

**STATE OF ILLINOIS  
IN THE THIRD JUDICIAL CIRCUIT  
MADISON COUNTY**

Edwardsville/Glen Carbon Chamber of Commerce )  
)  
an Illinois not-for-profit corporation. )  
)  
Plaintiff, )  
)  
Vs. )  
)  
Governor Jay Robert Pritzker, )  
in his official capacity. )  
)  
Defendant. )

2020MR000550  
Case No. 2020-MR-\_\_\_\_\_

**COMPLAINT FOR DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF**

COMES NOW Plaintiff, Edwardsville/Glen Carbon Chamber of Commerce, an Illinois not-for-profit Corporation, (hereinafter referred to as the “Chamber”) by and through their attorneys, Thomas G. DeVore, Erik Hyam, and Silver Lake Group, Ltd., and for their Complaint for Declaratory Judgment and Injunctive Relief against Defendant, Governor Jay Robert Pritzker (hereinafter referred to as “Pritzker”), in his official capacity, hereby alleges as follows:

1. Pritzker is currently the duly elected Governor of the State of Illinois.
2. The Chamber is an Illinois not-for-profit corporation that represents its members in a variety of matters of importance.
3. The Chambers corporate office is located in Madison County, IL.
4. The Chamber has approximately 500 members mostly being private business entities.
5. Many of The Chambers members have seen their private business premises forced closed as they were deemed non-essential by Pritzker in EO32.

6. Just so it is clear, The Chamber is NOT seeking any relief under the U.S. Constitution or under any Federal Law.

7. On March 09, 2020, Pritzker issued a proclamation declaring, as of that date, a disaster existed within Illinois as a result of the COVID-19 virus. (See Exhibit 1 hereinafter referred to as "Proclamation#1")

8. Pritzker issued Proclamation#1 pursuant to the authority granted him under the Illinois Emergency Management Agency Act. (See 20 ILCS 3305 *et seq.*, hereinafter referred to as the "IEMAA")

9. The IEMAA states: "In the event of a disaster, as defined in Section 4, the Governor may by proclamation declare that a disaster exists." (See 20 ILCS 3305/7)

10. Section 4 of The Act defines a disaster as follows:

"Disaster" means an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, public health emergencies, or acts of domestic terrorism. (See 20 ILCS 3305/4)

11. In Proclamation#1, Pritzker states the COVID-19 virus is a novel severe acute respiratory illness. (See 2<sup>nd</sup> whereas clause of Proclamation#1)

12. In Proclamation#1, Pritzker determined the respiratory illness not to be a disaster but to be a currently existing "public health emergency." (See 15<sup>th</sup> whereas clause of Proclamation#1.)

13. In Proclamation#1, Pritzker declared all 102 counties within Illinois a disaster area as a result of COVID-19. (See Section 1 of Proclamation#1)

14. Under the auspices of Proclamation#1, Pritzker utilized his emergency powers wherein he issued various executive orders.

15. On April 01, 2020, Pritzker issued another disaster proclamation. (See Exhibit 2 hereinafter referred to as “Proclamation#2”)

16. In Proclamation#2, Pritzker states the COVID-19 virus is novel severe acute respiratory illness. (See 1<sup>st</sup> whereas clause of Proclamation#2)

17. In Proclamation#2, Pritzker found COVID-19 is a public health emergency. (See 15<sup>th</sup> whereas clause of Proclamation#2.)

18. As such in Proclamation#2, Pritzker declares the COVID-19 illness to be a “continuing disaster”. (See Section 1 of Proclamation#2.)

19. Given Pritzker declared Proclamation#2 a continuing disaster, Pritzker further declared a continuation of his authority to wield the emergency powers of section 7 of the IEMAA. (See Section 1 of Proclamation#2.)

20. As a result of Proclamation#2, Pritzker utilized his emergency powers wherein he executed and continued various executive orders from that time through and including April 30, 2020.

21. On April 30, 2020, Pritzker issued yet another proclamation of disaster. (See Exhibit 3 hereinafter referred to as Proclamation#3.)

22. In Proclamation#3, Pritzker states the COVID-19 virus is novel severe acute respiratory illness. (See 3<sup>rd</sup> whereas clause of Proclamation#3.)

23. Yet again, Pritzker acknowledges in Proclamation#3 that COVID-19 is a current public health emergency. (See whereas clause 52 and 53 in Proclamation#3.)

24. As a result of Proclamation#3, Pritzker utilized his emergency powers wherein he executed and continued various executive orders until May 31, 2020.

25. As a result of Proclamation#1, Proclamation#2 and Proclamation#3, Pritzker is attempting to wield the emergency powers under the IEMAA for the better part of three months.

26. The very occurrence for which Pritzker found a disaster existed in Proclamation#1, Proclamation#2 and Proclamation#3 was the exact same novel severe acute respiratory illness.

27. Proclamation#1, Proclamation#2, and Proclamation#3 were all issued for exact 30-day periods.

28. Subsequent to a proper disaster proclamation, the IEMAA confers specific enumerated powers upon the Governor of the State of Illinois. (See 20 ILCS 3305/2(a)(2).)

29. Amongst those enumerated powers are fourteen (14) emergency powers as provided in section 7 of The Act. (See 20 ILCS 3305/7)

30. Section 7 of the IEMAA expressly states: "Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers.... (See 20 ILCS 3305/7)

31. As a result of Proclamation#3, Pritzker issued Executive Order 2020-32 (hereinafter "EO 32"). (See Exhibit 4)

32. As alleged authority to issue EO 32, Pritzker relies on two authorities:

a) Powers vested in him as the Governor of the State of Illinois.

b) Sections 7(1), 7(2), 7(3), 7(8), 7(9) and 7(12) of the IEMAA.

(See the "THEREFORE" clause on page 2 of EO 32)

33. Pritzker further states the emergency powers exercised in EO 32 were consistent with public health laws. (See the "THEREFORE" clause on page 2 of EO 32)

34. Upon information and belief, the public health laws which Pritzker states are consistent with his authority in EO 32 is assuredly the Illinois Department of Public Health Act, being 20 ILCS 2305 *et seq.* (hereinafter referred to as “IDPHA”) (See the “THEREFORE” clause on page 2 of EO 32)

35. IDPHA provides for general supervision of the interests of the health and lives of the people of the State. (See 20 ILCS 2305/2(a))

36. Under the IDPHA, the Department of Public Health (the “Department”) has supreme authority in matters of quarantine and isolation. *Id.* (Emphasis Added)

37. The Department may declare and enforce quarantine and isolation, when none exists, and may modify or relax quarantine and isolation when it has been established. *Id.*

38. Subject to the provisions of subsection (c), the Department may order a person or group of persons to be quarantined or isolated or may order a place to be closed and made off limits to the public to prevent the probable spread of a dangerously contagious or infectious disease, including non-compliant tuberculosis patients, until such time as the condition can be corrected or the danger to the public health eliminated or reduced in such a manner that no substantial danger to the public’s health any longer exists. (See 20 ILCS 2305/2(b).)

39. The IDPHA specifically admonishes that no person or a group of persons may be ordered to be quarantined or isolated and no place may be ordered to be closed and made off limits to the public except with the consent of the person or owner of the place or upon the prior order of a court of competent jurisdiction. (See 20 ILCS 2305/2(c).)

