

5-20-0148

E-FILED  
Transaction ID: 5-20-0148  
File Date: 4/29/2020 2:12 PM  
John J. Flood, Clerk of the Court  
APPELLATE COURT 5TH DISTRICT

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.

---

**SUPPORTING RECORD  
VOLUME 3 OF 3**

**KWAME RAOUL**  
Attorney General  
State of Illinois

**JANE ELINOR NOTZ**  
Solicitor General

**SARAH A. HUNGER**  
Deputy Solicitor General

**NADINE J. WICHERN**  
**RICHARD S. HUSZAGH**  
**PRIYANKA GUPTA**  
**JONATHAN J. SHEFFIELD**  
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

**TABLE OF CONTENTS TO SUPPORTING RECORD  
VOLUME 3**

Verification by Certification of Nadine J. Wichern Apr. 29, 2020	SR241
Temporary Restraining Order, Apr. 27, 2020	SR242-SR244
Report of Proceedings on Motion for Temporary Restraining Order Apr. 27, 2020	SR245-SR314
Notice of Interlocutory Appeal Apr. 27, 2020	SR315-SR320

## VERIFICATION BY CERTIFICATION

I, NADINE J. WICHERN, state the following:

1. I am a citizen of the United States over the age of 18. My current business address is 100 West Randolph Street, 12th Floor, Chicago, Illinois 60601. I have personal knowledge of the facts stated in this verification by certification. If called upon, I could testify competently to these facts.

2. I am an Assistant Attorney General in the Civil Appeals Division of the Office of the Attorney General of the State of Illinois, and, along with others, I have been assigned to represent Defendant-Petitioner Jay Robert Pritzker, in his official capacity as Governor of the State of Illinois, in the interlocutory appeal under Illinois Supreme Court Rule 307(d) in *Bailey v. Pritzker*, No. 5-20-\_\_\_\_ (Circuit Court for the Fourth Judicial Circuit, Clay County, Illinois No. 2020CH6), which now is pending before this court.

3. I am the attorney responsible for preparing the Supporting Record, which is three volumes, to be filed with this court in this interlocutory appeal.

4. I am familiar with the documents that have been filed with the circuit court, and the orders entered by the circuit court, in this case.

5. The documents included in the three volumes of Supporting Record are true and correct copies of documents that have been filed in the circuit court, and the orders entered by the circuit court, in this case.

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.

Executed on April 29, 2020.

/s/ Nadine J. Wichern  
NADINE J. WICHERN  
Assistant Attorney General  
100 West Randolph Street  
12th Floor  
Chicago, Illinois 60601  
(312) 814-5659/1497  
Primary e-service:  
CivilAppeals@atg.state.il.us  
Secondary e-service:  
nwichern@atg.state.il.us

IN THE CIRCUIT COURT  
FOR THE FOURTH JUDICIAL CIRCUIT  
CLAY COUNTY, ILLINOIS

**FILED**

APR 27 2020

*Crystal Bodnar*  
CIRCUIT CLERK OF THE  
FOURTH JUDICIAL CIRCUIT  
CLAY COUNTY ILLINOIS

Darren Bailey

Plaintiff,

vs.

Governor Jay Robert Pritzker,  
in his official capacity.

Defendant.

Case No. 2020-CH-06

TEMPORARY RESTRAINING ORDER WITH NOTICE

This Cause coming to be heard on Plaintiffs' Motion for Temporary Restraining Order, notice having been given, the Court finds as follows:

1. Plaintiff has filed a verified Complaint and verified Motion for Temporary Restraining Order and Preliminary Injunction.
2. Plaintiff also filed a brief in support along with a supplemental brief and accompanying documentation.
3. Defendant has filed his written response.
4. The Court has considered the pleadings filed to date and has further considered the arguments of counsel made in open court on this date.
5. Plaintiff has shown he has a clearly ascertainable right in need of immediate protection, namely his liberty interest to be free from Pritzker's executive order of quarantine in his own home.
6. Plaintiffs' Verified Complaint, Verified Motion for Temporary Restraining Order and Preliminary Injunction, along with his accompanying legal brief as well as its supplement, show Plaintiff has a reasonable likelihood of succeeding on the

merits.

- 7. Plaintiff has shown he will suffer irreparable harm if the Temporary Restraining order is not issued.
- 8. Plaintiff has shown he has no adequate remedy at law or in equity in that absent a Temporary Restraining Order being entered, Plaintiff, will continue to be isolated and quarantined in his home.

WHEREFORE, based on the above findings of this Court, IT IS HEREBY ORDERED:

- A. Governor Jay Robert Pritzker, or anyone delegated by him, is hereby enjoined from in anyway enforcing the March 20 Executive Order against Darren Bailey forcing him to isolate and quarantine in his home;
- B. Governor Jay Robert Pritzker is hereby enjoined from entering any further Executive Orders against Darren Bailey forcing him to isolate and quarantine in his home;

C. This Temporary Restraining Order shall remain in full force and effect ~~for ten days from the date hereof or until~~ A DATE TO BE AGREED UPON BY THE PARTIES, NOT TO EXCEED 30 DAYS FROM TODAY, WHEREIN A PRELIMINARY INTENTION WILL BE HEARD ON THAT DATE. ~~2020, unless sooner modified or dissolved by this Court.~~

D. This Temporary Restraining Order is entered at 3:15 [a.m.] (p.m.) on APRIL 27, 2020

DATED this 27 day of April, 2020.

Michael A. May  
JUDGE

Thomas DeVore  
IL Bar No. 6305737  
**DeVore Law Offices, LLC**  
Attorney for Plaintiff  
118 North Second Street  
Greenville, Illinois 62246  
Telephone 618.664.9439  
tom@silverlakelaw.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT  
CLAY COUNTY, ILLINOIS

DARREN BAILEY, )  
 )  
Plaintiff, )  
 )  
vs. ) NO. 20-CH-6  
 )  
GOVERNOR J.B. PRITZKER, in )  
his official capacity, )  
 )  
Defendant. )

REPORT OF PROCEEDINGS of the hearing held  
before the Honorable MICHAEL D. MCHANEY on the 27th day  
of April, 2020.

APPEARANCES: MR. THOMAS DEVORE  
MR. ERIK HYAM  
On behalf of the Plaintiff  
MR. THOMAS VERTICCHIO  
on behalf of the Defendant

PREPARED BY: LORI SIMS  
Certified Shorthand Reporter  
No. 084-003424  
1431 Panther Creek Lane  
Louisville, Illinois 62858

1           THE COURT: All right. We've got some  
2 preliminary matters before we begin. First, obviously  
3 the public is in this courtroom. To the extent that  
4 that could be viewed as contravention of our  
5 Administrative Order governing the Fourth Circuit or a  
6 violation of the Governor's stay-at-home order, I and I  
7 alone take full responsibility for any ramifications for  
8 either of those.

9           The public has an absolute right to access to  
10 the courts and transparency. I cannot imagine anything  
11 more unjust than to deprive the citizens the right to  
12 view the process in which this court is asked to  
13 drastically potentially alter their lives. Therefore,  
14 you're here. However, you are here as directed by the  
15 sheriff of Clay County, who has done a phenomenal job  
16 preparing for this with respect to social distancing and  
17 our Fourth Circuit Administrative Order. Thank you,  
18 Sheriff.

19           In that vein, while you're here, there will be  
20 no public outbursts, no displays. Anybody disrupting  
21 this proceeding will be removed immediately, and, at the  
22 conclusion of this hearing, you will leave as directed  
23 by the Clay County Sheriff.

24           I'm now going to call 20-CH-6, Bailey versus  
25 Pritzker. Would the parties please identify themselves

1 for the court reporter and record.

2 MR. DeVORE: Your Honor, Plaintiff appears,  
3 Darren Bailey, by his counsel, Erik Hyam and Thomas  
4 DeVore of DeVore Law Office, sir.

5 MR. VERTICCHIO: Good afternoon, Your Honor.  
6 Tom Verticchio for Governor Pritzker.

7 THE COURT: Very well. Thank you. You may be  
8 seated.

9 MR. VERTICCHIO: Your Honor, may I?

10 THE COURT: Yes.

11 MR. VERTICCHIO: I know we had a preliminary  
12 matter that I became aware of this morning. There was a  
13 Motion for leave to file an Amicus. I know that counsel  
14 is in the courtroom, and I thought the court might want  
15 to address that.

16 THE COURT: Yeah. Let's do that. What have you  
17 got, the Hospital Association?

18 MR. WURL: Yes, Your Honor.

19 THE COURT: Would you please identify yourself  
20 for the record.

21 MR. WURL: My name is Dan Wurl of Heyl Royster  
22 Law Firm in Champaign, Illinois, and we are serving as  
23 local counsel for the Illinois Health and Hospital  
24 Association.

25 MR. OURTH: I'm Joe Ourth, Saul, Ewing, Arnstein

1 & Lehr, on behalf of the Illinois Health and Hospital  
2 Association and on behalf of the 200 members of the  
3 hospitals who are members of the Hospital Association.

4 THE COURT: And, for the record, you have filed  
5 an Amicus brief; is that correct?

6 MR. WURL: That's correct, Your Honor.

7 THE COURT: Both parties received a copy of  
8 that?

9 MR. VERTICCHIO: Yes, Judge.

10 MR. DeVORE: Yes, Judge. I got it on the way  
11 down here, sir.

12 THE COURT: Any objection?

13 MR. VERTICCHIO: None from the Governor, Your  
14 Honor.

15 MR. DeVORE: Judge, we would have an objection  
16 at this point, especially at the proceeding of a  
17 temporary restraining order. From what I understand of  
18 looking at their document, it appears to be, and, again,  
19 reading it as we were driving down here, me not driving,  
20 of course, sir, some kind of balancing of the equities  
21 or some, something of the nature that if the court would  
22 find that the Governor's Order is beyond his authority,  
23 that that would cause some undue harm within the  
24 hospitals.

25 To me, at this stage of the proceeding, that

1 issue is not in front of the court. I believe it will  
2 cloud what otherwise is a temporary restraining order  
3 hearing on the pleadings of the parties. I believe once  
4 the court gets into this and sees some of the  
5 documentation, that it will find, that even if this  
6 court would find that the Order exceeded his authority,  
7 that there are measures already in place.

8 So, to the extent that that would over-  
9 complicate what otherwise is a statutory construction  
10 and a constitutional issue, I don't believe that the  
11 Amicus brief provides any helpful insight at this time  
12 to the court. Thank you.

13 MR. VERTICCHIO: May I, Your Honor?

14 THE COURT: Yeah.

15 MR. VERTICCHIO: On behalf of the Governor,  
16 we're here on a TRO and, as you know from the briefing,  
17 Your Honor, one of the issues that the court will  
18 consider, provided that the plaintiff meets his original  
19 four requirements, is the balancing of the harms and the  
20 hardship due upon the public in the event that the Order  
21 is entered and relief granted. It appears to me that  
22 there could be no more relevant, sadly, there could be  
23 no more relevant viewpoint for the court to consider on  
24 the balancing of the harms and damage to the public than  
25 the view of the Amicus hospital, Health and Hospital

1 Association.

2 I briefly looked at the brief and declaration  
3 attached and it bears directly upon the issue of  
4 balancing the harms and the hardship upon the public.  
5 We respectfully request that the Motion be granted.

6 THE COURT: I will allow the filing of the  
7 Amicus brief, although you're not parties but you, of  
8 course, may observe.

9 MR. WURL: Thank you, Your Honor.

10 MR. VERTICCHIO: Thank you, Judge.

11 THE COURT: All right.

12 MR. VERTICCHIO: Then procedurally, Your Honor,  
13 I don't know how the court wants to proceed in terms of  
14 the order. We have filed a 2-615 Motion to Dismiss the  
15 Complaint. Granted it, by and large, goes to the  
16 likelihood of success on the merits.

