

IN THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
CLAY COUNTY, ILLINOIS

DARREN BAILEY,)
)
 Plaintiff,)
)
 vs.) Case No. 2020-CH-6
)
 GOVERNOR JAY ROBERT)
 PRITZKER, in his official)
 Capacity,)
)
 Defendant.)

**OBJECTION TO MOTION FOR TRANSFER
PURSUANT TO *FORUM NON CONVENIENS***

DARREN BAILEY (“Bailey”), by and through his undersigned attorneys, states as follows in opposition to the Pritzker’s *Motion for Transfer Pursuant to Forum Non Conveniens* (the “Motion”):

INTRODUCTION

- 1) The Motion has nothing to do with Clay County being an inconvenient forum.
- 2) Under the facts and circumstances present, it would seem this request is for all intents and purposes Pritzker’s motion for substitution of judge cloaked as a forum change for “convenience.”
- 3) One might only presume Pritzker is seemingly displeased with this Court’s prior rulings in the instant case, as evidenced by his public tirade following this Court’s April 27, 2020 ruling, and his subsequent plea to our Supreme Court to take this matter away from this Court.
- 4) *Forum non conveniens* is not a vehicle for Pritzker to forum shop for a favorable ear, but instead is a device to remedy a situation in which the existing forum is truly inconvenient for *all parties*.

- 5) To that end, Pritzker has failed to articulate a valid, cognizable predicate for transfer.
- 6) For reasons unknown to Bailey, in the Motion, Pritzker brings up empirical data regarding COVID-19.
- 7) In doing so, Pritzker unwittingly admits to the ongoing public health emergency being the foundation for his exercise of emergency powers.
- 8) Pritzker continues to brazenly acknowledge he is no longer using emergency powers to avert a public health emergency, which is the express limitation of the power delegated him by the legislative branch of government.
- 9) Bailey readily recognizes that COVID-19 is pernicious and has wrought hardship throughout our great state.
- 10) As a result of COVID-19, scores have fallen ill and many good people have sadly passed.
- 11) Also, as a direct result of the oppressive and enduring action of the executive branch of government in response to COVID-19, our state and local economies have been devastated and many good people have lost their livelihoods.
- 12) The economic and societal costs resulting from Pritzker's arbitrary decisions will have far reaching impacts lasting a generation or more.
- 13) Thousands of businesses Pritzker deemed non-essential have been forced to shutter their doors and now face the prospect of financial ruin.
- 14) Our citizens wake up each day and must determine if their free will to do what they please have been restrained by an arbitrary list of activities which Pritzker has dictated to be essential.
- 15) It is undeniable this public health matter presents challenges to government, businesses and individuals, but these challenges demand a balancing of the public health with individual's God-given rights.

16) Even during times as daunting as these, there can be no departure from established principles of jurisprudence, and the long-established standards elicited by our Supreme Court governing intrastate *forum non conveniens* are the foundation of which this Honorable Court should find a transfer of this cause does not lie.

BACKGROUND

17) Bailey commenced this action on April 23, 2020, seeking relief from certain executive orders and disaster declarations issued by the Pritzker in connection with the COVID-19 pandemic.

18) Specifically, in his initial filing with this Court Bailey sought various forms of relief: (1) a judgment declaring the scope of and limitations on the Pritzker's authority under the Illinois Emergency Management Agency Act (the "IEMAA") and (2) an injunction excusing Bailey's compliance with certain so-called "stay at home" orders Pritzker issued under the auspices of the IEMAA.

19) At the conclusion of a hearing in this case on April 27, 2020, the Court entered its temporary restraining order which found that Bailey was not subject to certain provisions of Pritzker's executive order.

20) In that respect, the Court concluded Bailey proved a likelihood of success on the merits existed regarding Pritzker's exceeded his authority in exercising emergency powers under the IEMAA after 30 days following Pritzker's March 9, 2020, disaster declaration.

21) Pritzker immediately sought appellate review and further asked for a direct appeal by the Illinois Supreme Court.

22) In tandem with his request for a direct appeal by the Illinois Supreme Court, Pritzker asked the Supreme Court to issue a supervisory order concerning the scope of Pritzker's authority under the IEMAA.