40. The Department may, however, order a person or a group of persons to be quarantined or isolated or may order a place to be closed and made off limits to the public on an immediate basis without prior consent or court order if, in the reasonable judgment of the

Department, immediate action is required to protect the public from a dangerously contagious or infectious disease. Id.

41. In the event of an immediate order issued without prior consent or court order, the Department shall, as soon as practical, within 48 hours after issuing the order, obtain the consent of the person or owner or file a petition requesting a court order authorizing the isolation or quarantine or closure. Id.

42. To obtain a court order for isolation, quarantine, or closure, the Department, by clear and convincing evidence, must prove that the public's health and welfare are significantly endangered by a person or group of persons that has, that is suspected of having, that has been exposed to, or that is reasonably believed to have been exposed to a dangerously contagious or infectious disease or by a place where there is a significant amount of activity likely to spread a dangerously contagious or infectious disease. Id.

43. The Department must also prove that all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists. Id.

44. Persons who are or are about to be ordered to be isolated or quarantined and owners of places that are or are about to be closed and made off limits to the public shall have the right to counsel. Id.

45. Persons who are ordered to be isolated or quarantined or who are owners of places that are ordered to be closed and made off limits to the public, shall be given a written notice of such order. Id.

46. The written notice shall additionally include the following: (1) notice of the right to counsel; (2) notice that if the person or owner is indigent, the court will appoint counsel for that person or owner; (3) notice of the reason for the order for isolation, quarantine, or closure; (4)

notice of whether the order is an immediate order, and if so, the time frame for the Department to seek consent or to file a petition requesting a court order as set out in this subsection; and (5) notice of the anticipated duration of the isolation, quarantine, or closure. Id.

47. Because the Department is an agency of the State of Illinois and because Pritzker is the chief executive officer of the State of Illinois, upon information and belief, Pritzker is familiar with and charged with knowledge of the IDPHA.

48. Pritzker is also familiar with and charged with knowledge of the Plan and administrative rules of the Department attached herein. (See Exhibits 5 and 6 respectively)

49. The Plan, consistent with relevant provisions of state law provides:

“[The Department] is authorized to order a person to be quarantined or isolated or a place to be closed and made off limits to the public to prevent the probable spread of a dangerously contagious or infectious disease until such time as the condition may be corrected or the danger to the public health eliminated or reduced in such a manner that no substantial danger to the public’s health any longer exists (20 ILCS 2305/2(b)). No person may be ordered to be quarantined or isolated and no place may be ordered to be closed and made off limits to the public, however, except with the consent of the person or the owner of the place or upon the order of a court of competent jurisdiction (20 ILCS 2305/2(c)). In order to obtain a court order, IDPH must prove, by clear and convincing evidence, that the public’s health and welfare are significantly endangered and all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists (20 ILCS 2305/2(c)).” (See Page 71 of The Plan.)

50. The Department has explicitly delegated its authority to order isolation, quarantine and closure to certified local health departments. (See Page 71 of The Plan.) (Emphasis Added)

51. The IDPHA generally defines quarantine as restricting the movement of people or restricting their activities.

52. IDPH’s promulgated administrative rules regarding procedural safeguards must be followed when restricting the movements or activities of the people, or closing businesses, to control disease spread. (See Exhibit 6.).

53. The board of health of each county or multiple-county health department shall:

- a) Within its jurisdiction, and professional and technical competence, enforce and observe all State laws pertaining to the preservation of health..... See 55 ILCS 5/5-25013 (A)(6).
- b) Within its jurisdiction, and professional and technical competence, investigate the existence of any contagious or infectious disease and adopt measures, not inconsistent with the regulations of the State Department of Public Health... See 55 ILCS 5/5-25013 (A)(7).

**COUNT I**  
**DECLARATORY JUDGMENT FINDING**  
**THE APRIL 30 PROCLAMATION IS VOID FOR FAILING TO**  
**MEET THE DEFINITION OF A DISASTER AS DEFINED IN THE IEMAA**

54. The Chamber incorporates paragraphs 1-53 as if more fully stated herein.

55. In the event of a disaster, as defined in Section 4 of the IEMAA, the Governor may, by proclamation declare that a disaster exists. (See 20 ILCS 3305/7)

56. Section 4 defines a disaster as follows:

“Disaster” means an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, public health emergencies, or acts of domestic terrorism.”

57. Thus, under Section 4, a “disaster” exists only if there is an occurrence or threat requiring emergency action to avert its effects.

58. For purposes of this action, The Chamber does not dispute that on March 09, 2020 when Pritzker issued Proclamation#1 an occurrence or threat of a widespread natural cause which



could cause loss of life existed and as such there was a requirement of emergency action to avert a public health emergency.

59. That occurrence or threat was COVID-19.

60. In order to trigger emergency executive authority under the IEMAA, there must be a threat or occurrence requiring emergency action to avert, *inter alia*, a public health emergency.

61. The analysis concerning an occurrence or threat comprising a disaster as defined within Section 4 of the IEMAA, which would trigger emergency executive authority, applies equally to Proclamation#2 as it did to Proclamation#1.

62. In other words, the prerequisite to proclaiming a disaster existed under the IEMAA as to Proclamation#2 required an occurrence or threat requiring emergency action to avert, *inter alia*, a public health emergency.

63. On April 30, 2020, Pritzker signed Proclamation#3.

64. The analysis concerning the triggering of executive authority applies equally to Proclamation#3 as it did to the prior two disaster proclamations.

65. In other words, the prerequisite to proclaiming a disaster existed under the IEMAA as to Proclamation#3 required an occurrence or threat requiring emergency action to avert, *inter alia*, a public health emergency.

66. As the ever-increasing amount of ink is consumed with each serial proclamation, the relevant provision can be found at the 9<sup>th</sup> whereas clause on page 4 of Proclamation#3. It states in relevant part: “the current circumstances in Illinois surrounding the spread of COVID-19 constitute an epidemic emergency and a public health emergency under section 4 of the IEMAA.”

67. Since its resulting effect restricts the rights and interests of The Chamber, they have a right to insist Proclamation#3, which declared a disaster, was within the authority granted Pritzker by the legislature.

68. Contrary to Pritzker' contention in Proclamation#3, Section 4 of the IEMAA does not define what constitutes an epidemic or a public health emergency.

69. Section 4 of the IEMAA defines a disaster.

70. The emergency powers of Section 7 of the IEMAA can only be invoked in response to a disaster which is defined in Section 4 of the IEMAA as a threat or occurrence wherein emergency measures are needed to prevent or ward off those enumerated matters such as an epidemic or a public health emergency.

71. Pritzker admits in Proclamation#2 and Proclamation#3 that COVID-19 constitutes a then-existing public health emergency.

72. Given Pritzker's express acknowledgment in Proclamation#3 on April 30, 2020 that a public health emergency then existed as to the same COVID-19 virus which existed on March 09, 2020, it was impossible for him to legally declare a disaster.

73. The only reason why Pritzker needed to issue Proclamation#3 was due to the artificial termination dates which was placed in the prior two proclamations. (Emphasis Added)

74. Re-issuing a disaster proclamation for the same COVID-19 virus due to an unnecessary self-serving termination date placed in a previous proclamation of disaster is not a threat or occurrence satisfying the definition of a disaster in Section 4 of the IEMAA supporting the issuance of Proclamation#3.

75. The Chamber has a right to insist Proclamation#3 which declared a disaster was only done within the authority granted Pritzker by the legislature.

