relief deemed appropriate.

Respectfully submitted,

KWAME RAOUL  
Attorney General  
State of Illinois

JANE ELINOR NOTZ  
Solicitor General

By: /s/ Sarah A. Hunger  
SARAH A. HUNGER  
Deputy Solicitor General  
NADINE J. WICHERN  
RICHARD S. HUSZAGH  
Assistant Attorneys General  
100 West Randolph Street  
12th Floor  
Chicago, Illinois 60601  
(312) 814-5202  
Primary e-service:  
CivilAppeals@atg.state.il.us  
Secondary e-service:  
shunger@atg.state.il.us

May 26, 2020

## CERTIFICATE OF FILING AND SERVICE

I hereby certify that on May 26, 2020, I electronically filed the foregoing **Defendant's Memorandum In Support Of Rule 307(d) Petition For Review Of Temporary Restraining 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 May 26, 2020.

Thomas G. DeVore  
tom@silverlakelaw.com

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

/s/ Sarah A. Hunger  
SARAH A. HUNGER  
Deputy Solicitor General  
100 West Randolph Street  
12th Floor  
Chicago, Illinois 60601  
(312) 814-5202  
Primary e-service:  
CivilAppeals@atg.state.il.us  
Secondary e-service:  
shunger@atg.state.il.us