- 23) Following Pritzker's appeal, Bailey agreed to vacatur of this Court's temporary restraining order allowing him the opportunity to timely include newly discovered information in this cause for the Honorable Courts consideration.
- 24) Bailey's consent of dissolution of the restraining order rendered moot Pritzker's request for appellate review.
- 25) However, Pritzker still persisted in his motion for entry of a supervisory order.
- 26) Our Illinois Supreme Court denied Pritzker's request on May 11, 2020.
- 27) Bailey has since sought leave to amend his complaint in this matter.
- 28) In substantial part, Bailey's request for declaratory relief is predicated on issues of statutory construction as applied to Pritzker's public acts.
- 29) The core issue is whether the Pritzker's issuance of executive orders was authorized by constitutional or legislative authority.
- 30) Pritzker filed the instant Motion on May 13, 2020, and seeks an order transferring this case to the Circuit Court, Sangamon County, Illinois.
- 31) In support of the Motion, Pritzker contends since he "lives" in Sangamon County and many unidentified witnesses are from Sangamon and Cook Counties, venue should be transferred from this Court.
- 32) No specifics are given as to who these witnesses are, where they live, or what relevant testimony they might provide in a declaratory judgment action.
- 33) Pritzker also asserts that the nature of the relief Bailey seeks requires "uniformity" throughout the State of Illinois.
- 34) Pritzker is hard pressed to appreciate how such uniformity can only be achieved in the Sangamon County Circuit Court.

35) As more fully discussed below, Pritzker has fallen far short of establishing a basis for transfer of this case.

36) Nothing in Supreme Court Rule 187 or the precedents construing it, supports Pritzker's request, and as such it must be denied.

ILLINOIS FORUM NON CONVENIENS

37) Supreme Court Rule 187 provides for intrastate transfer of cases on the basis of *forum non conveniens*.

38) Our Supreme Court has repeatedly noted that the *forum non conveniens* doctrine gives courts discretionary power that should be exercised only in exceptional circumstances when the interests of justice require a trial in a more convenient forum *Langenhorst v. Norfolk Southern Ry. Co.*, 848 N.E.2d 927, 219 Ill.2d 430, 302 Ill.Dec. 363 (Ill. 2006)

39) Bailey has a substantial interest in choosing the forum where his rights will be vindicated, and Bailey's forum choice should rarely be disturbed unless the other factors strongly favor transfer. *Id.*

40) Bailey's initial choice of forum will prevail, provided the inconvenience factors attached to such forum do not greatly outweigh Bailey's substantial right to try the case in the chosen forum. *Id.* at 945-935.

41) Private interest inconvenience factors include (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical problems that make trial of a case easy, expeditious, and inexpensive. *Id.*

42) Public interest inconvenience factors include (1) the interest in deciding controversies locally; (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation; and (3) the administrative difficulties presented by adding litigation to already congested court dockets. *Id.*

43) The burden is on Pritzker to show that relevant private and public interest factors "strongly favor" Pritzker's choice of forum to warrant disturbing Bailey's choice. *Id.*

44) Unless the balance of factors strongly favors Pritzker's choice of forum, Bailey's choice of forum should rarely be disturbed. *Id.*

**PRITZKER HAS FAILED TO MEET HIS BURDEN
AND COURT SHOULD DENY THE REQUEST FOR TRANSFER**

45) Pritzker has provided the Court with nothing but conclusory assertions concerning the public and private interests at issue in connection with a motion to transfer under Rule 187.

46) None of Pritzker's assertions warrant serious consideration by the Court.

47) Most significantly, Pritzker does not so much as give lip service to the Supreme Court's admonition that Bailey's choice of forum should be given great deference unless the factors governing the analysis under Rule 187 strongly favor transfer.

Private Interests Weigh in Opposition to Transfer

48) Private interest inconvenience factors the Court should consider are (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical problems that make trial of a case easy, expeditious, and inexpensive.

Convenience of the Parties

49) Pritzker alleges his "official" residence is in Sangamon County.

50) Referring to his "official" residence is obfuscation at its best.

51) Pritzker's "official" residence is of no matter when considering convenience of the parties and it should not escape this Court that Pritzker does not allege he actually lives in Sangamon County.

- 52) Unless the Thompson Center has somehow been moved to Sangamon County, given it seems to be the location of Pritzker's daily press briefings, it would seem readily apparent he is actually residing in Cook County.
- 53) While Pritzker goes to great lengths regarding his residence, he makes no mention of Bailey's residence is in Clay County.
- 54) Regardless of residency, this matter is a declaratory judgment action which action will require minimal, if any, appearances of Pritzker's.
- 55) Should there be an occasion, none of which are contemplated at the moment by Bailey, it seems relatively certain Pritzker has the resources and capabilities available to come down to Clay County once or twice should that even be necessary.