17 THE COURT: It does. They're intertwined.

18 MR. VERTICCHIO: Maybe for that reason it makes  
19 sense for Mr. DeVore to present his Motion with the  
20 understanding that I will then present my 2-615 in  
21 response to the Motion for temporary restraining order  
22 if that makes sense for the court.

23 THE COURT: Makes sense to me.

24 MR. DeVORE: Your Honor, I would ask the  
25 court -- I agree with my colleague that the arguments

1 raised in the, you know, not as much the Motion to  
2 Dismiss but in their opposition brief I will call it, it  
3 does take on the issue of likelihood of success on the  
4 merits as it relates to the temporary restraining order.  
5 If they are successful in that argument, the TRO doesn't  
6 issue, but as to the issue of the Motion --

7 THE COURT: Anybody that's got a cell phone, if  
8 that goes off again, the sheriff is going to confiscate  
9 it and you're out of here. Go ahead.

10 MR. DeVORE: Thank you, Your Honor. Your Honor,  
11 the Motion to Dismiss was filed and the Notice of  
12 Hearing on that Motion to Dismiss was received by our  
13 office roughly an hour ago. Local Rule 501(d) says that  
14 Notice of Hearing has to be presented to the opposing  
15 party no later than the second court date preceding the  
16 hearing. So I would ask the court merely to entertain  
17 the likelihood of success on the merits issue as it  
18 relates to the TRO and then, regardless of whether the  
19 court grants or denies, I believe the governor's Motion  
20 to Dismiss could be taken up at a later date where we  
21 can address those issues fully.

22 MR. VERTICCHIO: Your Honor, this is an  
23 emergency proceeding. The Motion was -- the Complaint  
24 was filed on Friday. We were served with it on Friday,  
25 the Motion to Dismiss filed Monday morning. We are on

1 the fast track as we all know. As a matter of fact, I  
2 received a supplemental brief last night from  
3 plaintiff's counsel, don't hold me to the precise time,  
4 but I think it was 1:05 a.m. Monday morning. There's a  
5 lot going on.

6 It seems to me that the Motion to Dismiss is  
7 directly tied to the likelihood of success. It's the  
8 same arguments on the legal issues --

9 THE COURT: Yeah. Basically the same argument.  
10 All right. I'm going to find I can walk and chew gum at  
11 the same time. I'm going to consider them both and the  
12 whole giant argument and we'll sort it out later. You  
13 may proceed, Petitioner.

14 MR. DeVORE: Understood, sir. Your Honor, my  
15 client brought this cause of action under declaratory  
16 judgment and request for preliminary injunction and  
17 temporary restraining order. The temporary restraining  
18 order request is verified and it was filed in this  
19 court.

20 As the court is aware and my colleague is aware,  
21 there's four elements that are required in order for a  
22 temporary restraining order to issue. They are a right  
23 in need of protection, they are irreparable injury, they  
24 are no adequate remedy at law, and likelihood of success  
25 on the merits. I would like to address each one of

1 those individually for the court. I'm going to leave  
2 likelihood of success on the merits for last because, as  
3 the court is aware, that is one of the most complicated  
4 ones.

5 As to the issue of right in need of protection,  
6 as was brought up briefly on, which is now in the record  
7 of the court on their request for a continuance, the  
8 right in need of protection is a liberty interest. It  
9 is a liberty interest as pled in this case of my client  
10 but it's also the same liberty interest of every citizen  
11 of this state. But as to Mr. Bailey, the liberty  
12 interest of him being ordered by the executive branch of  
13 this state to stay in his home unless he is engaged in  
14 an essential activity that the Governor's office has  
15 also defined what's essential with someone, we don't  
16 know who, and, if he does that, if he doesn't follow  
17 that order, he could be subject to some prosecution,  
18 persecution, whatever we want to call it, we don't  
19 really know, we haven't seen that yet, but ultimately  
20 some mechanism by which my client could be sanctioned  
21 for not staying at home unless it's an essential task or  
22 work or food, it's been defined by the same executive  
23 branch. That is a right in need of protection, one of  
24 which I'm not sure there could be a greater right in  
25 need of protection for this court to consider.

1           Now, there's been some -- I want to throw this  
2 in just briefly. There's been some response by the  
3 Governor's office that says, well, Mr. Bailey hasn't  
4 adhered to that so he's really not subject to this stay-  
5 at-home order. If my client has chosen to leave his  
6 home not for an essential task, he has, at least as we  
7 sit right now in the state of the executive order,  
8 potentially subjecting himself to punishment. That's  
9 the right in need of protection here, Judge, not whether  
10 you choose to peacefully disobey, which I would call  
11 that, the fact that the order has been issued that says  
12 if you do this, you could be subject to violation of  
13 this order. That's the right, Judge, and we would ask  
14 the court to find that that, there's really no contest  
15 that my client has raised a right in need of protection.

16           The issue of irreparable injury is next, which  
17 is kind of coupled with that, is what injury, should  
18 this court not enter a temporary restraining order, would  
19 Mr. Bailey suffer? Again, briefly argued to this court  
20 in the motion to continue by the state, by the  
21 Governor's office was that there is no prejudice. Every  
22 day that goes by that this Executive Order has been in  
23 effect is irreparable to my client. To be told by the  
24 executive branch of this state that if he does not stay  
25 in his house, unless you leave it for a reason I say you

1 can leave, every day that goes by, that is an  
2 irreplaceable violation of his liberty interest. You  
3 can't get that back.

4           Maybe my client chose to want to go peacefully  
5 go to his neighbor's house and see how his friend's  
6 doing. I don't know what he does for a living, or what  
7 he does for entertainment, but that's a violation,  
8 Judge, and it's irreparable. You cannot get that back.  
9 So I would ask the court to find that there's really no  
10 contest as to that one.

11           Adequate remedy at law. That's where we're at  
12 right now. The executive branch has said, and I think  
13 they've said in their response that they filed with this  
14 court, that the Governor has the constitutional power to  
15 use the police power any way he sees fit. And as we sit  
16 here today, and I'm saddened on behalf of my client and  
17 the rest of the people of this state, that the  
18 legislature has not done a thing. They haven't met  
19 since May (sic) 5th.

20           The first proclamation of disaster was entered  
21 on March 9th. Four days before that was the last day  
22 they convened. They have not convened since. I've  
23 asked my representatives, Mr. Bailey should probably ask  
24 his, why are you not convening? We don't know. But is  
25 there a remedy in the legislature? I don't think we

1 need to look to it for that, but I would just point out  
2 to the court that if, in fact, my client's case is found  
3 to have merit by this court, part of that merit is the  
4 fact that the legislature has sat by idly and watched  
5 the executive branch usurp its authority and has not  
6 done anything.

7 So my client's only adequate remedy at law is to  
8 come to the third branch of government, which is this  
9 court, and ask them for redress. That's the only choice  
10 he has.

11 THE COURT: But the attorney general is going to  
12 argue he does have an adequate remedy of law. It's  
13 already passed. The Governor can pass these continuing  
14 disaster proclamations every 30 days or beyond.

15 MR. DeVORE: That's what he's going to argue.  
16 Yeah.

17 THE COURT: You've got an adequate remedy right  
18 there.

19 MR. DeVORE: The remedy being the executive  
20 branch?

21 THE COURT: Yeah. That's what he's going to do.

22 MR. DeVORE: He's going to try, I'm sure. So as  
23 to the adequate remedy at law, my client's position is  
24 for a court to find that the Governor's orders that he  
25 is issuing exceed his authority.

1 THE COURT: Let's just get down to it.

2 MR. DeVORE: Yes.

3 THE COURT: What's your arguing is the Governor  
4 can do what he did for 30 days and that's it absent  
5 further legislative approval. Isn't that what you're  
6 saying?

7 MR. DeVORE: Under the Illinois Emergency  
8 Management Act, yes. Under the Department of Public  
9 Health Act, I would say it's different.

10 THE COURT: Yeah. It's vastly different there  
11 because there, Attorney General, you get a lawyer. You  
12 get judicial review. You can't do this stuff longer  
13 than 48 hours until you go to court.

14 MR. DeVORE: That's what we're getting to. Yes,  
15 sir.

16 THE COURT: Anyway.

17 MR. DeVORE: Yes, sir. I agree with the court.  
18 So, again, after the adequate remedy at law, again,  
19 there is a law that we're getting to on the likelihood  
20 of success on the merits. My client has to prove to  
21 this court today, not that he can succeed on the merits,  
22 which is why I would ask the court, at least for the  
23 record, to find I still have an objection to hearing the  
24 Motion to Dismiss because my burden on the TRO today is  
25 merely likelihood of success, which is different than

1 the Motion to Dismiss for stated claim, but I just want  
2 that noted, Judge.

3 Likelihood of success on the merit, has my  
4 client put forth enough information in front of this  
5 court to say, yes, there is a chance here of some merit  
6 that he is going succeed, at what? Succeed that the  
7 Governor exceeded his authority to force him, through an  
8 Executive Order, to stay in his house.

9 Now, what I think is interesting about this,  
10 Judge, is, in their response, the Governor takes the  
11 position that -- because we cite the Illinois Department  
12 of Public Health rules and regulations and the act that  
13 talks about isolation and quarantine. The Governor  
14 takes the position in this court that, well, telling  
15 someone to stay at home but they can leave for these  
16 reasons I said they can leave is not tantamount to a  
17 quarantine. That's some interesting mental gymnastics,  
18 Judge, and I would ask the court not to entertain that.  
19 Telling someone that they can't leave their house except  
20 for these reasons is tantamount to a quarantine. I'll  
21 get to that.

22 Illinois Emergency Management Agency Act, 20  
23 ILCS 3305/2, the court has it, the court has read it.  
24 The language of it is not ambiguous. As my colleague on  
25 behalf of the Governor would say, he believes there's

1     ambiguity so I would like to go to the statute, and I  
2     have it in front of me, and the statute, by our  
3     legislature, in Section 2, subsection (a)(2), it does  
4     intend to confer upon the Governor and upon the  
5     principal executive officer the powers provided herein.  
6     So something herein the legislature intended to grant  
7     that power to the Governor. It was a delegation of some  
8     legislative authority to the executive branch, and we  
9     have to look at see what those are.

10            Before -- I'm going to go through the statute as  
11     it reads, Judge. The first thing before certain powers  
12     are triggered, as the court has read and the attorneys  
13     here know, we have to have a disaster. What is a  
14     disaster? The statute helps us with that. A disaster,  
15     and I'm going to parse the language because, as we all  
16     know, it's written by lawyers and there's a lot of  
17     words, but I've parsed it out, a disaster means an  
18     occurrence.

19            THE COURT: Aren't you conceding there's a  
20     disaster?

21            MR. DeVORE: Yes, but there's a point to make,  
22     Judge. Yes. A disaster means an occurrence, which it  
23     could include loss of life from any natural cause  
24     requiring emergency action to avert is what the language  
25     says, a public health emergency. So if the Governor

1 chooses to issue a disaster proclamation under COVID-19,  
2 that's what he would look at, and he did that on  
3 March 9th. It's not been contested that I'm aware of.  
4 My client is not contesting that in this court today.  
5 That was issued on March 9th, Your Honor.

6 If I flip to Section 6, it talks about certain  
7 powers that the Governor has about preparing plans and  
8 doing things to help keep people, you know, with other  
9 agencies, and that's not really in front of the court  
10 today, but Section 7 is where we get to, Your Honor.

