No. 5-20-_____

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

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

SUPPORTING RECORD
VOLUME 3 OF 3

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VERIFICATION BY CERTIFICATION

I, Sarah A. Hunger, 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 the Deputy Solicitor General in the Office of the Attorney General of the State of Illinois and along with others, I have been assigned to represent Defendant-Petitioner J.B. Pritzker, in his official capacity as Governor of the State of Illinois, in the interlocutory appeal under Illinois Supreme Court Rule 307(d) in *Mainer v. Pritzker*, No. 5-20-____(Circuit Court for the Fourth Judicial Circuit, Clay County, Illinois, No. 2020CH10), which is now 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 under 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 May 26, 2020.

/s/ Sarah A. Hunger
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STATE OF ILLINOIS
IN THE FOURTH JUDICIAL CIRCUIT
CLAY COUNTY

FILED
MAY 22 2020
Gwynne Borland
CIRCUIT CLERK OF THE
FOURTH JUDICIAL CIRCUIT
CLAY COUNTY ILLINOIS

JAMES MAINER, in his individual capacity and on behalf of all citizens similarly situated, and HCL DELUXE TAN, LLC, an Illinois Limited liability company, on its behalf and on behalf of all businesses similarly situated.

Plaintiffs,

Vs.

Governor Jay Robert Pritzker, in his official capacity.

Defendant.

Case No. 2020-CH- 10

TEMPORARY RESTRAINING ORDER WITH NOTICE

This Cause coming to be heard on Plaintiffs' Motion for Temporary Restraining Order, no notice having been given, the Court finds as follows:

1. Plaintiffs have filed a verified Complaint and verified Motion for Temporary Restraining Order.
2. Plaintiffs also filed a brief in support as accompanying documentation.
3. The Court has considered the pleadings filed to date and has further considered the legal arguments made in the brief.
4. Plaintiffs clearly have protectable rights and interests at stake to be free from the defendants ultra vires lawmaking which vitiates procedural and substantive protections explicitly provided by Illinois law under the IEMAA.
5. Plaintiffs' Verified Complaint, Verified Motion for Temporary Restraining Order, along with their accompanying legal brief, show Plaintiffs have a reasonable

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likelihood of succeeding on the merits.

6. Plaintiffs have shown they will suffer irreparable harm if the Temporary Restraining order is not issued.
7. Plaintiffs have shown that absent a Temporary Restraining Order being entered every hour which passes they have no adequate remedy at law to prohibit Pritzker from enforcing EO 32 against them absent an injunction from this Court barring the same.
8. Waiting until such time as a hearing might be had on a determination on the merits of the injunction is too great a risk for James and HCL, ~~and all citizens and businesses similarly situated,~~ given their freedom and livelihoods are being stripped away in violation of Illinois law every hour that passes.
9. The balancing of the equities weigh in great favor of James and HCL, ~~and all citizens and businesses similarly situated~~, being granted this relief as the Plaintiffs are all still subject to the supreme authority which lies with the Illinois Department of Public Health, which oversight rests with each local department of public health, which administrative body can legally restrict the movement or activities of people, or force business closures, should a bona fide public health risk, specific to Plaintiffs, actually arise during the pendency of this order.

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

A. Defendant, and all administrative agencies under his control are hereby immediately enjoined from in anyway enforcing any provision of EO 32 against

James, ~~or any citizen similarly situated within the State of Illinois,~~ which provision might restrict their movement or activities;

B. Defendant, and all administrative agencies under his control are hereby immediately enjoined from in anyway enforcing any provision of EO 32 against HCL, ~~or any businesses similarly situated within the State of Illinois,~~ which provision might forcibly close their business;

C. Nothing in this order shall be construed to interfere with the Department of Health's supreme authority delegated to them under the Department of Public Health Act of enforcing its lawful authority against James and HCL, and all citizens and businesses similarly situated, including taking all necessary measures prudent as allowed by law to protect the public health, up to and including restricting the movement or activities of citizens, or closure of the businesses, should the facts and circumstances warrant consistent with the Department of Health Act.

D. This Temporary Restraining Order shall remain in full force and effect ~~for ten days from the date hereof or~~ until June 5th, 2020 ~~[a.m.][p.m.] on~~ At 1:00 pm ~~, 2020~~, unless sooner modified or dissolved by this Court.

E. This Temporary Restraining Order is entered at 3:18 [a.m.] [p.m.] on May 22, 2020.

DATED this 22 day of May, 20.

Michael D. Mahoney
JUDGE

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IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT

CLAY COUNTY, ILLINOIS

JAMES MAINER, in his individual capacity and on behalf of all citizens similarly situated, and HCL DELUXE TAN, LLC, an Illinois limited liability company, on its behalf and on behalf of all businesses similarly situated,	)	
Plaintiffs,	)	
vs.	)	NO. 20-CH-10
GOVERNOR JAY ROBERT PRITZKER, in his official capacity,	)	
Defendant.	)	

REPORT OF PROCEEDINGS of the hearing held before the Honorable MICHAEL D. McHANEY on the 22nd day of May, 2020.

APPEARANCES: MR. THOMAS DeVORE
MR. ERIK HYAM
On behalf of the Plaintiffs
MR. THOMAS VERTICCHIO
on behalf of the Defendant

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

THE COURT: I've got 20-CH-10, James, is it Mainer? Am I pronouncing that correctly?

MR. MAINER: Yes, sir.

THE COURT: Versus Governor Jay Robert Pritzker. Set today for petition for TRO?

MR. DeVORE: Correct, Your Honor, with notice.

THE COURT: All right. You may proceed.

MR. DeVORE: Thank you, Your Honor. Judge, Mr. Mainer is an individual who lives within Clay County. He's also a business owner who owns HCL Deluxe Tan, LLC. It's a small business also within Clay County. He brought this cause of action for declaratory judgment and for injunctive relief.

The allegations raised in our, differ significantly from what this court has seen already in other matters in this court, specifically Mr. Bailey, which the court is aware is now in the federal court for the time being. Mr. Mainer brings this cause of action, Your Honor, on a representative basis, which I'll get to in a minute, on behalf of himself and all individuals. It's on behalf of the entity and all businesses similarly situated.

THE COURT: Now, how can he do that --

MR. DeVORE: I have case law.

THE COURT -- without certification of a class or

standing?

MR. DeVORE: Yes. I have case law for the court. Would you like me to address that now?

THE COURT: Please.

MR. DeVORE: Okay. I got their 240-page brief, Your Honor, and went through it and I was aware that that issue would likely be -- may I approach, Judge?

THE COURT: Yeah. Sure.

MR. DeVORE: Would be an issue that the court would want to consider, and this case I think will make that dispositive for the court, Your Honor. It deals with the issue of representative actions versus class actions, as the court is familiar, a class action where you have to certify a class, et cetera. This case, which goes back a long time, lays out the law in our state, it's 1938, and the court can take the time, once it's heard all of the evidence and arguments here today that's in the pleadings and consider this case, I would ask it to consider it.

I'm going to flip to page 11, Your Honor, and I think I would like to put into the record some of the relevant language which I think will answer this question for the court. I'm at the top right of page 11, sir, where the respondents in this particular case argued that this cause was not a representative

suit. The term representative suit and class suit are used interchangeably. Generally the word representative refers to the named individuals actually bringing the action, while the word class embraces the entire group which the named person purports to represent.

Jumping down a little bit. There's a lot of language in between there. I'll get the highlights for the court. I'd ask it to read from about that paragraph on for itself. It talks about down below, the general rule, in courts of equity, as to parties, this is the general rule, Your Honor, I agree, all persons materially interested in the subject matter ought to be made parties to the suit -- I believe that's the argument that my colleague makes on behalf of the Governor -- either as plaintiffs or as defendants, however numerous they may be, in order, not only that complete justice may be done, and that multiplicity of suits may be prevented.

Going on down below. Undoubtedly this does furnish a safe and satisfactory guide in many cases of ordinary practice; but it may admit of doubt whether it is universally true, or whether it is not equally as open to criticism as is the common formulary, in which the rule is expressed.

The truth is, sir, is that the general rule in

relation to parties does not seem to be founded on any positive and uniform principle and, therefore, it does not admit of any, admit of being expounded by the application of any universal theorem, as a test. It is a rule founded partly in artificial reasoning, partly in considerations of convenience, partly in solicitude of courts of equity to suppress multifarious litigation, and the parts I'm getting to I think will speak to the end, Judge, down below, bottom left, page 12. On this account it is of great importance to ascertain, what are the admitted exceptions to the general rule, and to ascertain what are the grounds on which they are founded; for when these exceptions, and the grounds thereof, are fully seen and explained, they will furnish strong lights to guide us in our endeavors to apply the rule and the exceptions to new cases as they arise.

All these exceptions will be found to be governed by one and the same principle, which is, that as the object of the general rule is to accomplish the purposes of justice between all parties in interest, and it is a rule founded, in some sort, upon public convenience and policy, rather than upon positive principles of municipal or general jurisprudence, courts of equity will not suffer it to be so applied as to defeat the very purposes of justice, if they can dispose

of the merits of the case before them without prejudice to the rights or interests of other persons, who are not parties, or if the circumstances of the case render the application of the rule wholly impracticable, the rule being everybody should be a party.

Getting to the end where I think this case, Judge, will make it clear for the court. Bottom right, page 12. Even in the cases in which the court will thus administer relief, so solicitous is it to attain the purposes of substantial justice, that it will generally require the bill to be filed, not only in behalf of the plaintiff, here you go, but also in behalf of all other persons interested, who are not made direct parties, although in a sense they are made so, so that they may come in under the decree to take benefit. The court will go further, and in such cases, it will entertain a bill or petition, which shall bring the rights and interests of the absent parties more distinctly before court, if there is any certainty, or even danger, of injury or injustice to them. The most usual cases arranging themselves under this head of exceptions are where the question is one of common or general interest.

Your Honor, that is this case. This case is outlined here under the exception that is laid out from 1938 to where this cause of action, on behalf of all

citizens similarly situated or businesses, is a product of an executive order and proclamations that touched every person in this state. The Governor would suggest that the way to seek redress for 12 million people is to put them all in individual causes of action. That's impracticable under the standards set forth in this case, Judge.

If the court reads through that again, if necessary, it will find that this is the case to where representative action would apply. We would ask the court to find that be the case.

THE COURT: All right.