Relative Ease of Access to Sources of Testimonial, Documentary, and Real Evidence

- 56) Pritzker claims that all of the proclamations and executive orders and the individuals who will testify regarding their promulgation, can be most easily accessed in Sangamon County.
- 57) The relevant documents being the disaster proclamations and executive orders are public record, all of which can be easily printed off the Illinois Secretary of States website, so their physical location is hardly relevant.
- 58) Bailey is not contesting the mere promulgation of such disaster proclamations and executive orders so testimony regarding the same is not relevant.
- 59) Even so, Pritzker does not specify identify any of the witnesses to the promulgation of the proclamations and executive orders, let alone how their testimony might be relevant.
- 60) Pritzker claims they can be most "easily accessed" in Sangamon County, but not only does he fail to adduce who they are, he doesn't adduce if they even reside or work in Sangamon County.
- 61) Pritzker claims the witnesses required to be called to testify, including public health officials and experts, are not located in Clay County, but they work in Sangamon and Cook County.

62) Therefore, it is abundantly clear Sangamon County is not the nucleus Pritzker portrays it to be.

63) Lastly the “location” of individual witnesses, or the location of documents, is not a significant factor in this case.

64) Bailey’s complaint and his forthcoming amended complaint raise what are fundamentally and virtually exclusively issues of law, i.e., the construction of statutes from which Pritzker claims to derive his authority.

All Other Practical Problems that make Trial of a Case Easy, Expeditious, and Inexpensive.

65) Pritzker does make any factual or conclusory statements regarding this factor and as such Bailey provides no response to the same.

Public Interests do not Warrant Transfer of this Action

66) Public interest inconvenience factors include (1) the interest in deciding controversies locally; (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation; and (3) the administrative difficulties presented by adding litigation to already congested court dockets.

The Interest of Deciding Controversies Locally

67) Pritzker is correct in that the controversy in this cause is far from localized and has far reaching effects.

68) That reality has little to do with Bailey’s cause of action and more to do with the fact that Pritzker took executive action that significantly impacted every citizen and business of this state.

69) That consequences of Pritzker’s orders have been equally felt by all businesses and citizens of Illinois in all 102 counties, at least to those who have been deemed non-essential.

70) As such, when defining the term locally in the context of Pritzker's pervasive executive orders, it applies equally to every county in the state.

71) The consequences of the proclamations and executive orders have a decided effect on Bailey in Clay County.

72) Nonetheless, Pritzker suggests since Sangamon County is the "central" place it means its circuit court is somehow more convenient?

73) That convoluted logic is difficult for Bailey to even appreciate as applied to the public interest factors.

Conclusion

74) The Court will notice Bailey didn't address public factors two and three in this response as Pritzker acknowledges those two factors are not relevant in this cause.

75) Pritzker's basis for transfer can be reduced to this: his official residence is in Sangamon County, the disaster proclamations and executive orders are archived there, unidentified witnesses are there which may testify about something, and the county is a "central place" regarding the requested relief that spans all of Illinois.

76) Certainly, the relief sought by Bailey spans all of Illinois but that is only because a "one size fits all" executive order promulgated by Pritzker has paralyzed the entire state.

77) Whether a county is the "central place", presumably related to geography, is not a relevant factor to be considered.

78) This Court is an entirely convenient and appropriate forum for disposition of Bailey's claims.

79) Pritzker fails to explain why a decision on the merits here, and its attendant effects, are somehow less compelling than a decision in Sangamon County.

- 80) Pritzker doesn't attempt to describe how this Court is any less qualified to address the relevant issues presented as compared to another honorable judge in the Sangamon County Circuit Court.
- 81) Pritzker has not advanced any basis for transfer under the Supreme Court's jurisprudence.
- 82) Pritzker has alleged no facts as his Motion is riddled with vague assertions which lie on the fray of transfer jurisprudence.
- 83) Bailey's choice of forum must prevail unless this Court finds the aggregate effect of the inconvenience factors greatly outweigh Bailey's substantial right to try the case Clay County.
- 84) At best, Pritzker has done little more than bring to the surface he is forum shopping under the guise of a *non conveniens* argument.
- 85) For the foregoing reasons, this Court should deny Pritzker's Motion under Rule 187.

WHEREFORE, DARREN BAILEY respectfully requests and prays that the Court enter its Order denying Pritzker's *Motion for Transfer Pursuant to Forum Non Conveniens*.

SILVER LAKE GROUP, LTD.

/s/ Thomas G. Devore

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CERTIFICATE OF SERVICE

STATE OF ILLINOIS)
) SS.
COUNTY OF BOND)

The undersigned hereby certifies, pursuant to the provisions of 735 ILCS 5/1-109, and the penalties therein provided, that a copy of the foregoing instrument was served upon each of the parties hereinafter set forth by electronic means on May 15, 2020 :

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and that the original was filed with the Clerk of the Court in which said cause is pending.

/s/ Thomas DeVore
Thomas DeVore