11 THE COURT: That's 30 days.

12 MR. DeVORE: Emergency powers of the governor,  
13 and I want to parse this really close if I may, sir.  
14 And just for the court's clarification, the government  
15 has taken the position that this language is ambiguous  
16 somehow. In the event --

17 THE COURT: Are you?

18 MR. VERTICCHIO: Not at all, Your Honor.

19 THE COURT: I didn't think he was either. I  
20 thought he said -- he's saying it's clear that the  
21 Governor can just issue these 30-day proclamations as  
22 long as he wants.

23 MR. DeVORE: True, which would be an  
24 interpretation. I'm sorry, sir. Go ahead.

25 MR. VERTICCHIO: As long as it's declared a

1 disaster.

2 THE COURT: All right.

3 MR. DeVORE: Fair enough. Let's talk about  
4 that, Judge. In the event of a disaster as defined in  
5 Section 4, which we just went through, and I think -- I  
6 don't believe there's a dispute in this court, and I'm  
7 asking the court not to find there's a dispute, that  
8 that disaster proclamation on March 9th was COVID-19.  
9 Okay.

10 So, in the event that disaster was proclaimed,  
11 the Governor declared a disaster exists. Upon such  
12 proclamation is the language, the Governor shall have  
13 and may exercise for a period not to exceed 30 days the  
14 following emergency powers. I'm going to go on in a  
15 lower part of the statute before I come back to the 30,  
16 Judge, because when we're talking about whether they can  
17 be, and I use the language on behalf of my client, re-  
18 energized with a new proclamation, et cetera, provided,  
19 however, that the lapse of the emergency powers shall  
20 not, as regard to any act committed within the 30 days,  
21 deprive any person of any rights they may have.

22 So what that was saying and what the legislature  
23 is saying is, upon lapse, you still have certain rights  
24 as people. So I would ask the court to consider that  
25 the legislature obviously recognized that after 30 days

1 there would be a lapse in the power at least as it  
2 relates to the disaster that was promulgated at the  
3 onset.

4           The Governor, when he -- and, again, going  
5 through these powers, Judge, we have the power that, it  
6 seems fair to say, the Governor is trying to invoke  
7 here, to control ingress and egress to and from a  
8 disaster area, the movement of persons within the area,  
9 and the occupancy of premises therein. The Governor,  
10 again, has interpreted that language, that that means he  
11 can tell every person within the whole state to stay at  
12 home, not arguing -- I'm asking the court just to  
13 consider that in its totality. We're certainly not here  
14 today arguing that that Executive Order exceeded that  
15 language. We're arguing that it exceeded the 30 days,  
16 because I wanted to point that out to the court that  
17 there has been an interpretation that that language says  
18 you can make people stay at home.

19           Now here's the clever part, Judge, of the  
20 March 19th order that I would ask the court to look at.  
21 The disaster proclamation of March 9th said that  
22 COVID-19, and I have it here in front of me,  
23 proclamation, the proclamation of March 9th, Your Honor,  
24 I just had to go to it, where it has all of the  
25 whereas that the court can see, based on the

1 foregoing, the circumstances surrounding COVID-19  
2 constitute a public health emergency under Section 4.

3 Then you flip to the -- he does the Executive  
4 Order, and the Executive Order refers to, and I want to  
5 point this out because my colleague, I believe from his  
6 brief, is going to come to a constitutional argument,  
7 therefore, under the Executive Order of March 20th that  
8 we're arguing about, by the powers vested in me as  
9 Governor of the State of Illinois, and pursuant to  
10 Sections 7(1), 7(2), 7(8), 7(10) and 7(12) of the  
11 Illinois Emergency Management Agency Act, 20 ILCS 3305,  
12 so that's where he cites the Emergency Management Act,  
13 and -- this is going to get a little bit interesting  
14 later, Your Honor -- and consistent with the powers in  
15 public health laws.

16 So the Governor, in this Executive Order  
17 restraining my client in his home, says I'm doing that  
18 under the Emergency Management Act and within the powers  
19 of public health laws. And then he goes on to issue the  
20 stay-at-home order in that March 20th Executive Order.  
21 That March 20th Executive Order, Your Honor, was by, on  
22 its face, I'm going to flip back to it, on its face I  
23 believe was set to expire on the 7th of April. I want  
24 to make sure that I provide that paragraph to the court.  
25 Here it is, Judge, under first page, March 21st at 5:00

1 for the remainder of the duration of the Gubernatorial  
2 Disaster Proclamation, which currently and through  
3 April 7, 2020. So this order was set to expire on  
4 April 7th.

5 Now the Governor, when he issued the first  
6 proclamation of a disaster --

7 MR. VERTICCHIO: Your Honor, I'm sorry, but if  
8 the record is going to reflect that counsel is quoting  
9 from the order, it doesn't say and, it says extend.

10 MR. DeVORE: Could you clarify that, counsel?  
11 Where at?

12 MR. VERTICCHIO: You just read it, counsel.  
13 Which currently extends through April 7th.

14 MR. DeVORE: Okay. Currently extends through  
15 April 7th.

16 MR. VERTICCHIO: Thank you.

17 MR. DeVORE: Now the proclamation that was  
18 entered on March 9th, interestingly enough, Your Honor,  
19 had a 30-day time frame in the disaster proclamation.  
20 There's nothing in the statute that says disaster  
21 proclamations have a 30-day limitation. It just says  
22 you can issue a disaster proclamation. Nonetheless, the  
23 Governor put in a 30-day limitation on that  
24 proclamation. And, again, this order of March 20th that  
25 he entered ordering stay in place of my client through

1 the Emergency Management Act, and presumably consistent  
2 with the powers in the public health laws, extended  
3 through April 7th.

4 Absent some argument that this order, before  
5 April 1st when we have the new proclamation ordering my  
6 client to stay at home, would not be through the  
7 Emergency Management Act as we're here today but it  
8 could be through the public health laws because the  
9 Governor cites that as authority.

10 Now, getting to the April 1st proclamation,  
11 Judge, is where the power being exerted by the Governor  
12 through the Emergency Management Act becomes a lot more  
13 precarious and I believe can no way be reconciled with  
14 the plain language of the statute.

15 The Governor, in this he calls the proclamation  
16 of the COVID-19 virus a continuing disaster. He doesn't  
17 call it a new disaster. He doesn't say the disaster has  
18 migrated in one way or another. He calls it a  
19 continuing disaster, which I believe this court can say  
20 and I believe makes sense with just interpreting of  
21 language, it was the same disaster, it just was still  
22 ongoing at that point in time. Why the Governor chose  
23 to, again, put 30 days on the first disaster and have it  
24 and that proclamation and then have a new proclamation  
25 that just says, oh, yeah, it's continuing, I don't know

1 why he added the temporary restraining order change.

2 THE COURT: How about because he knew he only  
3 had a 30-day limit?

4 MR. DeVORE: I'm going to present that to the  
5 court as probably why but, again, I'm not going to  
6 speculate on the good intentions of the Governor.

7 So when this new proclamation gets entered on  
8 April 1st, Your Honor, saying we have a continuing  
9 disaster, a new one, we all know it's the same disaster,  
10 the Governor obviously contemporaneously with that  
11 issues another Executive Order pushing his emergency  
12 powers down another 30 days to the end of April.

13 Now, statutory construction, I would ask the  
14 court to consider this: If the legislature of the state  
15 of Illinois intended to let the Governor have some sort  
16 of emergency power, whether that power includes making  
17 you stay at home or not, let's set that aside for a  
18 second, if you were going to let the Governor have  
19 emergency powers that extended for the duration of a  
20 disaster, they could have written that. They could have  
21 written in there that these emergency powers will last  
22 so long as the COVID-19 disaster is still a public  
23 health emergency. That would have been pretty easy.  
24 Now whether or not that exceeded their delegation of  
25 authority from a constitutional perspective, we're not

1 at that today.

2 All we're saying is they clearly, when they  
3 wrote this statute, didn't intend in any way to allow a  
4 Governor, the office of Governor, I'm not even using our  
5 current Governor's name, an office of Governor to  
6 exercise these emergency powers into perpetuity by  
7 merely bootstrapping new proclamations every 30 days for  
8 the same disaster. I mean the disaster is the disaster,  
9 and that's what the Governor, in his Emergency Manage-  
10 ment Act proclamations, is doing.

11 THE COURT: While we're on that subject,  
12 Attorney General, the speaker of the house, Illinois  
13 house, could propose an amendment to this Emergency  
14 Management Act and grant the authority the Governor  
15 seeks in perpetuity or as long as the Governor deems  
16 there to be a disaster and he could pass that in a New  
17 York minute, couldn't he?

18 MR. VERTICCHIO: Well, I think the speaker of  
19 the house could bring that to the floor and --

20 THE COURT: Exactly, for which then there could  
21 be debate and an up or down vote and transparency so the  
22 citizens could see who was voting for this and who  
23 isn't. That could be done.

24 MR. VERTICCHIO: Sure. And, Your Honor, we're  
25 here today to talk about what was done. What did the

1 legislature do.

2 THE COURT: I get that.

3 MR. VERTICCHIO: Not what they might do.

4 THE COURT: I'm just saying that in response to  
5 something in your brief that says if I dissolve this, or  
6 if I grant this TRO, we're going to kill millions of  
7 people. Okay. Go ahead.

8 MR. DeVORE: Thank you very much, Your Honor.  
9 What the court just suggested -- and I understand my  
10 colleague's response that what we're here for today is  
11 what happened and not what could happen, but what could  
12 happen -- I still think the court can use that analysis  
13 of its significant time of experience to say I know what  
14 was meant by this statute and those were the things that  
15 can happen.

16 Now, granted, if the legislature would do what  
17 the court is talking about and grant that authority in  
18 public on the floor, people see how they vote, citizens  
19 still could seek reprieve in a court saying that was an  
20 excessive delegation of legislative authority.

21 THE COURT: That argument is for another day.

22 MR. DeVORE: Absolutely, sir. So as it relates  
23 to the Illinois Emergency Management Act, again, Your  
24 Honor, once the order of April 1st, the Executive Order  
25 which then re-energized the 30 days of power under the

1 Emergency Management Act according to the Governor by  
2 his actions, I would ask the Court to find there's a  
3 likelihood of success on the merits that there's no  
4 language in the act as it's written that supports that  
5 proposition and, as a matter of fact, as the court's  
6 aware from statutory construction, if we, as jurists in  
7 courts, interpret language of the statute that vitiates  
8 completely one of its provisions, that's not something  
9 we should do.

10           So if the court chose and decides to say, yes,  
11 there is a proper -- again, I'm calling them serial  
12 proclamations -- they could arguably give the Governor  
13 the authority to use these emergency powers until COVID  
14 is over. I'm not even here suggesting to the court  
15 that's a good or bad idea, whether or not that best  
16 serves the people. That's all a different issue. The  
17 act can't be read to suggest that because, if it does,  
18 the words of lapse and the words that they shall not,  
19 you know, exceed 30 days, those are rendered meaning-  
20 less. They don't mean anything anymore and the  
21 emergency powers could continue forever.

22           So as to the Emergency Management Act, that is  
23 where we believe we have presented a likelihood of  
24 success on the merits that the Governor exceeded the  
25 delegated authority granted him under the Illinois

1 Emergency Management Act.

2           The supplemental brief that we provided to the  
3 court tells, and some of the cases my colleague provided  
4 the court in response gives some history and some  
5 authority to this court that, when I read it -- I'm a  
6 50-year-old person, Judge, and I thought, man, this is a  
7 new issue. I've got to figure this out. This almost  
8 identical issue existed in the halls of our courts  
9 100 years ago as to people being ordered to stay at home  
10 and whether or not that was a proper exercise of  
11 authority. The law now has -- what I have in front of  
12 me is the Department of Public Health Act. Let me grab,  
13 Your Honor, and this is a significant issue that I hope  
14 I do service, Your Honor. This act, Your Honor, is in  
15 some of the case law, again, that my colleague cited on  
16 behalf of the Governor.