MR. DeVORE: Getting to the cause of action, Judge, I think it helps to lay a basic foundation and then to start with the court with the 200 something, highlighting some of the 200-something pages that the Governor's office filed in response. This cause of action, Your Honor, lays out three declaratory judgment actions. Three. Either one of those three, in and of itself, would be a basis to find likelihood of success on the merits. One is that proclamation number three does not rise to the definition of disaster as it is written in the statute. Two, regardless of that, the 30-day limitation that's in the Illinois Emergency Management Agency Act should apply and it should not

allow to be bootstrapped on to and serially proclaimed to the benefit of the executive branch. Three, even if you get past step one and step two, the question becomes whether or not the power the Governor is wielding in the executive order has constitutional authority or it has authority delegated under the Emergency Management Agency Act.

He has to have one of those two powers delegated to him either by the constitution of the state -- I want to make sure I say the state because I don't want to end up in federal court -- or of the Emergency Management Agency Act. That's distinct, Your Honor. If the court finds that proclamation three does not meet the definition of a disaster, if the court finds that, notwithstanding that, the 30-day limitation still applies and, notwithstanding that, the power to restrict the movements of our people or closure of our businesses is not authority given to the Governor by the Emergency Management Agency Act nor is it given to him by the constitution. That's what's at play here, Your Honor.

If I jump into their, into their introduction, Judge, before I lay out what I think is clear and unequivocal likelihood of success on each of those three issues, I think it bears mention looking at their response, and I think the court, if it does that and

allows me to, it will see where the differences are between my client's position and the Governor's position.

Page 1 talks about other courts that have reasoned opinions that rejected arguments for the plaintiff, that the plaintiff asserts here. I think we have made that clear that those opinions aren't controlling. Could they be persuasive to this court? Certainly. I would suggest to the court they don't necessarily raise the issues that we're raising here. They skirt tail it, but they don't get there.

Dropping down below on page 1, it talks about how the court might disagree with the Governor's actions but the General Assembly and Illinois Constitution provide him with the authority. The Governor is taking the position, Your Honor, that not only does the General Assembly, Emergency Management Agency Act I presume, but the Illinois Constitution gives him the authority to restrict people's movements from their homes and their activities as well as forcibly closing the businesses of this state. It's written right here. That's what they're suggesting to this court.

Jumping to page 2 of their position, because disasters (like flooding and pandemics) do not adhere to calendars and may exist beyond 30 days, the Act allows

the Governor to exercise emergency powers for multiple or successive 30-day periods whenever a disaster exists. The Act imposes no other condition or limitation. That's the issue in front of the court as to one of the issues that my client has raised, not to all three of them, but that's really -- I know that they're -- it's almost like gas lighting a little bit that if it continues to be written over and over again, it makes it true.

What we're going to be asking the court to do is look at the definition of disaster specifically and we're going to break it apart and I believe the court will find that there is a limitation in the legislative authority. Again, I want to point out to the court on page 4 that the Governor again reiterates, again I keep using gas lighting because it's a word that stuck with me for the last two months that I've been working on this matter. The Governor uses his powers under the Act, again, Emergency Management Agency Act, and the Illinois Constitution. Now, I'm not going to get ahead of myself, but the court has seen the cite and I brought the case to where our Illinois Supreme Court, which is controlling authority for this court, says that that's not true. We'll get to that. But, again, they continue to say it in here over and over again, Your Honor.

The Governor again, on page 4, three disaster proclamations he has issued, which we agree, related to COVID-19, which we agree, they were all the same virus, citing numerous facts to demonstrate why the current circumstances in Illinois comprise a disaster. I'm going to read that again, and the court has seen in each of these three disaster proclamations the ink continues to flow with all of the facts, those facts are not taken lightly by my client or by myself, but those facts demonstrating the circumstances comprising a disaster.

Your Honor, what is a disaster is defined by the statute and I'm going to get to that, too. I'm not going to get ahead of myself. It talks about a threat or an occurrence, and all of the ink that's being laid of all of the real issues that we have in our state, I'm asking the court not to let that take away from the basic breakdown of what defines a disaster.

THE COURT: How can a pandemic not be a disaster?

MR. DeVORE: I understand. I'm going to get to that. I'm not saying that a pandemic is not a disaster. I'm saying that, according to the definition of disaster as written, whether or not that definition gives rise to the triggering of the proclamation under the statute. Of course, we would all sit here as adults, intelligent

adults saying, well, a pandemic, a public health emergency is a disaster. We're all going to go, well, of course it is. I think if the court, when it looks at the issues within the definition, will find it doesn't fit and I will get to that, sir.

Again, with more gas lighting, Your Honor, page 4, plaintiff urges the court to declare that the only source of authority available to officials to address the unprecedented catastrophe caused by COVID-19 is section 2 of the department of health. I'm going to read that again, Your Honor, because this is extremely, extremely important. They want to say that my client's position is this: That the court should declare that the only source of authority available to Illinois officials to address the unprecedented catastrophe caused by COVID-19 is Section 2 of the department of health. My client is not saying that. They want the court to believe my client is saying that.

First of all, I would point out to the court they continue to use the word unprecedented. I do not take COVID-19 lightly as a citizen of this state and I know my client doesn't, but when we use words like unprecedented, we have to consider that in our state's history there's been a lot of public health disasters. I would imagine the good people of the 1920s where we

lost over a hundred thousand citizens to Typhoid, a case of which I brought in front of this court, they probably thought that it was unprecedented in their time, too. Making something an unprecedented catastrophe does not give us the ability to circumvent the rule of law and moreover, Your Honor, my client is not saying that if we have a disaster, a public health emergency, that we're asking this court to declare that the only source available is Section 2. What my client is saying is that, when it comes to the issue of restricting our people's movement or their activities or to forcibly close our businesses within our state, we're saying that that is controlled by the Illinois Department of Public Health Act. That's certainly not the only available resource that this state has. It has significant resources.

The Governor has certain resources that he can employ as executive and he should, but we're taking the position that the Department of Health Act -- it's one of three positions my client takes. One is the Department of Health Act is the authority to deal with those specific issues and, again, saying that that's the only authority for this whole pandemic, that's mis-leading, Your Honor. They're trying to do that in order, in my humble opinion and my client's, to scare

people.

Page 6 of the Governor's response, bottom, Section 7 of the Act authorizes the Governor to exercise emergency powers for periods of 30 days if he has proclaimed the existence of a disaster, and to continue to exercise those emergency powers for additional 30 days if he determines and proclaims that a disaster still exists. Again, just because we continue to say that doesn't make it true, and when I ask the court to break down the language in the Act itself, I don't believe the court will find that.

Now I know the Governor wants to say that, that as long as there's a COVID-19 disaster, he can continue bunny hopping proclamations into perpetuity. I don't believe the court will find that when it actually breaks down the definition, and the language that they kind of put here on page 2 that I'll get to in detail, Your Honor, where does the definition of disaster start? It starts with an occurrence or a threat. That language is going to be important. I'm going to ask the court -- we've got three big words inside this definition, Your Honor. We've got occurrence. We've got threat and we've got avert.

Page 12 of the Governor's response, having recognized and declared that disaster continued to

exist, on April 30th the Governor exceeded his authority, exercised, I apologize, exercised his authority under the Act to issue Executive Order 2020, it says 33, I'm going to assume maybe attorney general might have meant 32, they can speak to that, that's what I took it to mean, which extends for an additional 30 days many components of his comprehensive response. There's a lot to be gleaned, Your Honor, from this, a lot.

A disaster that continued to exist. That's an admission that the occurrence or threat that they were proclaiming, at least number two and number three proclamations, was the same one that they issued number one. Governor also admits where he is going to extend for 30 days his components for his comprehensive response is admitting to this court that he's no longer exercising emergency powers to try to avert a public health emergency. He's, in fact, using those continued powers to manage this public health emergency in a comprehensive response. I have tried as hard as I can on behalf of my client to glean that from the department of, or the Illinois Emergency Management Agency Act and I can't get there, sir.

I think I just have one or two pieces left, Your Honor, of their response that I think speaks to what the

court should be looking at. Bottom of page 30, sir. Once 30 days has passed, the Governor's emergency powers would have lapsed by law, don't disagree with that, unless he made a new determination that the disaster continued to exist. Again, I have read the Emergency Management Agency Act a thousand times in the last two months and I find no such interpretation and I'm asking the court, when we get to my client's case in chief, to find that there's nothing to be gleaned to say that you can continue those 30 day emergency powers by making a new determination that the disaster continues to exist.

Then they say that my client is asking the court to rewrite the statutory definition of a disaster to exclude epidemics and public health emergencies. That's absurd. I would never do that. I think that epidemics and public health emergencies are absolutely things that should be addressed on an emergency basis, but what I'm asking the court to say is when we look at proclamations two and proclamations three, that that's not what's going on there, Judge. That's not an occurrence or threat of COVID-19 that requires those proclamations to be issued.

THE COURT: Well, then, what is it?

MR. DeVORE: I'm going to jump ahead. If you look, Your Honor, at the proclamation number one -- if

you look at all of the proclamations that they've given this court, there's, what, a hundred of them, you won't find any 30-day termination in the proclamation until about the time that Governor Rauner takes over. Prior to then there's no dates.

On March 9th, there was a proclamation of disaster. My client doesn't contest that COVID-19 existed on March 9th and it was an occurrence or threat that could cause loss of life that required emergency action of the Governor to try to avert a public health emergency. He doesn't object to that. Jump to April 1st with the same exact definition that the court has to consider, what is the occurrence that occurred causing proclamation number two to require issuance? It's not COVID-19, sir. It's the arbitrary 30-day date that they put in proclamation one that caused it to expire. That was the occurrence that precipitated the need because, if not for that 30-day date in proclamation one, proclamation two is unnecessary. It's not necessary.

So if the court is asking itself, I have a proclamation on April 1st, why is that proclamation issued? Is it a disaster as defined under Section 4 that caused the need for this proclamation? The answer is no, sir, it's not. The occurrence was quite simply

the 30-day date that was, is unnecessary, even though they will argue to you that it's required, it's not. It was not even heard of until Governor Rauner took over. That was what caused it. If you jump to May 1st or April 30th, we have proclamation number three, which is where we sit today. What was the threat or occurrence that caused that? The Governor acknowledges, and I think he comes right out and says that it's the same COVID-19 virus. It's always been the same COVID-19 virus. What's the occurrence on April 30th that required proclamation number three? It's not the virus. It's always been there. It's the 30-day termination date that they put in proclamation number two, and I would suggest to this court, absent some relief, it's going to be the same 30-day date that could be put in proclamation number four hypothetically.

That's where, Judge, in Count I my client is specifically taking the position, and it's not so -- these court cases that they're talking about here, they don't talk about that. Actually those cases, if the court reads them, it says the Governor must identify an occurrence or threat, both of them. If the court reads closely, it will find proclamation two and proclamation three, there is no occurrence or threat as defined by the statute, and I've argued for my client in my brief

that until such time as the legislature says, under the definition of Section 4, that an occurrence or threat can be the reissuing of a disaster proclamation, merely to address the fact that the 30-day window that the legislature never required is put in there and terminates the one before it, until that happens, Judge, that's an improper use and improper designation of a disaster. It doesn't fit its own definition, sir, by construct.