76. An actual controversy exists between the parties in regard to the authority of Pritzker to issue a disaster Proclamation#3 which was the genesis for EO 32 which resulted in the forcible closure of all businesses Pritzker deemed non-essential.

77. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

WHEREFORE, Plaintiffs, The Chamber, herein requests that this court enter an Order:

- A. Declaring no disaster existed as defined in Section 4 of the IEMAA as to Proclamation#3;
- B. Finding Proclamation#3 is void ab initio as no disaster existed on that date as defined in Section 4 of the IEMAA;
- C. Finding that any emergency powers under Section 7 of the IEMAA which were invoked in EO 32 pursuant Proclamation#3 are null and void ab initio;
- D. Awarding The Chamber their costs incurred in this matter as may be allowed by law;
- E. That the Court grant such other and further relief as is just and proper.

**COUNT II**  
**DECLARATORY JUDGMENT FINDING PRITZKER HAD NO**  
**AUTHORITY TO UTILIZE EMERGENCY POWERS AFTER APRIL 08, 2020**

78. The Chamber restates paragraphs 1-77 as if more fully stated herein.

79. Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers. (See 20 ILCS 3305/7)

80. Pritzker has by devise been exercising emergency powers under Section 7 of the IEMAA since March 09, 2020.

81. Pritzker has issued serial proclamations from March 09, 2020 through April 30, 2020.

82. Each time he issues a new proclamation, he contemporaneously issues new executive order(s) under the emergency power of section 7 of the IEMAA.

83. Notwithstanding there is no 30-day requirement under the IEMAA as to disaster proclamations, Pritzker has included arbitrary 30-day deadlines in Proclamation#1, Proclamation#2, Proclamation#3.

84. In each and every disaster proclamation, Pritzker refers to the same COVID-19 virus as the genesis of his proclaiming a disaster.

85. Pritzker has issued serial proclamations back to back for the purpose of re-energizing the 30-day emergency powers to, *inter alia*, forcibly close businesses which he deemed non-essential within the entire State of Illinois.

86. The Chamber has a right to insist Pritzker not engage in a fiction designed to circumvent express limitations on his authority imposed by the legislature.

87. An actual controversy exists between the parties in regard to the authority of Pritzker to issue serial proclamations for the same COVID-19 disaster for the purpose of continuing to exercise emergency powers beyond the 30-day limitation period.

88. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

WHEREFORE, Plaintiff, The Chamber herein requests that this court enter an Order:

A) Declaring Pritzker issued Proclamation#3 for the same COVID-19 virus which gave rise to the issuance of Proclamation#1 on March 09, 2020;

- B) Declaring the 30-days of emergency powers provided under Section 7 of the IEMAA lapsed on April 08, 2020;
- C) Declaring Proclamation#3 did not reset the 30-day emergency provisions under Section 7 of the IEMAA;
- D) Declaring any executive orders finding their authority under the emergency powers of Section 7 of the IEMAA after April 08, 2020 are void ab initio;
- E) Awarding The Chamber their costs incurred in this matter as may be allowed by law;
- F) That the Court grant such other and further relief as is just and proper.

**COUNT III**  
**DECLARATORY JUDGMENT FINDING THAT THE ILLINOIS DEPARTMENT OF HEALTH ACT GOVERNS THE CONDUCT OF STATE ACTORS IN THIS CONTEXT**

89. The Chamber restates paragraphs 1-88 as if more fully stated herein.

90. In relation to the specific matters raised herein, in order to close a business, Pritzker must have acted under the Illinois constitutional powers vested in him as Governor, or under the powers delegated to him under The IEMAA by the legislative branch.

91. Nowhere in EO 32 does Pritzker identify what Illinois constitutional power is vested in him to seize control and close private business he deemed non-essential.

92. His suggestion of having constitutional authority is nothing but conclusory.

93. As Governor, he is the supreme executive of the State of Illinois.

94. In that role, he is charged with the faithful execution of the laws of the State and not the making of laws.

95. Seizing control of business premises and ordering them closed is a clear utilization of the police powers of the State.

96. Police powers are vested in the sound discretion of the legislative branch of government.

97. As such, Pritzker must find authority to forcibly close business premises under his cited sections of the IEMAA in EO 32.

98. Even under the most strained interpretation of Pritzker's cited sections 7(1), 7(2), 7(3), 7(8), 7(9) and 7(12) of The IEMAA, nowhere can it be found where the legislative branch delegated any power to Pritzker to forcibly close private businesses.

99. Pritzker made it clear EO 32 was not intended to alter or modify any existing State, County or local authorities in regard to ordering business closures. (See Section 19 of EO 32)

100. The supreme authority regarding business closures due to public health reasons lies with the Department.

101. The Chamber does not dispute in times such as these, and at all times for that matter, the Department has the statutory authority given to them by the Illinois legislature to forcibly close business premises if circumstances give rise to a public health risk.

102. The legislative branch in its sound discretion placed the supreme authority over such matters with the Department pursuant to the IDPHA.

103. Any attempt by Pritzker to cobble together a basis for delegated authority under his cited sections of EO 32 should not remotely compel this Court it would supersede the express supreme authority vested in the Department of Health by the people's lawmaking branch of our government.

104. The supreme authority over closure of businesses due to health risks is quite compelling language the legislature used when granting the Department this extraordinary power.

105. The Departments authority under the IDPHA is to be exercised by each county's board of health in a manner consistent with state law.

106. The Chamber has a right to insist Pritzker act solely within the scope of the authority granted to him by the legislature, and, specifically, be constrained from acting beyond the authority granted to him under the IEMAA.

107. An actual controversy exists between the parties in regard to the authority of Pritzker to enter and enforce those provisions of EO 32 which force the closure of businesses he deemed non-essential.

108. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

WHEREFORE, Plaintiff, The Chamber, herein requests that this court enter an Order:

- A. Declaring Pritzker had no Illinois constitutional authority as Governor to forcibly close private business premises in EO 32;
- B. Declaring that none of the cited provisions of the IEMAA in EO 32 delegated Pritzker any authority to forcibly close private business premises;
- C. Declaring the proper authority to forcibly close private business premises due to any public health risks has been expressly delegated to the Department of Health under the Illinois Department of Public Health Act;
- D. Awarding The Chamber their costs incurred in this matter as may be allowed by law;
- E. That the Court grant such other and further relief as is just and proper.

**COUNT IV**  
**FOR INJUNCTIVE RELIEF**

109. The Chamber restates paragraphs 1-108 as if more fully stated herein.

110. The Chamber has the following separate and distinct rights as it relates to this cause:

a) To insist Pritzker not exceed his authority by issuing disaster proclamations which fail to meet the definition of a disaster under Section 4 of the IEMAA;

b) To insist Pritzker not exceed his authority in arbitrarily extending the emergency powers of section 7 of the IEMAA beyond the 30-day limitation.

c) To insist Pritzker does not have any authority to force business premise closures under the IEMAA as the supreme authority regarding the same was expressly delegated to the Department.

111. Any one of those distinct rights separately would be justification enough for this Court to find in favor of The Chamber.

112. The Chamber is being irreparably harmed each and every moment in which it continues to be subjected to Pritzker's ultra vires executive order.

113. Among other things, The Chamber, is prevented from having private business premises opened and are subject to potential enforcement actions, which actions regarding license revocation, etc. have been expressly threatened by Pritzker in his daily press briefings, to the extent private business premises might engage in activities proscribed by EO 32.