17           This Department of Public Health Act must go  
18 back, again, at least as early as 1922 when our Supreme  
19 Court rendered an opinion that is significant. So I  
20 have the, and I've provided it to the court, 20 ILCS  
21 2305, Department of Public Health Act, and it has some  
22 language within it that I think the court should  
23 consider and it also has the Pandemic Influenza  
24 Preparedness and Response Plan. Those pieces of  
25 information, along with the cites that have been given

1 in these cases, I believe the court will find, when this  
2 is over today and I'm done presenting it, that not only  
3 did the Governor exceed his authority under the Illinois  
4 Emergency Management Act, regardless of that and  
5 independent of that, he never had any authority in the  
6 first place as it relates to quarantine and isolation.  
7 He didn't have any. I would like to -- again, let me go  
8 through and get my documents here and I'm going to  
9 provide that to the court. 20 ILCS 2305, Powers. The  
10 State Department of Public Health has general  
11 supervision of the interests of the health and lives of  
12 the people of the State. Next sentence, Judge. It, the  
13 Department of Public Health, has supreme authority in  
14 matters of quarantine and isolation, and may declare and  
15 enforce quarantine and isolation when none exists.

16 The legislature, the police making the laws, you  
17 know, police laws that they made gave that authority,  
18 not to the Governor. I mean we have two statutes here  
19 the court is considering. One I've argued he exceeded  
20 in the Emergency Management Act. There is no specific  
21 delegation of quarantine in the Emergency Management  
22 Act. It talks about how he can control the movement of  
23 people within a disaster area. I would suggest to the  
24 court that's probably not quarantine.

25 Our legislature, exercising its police powers,

1 which they have, gave that to a completely independent  
2 body. Now they're under the Governor's office, but when  
3 I get done presenting this to the court, I'm interested  
4 to see how this gets responded to by the Governor.

5 Attached to the document that we've given you,  
6 Judge, with the statute is a copy of, and it's required  
7 by the statute, and I want to provide this to the court  
8 and pray I do it justice, to the concerns of the people  
9 of the state, maybe people in this room, that if this  
10 court finds this order to be excess of his authority  
11 that people's lives are at risk. They're not, Judge,  
12 and I would tell the court they're not because this  
13 issue has been reduced to a 120-page plan by the State  
14 Department of Public Health Pandemic Influenza  
15 Preparedness and Response Plan. It's right here for the  
16 court to see. I've got some pages of it that I want to  
17 cite. It refers to the statute and it's promulgated  
18 under the statute, and what I think the court will find  
19 interesting is that seven days before our Governor  
20 issued his first proclamation of disaster, they made  
21 some ministerial changes to this document, nothing  
22 significant. They added our new director, Miss Ezike,  
23 to it. This document was being circulated through when  
24 the COVID-19 was an issue for our country and right  
25 before the proclamation.

1           The court has it there. I'm going to start  
2 where the issues that I think are relevant to the court  
3 start on about page 66. In these rules, again, Judge,  
4 which are grounded in the authority granted the  
5 Department of Public Health by our legislature who holds  
6 the police powers of this state, Restriction of Movement  
7 or Activities to Control Disease Spread. There's a  
8 whole section in here about that that the Department of  
9 Public Health has, and it talks about quarantines and it  
10 talks about the different types of quarantines.  
11 Quarantine is not effective in controlling multiple  
12 influenza outbreaks in large, and it goes on to talk  
13 about, even if quarantine on a grand scale might be  
14 effective in controlling influenza in large populations,  
15 it would damage the economy by reducing the work force.  
16 That's in their own plan.

17           The issue of how do they enforce this.

18           THE COURT: Are you arguing that we don't need  
19 the Executive Order to save millions of lives? If we  
20 just follow that, we're all going to be just fine. Is  
21 that what you're saying?

22           MR. DeVORE: I'm saying that that's what this  
23 document was prepared for this issue, and I have two  
24 Supreme Court cases that took this issue on 60 and a  
25 hundred years ago that said the legislative branch and

1 the Department of Public Health controls isolation and  
2 quarantine and they are better served -- I want to read  
3 some of this on the record if I could -- they are better  
4 served as a board to legislate through the delegation by  
5 the legislature to do that than one person. Our Supreme  
6 Court a hundred years ago, Judge, and I want to get to  
7 that, says that one person making these decisions is not  
8 what this country is all about and I will get to that,  
9 but what I'm saying is, yes, sir, I'm saying this 120-  
10 page document -- and you know what it says, Your Honor?  
11 It says in here that these decisions, and I called on  
12 county health departments, but the decisions of  
13 quarantine and isolation, and you know what else,  
14 closure of businesses is controlled through the  
15 legislature through the Illinois Department of Public  
16 Health down to every county health department within the  
17 102 counties that we have.

18 That's what the law says, and it's in here and  
19 they've had it and they were inside of it making  
20 ministerial changes seven days before the proclamation  
21 was entered.

22 THE COURT: That document, that provides right  
23 to counsel, judicial review and all of that, correct?

24 MR. DeVORE: The plan cites the statute and the  
25 statute says, here's what it says, it says if the, and I

1 can tell you, I had to go ask, communicable, that's a  
2 big word, disease nurse, Bond County is where I live,  
3 sir. There's a communicable disease nurse, and I don't  
4 want to say her name, if you were believed to have any  
5 contagious disease ever, not just COVID-19, she has the  
6 ability to go to our administrator and our administrator  
7 will then send a letter to that person, the notice. You  
8 know what, the statute requires a notice to that person  
9 that says we have determined you have this disease and  
10 we need you to either voluntarily quarantine or not and,  
11 if you don't, the board can go to our state's attorney,  
12 whose name is Dora Mann, and it says they can get an  
13 order from the judge saying you have to quarantine and  
14 giving them 48 hours to appear with counsel to be heard.  
15 That's in place, Judge. That's always been in place.

16 THE COURT: I get that. What if, instead of  
17 COVID-19, what if this was a mutation of Ebola with a  
18 hundred percent kill rate? Isn't that what this  
19 Emergency Management Act is designed to prevent and what  
20 these Executive Orders are designed? There's no time  
21 under that act to do what you're saying. There's no  
22 time. You've got to socially isolate and shut this  
23 place down or everybody is going to die.

24 MR. DeVORE: I agree with you 100 percent, and  
25 you know what this plan says, Judge? It says that

1 decision, the legislative branch of our state has  
2 delegated that decision making to the Illinois  
3 Department of Public Health, not to the executive branch  
4 of Governor.

5 THE COURT: But they did in the Emergency  
6 Manage- ment Act.

7 MR. DeVORE: They're trying to say that they  
8 did. Correct. Yeah.

9 THE COURT: All right.

10 MR. DeVORE: And -- well, I'm going to point  
11 that out, too, Judge, because I'm interested to hear  
12 what my colleague says, is that they have now in their  
13 response said that their authority was grounded in not  
14 only the Illinois Emergency Management Act but it's  
15 grounded in the constitution. Now, I went back and  
16 looked to make sure I didn't miss anything, and in the  
17 proclamations and orders that were entered, it  
18 specifically says we have issued these orders pursuant  
19 to these sections of the Illinois Emergency Management  
20 Act and it's consistent with public health laws. It's  
21 not consistent with this public health law, Judge.

22 It completely contradicts it. Not only does it  
23 contradict it and usurp it, it strips the fundamental  
24 due process rights away from every citizen, including  
25 Mr. Bailey. For those reasons, Judge, we believe that

1 the mechanisms that are in place, they've been in place,  
2 and I want to end this -- I have one case that my  
3 colleague cited, Judge, that I would like to hand the  
4 court and I would like the record to reflect -- I want  
5 the court to appreciate -- may I, sir?

6 THE COURT: Yeah.

7 MR. DeVORE: That this issue -- this was a  
8 typhoid issue of 1922 I believe is when the case was  
9 issued, Judge, but this was a writ of habeas corpus to  
10 where a citizen of our state said that they were being  
11 held against their will for all intents and purposes.  
12 This was, and I'm on page 4 of 13, this lady's name was  
13 Jennie Barmore, and she filed in the court an  
14 application for writ of habeas corpus, in English that  
15 means I'm being held against my will, stating that she  
16 was unlawfully restrained of her liberty at her home in  
17 Chicago by the commissioner of health. It goes on and  
18 talks about the health of the people is unquestionably  
19 an economic asset and social blessing and the science of  
20 public health is of great importance.

21 Now here when I get to page 6 is where this case  
22 law that I would ask the court to consider, the  
23 preservation of the public health is one of the duties  
24 devolving upon a state as a sovereign power will not be  
25 questioned. It is. The health of the people in our

1 state is, it is important. Among the objects sought to  
2 be secured by governmental laws, none is more important  
3 than the preservation of the public health. The duty to  
4 preserve the public health finds ample support in the  
5 police power, which this is the part of the case I  
6 believe my, the Governor cites, which is inherent in the  
7 state, and which the state cannot surrender. That's  
8 true, too. Every state has acknowledged power to pass  
9 and enforce quarantine, health and inspection laws,  
10 quarantine, health and inspection laws to prevent the  
11 introduction of disease, et cetera, and such laws must  
12 be submitted to by individuals.

13 So what that says, Your Honor, is that under  
14 these circumstances through the powers given to certain  
15 departments by the legislature, is that we, as citizens,  
16 sometimes may have to yield. We understand that and I  
17 think my client understands that. Generally speaking,  
18 what laws or regulations are necessary to protect public  
19 health and secure public comfort is a legislative  
20 question, and appropriate measures intended and  
21 calculated to accomplish these ends are not subject to  
22 judicial review, and what that goes on to say is that  
23 when someone eventually makes it to your court saying  
24 that they've been held in violation of their rights,  
25 this court would apply an arbitrary and capricious

1 standard of whether or not they have been restrained.

2           Next paragraph, Judge. The legislature may, in  
3 the exercise of the police power of the state, create  
4 ministerial boards, Illinois Department of Public  
5 Health, with power to prescribe rules and impose  
6 penalties for their violation and provide for the  
7 collection of such penalties.

8           So there's been a lot of conversation that the  
9 court may have heard, well, how does a governor enforce  
10 this? That's a good question. Here's how the Illinois  
11 Department of Public Health enforces it and it's right  
12 here, the exercise of the police power is a matter  
13 resting in the discretion of the legislature or the  
14 board or tribunal to which the power is delegated and  
15 the courts will not interfere with this exercise unless  
16 it's arbitrary or capricious. This is a 1922 case,  
17 Judge, and I'm going to come to the end of something  
18 that this case says, that this court said. The  
19 legislature has granted the power to appoint a board of  
20 health and to prescribe its duties and powers. A board  
21 of health must necessarily consist of more than one  
22 person and powers. Many authorities contend that the  
23 administration of public health should be vested in an  
24 individual, and that that individual may be trained in  
25 the science of public health. This contention is based

1 on the ground that this form of administration of the  
2 health laws is productive and efficient.

3 Please bear with me, Judge. This is so  
4 important. The same argument might have been made in  
5 favor of an absolute monarchy, but the experience of the  
6 world has been that other forms of government, perhaps  
7 more cumbersome and less efficient, insure to the people  
8 a more reasonable and less arbitrary administration of  
9 the laws. Whatever may be best, legislature of Illinois  
10 has said that the public health shall be regulated and  
11 guarded by the board of health. Until the legislature  
12 grants to cities, this was a city case, the power, they  
13 must contend with the board of health. That's what this  
14 case said, Judge, a hundred years ago, and that's what  
15 I'm asking this court to say today.