Going now -- so that really lays out, Your Honor, what Count I is all about. My client has laid out in Count I that proclamation number three should not be, should be void. If the court would choose to not void the whole thing, it can choose to void the 30-day part, which we'll get to second, but it's my client's position quite clearly, Your Honor, that proclamation number three, as we sit here today, was not issued on April 30th under the strict interpretation definition of Section 4 of the IEMAA. There was no occurrence, Your Honor. The only occurrence was arbitrarily, I would say artificially created with that 30-day deadline.

Now my colleague, in Mr. Bailey's case, I'm not suggesting it, but my client suggested to this court, if it recalls, that attacking a proclamation of disaster was a proper way to address this concern, and I believe

my colleague went so far as to say that if the court might find bad faith on the issuance of a proclamation, I'm not suggesting that nor would I suggest that, but I would suggest to the court is that the proclamation number three was not issued within the definition and I think the court can invalidate it and should invalidate it for that very reason. It should, at a minimum, find there's a likelihood of success on the merit of what we just argued.

Going to number two, Your Honor, is not a new issue for the court. It was touched upon in some fashion. It deals with this 30-day emergency power. 30-day emergency power they're going to argue says one thing. My client is going to argue it says another, and the court herein lies its discretion to figure it out. I think the court, in using long well-established principles of statutory construction, would hopefully find in my client's favor or, at least when we get to the merits, Your Honor, when we get to the merits, will find there is a likelihood that we will do that.

There's an overlap, Judge, and I would ask you to go back to the arguments that were just made regarding the proclamation definition and consider it here. I don't believe there's any doubt, as all of us sit in this room in the court, that the 30 days that's

being put in these proclamations is but a fiction to continue having emergency powers wielded by the executive branch. I don't think anybody would argue that. I think the Governor would argue to this court that the statute doesn't say that he can't.

My client believes that it does. If the court -- it doesn't expressly say it either way. I think we can get there. I think the court has to go to legislative intent. Did the legislature intend, when it put the provision in there, I want to read it, upon the issuance of a proclamation, Governor, I'm paraphrasing, the Governor can exercise emergency powers for 30 days, period not to exceed 30 days. The legislature put that in there and this court is charged with trying to figure out what the legislative branch meant in a way that doesn't completely vitiate that provision. My colleague and the court is aware that statutory interpretation is to be done in such a way that not only does it eliminate or render meaningless a provision, it doesn't result in preposterous results. Absurdity I think the law uses.

So we have proclamation one, proclamation two, proclamation three. Regardless of whether it fits the definition, this court has to ask itself does that, in and of itself, that same COVID-19 that's called a continuing disaster, that the Governor has acknowledged

that he is now using emergency authority to manage his comprehensive plan, whether this court should find that that is an allowable interpretation, an allowable use of the 30 days. I point out to the court that there is no provision, again, that says you have to have a 30-day termination date of a proclamation. That's put in there arbitrarily, it's not necessary.

Your Honor, if this court were to say that the way that this is being interpreted as to this issue, which is issue number two of my client, is proper, that leaves the Governor in a position to continue to issue proclamations of disaster into perpetuity until such time as he alone has determined that a disaster no longer exists. I don't know how long that's going to last. COVID-19 could be with us, Your Honor, for the next year or two. It's possible. None of us know. Unless we have medical experts at some point give us an opinion, which we're not here for today, we have to presume we don't know. So the court is being asked to interpret that 30-day language because the court should give it some credence. What does the legislature mean? They're asking the court to interpret it in such a way that renders it meaningless. What we're asking the court to do is to find, as the legislature was clear, that upon an occurrence -- again, get back to the

occurrence or threat, Your Honor.

What was the occurrence or threat on March 9th? COVID-19. That's true. What was the occurrence or threat, again, on April 1st and April, and April 30th as it relates to the definition of a disaster? It was their termination date, but we can certainly still all agree that COVID-19 on April 30th was still around, still around as we sit here today. So they're trying to, again, create this fiction, Your Honor, to get this 30-day re-energizing power is what I've been calling it and I'm asking the court not to find that that is a proper interpretation because it creates absurd results.

It allows the Governor, by practice, to be shutting down businesses, which I'm getting to in step three, but still he is using that power, whether that's proper or not, to shut down businesses, to restrict people's movements, and when people try to seek redress and get their businesses open, the heavy hand of the administrative agencies is coming down on them with their licenses, and I'm asking the court not to allow that to be interpreted that way in Count II.

Count II, Your Honor, is one --

THE COURT: Hold on. Before you get to Count III, what's your response to the defendant's including in his response your client's Facebook post he's in

business? What's the big -- why do we need a TRO? He's working.

MR. DeVORE: That's a good question, Your Honor, and the question, the answer would be is, as we speak, the Department of Health is trying to shut him down. That's what's going on. The administrative agencies of this state are coming down on licensure to enforce this executive order. That's the harm, Your Honor, and that's what he is here for today is to be able to be free to keep his business open. Subject to being closed, and I'll get to that, by the Department of Health, should he be a health risk, we understand that, but as of right now, the executive -- he's open and he's being threatened with licensure as we sit here today because he needs that license to operate. So they're dangling that over his head, Your Honor. That's the injury and that's the harm that's really -- and I would suggest to the court that is not a unique issue to this gentleman. That's an issue that is the conversation of the state at all levels, the utilization of administrative agencies to keep businesses from opening when the local health departments may not be trying to stop them.

Count III, Your Honor, is the one that the cases that my colleague cites that have had this issue in

their courts across our state, none of them have touched upon it. I think it's one of the most egregious ones that we're dealing with, and it deals with the power, Your Honor. Who has the power to take a business and force it closed? Who has the power to tell anybody that, unless you have one of these essential reasons, you can't leave your house? Count III is all about that.

Now the constitutional provisions they suggest gives the Governor power. Then they also say, in addition to that, the Emergency Management Act gives them the power, the power to control people's livelihoods, the power to control people's movements. That's the issue, the main issue. That's the elephant in the room, sir. Now, as it relates to the constitutional power, my colleague talks about, on behalf of the Governor, about the disastrous consequences that might be present if we don't allow the executive branch to wield this power.

Court's likely aware, I know I was when I went to law school, the Youngstown Steel Mill case of the United States Supreme Court. The court can look it up. It's a landmark case. We were at war with Korea, yes, Korea. President Truman authorized the seizing of all of our steel mills because if it didn't happen there was

going to be chaos and our nation would be at risk, and the US Supreme Court stepped up and said it doesn't matter. The court ought to read that case, bring tears to your eyes, where they said, even under these times of emergencies, the executive office does not wield the police power to seize our businesses. That is delegated to the legislative branch. It's federal. It's the same issues. I'm getting to the case law for Illinois. They don't wield that power, Judge. The executive cannot wield the power. And, again, I would ask the court, if it's going to take this in any fashion under review for any amount of time, read that case. That case tells it all about constitutional separation of powers, which is what's at risk in this courtroom.

Getting though back to Illinois constitutional law, we have a case that we cited. My colleague, on behalf of the Governor, seems to ignore it. They unequivocally take the position, page 45 of their response, they suggest that my client's misreading of the Public Health Act would create a significant constitutional problem by stripping the Governor of his executive authority to protect the public and vesting it exclusively in an unelected official. Then it goes on, the Governor shall have the supreme executive power and shall be responsible for the ethical, or faithful

execution of the laws, and then he goes on, this executive power includes the ability to exercise the state's police power to protect the public health and he cites *Barmore.*

Barmore is a 1922 case during the Typhoid that I've given to every person across this state that would read it that actually would suggest to the contrary. What the Governor is suggesting here, that it gives the executive power, police power over our people, but the court, when it reads that provision, the Governor makes it clear to this court, clear in his opinion that he wields constitutional authority to restrict people's movements and their activities and to forcibly close their businesses, notwithstanding the Illinois Emergency Management Agency Act, which is a delegated authority from our legislature.

Your Honor, I provided to this court *Buettell v. Walker,* Supreme Court of 1974. That was an executive order issued by the Governor, and I want to read -- granted they're saying constitutional article V, sub-section 8 gives the Governor power to wield that kind of control over our people. With respect to the authority of the Governor to promulgate executive order number five, we do not agree with the defendant's contention that the order falls within the authority granted the

Governor by Section 8, Article V of the Constitution, which states the Governor shall have supreme executive power and be responsible for the faithful execution of the laws. That's what they write right here and this is what the Illinois Supreme Court said almost 50 years ago, the purpose of the order appears to formulate a new legal requirement, sound familiar, sir, rather than execute an existing one and, while the order properly emphasizes the desirability of regulating the conduct of people, the desirability of regulation must be distinguished from the power to promulgate it. I would ask the court to require the Governor to explain to it why it should not follow Illinois Supreme Court precedent that says the Governor does not wield that kind of power.

Then we go to the issue of *Barmore.* They cite the *Barmore* case, which Your Honor has it, too, where they say this executive power includes the ability to exercise the state's police power to protect the public health. *Barmore,* 302 at 427. Your Honor, I have the *Barmore* case with me right here. If the court doesn't have a full copy, I have one for it, and I'm at page 427, and I find no where -- it says the state is a sovereign power, we understand that, there's a duty to preserve the public health, finds ample support in the

police power. That's true. We all know that as lawyers. They suggest that here and they put the words executive in there.

Let me flip to the next page, sir. Generally speaking, what laws or regulations are necessary to protect the public health and secure public comfort is a legislative question. The exercise of the police power is a matter resting in the discretion of the legislature. United States, or Illinois Supreme Court precedent. I would like the court to ask, not only where does the authority come from for the Governor to suggest to this court he has constitutional authority, which *Buettell* 100 percent refutes, where is it that the executive can exercise police power where *Barmore* refutes?

Constitutional power to the Governor does not lie, Your Honor, as it relates to restricting people's movements and activities or closing their businesses. Does he have some power under the Emergency Management Agency Act? Certainly. Does he have the power to do those things? He does not, sir. We go to the Emergency Management Agency Act and look there for power. Did the legislature give the Governor's office power to wield, that extraordinary power to wield over our people? The court has to look to the Emergency Management Agency Act

and it can also look, guess what, to the *Barmore* case, 1922.

