

No. 5-20-_____

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 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 May 22, 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”). SR24-26. 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. SR220.¹ 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 additional executive orders, including Executive Order 32 (“EO32”), which is the current stay-at-home order. 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.* Indeed, the United States still has the most COVID-19 cases of any country: 1,662,768 as of May 26.² Illinois accounts for 112,017 of those cases as of May 25, which include 4,884 deaths.³

2. On May 21, 2020, plaintiffs 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

¹ All gubernatorial proclamations and executive orders are available at <https://coronavirus.illinois.gov/s/resources-for-executive-orders>.

² Hopkins University & Medicine, *Corona Virus Resource Center*, <https://coronavirus.jhu.edu/map.html>. All websites were last visited May 26, 2020.

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

outlined in the Illinois Department of Public Health Act (“Public Health Act”) provide the exclusive authority to address the current pandemic. SR2-21.

3. Plaintiffs filed a motion for a TRO 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.

4. 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.* 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.

5. On May 22, 2020, the Governor filed a timely notice of interlocutory appeal from that order. SR536.

6. This court should reverse and vacate the circuit court’s order of May 22, 2020, because plaintiffs did not satisfy the grounds to obtain a TRO. Specifically, plaintiffs failed to demonstrate a likelihood of success on the merits because the bases of plaintiffs’ case—that the COVID-19 pandemic is not a

“disaster,” the Governor’s emergency powers lapsed 30 days after his initial proclamation, and the Public Health Act provides the exclusive authority to address COVID-19—are wrong as a matter of law. To begin, COVID-19 satisfies the definition of a “disaster” under section 4 of the Act because it constituted both an epidemic and a public health emergency on April 30, when the Governor issued the disaster proclamation. Furthermore, 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.* As to the plaintiffs’ third theory, the Public Health Act—which supplements, rather than confines, the Governor’s authority under section 7—does not apply because EO32 is not an isolation, quarantine, or business closure order. Alternately, the Governor’s actions were a lawful exercise of his constitutional authority to protect the public health in an emergency.

7. The circuit court further erred in granting a TRO for several additional reasons: plaintiffs failed to show, as they were required to do, that they would suffer irreparable harm; any harm to them pales in comparison to the harm to the public and to the Governor; and the TRO disrupts, rather than preserves, the status quo. Indeed, any injury suffered by plaintiffs is extremely modest when compared to the significant harm the public will suffer if the Governor is unable to exercise his statutory and constitutional powers to combat COVID-19.

8. 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 May 22, 2020.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

By: /s/ Sarah A. Hunger
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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 May 22, 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 May 26, 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 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
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