16 We have an Emergency Management Act. Does it or  
17 does it not give the Governor the power at all to  
18 quarantine people? I would say it's in -- I think the  
19 act for the Department of Public Health is clear. It  
20 says we are the supreme power. I don't know how many  
21 times I may have seen you have the supreme power. If  
22 the court is looking at these two statutes, I think it's  
23 clear to say the Department of Public Health statute is  
24 more specific.

25 Coming back to the Illinois Emergency Manage-

1 ment Act, did it grant the Governor the power to  
2 quarantine, not just save people from going into a  
3 disaster area? If we had a nuclear disaster, the  
4 Governor saying who can go in there and who can't go in  
5 there, that's important movement of people, but to take  
6 it to the point of moving a people, being quarantining  
7 the whole state, I think if the court looks at the plan  
8 that we have here, it actually says that those aren't  
9 really good ideas because it's hard to enforce and would  
10 damage the economy. Their own plan, Judge, vitiates the  
11 actions of the Governor.

12           So I'm asking the court to say Illinois  
13 Department of Public Health Act, the legislature who  
14 holds the ultimate police power, has given that to the  
15 Board of Health. We have a mechanism in place through a  
16 120-page Pandemic Influenza Response. Every county in  
17 our state has something in place right now. That's the  
18 protection that our legislature has set up to handle  
19 these matters. The Illinois Emergency Management Act  
20 clearly gave the Governor the ability to enter some kind  
21 of orders within 30 days. He has now used a serial  
22 proclamation to try to do that. That doesn't appear to  
23 be required, or allowed by the statute itself, and, even  
24 if the court might get that far, which I'm asking it not  
25 to, that interpretation should not exceed the express

1 and clear legislative mandate of the Illinois Department  
2 of Public Health. Thank you very much, sir.

3 THE COURT: What say you, Mr. Attorney General?

4 MR. VERTICCHIO: Thank you, Your Honor. Your  
5 Honor, the Illinois General Assembly passed the  
6 Emergency Management Agency Act and, when it did, in the  
7 introduction, here's what it said as to why the act was  
8 passed, quote, to insure the state will be prepared to  
9 and will adequately deal with any disasters, preserve  
10 the lives and property of the people of this state and  
11 protect the public peace, health and safety in the event  
12 of a disaster.

13 Section (2) (a), the Act also grants the Governor  
14 the authority to declare by proclamation that a disaster  
15 exists and to exercise emergency powers pursuant to that  
16 disaster proclamation.

17 THE COURT: That preamble there just said to  
18 protect property, is that right?

19 MR. VERTICCHIO: That's one of the things.  
20 Lives, property, peace, health.

21 THE COURT: This Executive Order is absolutely  
22 destroying people's property. It's killing them. It is  
23 keeping them from working, making a living. How is that  
24 preserving property?

25 MR. VERTICCHIO: Well, it's a judgment to be

1 made, Your Honor, and it's a judgment that's being made  
2 not only in Illinois but across the country, indeed, the  
3 world and lives --

4 THE COURT: Well, with respect to that, how  
5 about the couple of states who never shut down in the  
6 first place? How about the states right now who are  
7 opening?

8 MR. VERTICCHIO: And that's the judgment that  
9 the governors of those states made within their  
10 executive power. In Illinois, Governor Pritzker made a  
11 different judgment. He made a judgment that he had the  
12 right to make under the act, and what's interesting  
13 about the act and the proclamation and, in fact, the  
14 30-day successive, multiple orders is that since the  
15 decades that the act was passed, Governors Rauner,  
16 Quinn, Pritzker, have passed successive and multiple,  
17 made successive and multiple proclamations and then, on  
18 that proclamation, issued executive orders regarding the  
19 declaration of a disaster.

20 THE COURT: Aren't you talking about flooding?

21 MR. VERTICCHIO: Several of them were flooding,  
22 Your Honor.

23 THE COURT: There is --

24 MR. VERTICCHIO: One of them was H1N1.

25 THE COURT: There is a vast difference between

1 being allowed to ask the federal government for disaster  
2 loans for farmers in a flood and an executive order that  
3 shuts down my right, my constitutional right to work, to  
4 travel, to exist, isn't there?

5 MR. VERTICCHIO: Well, excepting, Your Honor,  
6 the issue that the plaintiff brings is under this  
7 statute, does the Governor have the right to make  
8 multiple or successive declarations of a disaster and,  
9 therefore, upon that proclamation, trigger emergency  
10 powers for a period of 30 days, and the history of this  
11 act with multiple governors is yes, and now --

12 THE COURT: Does the Governor -- does the  
13 Governor have the right to shred the constitution for  
14 longer than 30 days? That's the issue, isn't it?

15 MR. VERTICCHIO: Well, the legislature  
16 promulgated the act and gave the Governor vast powers.

17 THE COURT: They certainly are vast.

18 MR. VERTICCHIO: They are. They are, and I  
19 think the key section is the one that counsel pointed  
20 out. It's Section 7. That's what we're here about  
21 today.

22 THE COURT: I'm glad you brought that up.  
23 Section 7 says, and I'm reading it here, let me find  
24 this here, the Governor shall have and may exercise for  
25 a period not to exceed 30 days. It doesn't say you can

1 do multiple declarations. It says you got 30 days to do  
2 whatever you want, even if it shreds the constitution  
3 but, after that, party over.

4 MR. VERTICCHIO: Respectfully, Your Honor,  
5 that's not what it says.

6 THE COURT: Please tell me what it does say.

7 MR. VERTICCHIO: I'm going to read Section 7.  
8 Quote, Emergency Powers of the Governor. In the event  
9 of a disaster, as defined in Section 4, and we have no  
10 dispute that there is a disaster here, the Governor may,  
11 by proclamation declare that a disaster exists.  
12 Continuing, upon such proclamation, what proclamation?  
13 The proclamation that a disaster exists, upon such  
14 proclamation, the Governor shall have and may exercise  
15 for a period not to exceed 30 days the following  
16 emergency powers.

17 So what triggers the 30 days? The proclamation.  
18 Upon such proclamation. When the Governor, under the  
19 clear reading of the act, it's the language they use,  
20 when the Governor, present tense, declares a disaster  
21 through proclamation, which he did in this case on  
22 March 9th and then again on April 1st, that declaration,  
23 through proclamation, triggers the next clause or  
24 sentence. Upon such proclamation, the Governor shall  
25 have and may exercise for a period not to exceed 30 days

1 the following emergency powers. It's a clear sentence.

2 So the triggering event is the proclamation and  
3 then the 30 days. If there's another proclamation, then  
4 there's another trigger, and, if there's another  
5 proclamation, then there's another trigger. What's the  
6 guardrail? What's the guardrail because this can't go  
7 on forever? Well, the guardrail is that the Governor is  
8 required under the act to declare a disaster.

9 THE COURT: What's to stop him from keeping on  
10 declaring a disaster for the next five years?

11 MR. VERTICCHIO: Cases like this, Your Honor.  
12 Cases like this. Mr. Bailey could bring a case and say  
13 his declaration of disaster was not taken in good faith,  
14 and that's the standard.

15 THE COURT: I'm sure we'll get to that in the  
16 next lawsuit.

17 MR. VERTICCHIO: Well, we may, but what we've  
18 heard today is we're not disputing there's a disaster  
19 and how could we? How could we dispute that? My notes  
20 for today, Your Honor, said that there's been almost  
21 42,000 cases of COVID-19 in Illinois and 1,843 deaths.  
22 I realized coming down here this morning my notes were  
23 wrong because I heard on the radio that there were 59  
24 deaths yesterday. There's a disaster.

25 THE COURT: And zero in Clay County and zero in

1 numerous other downstate counties.

2 MR. VERTICCHIO: That's an interesting point,  
3 Your Honor, because in Jasper County right next door  
4 there's 42 cases.

5 THE COURT: In a nursing home.

6 MR. VERTICCHIO: In a nursing home. In Marion  
7 County, I looked last night, I think there were  
8 26 cases. So this is not -- this is not a Northern  
9 Illinois only problem because in southern counties, too,  
10 the issue exists. Jasper County, 42 cases, less than  
11 10,000 residents in the county. As a result, it suffers  
12 one of the highest per capita infection rates in  
13 Illinois. Its rates are doubling every three days.

14 Jefferson County is one of the few to exceed  
15 Jasper. Its rates double every two and a half days.  
16 Randolph County, one of the fastest doubling rates in  
17 the state. The point is we can't really dispute it was  
18 a disaster. It is a disaster.

19 THE COURT: With respect to these statistics  
20 you're throwing out here and all of that, isn't it true  
21 that if I die in a car wreck and I happen to test  
22 positive for COVID-19, my cause of death for purposes of  
23 what this Governor is doing is COVID-19?

24 MR. VERTICCHIO: I don't know. I don't know how  
25 that particular method is, Your Honor.

1 THE COURT: All right.

2 MR. VERTICCHIO: So, under the act, that  
3 sentence is clear, and it's interesting to note that  
4 counsel goes on in Section 7 to read that, well, wait a  
5 minute, provided, however, that the lapse of emergency  
6 powers shall not and, therefore, the conclusion is,  
7 well, it must contemplate a lapse, but you have to read  
8 the rest of the section. The rest of the sentence makes  
9 it very clear that that clause concerns payment,  
10 reimbursement and compensation of people who contracted  
11 to provide services during the 30-day period. It simply  
12 has nothing to do with whether the Governor has the  
13 ability to then proclaim a disaster again and then, upon  
14 such proclamation, another 30 days triggers.

15 In our case, March 9th came and Governor  
16 Pritzker declared a disaster existed. March 20 the  
17 first Executive Order exercised the emergency powers  
18 that were to extend through April 7th as we learned,  
19 30 days from the original. Then on April 1st, present  
20 tense, declared a disaster existed thereby, upon that  
21 proclamation, was able to exercise his emergency powers  
22 through the same day Executive Order on April the 1st  
23 through April the 30th.

24 There are no limitations in the act with regard  
25 to his ability or any governor's ability to declare

1 multiple and successive proclamations, and that's what  
2 he did on March 9 and that's what he did on April 1.  
3 The act is clear and unambiguous on that issue.

4 THE COURT: There's also nothing in the act that  
5 says you get to keep doing this every 30 days whenever  
6 you want. That ain't in there either, is it?

7 MR. VERTICCHIO: Well, what the legislature  
8 said, the general assembly said is that, if you declare  
9 a disaster, then upon that proclamation, you've got  
10 30 days, and the guardrails again are was it a good  
11 faith exercise of the declaration of a disaster, and  
12 maybe some day there will be that case, but for today's  
13 purposes, I don't think anybody can dispute that we have  
14 a disaster and, more importantly, nobody is disputing  
15 it.

16 Where Mr. Bailey, the plaintiff's construction  
17 gets confused is that he triggers and links the 30-day  
18 period of emergency powers to a particular disaster, but  
19 the 30-day limitation isn't linked to a particular  
20 disaster. Under the clear language of the legislature,  
21 it's linked to the proclamation of a present tense  
22 disaster.

23 So it's pretty clear, Your Honor, that given the  
24 sequence of events, Governor Pritzker conducted the  
25 proclamation and the executive orders specifically

1 within the language of the statute. Declare, then upon  
2 the declaration, 30 days emergency power. And when the  
3 statute's looked at as a whole, it's apparent that that  
4 plain language means exactly what it was intended to  
5 mean, because when you look at the limitations section  
6 of the statute, Section 3, it has no limitations on the  
7 Governor on this issue. In fact, the only mention of  
8 the Governor in Section 3 is that the act shall not be  
9 construed to constrain the Governor's ability to, quote,  
10 proclaim martial law or exercise any other powers vested  
11 in the Governor under the constitution, statutes, or  
12 common law of this state. There are no limitations on  
13 this 30-day issue.