The *Barmore* case was about a lady who had been quarantined in her home because of, guess what, sir, the Typhoid, the Typhoid virus. She was quarantined. Now she ended up having to stay quarantined because she had the antibodies in her system of the Typhoid virus even though she showed no symptoms. She was complaining to our supreme court of this state that they shouldn't be able to quarantine her because she wasn't sick. She wasn't showing symptoms. They said, no, if you've got the virus, you can be quarantined.

There's a couple of things in this case, Your Honor, that I think will interest the court and will interest the people that are listening. I've been listening for two months, my client has, too, about flattening the curve. We've all heard this term, flattening the curve. I interpret that as a citizen, my client interprets it as someone in this court to say let's try to prevent the spread of this disease. That's a noble cause. We all agree with that. Prevent the spread of the disease. Let's get the least amount of people infected as we can. I understand.

Supreme Court, 1922, still good law in this state, health authorities cannot promulgate and enforce

rules which merely have a tendency to prevent the spread of contagious and infectious disease, which are not founded upon existing conditions because the authorities cannot interfere with the liberty of citizens until it actually exists. That's the law of this state, Your Honor. You can't enforce rules and promulgate rules that merely tend to prevent.

That's why, when I get to the final part of my argument to the court, is why the Department of Public Health, long-standing statutes and rules are significant and that's why the court, I'm hoping to find, that the legislature never intended to give the Governor any power under the Emergency Management Agency Act as it relates to quarantining or isolating our people or closing our businesses.

The court now, if it goes to the specific provisions of the Emergency Management Agency Act, there's six of them that the Governor lists.

THE COURT: Hold on a minute. Are you saying that the Governor has to wait until millions of people are dead and dying before action can be taken?

MR. DeVORE: No. I'm not saying that. When you're talking about action, if you're talking about quarantining or isolating people.

THE COURT: Yeah.

MR. DeVORE: I can get to that. What I'm saying to the court --

THE COURT: Isn't that the whole point? You want to prevent that from happening, and the only way to prevent that from happening are these executive orders.

MR. DeVORE: That's not true. We have, Your Honor, and it's been in place for what I can tell is over a century, the Illinois Department of Public Health Act.

THE COURT: I get you. I get that argument.

MR. DeVORE: Okay. Going to -- again, looking at the existing structure of our law, as the court knows, our legislature is in session right now and I've seen the proposed bill thrown around and if they want to come up with some solutions they can. Looking at what we have as law right now, the Governor listed the six provisions of the Emergency Management Agency Act. One of them, Your Honor, of the six, with a strained interpretation, the court might be able to say did the executive, did the legislative branch intend to give the Governor this power? It's number 8 under subsection 7. It talks about limiting the movement of people within a disaster area or controlling the occupancy of premises within the disaster area. That's as vague as it gets.

The court may ask itself, okay, what does that

mean? I have to figure out what that means. Does that language mean that the legislature intended to give that power to the Governor? Again, leave the 30-day issue out and leave the proclamation issue out. This is an independent question, Judge. Did the legislature intend, with that language, because I'll tell you, the other five that they cite, 1, 2, 3, 9 and 12, they don't even get there. They're not even close. Number 8 is the operative language the court needs to consider. Limiting the movement of people within a disaster area, controlling the premises, occupancy of premises within the disaster area. The court then has to look and say, okay, I have that language. What did the legislature mean by that? The court has to decide, and I would ask the court to consider, as the courts do across the state and have as long as we've been here, you have another act. You have the Illinois Department of Public Health Act. The legislature created that, too. Court has to ask itself is there a conflict between the two acts? And, if there is, that's step 1. Step 2 is which one does the court believe the legislature intended to control the issue that's in front of it today.

The Illinois Department of Public Health Act, Your Honor, if you go to the *Barmore* case, 1922, makes it clear and it says that the Department of Public

Health Act is the supreme authority when it comes to these matters.

In this case, Your Honor, there was someone within the city of Chicago, I believe a commissioner, who they tried, the Board of Health tried to delegate that authority to. Supreme court said no, no, no. Read that case, Judge. What it says is clear. It says that the power over our people cannot be wielded by one man. It says that monarchies were created in such ways. It says the power is wielded by a board. That's what it says, sir. It says a board. We have a board of health, state board of health. They have delegated to every county board of health across this state the power. It's codified in the statute. It's been reduced to administrative rules. I would even suggest to you, sir, it's been reduced to forms for orders of closure and orders of quarantine that are used by counties across this state. I've seen them. That's a structure that's in place.

It's very clear that if a citizen's business is going to be closed, if his movements are going to be restricted, there's due process. There's due process that eventually gives a business or a man or a woman the ability to come in front of this court and to say I don't believe I'm a health risk, sir. It lays out the

substantive standards, Your Honor, and they're clear and convincing evidence that has to be proven of specific facts that this person is a public health risk, not that we're just trying to force that down on our people because it might tend to prevent or reduce the spread, because there's real articulable facts.

I'm not here asking the court to think that that is wise. I'm not asking the court to think that there's not a better way or that whether our legislature maybe ought to make some changes. I'm asking the court to look at what the law is as we have it today and, if this court grants my client's relief, contrary to what the Governor's office wants to say, there's not going to be pandemonium. We have 102 local health departments that have the full resources of the state department of health if they need them.

The court goes to the county code in addition to the Department of Health Act, Your Honor. It lays out in there how the county health departments have been charged with the responsibility and the duty to enforce the provisions of the Department of Public Health Act. Now I'm not sure in this county how many people have been, have caught the disease, have been contagious or any of that. It doesn't matter. It's all conjecture, but I've heard of nothing and I would ask this court to

consider where is the overwhelming effect on our local departments of health. They're operating right now, Your Honor. They're doing exactly what the law prescribes them to do. It's there. If this court enters a temporary restraining order, none of that changes.

The proposed order that my client has put in front of Your Honor to consider specifically says that nothing that this court is doing would interfere with, what, the supreme authority to handle these affairs, nothing. So when the court looks at the Department of Health Act, reads the procedural substantive due process that's required, including a courtroom interfering, if necessary, to protect people's rights, and it compares that to, what does it compare it to, sir, it compares it to one sentence within the Emergency Management Agency Act that says a Governor can, in some facts, in some affect, control the movement of citizens within a disaster area or control occupancy of a house. Which one, sir, is more specific?

The court is aware of the specific versus general canon of statutory interpretation. There's no question, Your Honor, it's more specific. It's grossly more specific and that's what's here to protect our people. And, moreover, the supreme court authority that

I asked the court to consider says we don't give that power to one man. Doesn't matter if that man has good intentions or not, it's too dangerous.

For all of those reasons, Your Honor, my client believes that we've more than established a likelihood of success on the merits.

Irreparable injury, it's the same thing. He wants to try to support his family. This man served in Iraq, helped build a road to Baghdad, and he merely wants to be able to support his family without being sent letters from the Department of Health saying that he can't have a business open, not because, Your Honor, this is so crucial, not because the Department of Health feels that he's a health risk under the provisions of the Department of Health Act. No. No. No. That would be appropriate. Then he could come to this courtroom and argue to the court. They're sending him these letters saying you're in violation of the executive order and you're going to close or you're in trouble. We're going to take your license away from you. That's the irreparable injury, Your Honor, and that's what's holding back my client from being able to exercise his rights of freedom.

For those reasons, we ask you to enter the temporary restraining order. We ask you to enter that

order saying that this executive order is either, one, not enforceable as it relates to closure of businesses or as to the controlling and restricting of people, that's number three, Count III. Number II is the 30 days. They can't bootstrap for the reasons we've argued. And, number one, proclamation number three was not fitting a definition of disaster. Thank you, Your Honor.

THE COURT: Defense.

MR. VERTICCHIO: Thank you, Your Honor. Thomas Verticchio for the attorney general on behalf of Governor Pritzker. Your Honor, over the course of the last three weeks, there have been three cases in which TROs were presented to courts in this state seeking the relief that the plaintiff seeks here with the identical issues at stake that are raised here, the same argument about the Governor not being able to exercise emergency powers under the Act for more than 30 days that are raised here.

On May 3rd in a case filed in Rockford, Illinois, Federal District Judge John Lee agreed with the Governor's reading of the Act. Judge Lee ruled, quote, so long as the Governor makes new findings of fact to determine that a state of emergency still exists, the Act empowers him to declare successive

disasters even if they stem from the same underlying crisis, close quote. That's the Beloved Church case. Judge Lee went on to conclude that plaintiff's statutory argument, same as the one made here, quote, lacks even a negligible chance of success, close quote.

Five days later on May 8th, Cook County Circuit Judge Gamrath agreed, again agreed with the Governor's interpretation of the Act and the statutory instruction relating to the Governor's authority. Judge Gamrath wrote, quote, based upon his April 30th disaster proclamation, Governor Pritzker has the authority under the Act to continue to exercise his emergency powers for an additional 30 days and issue executive order 2020-32, close quote. That's the very executive order that plaintiff challenges here.

Judge Gamrath denied the plaintiff's motion for temporary restraining order there. Same issues. She concluded that plaintiff there, quote, has not shown a likelihood of success on the merits of his claim that Governor Pritzker exceeded his power in issuing the executive order under these exceptional circumstances, close quote. Judge Gamrath's opinion, Your Honor, is Exhibit 2 to our memorandum. Judge Lee's exhibit, is Exhibit 3.

Yesterday, yesterday, May 21st, Sangamon County

Circuit Judge Grischow ruled that Section 7 of the Act, quote, makes clear that the 30-day period during which the Governor may exercise emergency powers is triggered by the Governor's proclamation declaring a disaster, not by the date on which the disaster initially arises. If a disaster still exists, Section 7 of the Act permits the Governor to continue declaring its existence by proclamation and utilizing the emergency powers conferred on him for the 30-day period following each such proclamation, period, close quote. Same exact issue here.

Judge Gamrath (sic) continued, quote, the April 30, 2020, disaster proclamation statutorily authorized the Governor's Section 7 emergency powers implemented by executive order 2020-32 on April 30, 2020. Plaintiff's assertion that Section 7 emergency powers were statutorily permitted for only one single 30-day period after the initial March 9, 2020, disaster proclamation is, thus, contrary to the plain meaning of the Act. Judge Grischow's opinion, Your Honor, is Exhibit 1 to our memorandum. Like Judge Lee, like Judge Gamrath, Judge Grischow denied the plaintiff's motion for temporary restraining order finding simply there's no likelihood of success on the merits.

Three cases over the last three weeks, three

different judges across this state, same decision by each on the identical issue raised here by plaintiff. Judges Lee, Gamrath and Grischow, Your Honor, all recognized that, when the Illinois General Assembly passed the Emergency Management Agency Act, it did it to ensure that the state was ready in the event of a disaster. They all looked at Section 2 of the Act that said it was promulgated in order, quote, to protect the public peace, health and safety in the event of a disaster, period, close quote.