114. The Chamber has no adequate remedy at law to prohibit Pritzker from enforcing the executive orders absent an injunction from this Court ordering the same.

115. In that respect, the relevant executive orders and declarations constitute prior restraints which cannot be fully remedied by an award of damages.

116. There is a reasonable likelihood of success on the merits as Proclamation#3 was not issued pursuant to the definition of a disaster as defined by the IEMAA.



117. There is a reasonable likelihood of success on the merits as Pritzker has no authority to extend the emergency powers of section 7 of the IEMAA beyond 30 days.

118. There is a reasonable likelihood of success on the merits as Pritzker has no authority under the IEMAA to force business closures of premises he deemed non-essential because the IDPHA has supreme authority over those matters.

WHEREFORE, Plaintiff, The Chamber, prays that this Court enter judgment in his favor and:

- A. Find and determine The Chamber has a right to insist that Pritzker act only within the scope of the authority granted to him by the Illinois Constitution or by the legislature.
- B. Find and determine The Chamber is irreparably harmed every moment they are subjected to the EO 32.
- C. Find and determine The Chamber has no adequate remedy at law to protect its rights against EO 32, or any future executive order with substantively similar provisions, beyond injunctive relief.
- D. Find and determine The Chamber has a likelihood of success on the merits.
- E. Enter an injunction permanently enjoining Pritzker, or any administrative agency under his authority, from enforcing EO 32, or any future executive order with substantively similar provisions, in its totality from this date forward.
- F. Or in the alternative, enter an injunction permanently enjoining Pritzker, or any administrative agency under his authority, from enforcing those specific provision of EO 32, or any future executive order with substantively similar provisions, which forcibly closes, or materially limits the activities, of non-essential businesses from this date forward.
- G. For such other relief as this Court deems just and proper.

Respectfully submitted,

By: /s/ Thomas Devore  
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#### VERIFICATION

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct except as to matters therein stated to be on information and belief, if any, and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

Date: May 22, 2020

By:



DESIREE MEREDITH BENNYHOFF  
Its duly authorized agent (President & CEO)

STATE OF ILLINOIS  
IN THE THIRD JUDICIAL CIRCUIT  
MADISON COUNTY

Edwardsville/Glen Carbon Chamber of Commerce )

an Illinois not-for-profit corporation. )

Plaintiff, )

Vs. )

Governor Jay Robert Pritzker, )  
in his official capacity. )

Defendant. )

2020MR000550

Case No. 2020-MR-\_\_\_\_\_

**EXPEDITED REQUEST**

**MOTION FOR TEMPORARY RESTRAINING ORDER**  
**WITH NOTICE**

COMES NOW Plaintiff, Edwardsville/Glen Carbon Chamber of Commerce, an Illinois not-for-profit Corporation, (hereinafter referred to as the "Chamber"), and for its Verified Motion for Temporary Restraining Order pursuant 735 ILCS 5/11-102 in this matter, allege as follows:

1. A verified petition and its exhibits ("Petition"), which includes as Count IV a request for an adjudication of injunctive relief, has been filed in this matter which Petition is incorporated herein by reference.
2. In further support of this motion, The Chamber, also filed a legal brief in support of a its temporary restraining order, which shall be incorporated herein by reference also.
3. The Verified Petition alleges in Count I that Proclamation#3 is invalid at it fails to meet the definition of a disaster under Section 4 of the IEMAA.
4. The Verified Petition alleges in Count II that EO 32 is void at it exceeds the 30-day limit

placed on emergency powers as provided in Section 7 of the IEMAA.

5. The Verified Petition alleges in Count III that certain parts of Pritzker's EO 32 which forcibly closes businesses which have been deemed non-essential was issued in excess of the authority granted Pritzker under the IEMAA.
6. The Chamber has an absolute right to insist any executive order issued be lawful and not beyond the power of Pritzker under the Illinois Constitution or delegated by the legislature.
7. Immediate and irreparable harm is being suffered by private businesses which were deemed non-essential and had their premises closed, or business premises activities limited, as every hour which passes they are being unlawfully and irreparably prohibited from fully operating their business premises.
8. The Chamber requires a temporary restraining order issue to enjoin enforcement of EO 32, or any future executive order with substantively similar provisions, against private businesses which were deemed non-essential and had their premises closed, or significantly limited, until the Court renders a final verdict in this matter.
9. The Chamber has no other adequate remedy at law to prohibit enforcement of EO 32, or any future executive order with substantively similar provisions, until such time as the Court renders a final verdict in this matter.
10. There is a reasonable likelihood that The Chamber will succeed on the merits of this case in any one of the following three ways, any one of which on its own accord provides for the requested relief herein:
  - a) There is a reasonable likelihood of success on the merits as to Count I that Proclamation#3 was not issued pursuant to the definition of a disaster as defined by Section 4 of the IEMAA.

b) There is a reasonable likelihood of success on the merits as to Count II that Pritzker has no authority to extend the emergency powers of section 7 of the IEMAA beyond 30-days beginning from March 09, 2020 .

c) There is a reasonable likelihood of success on the merits as to Count II that Pritzker has no authority under the Illinois Constitution or the IEMAA to unilaterally order businesses closed which he deemed non-essential.

11. The balancing of the equities weigh in great favor of The Chamber being granted this relief as private businesses which were deemed non-essential and had their premises closed are still subject to the supreme authority and oversight of the local department of public health which administrative body has the authority to force a business closed, should a bona fide public health risk specific to a particular business premises actually arise during the pendency of this order.

WHEREFORE, the Plaintiff, The Chamber, respectfully prays that this Court enter an order that provides for:

- A. Pritzker, and all administrative agencies under his control be immediately enjoined from in anyway enforcing any provision of EO 32, or any future executive order with substantively similar provisions, to forcibly close, or materially limits the business activities, of The Chamber;
- B. Pritzker, and all administrative agencies under his control be immediately enjoined from interfering with any professional or business license held by The Chamber, should they choose to open its doors consistent with health guidelines prescribed by the local board of health, while this temporary restraining order is in effect;
- C. Such further relief as this Court deems just and equitable.

Respectfully submitted,

By: /s/ Thomas DeVore  
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### VERIFICATION

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct except as to matters therein stated to be on information and belief, if any, and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.



Date: May 22, 2020

By: \_\_\_\_\_  
DESIREE MEREDITH BENNYHOFF  
Its duly authorized agent

STATE OF ILLINOIS  
IN THE THIRD JUDICIAL CIRCUIT  
MADISON COUNTY

Edwardsville/Glen Carbon Chamber of Commerce )  
)  
an Illinois not-for-profit corporation. )  
)  
Plaintiff, )  
)  
Vs. )  
)  
Governor Jay Robert Pritzker, )  
in his official capacity. )  
)  
Defendant. )

2020MR000550  
Case No. 2020-MR-\_\_\_\_\_

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PLAINTIFF MEMORANDUM IN SUPPORT OF ITS REQUEST FOR  
TEMPORARY RESTRAINING ORDER WITH NOTICE

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COMES NOW Plaintiff, Edwardsville/Glen Carbon Chamber of Commerce, an Illinois not-for-profit corporation, (hereinafter referred to as the "Chamber") by and through their attorneys, Thomas G. DeVore, Erik D. Hyam, and DeVore Law Office, LLC., and provides the following as its Memorandum in Support of its Request for a Temporary Restraining Order With Notice, state as follows:

INTRODUCTION

1. Plaintiff incorporates all paragraphs of its Complaint for Declaratory Judgment and Injunctive Relief as well as its Legal Brief in Support of Plaintiff's Declaratory Action Claims as if each had been specifically listed herein.
2. This case is about Pritzker exceeding his authority under the Illinois Constitution and/or the IEMAA.
3. Just so it is clear, The Chamber is **NOT** seeking any relief under the U.S.