14 So you look further in the statute. Well, did  
15 the legislature, the general assembly put limitations on  
16 somebody else regarding this issue, this timing issue  
17 about declaring a disaster? And the answer is yes. In  
18 Section 11, the general assembly dealt with the issue of  
19 a local disaster, local disaster, and it gave local  
20 political bodies the ability and, in particular, the  
21 executive of a local subdivision, the ability to declare  
22 a disaster, but here's what it said in that regard.  
23 That the local disaster declaration, quote, this is  
24 Section 11, quote, shall not be continued or renewed for  
25 a period in excess of seven days except by or with the

1 consent of the governing board of the political  
2 subdivision.

3 In that instance, same statute, same issue, the  
4 general assembly determined we're going to confine the  
5 local subdivision to seven days unless it gets consent  
6 of the governing body of the subdivision. The precise  
7 same issue with regard to the Governor, that limitation  
8 is not there. In other words, when the legislature  
9 wanted to put a limitation on this ability to declare a  
10 disaster in terms of timing, it did. Fair inference, it  
11 didn't place that restriction on the Governor. None  
12 exists.

13 THE COURT: Well, I get that, and for 30 days --  
14 the legislature, aren't they saying, look, we get it.  
15 You can't spend all of this time -- you've got 30 days  
16 to make this state safe and do what you've got to do,  
17 but, after that, there's that pesky little thing called  
18 the constitution that's going to have to be dealt with.

19 MR. VERTICCHIO: Well, Your Honor, there's a  
20 couple things on that. That construction, and that's  
21 certainly Mr. Bailey's construction, that construction  
22 presumes that every disaster will either be over in  
23 30 days or the legislature is going to do something, but  
24 when passing the act, the general assembly determined  
25 that that's not the guardrail we're going to put on the

1 Governor. We're not saying in this act you can only do  
2 it for 30 days and then we're going to do something.  
3 That's not what the ACT says. The general assembly,  
4 when passing the ACT, said, Governor, if you declare a  
5 disaster, the law says he has to do it in good faith,  
6 but if you declare a disaster by proclamation, upon that  
7 proclamation, you have emergency powers for 30 days.  
8 That's all it said. It could have gone on to say and,  
9 thereafter, the legislature will convene. It doesn't  
10 say that. It doesn't say that at all, but under Mr.  
11 Bailey's construction of the statute, the 30 days  
12 triggers a stop. Stop. If you do something past  
13 30 days, it's void, it's invalid, it's illegal he'll  
14 tell you.

15 But then what? What if the general assembly  
16 isn't in a position to convene? Sometimes that could be  
17 the case. Some would argue it's the case now. The  
18 determination of the general assembly was the guard-  
19 rails would be the declaration of a disaster. In that  
20 event, if there is a present-tense disaster, the  
21 Governor declares, proclaims 30 days and, yes, it was  
22 floods, although Governor Rauner's I believe was also  
23 H1N1, multiple successive orders under the act.

24 THE COURT: H1N1 is the flu, also, right?

25 MR. VERTICCHIO: Certainly a virus.

1 THE COURT: And that governor certainly didn't  
2 shut down the state and destroy people's lives and  
3 property for H1N1.

4 MR. VERTICCHIO: No question about it. H1N1 is  
5 nothing -- I can't say it's nothing. It clearly was  
6 significant, but, compared to COVID-19, it's not, it's a  
7 different world.

8 MR. DeVORE: Judge, I just want to put on the  
9 record for clarification that counsel is not giving  
10 medical professional advice.

11 THE COURT: I get that.

12 MR. DeVORE: Thank you.

13 MR. VERTICCHIO: I will stipulate to that, Your  
14 Honor.

15 MR. DeVORE: Thank you, sir.

16 MR. VERTICCHIO: But there's legal consequence  
17 to the history of three different governors, successive,  
18 multiple executive orders, proclamations of disaster,  
19 30 days continued, another 30, another 30, and there's  
20 legal consequence of the legislature not coming in and  
21 saying, time out, you can't do that. You can't do that.  
22 Why do I say there's legal consequence?

23 Well, we cited the case, Your Honor. It was the  
24 Piolet Brothers case. Here's what the court said: A  
25 reasonable interpretation of a statute by an agency

1 charged with enforcement of that statute is entitled to  
2 great weight. Such a construction is even more  
3 persuasive if consistent, long-continued, and in  
4 conjunction with legislative acquiescence on the  
5 subject. Such acquiescence appears where the  
6 legislature, presumably aware of the administrative  
7 interpretation in question, has amended other sections  
8 of the act since that interpretation but left untouched  
9 the sections subject to the administrative  
10 interpretation, and that is precisely the situation we  
11 have here.

12 We have multiple governors under Section 7 of  
13 the ACT making multiple or successive proclamations and,  
14 upon such proclamation, exercising emergency powers for  
15 the 30-day period. We have the legislature, the general  
16 assembly, during these several decades, on 11 separate  
17 occasions amended the act and not once did anyone in the  
18 general assembly even suggest, wait a minute, those  
19 successive and multiple declarations and proclamations,  
20 he can't do that. We need to amend the act to make this  
21 clear.

22 The Piolet court tells us that's very persuasive  
23 evidence of acquiescence and validates the  
24 interpretation given by the Governor in this case. All  
25 of that the plaintiff ignores, disregards the plain

1 language, the plain language of Section 7, adds  
2 restrictions where none exists. There are -- there's no  
3 restriction there. The one place where there is a  
4 restriction on this issue is in Section 11, and the  
5 general assembly was very clear there, and ignores those  
6 clear limitations that were placed upon the  
7 subdivisions.

8 Mr. Bailey says, well, by permitting successive  
9 and multiple disaster proclamations, you rendered the  
10 30-day limitation meaningless. Not true. The 30-day  
11 limitation triggers upon the declaration of the disaster  
12 and then a subsequent proclamation. It has meaning  
13 because the Governor has to, at the end of the 30 days  
14 or before the 30 days, if he is under the judgment that  
15 another proclamation is in order and another declaration  
16 is required, he's under the good faith obligation to  
17 make a declaration of disaster and renew the emergency  
18 powers and that's exactly what happened here.

19 THE COURT: Hold on. Who governs whether it's  
20 good faith? Where does the petitioner get to go to  
21 judge that?

22 MR. VERTICCHIO: Right here, and that's a  
23 situation, Your Honor, better left in the hands of  
24 people like you. Not to suggest that it's an easy  
25 determination, but that's where it's left.

1 THE COURT: For the record, I'm bound to follow  
2 the law and the law requires me to give deference to the  
3 executive branch and the legislative branch and I so do.  
4 Go ahead.

5 MR. VERTICCHIO: Thank you, Your Honor.  
6 Finally, Your Honor, on the issue of the statutory  
7 interpretation, the interpretation pressed by the  
8 plaintiff would lead to absurd and, frankly, in this  
9 case, dangerous results because, as a result of a  
10 finding that the Governor, despite the clear language of  
11 the act, does not have the authority under the act to  
12 issue successive and multiple proclamations triggering  
13 the emergency powers, the requested relief says,  
14 therefore, after April 7th, everything that the Governor  
15 implemented through the Executive Order of April 1st is  
16 void. There's the -- and we've -- most of the executive  
17 orders are cited in the exhibits to the plaintiff's  
18 complaint. Procurement of medical supplies, personal  
19 protective equipment. There's executive orders  
20 protecting state government operations, home evictions,  
21 Department of Corrections regulations, health workers,  
22 county jails, Illinois schools, repossession of  
23 vehicles, regulation of bars and restaurants,  
24 unemployment insurance, open meetings act issues,  
25 federal funds, social distancing, protection of health,

1 all of those executive orders, every one of them,  
2 according to Mr. Bailey, are void and invalid as of  
3 April 7th.

4 THE COURT: They already happened. I mean that  
5 horse left the barn, didn't it?

6 MR. VERTICCHIO: But what happens to the work  
7 that's being done pursuant to all of those? Everyone is  
8 now free to do what they want. Health care workers are  
9 no longer protected. The Amicus brief comes to mind,  
10 Your Honor. They're all void, and they were all taken  
11 by the Governor under the specific authority of the act  
12 to protect the health and safety of citizens, of the  
13 citizens of Illinois.

14 MR. DeVORE: Judge, could counsel clarify  
15 whether he's referring to Section 6 or 7 as to these  
16 measures?

17 MR. VERTICCHIO: Section 7 is the trigger. As I  
18 said, Your Honor, these restrictions have been in place  
19 now, first on March 20 then renewed based upon a new  
20 declaration on April 1st and, even with the  
21 restrictions, 42,000 cases, now almost 1900 deaths.

22 If they are removed, if the court determines  
23 they're invalid, they're removed, things are going to  
24 get worse, things are going to get worse, and the  
25 general assembly's determination that this act was to

1 protect the health and safety of the people of the state  
2 of Illinois will be frustrated.

3 THE COURT: All they've got to do is convene and  
4 make a motion to amend this Emergency Management Act to  
5 give the Governor, not 30 days, 60, 90, 120.

6 MR. VERTICCHIO: There's no question, Your  
7 Honor, but we're here to determine what did they already  
8 do? The legislature has already made that  
9 determination.

10 THE COURT: I get you.

11 MR. VERTICCHIO: So for all of those reasons,  
12 the clear construction of the act, the statutory  
13 construction rules, they all clearly land on 30 days as  
14 triggered by the proclamation, the declaration of the  
15 disaster. There was nothing, nothing about either of  
16 the proclamations, and specifically the April 1  
17 proclamation, that went afoul of the specific language  
18 of the legislature.

19 And, beyond that, there's the constitutional  
20 issue. Counsel said to the court, well, there's no  
21 evidence in the orders that they were done pursuant to  
22 some constitutional authority in addition to the act,  
23 but I'm looking, for example, at, it's Exhibit 2 to the  
24 plaintiff's complaint, the therefore clause that counsel  
25 read part of. Therefore, quote, by the power vested in

1 me as Governor of the State of Illinois and, now I'm  
2 paraphrasing, pursuant to the act and health laws, I'm  
3 invoking these emergency powers. So it's pretty clear  
4 that it was pursuant to the act and pursuant to the  
5 powers as Governor of the State of Illinois. Well,  
6 those are his constitutional powers.

7           When you consider that he has the constitutional  
8 powers in the situation at hand, it's clear that he, he  
9 being Governor Pritzker, properly exercised those powers  
10 here for three very simple reasons. We've heard about  
11 the state's police powers. They exist under the  
12 constitution to protect public health and safety.  
13 That's a truism. Secondly, the general assembly has  
14 done nothing, nothing to restrict the Governor in the  
15 exercise of his constitutional authority to protect  
16 health and safety. As a matter of fact, we now actually  
17 in the Emergency Management Act, the general assembly  
18 specifically said the constitutional authority of the  
19 Governor is preserved. We don't seek to limit that in  
20 any way and, finally, three, also undeniable, COVID-19  
21 presents a situation of urgent circumstances that  
22 requires prompt action, and that gets to the point that  
23 you made.

24           You said it a couple of times. There's no time.  
25 There's no time. There's no time to go to the health

1 department. There's no time for everyone in this room,  
2 everyone in this county, everyone in this state to get  
3 right to counsel, have a hearing, determine whether some  
4 kind of stay at home is required. There's no time.