The Act grants the Governor the ability and authority to declare by proclamation a disaster and those proclamations trigger the emergency powers of the Act.

THE COURT: How many proclamations have there been?

MR. VERTICCHIO: There's been three, Your Honor. March 9th, April 1st, April 30th.

THE COURT: All right. What if proclamation number four says I'm declaring a disaster exists until every citizen in this state is vaccinated? Does he have that authority according to your statutory interpretation?

MR. VERTICCHIO: He certainly has that authority, and then that brings us to where we were

before a few weeks ago that if there then is a challenge --

THE COURT: You're saying --

MR. VERTICCHIO: Wait a minute. The basis -- the basis -- if the basis of the proclamation is challenged, then that's fair game, but that's not happening. We've heard it multiple times from Mr. DeVore today, of course, COVID-19 is here. Of course, we have a disaster. Now, we have heard that but the operative April 30th proclamation wasn't promulgated because of a disaster. It was promulgated because the 30 days was running.

The critical issue is let's look at the record and did a disaster exist on April 30? I don't think there's a dispute about that, that a disaster existed. Exhibit 4, I'm sorry, Exhibit 3 to the complaint, Your Honor, is the April 30th promulgation from the Governor and it details page after page the health risks and findings of the medical experts and what's going on in this state with regard to COVID-19, and then in Section 1 of the promulgation, the Governor wrote pursuant to the provisions of Section 7 of the Illinois Emergency Management Agency Act, I find a disaster exists. So the question is was that finding based on fact, and we've heard nothing to even suggest that it

was not. So on the 30-day issue, really the driver of the claim and the issue before the court, I --

THE COURT: Why did the proclamations or the executive orders even mention 30 days? Why even put that in there?

MR. VERTICCHIO: Because of wording of the Act, Your Honor.

THE COURT: Why didn't he just say I deem it a disaster and I will deem it so until I undeem it?

MR. VERTICCHIO: I don't think he can do that. He has to have a basis for the disaster. A disaster has to exist at the time he makes the proclamation, and he made that proclamation on April 30th. So then the executive order came the same day, and the question is did that executive order trigger 30 days of emergency powers and, in order to determine the answer to the question, you, of course, have to look to the statute.

My first boss in this business, Your Honor, more decades ago than I would like to admit, told me that if the case is about a statute, read the statute. So let's read Section 7. Here's what it says. Quote, Emergency Powers of the Governor. In the event of a disaster, as defined in Section 4, the Governor may, by proclamation declare that a disaster exists. Upon such proclamation, the Governor shall have and may exercise for a period

not to exceed 30 days the following emergency powers, and then it continues and delineates the powers. So reading the statute, it's clear that there is a singular criteria to issue a proclamation.

THE COURT: But it says not to exceed 30 days.

MR. VERTICCHIO: Exactly, but if the criteria to issue a proclamation exists, a disaster, then the Act says upon such proclamation, what proclamation? The proclamation that there's a disaster. So upon the April 30 proclamation, quote, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers, close quote. So when you look at the series of events here as we know them now to exist, they're all, they're attached as exhibits to plaintiff's complaint, March 9th there was a proclamation of disaster, that's Exhibit 1 to the complaint, I find, the Governor determined, I find a disaster. That's the proclamation. That then triggered the ability on March 20 to issue the executive order for a period of 30 days because, upon such proclamation, he can issue the executive order and exercise emergency powers for 30 days.

April 1st, the second proclamation, I find, present tense, a disaster exists. There's no dispute that it didn't exist. I find that it exists on April 1.

What did that do? Upon such proclamation, the emergency powers under the plain reading of the Act triggered for 30 days. April 30, I find that a disaster exists. This is Exhibit 3 to the complaint. What did that proclamation do? Upon such proclamation, the emergency powers of the Act trigger for 30 days.

The executive order at issue here, Exhibit 4, issued the same day that the April 30 proclamation was issued, allowed the exercise of emergency powers for 30 days. There's no limitation within the Act on the number of such proclamations.

Now, in your hypothetical, could the Governor just issue a proclamation because he feels like it? No. There has to be a disaster, and that's the guardrail here, but there's no limitation on the number of proclamations he could issue, and where the plaintiff's construction get confused is that the plaintiff somehow reads a 30-day limit on emergency powers as linking to a particular disaster thinking, well, no, there was a disaster on March 9, 30 days hence, April 9, we're done, but it doesn't link to the disaster. It links by the specific words to the proclamation. Again, read the statute and here's what it says, this is a separate standalone sentence, quote, upon such proclamation, the Governor shall have and may exercise for a period not to

exceed 30 days the following emergency powers, close quote.

Not only does the section plainly read support the Governor's construction but the statute as a whole supports the Governor's construction. Section 3 of the Act, which is the limitations section of the Act, the only portion of the Act that constrains the Governor's ability at all and it says, quote, that the Act should not be construed, I'm sorry, the Act should not be construed to constrain the Governor's ability to, quote, exercise any other powers vested in the Governor under the Constitution, statutes, or common law of this state, independent of or in conjunction with any provision of this Act, close quote.

There's no limitation there on the Governor's ability to issue successive proclamations which then trigger the Act, and the question then becomes when you look at the Act as a greater whole, was there somewhere in the Act that the General Assembly did speak to this issue? Was there somewhere within the Act that they did say slow down, if you issue a proclamation of disaster, you can only do it for a limited period of time? And the answer to that, of course, is yes. Yes. They did it in Section 11.

Section 11 of the Act permits principle

executive officers of political subdivisions to declare local disasters. However, upon such a local disaster declaration, the General Assembly said this, a local disaster declaration, quote, shall not be continued or renewed for a period in excess of seven days except by or with consent of the governing board of the political subdivision, close quote. So when the General Assembly wanted to tie a limitation on the ability to exercise emergency powers for a limited period of time, it did. For the local subdivisions, it said only seven days, and then you have to get authority and agreement from the governing body of the political subdivision. That simply doesn't exist with regard to the Governor. There's no such limitation placed upon the Governor in Section 7.

And on this issue, Your Honor, Judge Grischow yesterday addressed that very point at page 5 of her opinion. Quote, the General Assembly demonstrated it was capable of creating limits on renewing disaster declarations when it believes such limitations were appropriate. Continuing, while the General Assembly permitted the Governor to declare a disaster with no limitation on subsequent declarations and the renewed triggering of emergency powers under Section 7, it explicitly precluded local executive officials from

continuing or renewing such declarations without the intervention of the local legislative body, period, close quote.

So Judge Grischow, when reading the Act as a whole, said and ruled when denying a TRO that the General Assembly knows how to make a limitation on this. It did it in the Act, within this very Act with local subdivisions. It didn't do it with regard to the Governor.

Plaintiff's construction of the Governor's emergency power that it lapses, it lapsed on April 8th violates, therefor, multiple rules of statutory construction. The plain reading of the Act, it adds restrictions where none exists and it ignores that the General Assembly knows how to limit it when they want to. And on that point, Your Honor, Judge Grischow yesterday also commented and ruled as follows: Quote, because the interpretation of the act upon which plaintiff bases its claims cannot be squared with either the plain reading of Section 7 of the Act or an examination of the Act as a whole, there is no likelihood that plaintiff will succeed on the merits of its claim, close quote. But the plaintiff's theory, we heard it today, it's in the brief, it's in the complaint, is multiple successive disasters though and

multiple then successive triggering of the 30 days renders the 30 days meaningless. Well, no, because the guardrail is that the, there has to be a disaster. The 30-day limitation compels the Governor to make periodic determinations as to the existence of a disaster, and most recently he made that on April 30 and we've heard nothing to suggest that the determination of whether a disaster existed on April 30 was in any way unfounded. If a disaster exists at a point in time, then it triggers the 30 days for emergency powers.

And on that point, Your Honor, we heard today that, well, but Section 4 says but it's an occurrence, it's an occurrence, and there can only be one occurrence and that occurrence -- we all know the occurrence was sometime in March, maybe it was before, but the occurrence was the beginning of the COVID-19 pandemic. So if that's a disaster and it's only an occurrence, you can't have another occurrence and another occurrence and another occurrence, but that reads, again, words out of the statute because Section 4 is much broader than that. It says, quote, disaster means an occurrence or threat of widespread or severe damage, injury, or loss of life, and then it continues on referring to resulting from any natural or technological cause, including but not limited to an epidemic.

So it's more than an occurrence. It's the threat of injury or loss and, as we sit here today on this record, there's nothing to suggest, in fact, there's not even been an attempt to try that as of either March 9, April 1, or April 30th there was not a threat of injury or loss, and counsel made a point of the word avert because the statute says that disaster is part of, quote, requiring emergency action to avert, among other things, an epidemic. Well, avert means to ward off, and I don't think there's a suggestion, nor could there be a credible suggestion, that all of the action undertaken by the Governor was not in an effort to ward off, avert the dangers and injuries resulting from the pandemic.

Judge Gamrath, in her decision a few weeks ago, addressed this very point. She said, quote, a reasonable interpretation of the Act grants Governor Pritzker the authority to extend his power beyond an initial 30-day period where, as here, the disaster is ongoing and has not abated. Plaintiff correctly notes that the limit of 30 days in the Act encompasses the occurrence of a discrete event, one that stops and starts in a relatively short amount of time necessitating implementation of emergency powers for 30 days.

However, the Act also contemplates more and is not to be read so narrowly. That's at paragraphs 21 and 22 of her opinion, Your Honor, which you, of course, have. And here's how she wrestled with the it contemplates more at paragraph 25. Quote, Section 4 of the Act defines a disaster as an occurrence or threat of widespread or severe damage, injury or loss of life resulting from an epidemic. The unrefuted facts and objective data show that COVID-19 continues to infect and kill Illinois residents at a high rate. Therefore, a threat of widespread or severe damage, injury or loss of life continues to exist. And, on this record, it can't be disputed that that is just as true today as it was on May 8th.

The numbers are in our brief, Your Honor, but I believe that as of today there's 102 cases of COVID-19 reported in Illinois and 4,600 approximately reported COVID-19 deaths. It's somewhat telling that that number, that death number is almost 3,000 more deaths than it was the day I walked in this courtroom four weeks ago. So that evidence can't be disputed and there's no effort to dispute it. The disaster exists. The continuing threat exists, therefore, the proclamation of disaster triggered the 30 days on April 30 and those days continue. And, of course, the

guardrail which we've mentioned is that the Governor has to make this good faith determination and that's an issue that, and I'm sorry to belabor the point, Your Honor, but these are three judges that took the time, they considered the cases, the record before them, and made reasonable written opinions and here's what Judge Grischow said on this issue, the guardrails, quote, this is at page 5, the court is not saying the Governor's authority to exercise his emergency powers is without restraint. As the Act outlines, he must identify an occurrence to support each emergency declaration or the threat. Once the emergency has abated, the Governor's authority to issue executive orders will cease, and there's no evidence here or even an attempt at evidence that the emergency as of April 30, the proclamation and executive order at issue, had abated such as, such that the Governor's proclamation and executive orders were not appropriately exercised, and the proof of all of this, the statutory language, the clear language of Section 7, the statute as a whole supporting that clear language is the historical practice.