Constitution or under any Federal Law.

4. The redress being sought lies solely within the legal authority of the Illinois Constitution and Illinois Statutes.

5. The substantive law of Illinois, and the wisdom of implementing it, is for our legislature after proper discourse.

6. It is not subject to the caprice nature of any one man or woman no matter who they might be, what political party they might be from, and most importantly whether or not he or she may be acting with good intentions.

7. As the Honorable Court reads this very document, every moment which passes a private business having arbitrarily been deemed non-essential is floundering and faces an ever increasing likelihood of never being able to financially afford to re-open their doors, especially if this significant holiday weekend which is upon us should pass and business their premises are not open.

#### **STANDARD FOR ISSUANCE OF A TEMPORARY RESTRAINING ORDER**

8. In considering whether to issue injunctive relief, the court must consider four factors: (1) whether the movant has a right or interest that needs to be protected, (2) whether the movant has an adequate remedy at law, (3) the threat of irreparable harm to the movant if the injunction is not granted, and (4) the reasonable likelihood of success on the merits. *Arcor, Inc. v. Haas*, 363 Ill. App. 3d 396, 399 (1<sup>st</sup> Dist. 2005).

#### **I. PLAINTIFFS' LIKELIHOOD OF SUCCESS ON THE MERITS**

9. To show a likelihood of success on the merits, a party only needs to raise "a fair question about the existence of his right until the case can be decided on the merits. *In re Estate of Wilson*, 373 Ill. App. 3d 1066, 1075 (1<sup>st</sup> Dist. 2007); *see also Arpac Corp. v. Murray*, 226 Ill. App.



3d 65, 72 (1<sup>st</sup> Dist. 1992).

10. Plaintiffs' Verified Complaint, along with its Legal Brief in Support of Plaintiff's Declaratory Actions, raises three separate and distinct fair questions about the existence of the rights of the Plaintiff and the limitations on the Governor's authority.

11. Any one of the questions alone provides this Court with the likelihood of success of the merits needed to grant the relief requested.

12. The power to make the laws is a sovereign power vested in the legislature. *People v. Tibbitts*, 56 Ill.2d 56, 58 (1973).

13. Section 8 of article V of the Constitution does not grant a Governor the authority to promulgate new legal requirements via executive orders. *Buettell v. Walker*, 319 N.E.2d 502, 59 Ill.2d 146 (Ill. 1974)

14. Unless authorized by law an executive order relating to matters other than executive reorganization can be no more than a policy directive to agencies under the Governor's control. (See 2013 Ill. Att'y Gen. Op. 002)

15. No place may be ordered to be closed and made off limits to the public except with the consent of the person or owner of the place or upon the prior order of a court of competent jurisdiction. (See 20 ILCS 2305/2(c).)

16. Section 7 of the IEMAA expressly states: "Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers.... (See 20 ILCS 3305/7)

17. This Court can take judicial notice that the Honorable Mike McHaney of the 4<sup>th</sup> Judicial Circuit of the State of Illinois has already found twice extending emergency powers past the 30-day deadline of March 09, 2020 was beyond the authority granted Pritzker in the IEMAA.

(See 2020-CH-06 and 2020-CH-10, Clay County, IL)

18. Former Attorney General Jim Ryan found emergency powers granted to a Governor under Section 7 of IEMAA cannot be extended beyond 30-days without legislative approval. (See 2001 Ill. Att'y Gen. Op. I-028)

19. Attorney General Ryan went on to advise the act was clear in that it authorized emergency powers for 30-days and construction of the statute any other way would render the limitation clause meaningless. *Id.*

20. Pritzker is wielding unchecked authority to divest business owners of protections specifically delineated in the IDPHA upon the Department of Health by the Legislature.

21. Not only has the Pritzker stripped the businesses of the protections guaranteed them by the Legislature, Pritzker has so far effectively attempted to bar this Honorable Court from exercising any check upon the closure of businesses as the Legislature specifically provided in 20 ILCS 2305/2(c).

22. All of this clearly rises to the level of a likelihood of success on the merits.

## **II. PROTECTABLE RIGHTS AND INTERESTS ARE AT STAKE**

23. It should go without saying that Plaintiffs have protectable rights and interests at stake.

24. As set forth more fully above, Plaintiffs have a protectable right and interest in being free from invalid lawmaking that blatantly overreaches the authority of the Governor under his constitutional powers of office or any delegated power by the legislature in the IEMAA.

25. The Governor has unilaterally determined that certain businesses he deemed non-essential be closed without any oversight of this Court that such business premises constitute a threat to public health.

### III. IRREPARABLE HARM EXISTS FOR WHICH THERE IS NO ADEQUATE REMEDY AT LAW

26. Once a protectable interest has been established, “irreparable injury [or harm] is presumed if that interest is not protected.” *Guns Save Life, Inc. v. Raoul*, 2019 IL App (4<sup>th</sup>) 190334, ¶ 51 (quoting *Cameron v. Bartels*, 214 Ill. App. 3d 69, 73 (4<sup>th</sup> Dist. 1991)) (emphasis added).

27. Moreover, for harm that is of a continuous nature, and involves a right for which monetary compensation would be inadequate, like a deprivation of protected rights, courts have considered it to be *per se* irreparable harm. *C.J. v. Dept. of Human Services*, 331 Ill. App. 3d 871, 891-92 (1<sup>st</sup> Dist. 2002).

28. Here, the harm is of a continuing nature so long as EO 32 is left unchecked and capable of being enforced by the Governor wherein he is exercising his “tools”, with those tools being every administrative licensing agency in the state, as including albeit an ever dwindling number of law enforcement agencies, given law enforcement is beginning to openly refuse to enforce this executive fiat.

29. It should not escape this Court that the Madison County Board of Health, in wielding its supreme authority over business closures for public health risks, almost unanimously passed a comprehensive plan to re-open businesses under its jurisdiction.

30. It also should not escape this Court that Pritzker immediately threatened these businesses with risk of loss of precious business licenses, and even threatened all the good people of Madison County directly with loss of state and federal funding should it not yield to his executive order.

31. The movant need not show an actual injury before an injunction may issue. The threat of such injury is sufficient. *Gannett Outdoor of Chicago v. Baise*, 163 Ill. App. 3d 717, 722

(1<sup>st</sup> Dist. 1987).

32. Pritzker has made no qualms about it that he is threatening our businesses if they fail to comply with his executive order.

33. This honorable court should find such instances are clearly and immediate and irreparably injury of disastrous proportions.

WHEREFORE, Plaintiff respectfully requests that this Court a temporary restraining order without notice until this Court has the opportunity to fully and finally declare whether all or part of Proclamation#3 and/or EO 32 is a nullity.

Respectfully submitted,

Edwardsville/Glen Carbon  
Chamber of Commerce, Plaintiffs.