5 And I know Your Honor commented upon the line in  
6 the brief about millions dying, and I think, I think I  
7 heard a snicker from the back, but it's no joke. Again,  
8 I'm driving down this morning from my home, 59 people in  
9 Illinois died yesterday. This is no joke.

10 The constitutional --

11 THE COURT: Counsel, I couldn't agree with you  
12 more that it's no joke and, while we're on that subject  
13 since you brought it up, at a recent press conference,  
14 this Governor was asked by a reporter what about easing  
15 restrictions in counties in Illinois that don't have  
16 COVID or don't need it, and his response was, wait for  
17 it, laughter. I agree. It ain't funny. Go ahead.

18 MR. VERTICCHIO: Couldn't agree more, Your  
19 Honor. So the constitutional authority is also clear,  
20 and counsel read the probative language, the relevant  
21 language from the Barmore court case, among all, quote,  
22 among all of the objects sought to be secured by  
23 governmental laws, none is more important than the  
24 preservation of public health. The duty to preserve the  
25 public health finds ample support in the police power,

1 which is inherent in the state. The power can't be  
2 denied and the circumstances could not be more grave and  
3 the circumstances require prompt action. As you said,  
4 Your Honor, there's no time.

5 The Governor issued the executive orders.  
6 They're tailored to the situation, and there's nothing  
7 inconsistent in them under the statute and they are  
8 within his constitutional power.

9 THE COURT: Hold on. When you say tailored to  
10 the situation, that's a whole different argument and a  
11 whole different standard, is it not?

12 MR. VERTICCHIO: Well, the executive orders are  
13 certainly broad in terms of coverage.

14 THE COURT: Broad? You could drive a Mack truck  
15 through this thing.

16 MR. VERTICCHIO: They're broad. They're broad  
17 given the situation.

18 THE COURT: Tailored to the situation? How in  
19 the world does me not being allowed to fish at Forbes  
20 Lake promote COVID-19 but panic buying at Walmart  
21 doesn't? That ain't tailored to nothing.

22 MR. VERTICCHIO: If, by the question, Your  
23 Honor, you're wondering out loud whether someone will  
24 bring that lawsuit to question whether it was a good  
25 faith exercise in the finding of a disaster, I don't

1 know. I don't know, but under the law and under the  
2 facts that are alleged in the Complaint, the statutory  
3 action was proper, legal within the terms of the  
4 statute. The constitutional action was proper within  
5 the constitutional authority of the Governor.

6 For that reason, and, again, this goes to the  
7 likelihood of success requirement, but it also goes to  
8 the 2-615 Motion. There's no way, given the facts as we  
9 know them, given the facts that are already pled, that  
10 Mr. Bailey can amend the Complaint in any way to cure  
11 the situation. The statute says what it says. The  
12 Complaint should be dismissed with prejudice on the  
13 2-615 Motion, and the Motion for Temporary Restraining  
14 Order, in any event, should be denied because there's  
15 virtually no likelihood of success. There is no  
16 likelihood of success. Given the burden undertaken by  
17 the defendant in a 2-615 Motion, everything he says is  
18 accepted as true and he simply doesn't state a claim,  
19 and the TRO Motion fails for other reasons, too.

20 Mr. Bailey was obligated, in the TRO Motion, to  
21 make a showing of irreparable harm and the showing had  
22 to be supported by facts. Here's what the Capstone case  
23 said, Your Honor, as quoted in our brief, quote, a TRO  
24 is an extraordinary remedy and the party seeking it must  
25 meet the high burden of demonstrating, through well-pled

1 facts, that he is entitled to the relief sought.  
2 Continuing quote, to be considered well-pleaded, a  
3 party's factual allegations must be supported by  
4 allegations of specific facts.

5 On the injury, not only injury, but the  
6 irreparable injury, what do we know? Not much. We  
7 don't know -- we don't know where Mr. Bailey wants to go  
8 that he's not allowed to go. Counsel made a statement,  
9 well, we haven't seen it yet. Well, respectfully,  
10 plaintiff has an obligation to plead the facts. We  
11 haven't seen it yet doesn't cut it. We know virtually  
12 nothing about an injury to Mr. Bailey because all we  
13 have in the pleading, and that's all we can have on a  
14 TRO Motion, is his conclusion.

15 THE COURT: Are you seriously trying to argue  
16 that this Executive Order has not caused serious injury?

17 MR. VERTICCHIO: I'm seriously trying to argue  
18 that, with regard to Darren Bailey, who, as a result of  
19 him being an elected public official, is specifically  
20 exempt from the Executive Order.

21 THE COURT: He didn't sue as a public official.  
22 He sued as a private citizen. For all I know, he's  
23 running a non-essential business, which also, for all I  
24 know, is now bankrupt because of this Executive Order.

25 MR. VERTICCHIO: That's the point, Your Honor.

1 You said it. For all I know. We don't know. You don't  
2 know. I don't know. No one looking at this record  
3 knows. Why not? Because it's not in the Complaint.  
4 It's not in the Motion. It's not in this record  
5 anywhere. Maybe he was irreparably harmed. I don't  
6 know. You don't know. It's not in the pleadings, and  
7 the question on a Motion for Temporary Restraining Order  
8 on the harm issue is, we cited you the cases, why does  
9 this order need to issue today? What is your  
10 irreparable harm now? And the flip side, why can't this  
11 case just proceed at a pace that every other case?  
12 Pursuant to the rules of civil procedure, the case will  
13 go on. If not, what about it requires the order be  
14 issued today that so irreparably harms the plaintiff?  
15 And you said it. We don't know. That's a requirement  
16 that it was his burden to carry. He didn't carry it.

17 THE COURT: What we do know is that every second  
18 this Executive Order is in existence, the Illinois  
19 Constitution, numerous sections of it are being violated  
20 and the Bill of Rights is being shredded. That is  
21 irreparable harm.

22 MR. VERTICCHIO: We're here, Your Honor, not on  
23 political questions. We're here on --

24 THE COURT: That's got nothing to do with  
25 politics.

1 MR. VERTICCHIO: I mean political question in  
2 the legal sense, Your Honor, not politics. We are here  
3 on whether Mr. Bailey has carried his burden and he  
4 hasn't and, even if he did somehow convince the court  
5 that there was irreparable harm, the court then must  
6 look at the balancing of hardships and, when you look at  
7 the balancing of hardships, what damage to the public,  
8 it's laid out in our brief, Your Honor.

9 The Executive Orders with the safeguards, the  
10 situation hopefully is getting under control, you take  
11 them all off and things are going to get worse. The  
12 public is going to be damaged.

13 The Amicus brief, I looked at the declaration of  
14 Dr. Michael Wahl, W-a-h-l. He lays out in great detail  
15 the damage to public health care workers, hospital  
16 workers if the regulations are deemed to be void, to use  
17 the plaintiff's terminology. And so the balance of  
18 harms isn't even close. On one side of the ledger, you  
19 have what Dr. Wahl talks about and everything that's in  
20 our brief. On the other side of the ledger, you have  
21 the damage to Mr. Bailey. And as to that damage, we  
22 don't know.

23 Finally, Your Honor, just a word about the  
24 supplemental brief and the health care issue, the  
25 Department of Public Health and the Public Health Act.

1 The supplemental brief raises not only a legal theory  
2 that is not in the temporary restraining order papers, a  
3 legal theory that was raised at one o'clock this  
4 morning, but, more importantly, I think, it raises facts  
5 that are no where in the Complaint or, for that matter,  
6 anywhere in this record. There's simply no evidence,  
7 because I think there can't be, that Mr. Bailey is  
8 subject to a quarantine, a quarantine.

9 So for that reason alone, the shifting of gears,  
10 let's talk about the health act now. It doesn't work  
11 because the pleading means something, the allegations  
12 mean something. They are not so nimble, particularly  
13 when you're asking a court to issue emergency injunctive  
14 relief, the pleadings mean something. Beyond that, the  
15 quarantine authority to the Department of Public Health  
16 is, as the act itself says, it's in our response to the  
17 supplement, Your Honor, supplements the Governor's  
18 authority under the Emergency Management Act. It's in  
19 Section 2. It doesn't limit it and, as you said,  
20 there's simply no time. Even if we had facts that were  
21 alleged that kind of at least put him within the scope  
22 of the act, there's no time to deal with every person,  
23 every case in the event of a COVID-19 pandemic. The way  
24 to deal with it is the Emergency Management Act. That's  
25 what the Governor did.

1           And, finally, on this point, and it's also in  
2 the supplemental response, Your Honor, the construction  
3 Mr. Bailey wants to put upon the act trounces again upon  
4 the Governor's constitutional authority. So this  
5 supplemental argument raised early this morning, wrong  
6 on the facts and wrong on the law.

7           Your Honor, I was talking with one of the  
8 sheriff's deputies before the hearing downstairs and I  
9 mentioned, we were just chatting, and I mentioned that  
10 these are strange times. I was right. They're strange  
11 but they're also sad. There's just a lot going on in  
12 this world and this state that's sad as a result of  
13 COVID-19. Is it sad that people have to be subject to  
14 an Executive Order like the Governor issued? Yes. Is  
15 it sad that people are getting the virus? Yes. Is it  
16 sad that people are dying? Yes. But the action taken  
17 by the Governor, consistent with the statutory  
18 authority, consistent with the constitution, and at the  
19 end of the day, Mr. Bailey didn't carry his burden on  
20 the TRO.

21           The Governor respectfully requests, Your Honor,  
22 that the Complaint be dismissed with prejudice under  
23 2-615 and, in any event, the Motion for Temporary  
24 Restraining Order be denied. Thank you.

25           THE COURT: Thank you for your excellent

1 argument. All right. Petitioner, do you have anything  
2 else to add other than your argument that this is too  
3 much power in an individual, it's tyrannical, and the  
4 last time this happened a bunch of guys got on a boat  
5 and threw tea in the Boston Harbor?

6 MR. DeVORE: That's exactly what I'm saying,  
7 Your Honor.

8 THE COURT: All right. This court has  
9 considered all of the pleadings that have been filed,  
10 and I read everything that's been filed, including the  
11 Amicus brief.

12 The court is guided by, among other things, the  
13 following: There is no pandemic exception to the  
14 fundamental liberties the constitution safeguards.  
15 Indeed, individual rights secured by the constitution do  
16 not disappear during a public health crisis. That's In  
17 Re: Abbott, A-b-b-o-t-t, Federal 3d, 2020 West Law  
18 1685929. That's a Fifth Circuit appellate opinion.

19 These individual rights, including the  
20 protections in the Bill of Rights made applicable to the  
21 states through the Fourteenth Amendment, are always in  
22 force and restrain government action. At the same time,  
23 the constitution does not hobble government from taking  
24 necessary temporary measures to meet a genuine  
25 emergency. According to our United States Supreme

1 Court, in every well-ordered society charged with the  
2 duty of preserving, conserving the safety its members,  
3 the rights of the individual in respect of his liberty  
4 may, at times, under the pressure of great dangers, be  
5 subjected to such restraint, to be enforced by  
6 reasonable regulations, as the safety of the general  
7 public may demand, and that is the Jacobson case which  
8 was also cited by the Attorney General.

9 The settled rule from Jacobson, the Fifth  
10 Circuit recently explained, allows the state to  
11 restrict, for example, one's right to peaceably  
12 assemble, to publicly worship, to travel, and even to  
13 leave one's home. Courts owe substantial deference to  
14 government actions, particularly when exercised by  
15 states and localities under their police powers during a  
16 bona fide emergency.

17 The Supreme Court also has instructed courts to  
18 intervene if a statute purporting to have been enacted  
19 to protect the public health or the public safety has no  
20 real or substantial relation to those objects, or is,  
21 beyond all question, a plain, palpable invasion of  
22 rights secured by the fundamental law. That is also a  
23 quote from Jacobson.