Counsel referred to Governor Rauner. We know that Governor Rauner and Governor Pritzker and, before that, Governor Quinn issued successive and multiple proclamations. It was flooding. It was H1N1, and at no

time did the legislature say time out, Governor, that's not what the Act means. You don't have authority to do that but, in fact, we know that the Act had been amended 11 times over the last two decades when these Governors did that and that has legal consequence.

The cases that we cite to you, Your Honor, the *Pielet* case is the lead case on this issue, says that, quote, a reasonable interpretation of a statute by an agency charged with enforcement of that statute is entitled to great weight. Such a construction is even more persuasive if consistent, long-continued, and in conjunction with legislative acquiescence on the subject. Such acquiescence appears where the legislature, presumably aware of the administrative interpretation in question, has amended other sections of the Act since that interpretation but left untouched the sections subject to the administrative interpretation in question, and that is exactly what we have here.

We have clear statutory directive, a practice by multiple governors in issuing successive and multiple proclamations, acquiescence by the legislature because it was amended 11 times and nobody said, hey, we better amend that section because these governors are running wild. Hasn't happened. Why? Because it's in

conformance with the intent of the legislature and the plain language of Section 7.

Regardless of all of that, the plaintiff's theory in this case is, no, that here the Governor proclaimed a disaster on March 9 so as of April 9 he could do no more in terms of his emergency authority. Everything up through April 9, all of the protections, and they're all in the record, Your Honor, because they're attached to the complaint, all of the protections, all of the procurements, all of the executive orders relating to foreclosures and re-possessions and purchase of ventilators and, of course, the, what's termed, the stay-at-home order, the social distancing, the threading back and paring back of certain businesses to allow online, curb-side, all of that as of April 9, according to the plaintiff, is gone and one day past that by the Governor is unenforceable, invalid, and I think the phrase in the complaint is void *ab initio*.

Well, that's an absurd result because we know standing here on May 22nd the General Assembly hasn't addressed any of this. They haven't passed any COVID-19 protection issues. The Governor's proclamations pursuant to the Act gave him the authority for the 30 days and then 30 days and then 30 days and no one

said you can't do that. The General Assembly did not suggest that he couldn't. There's been no action by them suggesting that he can't, but if plaintiff's theory is right, everything since April 9 goes poof, and that cannot be consistent with the purpose of the Act in Section 2 again to, quote, protect the public peace, health and safety in the event of a disaster.

A little bit about the 2001 Informal Opinion, Your Honor. It's stressed in plaintiff's filing, we didn't hear much about it today, but the Informal Opinion by Attorney General Ryan, we lay this out in our brief, Your Honor, that opinion didn't address any of the rules of statutory construction that I just marched through for you, probably more laborious than I should have, but marched through nonetheless. It didn't consider Section 11, didn't consider Section 7, didn't consider Section 3, and as Judge Lee and Judge Grischow and Judge Gamrath concluded, the construction of Section 7 is completely consistent with the Governor's actions here to the extent the 2011 opinion, or 2001 opinion disagreed. All of those courts said that under the facts we have here, under the language here, it's appropriate.

And the other thing to consider about the 2011 (sic) opinion letter is that the Act was different. It

has since been amended. The Act then did not include, for example, public health emergencies as part of the disaster. Well, public health emergencies are something we're experiencing right now that obviously can go on far more than 30 days, far more than a few months, and we are right smack in the middle of it.

Just as importantly, the predecessor act, Your Honor, the Civil Defense Act, in Section 7 of that Act there was a rule for the legislature on the Governor's promulgation of disaster and how long he could exercise emergency powers. The predecessor act had a rule for the legislature, the General Assembly in it. This Act does not. The General Assembly must be presumed, under rules of statutory construction, that they knew they were changing it and they did.

Probably one of the most telling things about the 2001 letter opinion, which the plaintiff doesn't mention, is what was the question that was asked? The question asked was can the Governor extend the 30-day period? That's not what this case is about. No one is saying that that 30-day period should really be 31 or 32 or 48, not at all. It's 30. It's 30 upon such proclamation and, as it sits today, we're within the April 30 proclamation so that 30 days runs well.

Last thing on the 2001 opinion, Your Honor, the

Illinois Supreme Court told us, we cite you the case, the *Dew-Becker* case, last month, that when it comes to an attorney general opinion, like the 2001 opinion, if it's not well researched, not only is it not precedential, it's not relevant. Those were the words of the Illinois Supreme Court.

The executive orders in place, in place have put in force protections for the people of the state of Illinois and, even at that, we're up to 102 occurrences, 4,607 deaths. If they're removed, then those numbers are only going to go up and that would lead to an absurd result that's hard to imagine consistent with the legislative intent.

The Public Health Act, we heard about the Public Health Act, and I guess the simple thing about the Public Health Act is that it simply doesn't apply. There's no suggestion that the Department of Public Health in this county or others is actually taking action under the Act and, if it was, that's independent with what the Governor did under the Emergency Management Agency Act. The Public Health Act, itself, says that the two work in conjunction.

THE COURT: If the Act doesn't apply, why have it?

MR. VERTICCHIO: It doesn't apply to the facts

of this case, to the facts of this case. The Governor's proclamations and exercise of emergency powers is under the Emergency Management Act. The facts that the plaintiff has pled to you don't trigger the Public Health Act because no one has undertaken that conduct against him and he's not complaining about it in his pleadings in front of you in the verified complaint.

First and foremost, and Judge Lee recognized this, it's in our brief, this, the situation described by the plaintiff and that exists as a result of the executive orders is neither an isolation nor a quarantine nor a business closure. That's just not what's happening here and Judge Lee ruled as such. It's not isolation, it's not a quarantine. If it were an isolation or a quarantine or a business closure, then all of the provisions in the executive order wouldn't be allowed because the executive order sets forth all kind of abilities of people to move and travel and businesses to open to degrees. If it were truly a public health department quarantine, the business is shut down.

THE COURT: Only as deemed, quote, essential, end quote.

MR. VERTICCHIO: Well, even for non-essential, even for deemed, to use your phrase, non-essential. For a business, there's curb-side online and there's other

non-sales related activity that are specifically set forth as allowable under the executive orders. Clearly not a public health closure order under the Public Health Act. The two are just separate and can they both apply to a given situation? Yes, but the Governor's orders were issued pursuant to the Emergency Management Act, and there's just no question that under the terms of the Act and, frankly, the common parlance of the words, there is no quarantine, isolation or business closure. So the Public Health Act, simply, it doesn't apply.

Beyond the statutory authority, Your Honor, the Governor's April 3rd executive, April 30th executive order was also issued, of course, under his constitutional authority of police powers and this follows, again, from three really irrefutable, constitutional, fundamental doctrines. The first that state police powers authorize the government or supreme executive to take action in response to pandemics. The second is that the legislature, the General Assembly has not prohibited the Governor from taking such action, and the third is COVID-19 is, of course, a health emergency pandemic.

As to the first, we heard a little bit about the *Barmore* case. Well, in *Barmore*, the Illinois Supreme

Court upheld the restrictions upon Mrs. Barmore as a result of Typhoid in the rooming house. Mr. DeVore will tell you that, well, yeah, but that was legislative action, but the point is *Barmore* approved and allowed the use of police powers in the time of a public health emergency. And on the issue of what about the executive? What about the executive? The constitution says that the Governor is the, quote, supreme executive and shall, quote, have the supreme executive power.

The United States Supreme Court, cited you the case, the *Apollon* court almost 200 years ago spoke to this very issue that's being refuted today. Well, the executive can't do this. Here's what the court said, quote, it may be fit and proper for the government, in the exercise of the high discretion confided to the executive, for great public purposes, to act on a sudden emergency, or to prevent an irreparable mischief, by summary measures, which are not found in the text of the laws, period, close quote. That's the constitutional authority of the executive.

What do we hear from the plaintiff on that? Well, plaintiff tells you look at *Buettell*. Look at *Buettell.* That's authority for the proposition that the Governor can't just issue executive orders because in *Buettell* the Illinois Supreme Court said, no, that

executive order kind of, to use your phrasing, Your Honor, kind of looked like a duck, walked like a duck, quacked like a duck so it was legislative in nature, but *Buettell* has no application at all. *Buettell* was not a police powers emergency case. In *Buettell* they were dealing with political contributions and required disclosure of political contributions and the Illinois Supreme Court said the Governor went too far. *Buettell* is just simply not a police powers case. It's not an emergency case. It doesn't apply.

Which brings us to what does apply? The cases say, *Barmore,* others that we cited say at the time of an emergency, the police powers exist. We've heard in this courtroom a little bit about, well, what does apply with regard to this constitutional issue? Your Honor, in the Bailey case on April 27th, you said, I'm looking at page 65 of the transcript of proceedings, when talking about this very issue, what about the constitutional authority, you said settled rule, quote, allows the state to restrict, for example, one's right to peaceably assemble, to publicly worship, to travel, and even to leave one's home. Courts owe substantial deference to government actions, particularly when exercised by states and localities under their police powers during the bona fide emergency, close quote. And then you went

on in the very next paragraph to say that courts will intervene if the action, quote, to protect the public health or the public safety has no real or substantial relation to those objects, or is beyond all question, a plain, palpable invasion of rights secured by the fundamental law, close quote. And then finally you recognize, quote, courts reviewing a challenge to a measure responding to a society-threatened epidemic of COVID-19 should be vigilant to protect against clear invasions of constitutional rights while insuring they do not second guess the wisdom or efficiency of the measures enacted by the democratic branches of government, on the advice of health experts.

So that's what you said about the standard to apply, and what has the plaintiff said in this case, in this very case? Here's what the plaintiff said, I'm looking at his, the plaintiffs, their legal brief in support of plaintiffs' claims, paragraph 29, quote, while the courts will not pass upon the wisdom of the means adopted to restrict and suppress the spread of contagious and infectious diseases, they will interfere if the regulations are arbitrary and unreasonable.

So the plaintiff tells you you can interfere. You can strike down constitutionally the executive orders, quote, if the regulations are arbitrary and

unreasonable. You have said that it's constitutionally deficient in authority if the action, quote, to protect the public or public safety has no real or substantial relation to those objects.