By: /s/ Thomas G. DeVore  
One of Their Attorneys

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STATE OF ILLINOIS  
IN THE THIRD JUDICIAL CIRCUIT  
MADISON COUNTY

Edwardsville/Glen Carbon Chamber of Commerce )  
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an Illinois not-for-profit corporation. )  
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Plaintiff, )  
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Vs. )  
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Governor Jay Robert Pritzker, )  
in his official capacity. )  
 )  
Defendant. )

Case No. 2020-MR-2020MR000550

**LEGAL BRIEF IN SUPPORT OF PLAINTIFF'S  
DECLARATORY ACTION CLAIMS**

COMES NOW Plaintiff, Edwardsville/Glen Carbon Chamber of Commerce, an Illinois not-for-profit corporation, (hereinafter referred to as the "Chamber") by and through their attorneys, Thomas G. DeVore, Erik Hyam, and Silver Lake Group, Ltd., and provides this memorandum in support of its declaratory judgment claims, and hereby states:

**INTRODUCTION**

1. The Chamber readily recognizes COVID-19 is a serious public health matter which has required a concerted effort to combat and protect our state's public health interest.
2. The Chamber's objection to Governor Pritzker's ("Pritzker") efforts lies not solely with the efficacy of the unilateral decisions being made, but more with the blatant usurping of long-standing legislative solutions which were already in place to manage such public health emergencies.

3. These long-standing legislative solutions enacted to protect the public health include numerous Illinois statutory protections to preserve property rights during these trying times.
4. Just so it is clear, The Chamber is **NOT** seeking any relief under the U.S. Constitution or under any Federal Law.
5. The Chamber acknowledges that on March 09, 2020, COVID-19 constituted an occurrence or threat, which rose to the level of a disaster, as it required at that time emergency measures to try and avert a public health emergency, all as defined in Section 4 of the IEMAA.
6. The Chamber offers no facts in dispute that as of the filing of Proclamation #3 on April 30, 2020 a public health emergency which originated on March 09, 2020 still existed.
7. The issue of whether or not a public health emergency existed on April 30, 2020 is but a red-herring to deflect from the substantive matters actually present in this cause.
8. The Chamber contends the operative provisions of the IEMAA have been distorted by the executive office to wield emergency powers far in excess of the legislative grant to address any such public health emergency.
9. As a direct result of the unilateral action of Pritzker in response to COVID-19, our local economies have been devastated and many good people have lost their livelihoods.
10. The economic and societal costs resulting from Pritzker's arbitrary decisions will have far reaching impacts lasting a generation or more.
11. Numerous businesses Pritzker deemed non-essential have been forced to close their doors indefinitely.

12. It is undeniable a public health emergency such as this presents challenges to government, businesses and individuals, but these challenges demand a balancing of the public health with citizen's property rights, and not just for those who have been arbitrarily deemed essential by an administrative agency, which agency determination of essentiality was beyond the purview of the watchful public eye.
13. The rule of law cannot be cast aside during times of crisis as it is these very times when the rule of law is needed most.
14. When the Court reviews all of these documents and relevant Illinois statutes, and applies current legal precedent, The Chamber asks the Court to find relief should be granted in its favor on all matters raised.

#### **LEGAL FRAMEWORK OF STATUTORY INTERPRETATION**

15. The cardinal rule of statutory construction, to which all other canons and rules are subordinate, is to ascertain and give effect to the true intent and meaning of the legislature. *People v. Boykin* (1983), 94 Ill.2d 138, 141, 68 Ill.Dec. 321, 445 N.E.2d 1174, *quoting* *People ex rel. Hanrahan v. White* (1972), 52 Ill.2d 70, 73, 285 N.E.2d 129.)
16. In determining the legislative intent, courts should consider first the statutory language. *Boykin*, 94 Ill.2d at 141.
17. Unambiguous terms, when not specifically defined, must be given their plain and ordinary meaning. *Hayes v. Mercy Hospital & Medical Center* (1990), 136 Ill.2d 450, 455, 145 Ill.Dec. 894, 557 N.E.2d 873.
18. The courts presume that the General Assembly, in passing legislation, did not intend absurdity, inconvenience, or injustice and a statute will be interpreted so as to avoid a

construction which would raise doubts as to its validity. *Harris v. Manor Healthcare Corp.*, 489 N.E.2d 1374, 111 Ill.2d 350, 95 Ill.Dec. 510 (Ill. 1986)

19. The courts also will avoid a construction of a statute which would render any portion of it meaningless or void. *Id.*
20. Under accepted and established rules of statutory construction, when more than one act might apply to a situation, the more specific provisions prevail over the more general ones in cases of conflict. *Winnebago County v. Davis*, 509 N.E.2d 143, 156 Ill.App.3d 535, 108 Ill.Dec. 717 (Ill. App. 1987); *Board of Education v. Carter* (1983), 119 Ill. App. 3d 857, 75 Ill.Dec. 882, 458 N.E.2d 50.; *Board of Educ. of Minooka Community High School Dist. No. 111, Grundy, Kendall and Will Counties v. Carter*, 458 N.E.2d 50, 119 Ill.App.3d 857, 75 Ill.Dec. 882 (Ill. App. 1983)

#### **OTHER OPERATIVE LEGAL AUTHORITY**

21. Section 8 of article V of the Constitution does not grant a Governor the authority to promulgate new legal requirements via executive orders. *Buettell v. Walker*, 319 N.E.2d 502, 59 Ill.2d 146 (Ill. 1974)
22. An executive order can be utilized to execute an existing law but it is not a vehicle for establishing a new one. *Id.*
23. Executive orders cannot impose sanctions upon third persons who are not a part of state government. *Id.*
24. According to the Honorable Former Attorney General Lisa Madigan, a Governor does not have the power to legislate by executive order, and therefore, unless authorized by law an executive order relating to matters other than executive reorganization can be no more than



a policy directive to agencies under the Governor's control. (See 2013 Ill. Att'y Gen. Op. 002)

25. According to the Honorable Former Attorney General Jim Ryan, emergency powers granted to a Governor under Section 7 of IEMAA cannot be extended beyond 30-days without legislative approval. (See 2001 Ill. Att'y Gen. Op. I-028)
26. Attorney General Ryan went on to advise the act was clear in that it authorized emergency powers for 30-days and construction of the statute any other way would render the limitation clause meaningless. *Id.*
27. Ryan found further support for this construction is supported by references to section 9 of the IEMAA, which pertains to the financing of disaster response measures. Section 9 provides for the Governor's use of particular appropriated funds for emergency purposes, and, if necessary and the General Assembly is not in session, the transfer of funds from other accounts or the borrowing of additional funds, but only "until such time as a quorum of the General Assembly can convene in regular or extraordinary session". The purpose of this provision, like section 7 of the Act, is to empower the Governor to deal immediately with emerging emergency situations. *Id.*
28. Ryan finished by stating, even though many disaster situations could require remediation for a period long in excess of 30-days, normal governmental processes, including legislative action, can be set in motion to meet such needs within 30-days of the occurrence. *Id.*
29. In the case of emergencies it is indispensable to the preservation of public health that some administrative body should be clothed with authority to make adequate rules which have

the force of law, and to put these rules and regulations into effect promptly. *Barmore v. Robertson*, 302 Ill. 422, 134 N.E. 815, 819 (Ill. 1922)

30. 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. *Id.*
31. Health authorities cannot promulgate and enforce rules which merely have a tendency to prevent the spread of contagious and infectious diseases. *Id.*<sup>1</sup>
32. The health authorities cannot interfere with the liberties of a citizen until the emergency actually exists. *Id.*
33. IDPH has general supervision of the interests of the health and lives of the people of the State. (See 20 ILCS 2305/2(a))
34. IDPH has **supreme authority** in matters of quarantine and isolation. (See 20 ILCS 2305/2(a))
35. IDPH defines quarantine as “the separation and restriction of movement or activities of persons who are not ill....” (See key terms on page 66 of IDPH Pandemic Plan attached to the Complaint as Exhibit 5.)
36. Subject to the provisions of subsection (c), the Department may order a person or group of persons to be quarantined or isolated or may order a place to be closed and made off limits to the public to prevent the probable spread of a dangerously contagious or infectious disease. (See 20 ILCS 2305/2(b))

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<sup>1</sup> This prohibition sounds awful similar to “flattening the curve”. This is yet another example in this cause where Illinois Supreme Court precedent is being ignored by Pritzker in that he is enforcing by executive fiat health regulations which have been deemed beyond the authority of government for almost a century.