24 Courts reviewing a challenge to a measure  
25 responding to the society-threatening epidemic of

1 COVID-19 should be vigilant to protect against clear  
2 invasions of constitutional rights while ensuring they  
3 do not second-guess the wisdom or efficacy of the  
4 measures enacted by the democratic branches of  
5 government, on the advice of public health experts.

6 Fifth Amendment of the United States

7 Constitution states no person shall be deprived of life,  
8 liberty or property without due process of law. Our  
9 Illinois Constitution states in Section 2 no person  
10 shall be deprived of life, liberty or property without  
11 due process of law.

12 The issue before me now, in essence, is not  
13 whether the legislature can authorize the Governor to  
14 ignore the Illinois and United States Constitutions.  
15 They did it in the Emergency Management Act. The issue  
16 before me now is whether the Governor can ignore the  
17 Illinois and United States Constitutions for more than  
18 30 days. This court rules that the answer to that  
19 question is a resounding no. Accordingly, the  
20 petitioner's request for a TRO is granted. The Motion  
21 to Dismiss under Section 2-615 is denied.

22 Now, Petitioner, you submitted a proposed order.  
23 In that proposed order you state TRO extends for ten  
24 days. That's the part about your argument I disagree.  
25 You asked for this. You issued this. You did this with

1 notice, not without notice. Therefore, the ten-day rule  
2 doesn't apply. However, that said, this TRO that  
3 extends for a lengthy period of time, in essence becomes  
4 a preliminary injunction and this ain't no preliminary  
5 injunction yet. Therefore, I'll let you go beyond ten  
6 days but not beyond 30, otherwise, I'm entering a  
7 preliminary injunction without procedural process rights  
8 required for a preliminary injunction. So pick a date  
9 while we're here with Madam Clerk for a hearing on a  
10 preliminary injunction.

11 MR. VERTICCHIO: Can I address the court?

12 THE COURT: Yes.

13 MR. VERTICCHIO: Your Honor, given your ruling,  
14 this dovetails into the preliminary injunction issue,  
15 the Governor requests that the ruling be stayed.

16 THE COURT: I will absolutely deny that request.  
17 This ruling takes effect right this second.

18 MR. VERTICCHIO: Can I raise the issue of bond,  
19 Your Honor?

20 THE COURT: There is no requirement for bond.  
21 Statute doesn't mandate it. There's no reason for one.  
22 There's no money that's going to be required to be  
23 refunded or returned. I don't see any reason for bond  
24 whatsoever.

25 MR. VERTICCHIO: Well, the case law provides

1 that the plaintiff is obligated to make a showing as to  
2 why the court properly exercises its discretion in  
3 issuing no bond.

4 THE COURT: Want to make that showing?

5 MR. DeVORE: What showing would the court  
6 require for bond sufficient for my client to be able to  
7 continue with his constitutional rights, Your Honor?

8 THE COURT: Well, I'm not sure either. I'm not  
9 going to require bond. Anything else, AG?

10 MR. VERTICCHIO: No, Your Honor. In terms of  
11 scheduling, can Tom and I just talk a little bit off the  
12 record and let you know?

13 THE COURT: Absolutely. Yes.

14 MR. VERTICCHIO: Can I suggest maybe a status  
15 hearing for a week from today?

16 THE COURT: Whatever -- however you want to  
17 proceed is fine with me.

18 MR. VERTICCHIO: Why don't we confer with one  
19 another, then we'll let you know within a matter of  
20 minutes.

21 THE COURT: Would you rather do it that way?  
22 You two can get, discuss the matter between yourselves  
23 and you with the clerk can come up with a new date. Is  
24 that agreeable?

25 MR. VERTICCHIO: That's agreeable.

1 MR. DeVORE: Yes, sir.

2 MR. VERTICCHIO: Your Honor, am I to understand  
3 that the order being entered, save for the ten-day  
4 issue, is the one that was submitted?

5 THE COURT: It is. Have you got that? I've got  
6 it, but I want you to cross out that ten-day deal.

7 MR. DeVORE: Yes, sir.

8 MR. VERTICCHIO: I would like to take the order  
9 if the court is going to enter it today if that's  
10 possible.

11 THE COURT: Yes. I think you should. Take out  
12 that ten-day deal and put for the future date to be  
13 determined by counsel after consultation with the  
14 circuit clerk.

15 MR. DeVORE: Not to exceed 30 days?

16 THE COURT: Yes.

17 MR. DeVORE: Got it. Thank you, sir.

18 THE COURT: I will enter that right now after  
19 you make that amendment.

20 MR. DeVORE: Yes, sir.

21 MR. VERTICCHIO: I'm sure we'll be able to work  
22 a date out, but, if not, we'll get your guidance.

23 THE COURT: Yeah. If you can't, let me know.

24 MR. DeVORE: Yes, sir. May I approach, Judge?

25 MR. VERTICCHIO: Can I see it, Tom? Your Honor,

1 I mentioned the other day on the phone the plaintiff's  
2 Motion was captioned as both TRO and preliminary  
3 injunction. Is it fair to assume, counsel, that we'll  
4 be proceeding on that Motion?

5 MR. DeVORE: On the prelim? Yes, sir.

6 MR. VERTICCHIO: In other words, there's not  
7 going to be another filing.

8 MR. DeVORE: Correct.

9 THE COURT: Anything further on behalf of either  
10 party?

11 MR. DeVORE: No, sir. Thank you, Judge.

12 THE COURT: All right. Ladies and gentlemen, I  
13 would direct you to exit the courtroom and/or building  
14 as directed by the sheriff. We're adjourned.

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFIED SHORTHAND REPORTER'S CERTIFICATION

I, LORI SIMS, Certified Shorthand Reporter for the Circuit Court of Clay County, Fourth Judicial Circuit of Illinois, do hereby certify that I reported in machine shorthand the proceedings had on the hearing in the above entitled cause; that I thereafter caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript of the proceedings had before the Honorable MICHAEL D. MCHANEY, Judge of said Court.

Dated this th day of April, 2020.

\_\_\_\_\_  
Lori Sims  
Official Court Reporter  
CSR #084-003424

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
FIFTH JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
CLAY COUNTY, ILLINOIS

---

DARREN BAILEY,	)	
	)	
Plaintiff-Appellee,	)	
	)	No. 2020CH6
v.	)	
	)	
GOVERNOR J.B. PRITZKER,	)	
in his official capacity,	)	The Honorable
	)	MICHAEL D. McHANEY,
Defendant-Appellant.	)	Judge Presiding.

---

**NOTICE OF INTERLOCUTORY APPEAL**

PLEASE TAKE NOTICE that Defendant JB Pritzker, in his official capacity as Governor of the State of Illinois, by his attorney, Kwame Raoul, Attorney General of the State of Illinois, hereby appeals to the Appellate Court of Illinois, Fifth Judicial District, based on Illinois Supreme Court Rule 307(d) from an order of the Honorable Judge Michael D. McHaney of the Circuit Court of the Fourth Judicial Circuit, Clay County, Illinois, entered on April 27, 2020, granting the motion of Plaintiff Darren Bailey for a temporary restraining order. A copy of said order is attached to this notice of interlocutory appeal.

By this interlocutory appeal, Defendant requests that this court reverse and vacate the circuit court's order of April 27, 2020, dissolve the temporary restraining

order, and grant any other appropriate relief.

Respectfully submitted,

KWAME RAOUL  
Attorney General  
State of Illinois

By:

/s/ Nadine J. Wichern  
NADINE J. WICHERN  
Assistant Attorney General  
100 West Randolph Street  
12th Floor  
Chicago, Illinois 60601  
(312) 814-5659/1497  
Primary e-service:  
CivilAppeals@atg.state.il.us  
Secondary e-service:  
nwichern@atg.state.il.us

April 27, 2020

**COPY**

**IN THE CIRCUIT COURT  
FOR THE FOURTH JUDICIAL CIRCUIT  
CLAY COUNTY, ILLINOIS**

**FILED**

**APR 27 2020**

*Crystal Bostard*  
CIRCUIT CLERK OF THE  
FOURTH JUDICIAL CIRCUIT  
CLAY COUNTY ILLINOIS

Darren Bailey

Plaintiff,

vs.

Governor Jay Robert Pritzker,  
in his official capacity.

Defendant.

Case No. 2020-CH-06

**TEMPORARY RESTRAINING ORDER WITH NOTICE**

This Cause coming to be heard on Plaintiffs' Motion for Temporary Restraining Order, notice having been given, the Court finds as follows:

1. Plaintiff has filed a verified Complaint and verified Motion for Temporary Restraining Order and Preliminary Injunction.
2. Plaintiff also filed a brief in support along with a supplemental brief and accompanying documentation.
3. Defendant has filed his written response.
4. The Court has considered the pleadings filed to date and has further considered the arguments of counsel made in open court on this date.
5. Plaintiff has shown he has a clearly ascertainable right in need of immediate protection, namely his liberty interest to be free from Pritzker's executive order of quarantine in his own home.
6. Plaintiffs' Verified Complaint, Verified Motion for Temporary Restraining Order and Preliminary Injunction, along with his accompanying legal brief as well as its supplement, show Plaintiff has a reasonable likelihood of succeeding on the

merits.

- 7. Plaintiff has shown he will suffer irreparable harm if the Temporary Restraining order is not issued.
- 8. Plaintiff has shown he has no adequate remedy at law or in equity in that absent a Temporary Restraining Order being entered, Plaintiff, will continue to be isolated and quarantined in his home.

WHEREFORE, based on the above findings of this Court, IT IS HEREBY ORDERED:

- A. Governor Jay Robert Pritzker, or anyone delegated by him, is hereby enjoined from in anyway enforcing the March 20 Executive Order against Darren Bailey forcing him to isolate and quarantine in his home;
- B. Governor Jay Robert Pritzker is hereby enjoined from entering any further Executive Orders against Darren Bailey forcing him to isolate and quarantine in his home;

C. This Temporary Restraining Order shall remain in full force and effect ~~for ten days from the date hereof~~ until A DATE TO BE AGREED UPON BY THE PARTIES, NOT TO EXCEED 30 DAYS FROM TODAY, WHEREIN A PRELIMINARY ~~[a.m.] [p.m.] on~~ 2020, unless superseded or modified or INTENTION WILL BE HEARD ON THAT DATE.  
~~dissolved by this Court.~~

D. This Temporary Restraining Order is entered at 3:15 [a.m.]  
 (p.m.) on APRIL 27, 2020

DATED this 27 day of April, 2020.

  
 JUDGE

**COPY**

Thomas DeVore  
IL Bar No. 6305737  
**DeVore Law Offices, LLC**  
Attorney for Plaintiff  
118 North Second Street  
Greenville, Illinois 62246  
Telephone 618.664.9439  
tom@silverlakelaw.com

## CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 27, 2020, I electronically filed the foregoing Notice of Interlocutory Appeal with the Clerk of the Circuit Court for the Fourth Judicial Circuit, Clay County, Illinois, 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 27, 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/ Nadine J. Wichern  
NADINE J. WICHERN  
Assistant Attorney General  
100 West Randolph Street  
12th Floor  
Chicago, Illinois 60601  
(312) 814-5659/1497  
Primary e-service:  
CivilAppeals@atg.state.il.us  
Secondary e-service:  
nwichern@atg.state.il.us

## CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 29, 2020, I electronically filed the foregoing Supporting Record Volume 3 of 3 with the Clerk of the Illinois Appellate Court, Fifth Judicial District, by using the Odyssey eFileIL system.

I further certify that the other participant in this action, 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  
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