From there the question becomes, well, were those standards satisfied? And the answer is not on this record, not on this record, because there is not one piece of evidence that the Governor's actions are arbitrary or unreasonable or that they weren't done to protect the public in the case of an emergency. There's been a lot of talk, a lot of talk but no evidence.

We're here on a motion for temporary restraining order. Zero evidence on the point on the plaintiff's side. The only evidence on the issue about whether this conduct was arbitrary or unreasonable is the evidence in the complaint in the form of the attached disaster proclamations. The exhibits to the complaint are part of the complaint. They're part of plaintiff's evidence, and the disaster proclamations march through the public health emergency and march through, more importantly, the evidence that supports it and there's nothing in those documents and we've heard nothing today and there's nothing in a submission to suggest that any of it is arbitrary or unreasonable because it was all done to protect the citizens of the state of Illinois. It's

the plaintiff's burden to come forward with evidence. They have to come forward with evidence and, not only didn't they, they didn't even try. There is simply no likelihood of success on the merits as Judge Lee, Judge Grischow and Judge Gamrath all found on the statutory construction of Section 7 and the Act as a whole.

Separately and independently, the Governor had constitutional authority that has not been refuted and there hasn't been an attempt to refute it. As a result of that, the TRO request must be denied, but there's actually more because plaintiff has told you, and they're right, he has the burden of showing irreparable harm, irreparable injury and Your Honor hit it right on the head when noting, well, the business is operating. That issue came up in Sangamon County, too.

THE COURT: But you put in your brief he's operating in violation of the executive order.

MR. VERTICCHIO: He absolutely is. And on that point, if there is an administrative remedy to be had, if someone tries to shut him down as a result of that, then he can pursue his administrative remedy but, as you sit here today adjudging irreparable harm of the business, there is none. Judge Grischow reached this exact issue in the *Running Central* case when she ruled yesterday that, because the plaintiff was operating, it

failed in its burden to show irreparable harm. That doesn't mean the case was over. Didn't mean it at all. It just meant that, for the sake of a temporary restraining order, that was another reason why it could not be granted, and she had also obviously concluded that there was no likelihood of success on the merits.

Now, we just heard from counsel because you asked him, well, he's still operating, what's the harm, and the answer was, well, he gets these letters, he gets these threatening letters, and there was a comment about an inability to operate enough to support the family, which it's hard to imagine anything more important than that, but the point is it's not in the record.

We're here on an emergency temporary restraining order that the Governor got notice of yesterday at about, I don't know, 4:00 or so, so less than 24 hours later we're here and it's plaintiff's burden to support this extraordinary request for extraordinary relief with evidence, and, respectfully, it's not here. So likelihood of success? No. Irreparable harm? No. But what else? The plaintiff fully concedes that the court is to balance the equities. The court is to balance the equities and, when you look at that balancing, given the lack of any evidence on the plaintiff's side of harm, other than talk, against all of the evidence, even

within plaintiff's complaint, about the damage to the public should the executive orders be held invalid as of April 9th, the balancing isn't even close because it's undisputed on this record that the modeling of the state is that, if there's not social distancing and if there's not limitations put on businesses that are not found to be essential, the modeling in this record says deaths would be ten to 20 times greater than they are. The modeling in this record, it's undisputed, is that, if the executive orders are found invalid, the health care systems will be overwhelmed. That's the evidence. There's just nothing contrary to it and, Your Honor, this court can take judicial notice of the records in the circuit. You granted in the Bailey case the Illinois Health and Hospital Association right to file an Amicus brief and supporting affidavits on this balancing of harms issue. It's in the records of this court that the court can take judicial notice of.

Here's what the Illinois Health and Hospital Association concluded on this balancing issue, and it almost sounds trite to these days but it's not trite. These people, they're on the front lines. We hear it all the time. These are the healthcare workers on the front lines, and the record on this issue from them is sworn testimony in the affidavit of Dr. Wahl, two

striking conclusions, quote, absent the executive orders, hospital beds and medical equipment will not be available leaving the critically ill without needed medical care, close quote. Quote, absent the executive orders, greater numbers of frontline health care workers will get sick and hospitals will be under staffed, close quote.

Your Honor, the only evidence on the balancing of harms shows that it's not even close. So, in the end, no likelihood of success, the conduct is statutorily authorized separately and independently from constitutionally authorized, there's no irreparable harm or, if there is, it's not on this record. The balancing is not close and there hasn't even been an attempt from the plaintiffs on the balancing burden.

And on the issue that you originally asked about, how can you bring this on behalf of similarly situated individuals throughout the state, similarly situated businesses throughout the state, I appreciate that counsel was able to find an appellate court opinion from more than 80 years ago with some loose language on this point, but it's about 40 years plus older than the rules of civil procedure and the authorities cited by the Governor to you on these issues in the brief. It could not be more clear. The only time that plaintiffs

or the court can extend the grant of relief past the plaintiff is in three circumstances, either interested parties intervene in the case, that hasn't happened, other parties join as plaintiffs, that hasn't happened, or there is a class certified. That hasn't happened. There hasn't even been a motion for class certification. There is not one allegation in the complaint even purporting to satisfy the obligations of requirements for class. So Your Honor was, identified the issue quickly and the 80-year-old opinion doesn't get around rules of practice as they exist in 2020.

Mr. DeVore used an interesting phrase when he was closing about the rule of law and that does, that's what it comes down to here, the rule of law, because, if the court considers the rule of law, plaintiff can't win. The burdens haven't been satisfied.

I know that most people in this courtroom, maybe all of them, don't like the Governor's orders. The court has expressed opinions about the wisdom of the Governor's orders, but the orders are for the executives to determine. It's within the statutory power. It's within his constitutional power, and the rule of law supports it.

For all of those reasons, the motion for temporary restraining order should be denied. Thank

you, Your Honor.

THE COURT: Response, plaintiff.

MR. DeVORE: Yes. Thank you, Judge. If the standard by which the court is being asked to rule on this matter is protecting the public and if that's the standard that courts across this state and nation will continue into the future, protecting the public at all costs no matter what the law says, what a world our children might find ourselves in when they're our age.

I'm reading from the *Barmore* case, and I admire my colleague for that very good presentation that he gave, but as I sat and listened closely, I found myself interested on how those conclusions could be drawn from the very cases that we both use. I'm in the *Barmore* case right now, Judge. A board of health must necessarily consist of more than one person and it generally consists of several. This is where it gets good. Many authorities contend that the administration of public health should be vested in an individual and maybe that individual should be a person trained in the science of public health. This contention is based on the grounds that this form of administration of health laws is productive of efficiency and economy. Does that sound familiar, Your Honor?

The same argument might be made in favor of an

absolute monarchy, but the experience of the world has been that other forms of government, perhaps more cumbersome and less efficient, ensure the people a more reasonable and less arbitrary administration of the law during the Typhoid, Your Honor.

My colleague makes it clear, pretty much admits to this court that the Governor's goal is to limit the spread of the virus. I ask the court to take some judicial notice of a few things. Maybe the court might take judicial notice of the fact that medical health professionals across this part of the state are getting laid off. Precarious, but seems to be the case, but prevent the spread of the virus, that's what the goal of the Governor is. They talked about it. Going to have medical facilities overwhelmed. Many people are going to be ill. I hope that's not the case but, nonetheless, until such time as the law of this state changes, the Illinois Supreme Court says you can't promulgate rules that merely tend to prevent the spread of infectious disease. Those are not my words, Your Honor. Those are the words of the Illinois Supreme Court a hundred years ago.

The court would need to know nothing more about these various arguments of statutory construction we've talked about. It can merely consider for itself whether

this stay-at-home provision that my colleague interestingly enough points out -- they try real hard not to call it a quarantine or an isolation, Judge. They try to stay away from those words because, again, more gas lighting.

I would point you to Section 16 of the executive order where I read the intent of this executive order is to ensure that the maximum number of people self-isolate in their residence to the maximum extent feasible, while enabling essential services to slow the spread of COVID-19. The extent of the, or the intent of the executive order, the Governor admits, is not allowable by our own supreme court of this state but yet, boldly enough, he lays it in there. I think the court can stop there.

They talk about Governor, or states attorney, Attorney General Ryan's section, or his 2001 opinion about the 30 days, et cetera. They say there was nothing else Attorney General Ryan talked about, Judge. I would disagree. Attorney General Ryan points out to Section 9 of the Act, Emergency Management Act. It says, talks about the Governor's use of funds. It says, if necessary, and the General Assembly is not in session, the transfer of funds from other accounts but only until such time until a quorum of the General

Assembly can convene in regular or extraordinary session. So he did take that into account. I agree it's not controlling in this court. It's persuasive for whatever purpose the court wants to use it, but that attorney general believed that the 30-day limitation period did apply. I would ask the court to use its own judgment and determine whether or not it applies and not the judgment solely of the attorney general or of any of these other courts.

My colleague also talks about this issue over and over about the occurrence of a threat, talks about, again, this good faith dispute of whether proclamations two or three were done in good faith. Let's just talk about number three. I'm not here to say the Governor did anything in bad faith. I would never suggest that, but the occurrence or threat, Your Honor, by definition was only done because of the arbitrary end date.

They talk about serial proclamations of prior Governors. The proclamations up to the point of Governor Rauner never had a 30-day end date in them, ever. As the court suggested, just issue a proclamation. The proclamation terminates when the disaster terminates. Seems like every Governor that they've cited, there's, I don't know, this many of them, an inch thick, except for Governor Rauner and Governor

Pritzker, they didn't put dates.

Governor Rauner, when he put dates in for flooding things, et cetera, like that, he was not issuing emergency powers, wielding emergency powers, controlling people's movements and restricting their activities. This is the first time in this state that I'm aware of that that's ever happened. So my colleague also talks about, well, there's some authority out there that if the legislature has acquiesced, maybe there is an inference the court can take that there was intent. I would suggest to this court this is the first time that a Governor in our history that we have in front of us on this record today that that's ever happened.

The court can take judicial notice, again, of Senate Bill 3993, it's a public record right now, that would suggest an inference to this court that that wasn't intended because they're trying to limit the very power of the Governor to issue serial proclamations. So to suggest that the legislature acquiesced for years to this is misleading, Your Honor, because there is no such facts where someone has controlled our people to this extent under the emergency powers, and it seems now the first time that our legislature gets back in session they're taking that issue on.

Again, there's this talk about the proclamations

one, two or three. My colleague talks about the definition, and I pointed that out to the court, too, an occurrence or event that is to avert or, as my colleague says, to ward off a public health emergency. I agree with that definition, occurrence or a threat to avert or ward off a public health emergency. That's what the emergency act is all about.