37. Except as provided in this Section, no person or a group of persons may be ordered to be quarantined or isolated and no place may be ordered to be closed and made off limits to the public except with the consent of the person or owner of the place or upon the prior order of a court of competent jurisdiction. (See 20 ILCS 2305/2(c))
38. If the legislative intent of 20 ILCS 2305 *et seq.* is not clear enough to support the legislature intended to give supreme authority of quarantined, isolation and business closures to the IDPH, further legislative action in the county code provides additional support. (See 55 ILCS 5/5-25001 *et seq.* )
39. The board of health of each county or multiple-county health department shall
- a) Within its jurisdiction, and professional and technical competence, enforce and observe all State laws pertaining to the preservation of health..... See 55 ILCS 5/5-25013 (A)(6).
  - b) Within its jurisdiction, and professional and technical competence, investigate the existence of any contagious or infectious disease and adopt measures, not inconsistent with the regulations of the State Department of Public Health... See 55 ILCS 5/5-25013 (A)(7).
40. A board of health must necessarily consist of more than one person, and it generally consists of several persons. *Barmore*, 134 N.E. at 820.
41. Many authorities contend that the administration of public health should be vested in an individual. *Id.*
42. This contention is based on the ground that this form of administration of the health laws is productive of efficiency and economy. *Id.*

43. 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, insure to the people a more reasonable and less arbitrary administration of the laws. *Id.*
44. Whatever may be best, the Legislature of Illinois has said that the public health of cities shall be regulated and guarded by a board of health. *Id.*
45. The powers given to boards of health are extraordinary, and the legislature was evidently unwilling to leave to one person the determination of such important and drastic measures as are given to such boards. *Id.* (Emphasis Added)

#### COUNT I

46. The language of the IEMAA is clear that a disaster requires an ‘occurrence or threat’ which meets the definition of Section 4 of the IEMAA.
47. As for Proclamation #1, the occurrence or threat was COVID-19.
48. While efforts were certainly taken at the onset to try and avert a public health emergency, by the time Proclamation #2 and Proclamation #3 were issued it was clear nothing was being averted anymore, and efforts were being taken to manage COVID-19.
49. There is absolutely one occurrence, and one occurrence only, evidencing why Proclamation #2 and Proclamation #3 needed to be issued, and that was due to arbitrary and unnecessary termination dates placed in prior proclamations merely to reset the trigger of the emergency powers.
50. Triggering the extension of the emergency powers is not a threat or occurrence as defined in Section 4 of the IEMAA.

51. Long accepted Illinois jurisprudence is clear this Court should not interpret the IEMAA in such a way as to cause absurd results and this Court should always look for the true intent of the legislature.
52. In doing so, the Court must conclude the legislature never intended for the executive branch to issue serial disaster proclamations for the exact same “public health emergency” merely to trigger emergency powers.
53. Such an interpretation of the statute would render the express limitation on the emergency powers meaningless.
54. Proclamation #2 and Proclamation #3 were not issued in good faith, but were the product of arbitrary end dates in disaster proclamations merely to “trigger” a reset of the emergency powers.
55. These serial disaster proclamations were for the exact same COVID-19 virus.
56. The Court should find Proclamation #2 and Proclamation #3 were issued solely for the purpose to “trigger” a reset of the emergency powers of section 7 of the IEMAA.
57. As such, Proclamation #3 should be deemed invalid for failure to meet the definition of a disaster of under Section 4 of the IEMAA.
58. Until such time as our legislature changes the definition of disaster to include a continuing proclamation may issue when necessary to create a fiction to arbitrarily extend the emergency powers to the executive branch, this Court should decline to find such an injustice was never intended by the legislature.
59. To the extent the Court is not inclined to strike down Proclamation#3 in total, the Court ought to invalidate the relevant provision which “triggered” the emergency powers.

60. Should the Court choose to invalidate just the relevant provision of Proclamation #3 which triggered a reset of emergency powers, it can be found in Section 1 of Proclamation #3.

## COUNT II

61. Upon the issuance of a proclamation of disaster, Pritzker shall have and may exercise for a period not to exceed 30-days certain enumerated emergency powers.

62. Pritzker has by devise been exercising emergency powers under Section 7 of the IEMAA since March 09, 2020.

63. Pritzker has issued three proclamations of disaster.

64. The first on March 09, 2020; second on April 01, 2020; lastly April 30, 2020.

65. COVID-19 was a public health emergency at all times relevant.

66. Pritzker placed an arbitrary 30-day expiration date in each of the three disaster proclamations.

67. The IEMAA has no such requirement regarding any termination date in a proclamation of disaster.

68. Each time Pritzker issues a new proclamation in 30-day increments, he continues to wield the emergency powers under Section 7 of the IEMAA for another 30-days.

69. In each and every disaster proclamation, Pritzker refers to the exact same COVID-19 virus as the threat or occurrence present requiring his disaster proclamation.

70. The documents provided herein evidence the serial proclamations are for the same COVID-19 disaster and are for no other purpose than to trigger emergency power for as long as Pritzker deems prudent.

71. Our courts presume the General Assembly, in passing legislation, did not intend absurdity or injustice.

72. Our courts will also avoid construction of a statute which would render any portion of said statute meaningless or void.
73. It's absurd to believe the legislature intended to allow the executive office to issue numerous consecutive proclamations of disaster for the exact same COVID-19 virus which would allow the executive office to wield the extraordinary emergency powers into perpetuity.
74. Such an interpretation would also render the 30-day limit on emergency powers meaningless.
75. The issue of the 30-day limitation in the IEMAA was presented to former attorney general Jim Ryan in 2001. (See 2001 Ill. Att'y Gen. Op. I-028)
76. According to the Honorable Former Attorney General Jim Ryan, emergency powers granted to a Governor under Section 7 of IEMAA cannot be extended beyond 30-days without legislative approval.
77. Attorney General Ryan went on to advise the act was clear in that it authorized emergency powers for 30-days and construction of the statute any other way would render the limitation clause meaningless.
78. Ryan found further support by finding:
- a) This construction is supported by references to section 9 of the IEMAA, which pertains to the financing of disaster response measures.
  - b) Section 9 provides for the Governor's use of particular appropriated funds for emergency purposes, and, if necessary and the General Assembly is not in session, the transfer of funds from other accounts or the borrowing of additional funds, but only

"until such time as a quorum of the General Assembly can convene in regular or extraordinary session".