The court can look at each of those proclamations number two and number three, but number three is sufficient, and it states, Your Honor, that all of these circumstances constitute and it is a public health emergency and I would ask the court to consider under the strict definition how do you ward of or avert with emergency powers something that your own proclamation says is present and existing right now and you have put a plan together to, a comprehensive plan to deal with it. That's not an emergency, Your Honor.

Lastly, Your Honor, they talk about the, you know, the *Barmore* case talks about arbitrary and unreasonable. We cite that authority. We agree with that authority. The courts, if it takes it out of context, will not interfere with the Board of Health is what *Barmore* said, the Board of Health's promulgating and to use their authority to control people's movements and activities or to close their businesses unless it's

arbitrary and unreasonable. That's what it said and I agree with it.

Is it arbitrary and unreasonable for the executive under the facts present in this record to wield that power? That's by definition arbitrary and unreasonable, not by looking at to what actually he's doing as my colleague would suggest, but the mere fact he can't be doing it in the first place. That is arbitrary and unreasonable. For all of these reasons, Your Honor, the facts in this record are clear that the court should grant a temporary restraining order. The balancing of the equities is not going to harm anyone. The public health department has resources in every county that we have. They're there and they're operating and they're able to take care of this and we would ask the court to enter relief. Thank you.

THE COURT: All right. This court has reviewed the plaintiff's complaint, including attachments, prior to today's hearing. The court has had an opportunity to review the response submitted by the defendant and attachments and case law.

Before I rule, I'm advising everybody in this room, no public outbursts or displays. The court is still in session until you are told otherwise.

Since the inception of this insanity, the

following regulations, rules or consequences have occurred: I won't get COVID if I get an abortion but I will get COVID if I get a colonoscopy. Selling pot is essential but selling goods and services at a family-owned business is not. Pot wasn't even legal and pot dispensaries didn't even exist in this state until five months ago and, in that five months, they have become essential but a family-owned business in existence for five generations is not.

A family of six can pile in their car and drive to Carlyle Lake without contracting COVID but, if they all get in the same boat, they will. We are told that kids rarely contract the virus and sunlight kills it, but summer youth programs, sports programs are cancelled. Four people can drive to the golf course and not get COVID but, if they play in a foursome, they will. If I go to Walmart, I won't get COVID but, if I go to church, I will. Murderers are released from custody while small business owners are threatened with arrest if they have the audacity to attempt to feed their families.

These are just a few of examples of rules, regulations and consequences that are arbitrary, capricious, and completely devoid of anything even remotely approaching common sense.

State's attorneys in this state, county sheriffs, mayors, city councils and county boards have openly and publicly defied these orders followed by threats to withhold funding and revocation of necessary licenses and certifications unless you obey.

Our economy is shut down because of a flu virus with a 98 percent plus survival rate. Doctors and experts say different things weekly. The defendant cites models in his opposition. The only thing experts will agree on is that all models are wrong and some are useful. The Centers for Disease Control now says the virus is not easily spread on surfaces.

The defendant in this case orders you to stay home and pronounces that, if you leave the state, you are putting people in danger, but his family members traveled to Florida and Wisconsin because he deems such travel essential. One initial rationale why the rules don't apply to him is that his family farm had animals that needed fed. Try selling that argument to farmers who have had to slaughter their herds because of disruption in the supply chain.

When laws do not apply to those who make them, people are not being governed, they are being ruled. Make no mistake, these executive orders are not laws. They are royal decrees. Illinois citizens are not being

governed, they are being ruled. The last time I checked Illinois citizens are also Americans and Americans don't get ruled. The last time a monarch tried to rule Americans, a shot was fired that was heard around the world. That day led to the birth of a nation consensually governed based upon a document which ensures that on this day in this, any American courtroom tyrannical despotism will always lose and liberty, freedom and the constitution will always win.

That said, plaintiff, your request for a TRO with respect to Count I is denied. Your request for the TRO on behalf of similarly situated individuals is denied. If you develop some other case law or ability to convince me that that appellate court opinion you cite trumps current civil practice rules, I'll be glad to consider it later. Counts II and III are granted to your client only.

MR. DeVORE: Yes, sir.

THE COURT: Do you have an order?

MR. DeVORE: I'll prepare it, sir.

THE COURT: And please provide it to the defendant to approve as to form. Any request to stay will be denied.

MR. VERTICCHIO: Your Honor, for the record, move to stay enforcement pending appeal.

THE COURT: I will deny that.

MR. VERTICCHIO: I understand that. I know you know why I made the motion.

THE COURT: Sure. I understand.

MR. VERTICCHIO: Understood. Thank you, Your Honor.

MR. DeVORE: When do you want to come back, Your Honor?

THE COURT: Next Friday. Is that all right, defense?

MR. VERTICCHIO: What are we coming back for?

THE COURT: It's only good for ten days.

MR. VERTICCHIO: It's with notice, Your Honor.

THE COURT: I made you give notice. Ten days doesn't apply. You pick, defense.

MR. VERTICCHIO: Well, we're going to take an appeal so why don't we come back after we get a decision. How about a status?

THE COURT: I'll put a date determined between the counsel and coordinated with the clerk's office. How is that?

MR. VERTICCHIO: That's fine, Your Honor. For status?

THE COURT: Yeah. Right. Madam clerk, I will hand you the file so you can make sure they get copies,

which they're going to want. All right, ladies and gentlemen, exit the courtroom as directed by the sheriff. Court adjourned.

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 23rd day of May, 2020.

Lori Sims
_____
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

JAMES MAINER, in his individual capacity and on behalf of all citizens similarly situated, and HCL DELUXE, LLC, an Illinois limited liability company, on its behalf and on behalf of all businesses similarly situated,	)	
Plaintiffs-Appellees,	)	No. 2020CH10
v.	)	
GOVERNOR JAY ROBERT PRITZKER, in his official capacity,	)	The Honorable MICHAEL D. McHANEY,
Defendant-Appellant.	)	Judge Presiding.

NOTICE OF INTERLOCUTORY APPEAL

PLEASE TAKE NOTICE that Defendant Jay Robert 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 May 22, 2020, granting the motion of Plaintiffs James Mainer and HCL Deluxe Tan, LLC 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 May 22, 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
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May 22, 2020

STATE OF ILLINOIS
IN THE FOURTH JUDICIAL CIRCUIT
CLAY COUNTY

FILED
MAY 22 2020
Gwynne Borland
CIRCUIT CLERK OF THE
FOURTH JUDICIAL CIRCUIT
CLAY COUNTY ILLINOIS

JAMES MAINER, in his individual capacity and on behalf of all citizens similarly situated, and HCL DELUXE TAN, LLC, an Illinois Limited liability company, on its behalf and on behalf of all businesses similarly situated.

Plaintiffs,

Vs.

Governor Jay Robert Pritzker, in his official capacity.

Defendant.

Case No. 2020-CH- 10

TEMPORARY RESTRAINING ORDER WITH NOTICE

This Cause coming to be heard on Plaintiffs' Motion for Temporary Restraining Order, no notice having been given, the Court finds as follows:

1. Plaintiffs have filed a verified Complaint and verified Motion for Temporary Restraining Order.
2. Plaintiffs also filed a brief in support as accompanying documentation.
3. The Court has considered the pleadings filed to date and has further considered the legal arguments made in the brief.
4. Plaintiffs clearly have protectable rights and interests at stake to be free from the defendants ultra vires lawmaking which vitiates procedural and substantive protections explicitly provided by Illinois law under the IEMAA.
5. Plaintiffs' Verified Complaint, Verified Motion for Temporary Restraining Order, along with their accompanying legal brief, show Plaintiffs have a reasonable

likelihood of succeeding on the merits.

6. Plaintiffs have shown they will suffer irreparable harm if the Temporary Restraining order is not issued.
7. Plaintiffs have shown that absent a Temporary Restraining Order being entered every hour which passes they have no adequate remedy at law to prohibit Pritzker from enforcing EO 32 against them absent an injunction from this Court barring the same.
8. Waiting until such time as a hearing might be had on a determination on the merits of the injunction is too great a risk for James and HCL, ~~and all citizens and businesses similarly situated,~~ given their freedom and livelihoods are being stripped away in violation of Illinois law every hour that passes.
9. The balancing of the equities weigh in great favor of James and HCL, ~~and all citizens and businesses similarly situated~~, being granted this relief as the Plaintiffs are all still subject to the supreme authority which lies with the Illinois Department of Public Health, which oversight rests with each local department of public health, which administrative body can legally restrict the movement or activities of people, or force business closures, should a bona fide public health risk, specific to Plaintiffs, actually arise during the pendency of this order.

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

A. Defendant, and all administrative agencies under his control are hereby immediately enjoined from in anyway enforcing any provision of EO 32 against

James, ~~or any citizen similarly situated within the State of Illinois,~~ which provision might restrict their movement or activities;

B. Defendant, and all administrative agencies under his control are hereby immediately enjoined from in anyway enforcing any provision of EO 32 against HCL, ~~or any businesses similarly situated within the State of Illinois,~~ which provision might forcibly close their business;

C. Nothing in this order shall be construed to interfere with the Department of Health's supreme authority delegated to them under the Department of Public Health Act of enforcing its lawful authority against James and HCL, and all citizens and businesses similarly situated, including taking all necessary measures prudent as allowed by law to protect the public health, up to and including restricting the movement or activities of citizens, or closure of the businesses, should the facts and circumstances warrant consistent with the Department of Health Act.

D. This Temporary Restraining Order shall remain in full force and effect ~~for ten days from the date hereof or~~ until June 5, 2020 ~~[a.m.] [p.m.]~~ on At 1:00 pm ~~, 2020~~, unless sooner modified or dissolved by this Court.

E. This Temporary Restraining Order is entered at 3:18 [a.m.] [p.m.] on May 22, 2020.

DATED this 22 day of May, 20.

Michael D. Mahoney
JUDGE

SR540

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on May 22, 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 a registered service contact on the Odyssey eFileIL system, and thus will be served via that system. As a courtesy, that participant was served by sending a copy from my e-mail address to the e-mail addresses of record indicated below on May 22, 2020.

Thomas G. DeVore
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pleadingsgreenville@silverlake.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
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on May 26, 2020, I electronically filed the foregoing **Supporting Record Volume 3 of 3** with the Clerk of the Illinois Appellate Court, Fifth District, by using the Odyssey eFileIL system.

I further certify that the other participant in this appeal, named below, is not a registered service contact on the Odyssey eFileIL system, and thus was served by transmitting a copy from my e-mail address to the e-mail address of record indicated below on May 26, 2020.

Thomas G. DeVore
tom@silverlakelaw.com

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

/s/ Sarah A. Hunger
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