- c) The purpose of this provision, like section 7 of the Act, is to empower the Governor to deal immediately with emerging emergency situations.
- d) Even though many disaster situations could require remediation for a period long in excess of 30-days, normal governmental processes, including legislative action, can be set in motion to meet such needs within 30-days of the occurrence.

79. Former Attorney General Ryan's opinion seems consistent with the intent of the legislature and The Chamber asks this Court to find that same.

### COUNT III

80. If the non-essential business closure section of EO 32 is to be valid, Pritzker must find the authority to execute the same either in the Illinois Constitution or the IEMAA.

81. As alleged authority to issue EO 32, Pritzker relies on two sources:

- a) Powers vested in him as the Governor of the State of Illinois.
- b) Sections 7(1), 7(2), 7(3), 7(8), 7(9) and 7(12) of the IEMAA.

(See the "THEREFORE" clause on page 2 of EO 32)

82. If the authority does not lie in at least one of those two sources, the relevant provision of EO 32 forcing non-essential business premises closed is void.

#### A. Pritzker has No Constitutional Grant of Authority

83. In EO 32, Pritzker states the following:

"In regard to Pritzker's powers vested in him by the Illinois Constitution, he states:  
"whereas, the Illinois Constitution, in Article V, Section 8, provides that the governor shall have the supreme executive power, and shall be responsible for the faithful execution of



the laws, and states in the Preamble, that a central purpose of the Illinois Constitution is to provide for the health, and welfare of the people” (See 2<sup>nd</sup> to last whereas clause of EO 32)

84. Former Attorney General Lisa Madigan issued an opinion regarding the limit of power under the Illinois constitutional a Governor has relative to executive orders. (See 2013 Ill. Att’y Gen. Op. 002)
85. Ms. Madigan’s opinion was grounded in Illinois Supreme Court authority.
86. Section 8 of article V of the Constitution does not grant a Governor the authority to promulgate new legal requirements via executive orders. *Buettell v. Walker*, 319 N.E.2d 502, 59 Ill.2d 146 (Ill. 1974)
87. An executive order can be utilized to execute an existing law but it is not a vehicle for establishing a new one. *Id.*
88. Former Attorney General Madigan was crystal clear when she wrote: “**unless authorized by law an executive order relating to matters other than executive reorganization can be no more than a policy directive to agencies under the Governor’s control**”
89. It is fair to say as it relates to the forcible closure of “non-essential” businesses, EO 32 goes just a tad bit further than a policy directive to agencies.

No Delegated Authority from the IEMAA

90. None of the specifically enumerated provisions of the IEMAA expressly give Pritzker authority to forcibly close businesses he deemed non-essential.
91. Only one of the six enumerated provisions of the IEMAA cited by Pritzker could even remotely provide a semblance of implied power.
92. Section 7(8) states:
- (8) To control ingress and egress to and from a disaster area, the movement of persons

within the area, and the occupancy of premises therein. (See 20 ILCS 3305/7(8))

93. While it would be a strained interpretation to say the least, the Court need only look to other statutory schemes as well as relevant case law to conclude the legislature never intended to delegate such extraordinary power to the executive in the IEMAA.
94. IDPH has **supreme authority** in matters of quarantine and isolation.
95. The board of health of each county or multiple-county health department shall enforce all state laws pertaining to the preservation of health.
96. IDPH finds its authority in 20 ILCS 2305 *et seq.*, which authority contains significant procedural safeguards for business owners.
97. Our Illinois Supreme Court was clear almost 100 years ago that such power wielded over our people must be done by a board and not one person.
98. Should the Court find it even necessary to compare the IDPHA and the IEMAA, only one conclusion can be drawn, and that is the legislature created a specific statutory scheme for protecting the public health during times like these within the IDPHA.
99. That scheme includes a board of health in every county, with the oversight of our courts if necessary, which has been entrusted by our legislature, with balancing the protection of the public health with the personal interests of our people.
100. IDPH wields the power to forcibly close our businesses when necessary to protect the public health.
101. That power delegated to the Department by the legislature to forcibly close business premises includes procedures for judicial oversight, all of which has been usurped by the executive branch. (Emphasis Added).

102. Almost 100 years ago, our Supreme Court made it clear the legislature never intended to delegate such extraordinary power to one person.
103. Let alone to delegate this power to the heavy hand of the executive branch under the IEMAA, which act is devoid of any procedural safeguards afforded to our businesses in the IDPHA.
104. Pritzker has made no qualms about unleashing administrative agencies with “tools” to enforce his arbitrary orders, which “tools” include threatening our business owners with license revocation.
105. These actions by the executive branch show a complete disregard for the legislative and judicial branches of government.
106. In this great state the rule of law reigns supreme, and as such this Court should conclude the legislature never granted the executive branch the power to forcibly close our business premises, with no judicial oversight, under some implied interpretation of the IEMAA.
107. Such an interpretation would cause an injustice of immense proportions and this Honorable Court can safely presume the legislature intended no such purpose.

Respectfully submitted,

By: /s/ Thomas Devore  
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STATE OF ILLINOIS  
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Defendant. )

2020MR000550  
Case No. 2020-MR-\_\_\_\_\_

TEMPORARY RESTRAINING ORDER WITH NOTICE

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

1. The Chamber has filed a Verified Complaint and Verified Motion for Temporary Restraining Order.
2. The Chamber also filed a brief in support of their temporary restraining order as well as a brief in support of their case in chief.
3. The Court has considered the verified pleadings filed to date and has further considered the legal arguments made in the accompany briefs.
4. The Chamber clearly has protectable rights and interests at stake to not be irreparably burdened by ultra vires lawmaking which vitiated the procedural and substantive protections explicitly provided by Illinois law under the IEMAA before their business premises were forcibly closed.
5. The Chamber's Verified Complaint, Verified Motion for Temporary Restraining

Order, along with their accompanying legal briefs, show Plaintiff has established a reasonable likelihood of succeeding on the merits.

6. The Chamber has shown there is a protectible interest in not having business premises forcibly closed unless authorized under Illinois law, and as such will suffer irreparable harm if this Temporary Restraining Order is not issued.
7. The Chamber has shown that absent a Temporary Restraining Order being entered to protect itself, every hour which passes they have no adequate remedy at law to prohibit Pritzker from utilizing administrative agencies and other law enforcement agencies against them absent an injunction from this Court barring the same.
8. The balancing of the equities weigh in great favor of The Chamber being granted this relief as private business premises 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 seek an order from this Court to legally force business closures should a bona fide public health risk specific to a particular business premises actually arise during the pendency of this order.

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

- A. Pritzker, and all administrative agencies under his control are hereby enjoined from enforcing EO 32, or any future executive order with substantively similar provisions, in its totality from this date forward against any member of The Chamber;

- B. Pritzker, and all administrative agencies under his control are hereby immediately enjoined from interfering with any professional or business license held by any member of The Chamber, should said business choose to open its doors consistent with health guidelines prescribed by the local board of health, while this temporary restraining order is in effect;
- 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 any member of The Chamber, including taking all necessary measures prudent as allowed by law to protect the public health, 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 \_\_\_\_\_ [a.m.] [p.m.] on \_\_\_\_\_, 2020, unless sooner modified or dissolved by this Court.
- E. This Temporary Restraining Order is entered at \_\_\_\_\_ [a.m.] [p.m.] on \_\_\_\_\_, 2020.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20.

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JUDGE

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Case No. 2020-MR-\_\_\_\_\_ 2020MR000550

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