

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

Darren Bailey,)
)
)
Plaintiff,)
)
vs.) Case No. 2020-CH-6
)
Governor Jay Robert Pritzker,)
in his official capacity.)
)
Defendant.)

MOTION FOR SUMMARY JUDGMENT

COMES NOW Plaintiff, Darren Bailey, (hereinafter referred to as “Bailey”) by and through his attorneys, Thomas G. DeVore, Erik Hyam, and DeVore Law Offices, LLC, and for his Motion for Summary Judgment pursuant to 735 ILCS 5/2-1005 against the Defendant, Governor Jay Robert Pritzker (hereinafter referred to as “Pritzker”), in his official capacity, and hereby states as follows:

**PROCEDURAL AND LEGAL STANDARD
AS TO A SUMMARY JUDGMENT REQUEST**

1. Any time after the opposite party has appeared or after the time within which he or she is required to appear has expired, a plaintiff may move, with or without supporting affidavits, for a summary judgment in his or her favor for all or any part of the relief sought. (See 735 ILCS 5/2-1005 (a).)
2. The judgment sought shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (See 735 ILCS 5/2-1005 (c).)

3. Summary judgment is properly granted if the pleadings, depositions, and admissions on file, together with any affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *State Farm Mutual Automobile Insurance Co. v. Collins*, 258 Ill.App.3d 1, 629 N.E.2d 762, 763, 196 Ill.Dec. 217 (1st Dist. 1994).
4. Summary judgment “is an important tool in the administration of justice; its use in a proper case is to be encouraged and its benefits inure not only to the litigants...but to the community in avoiding congestion of trial calendars and the expenses of unnecessary trial.” *Kimbrough v. Jewel Cos.*, 92 Ill.App.3d 813, 416 N.E.2d 328, 333, 48 Ill. Dec. 297 (1st Dist. 1981).
5. There are no issues of material fact in this cause and the pertinent facts to this matter can be found in the public records all of which are attached as exhibits in this cause.

**REQUEST FOR SUMMARY JUDGMENT
AS TO COUNT I OF THE FIRST AMENDED COMPLAINT**

6. In the event of a disaster, as defined in Section 4 of the Illinois Emergency Management Agency Act (“IEMAA”), the Governor may by proclamation declare that a disaster exists. (See 20 ILCS 3305/7.)
7. On March 09, 2020, Pritzker entered his first disaster proclamation (“Proclamation #1”) regarding the COVID-19 virus. (See Exhibit 1 attached to the Complaint.)
8. Proclamation #1 found COVID-19 to be a public health emergency under Section 4 of the IEMAA. (See whereas #15 of Proclamation #1.)
9. Pritzker stated in Proclamation #1, he issued the proclamation pursuant to the authority granted him under the IEMAA.

10. Notwithstanding there being no provision in the IEMAA requiring the inclusion of an expiration date, Pritzker set Proclamation #1 to expire 30 days from issuance.
11. On April 01, 2020, Pritzker issued his second disaster proclamation (“Proclamation #2”) regarding the COVID-19 virus. (See Exhibit 2 attached to the Complaint.)
12. Pritzker stated in Proclamation #2, he issued the proclamation pursuant to the authority granted him under the IEMAA.
13. In Proclamation #2, Pritzker states: “based on the foregoing, the circumstances surrounding COVID-19 constitute a continuing public health emergency under Section 4 of the Illinois Emergency Management Agency Act.” (See 15th whereas clause of Proclamation #2.) (Emphasis Added.)
14. Notwithstanding there is no provision in the IEMAA requiring the inclusion of an expiration date, Pritzker set Proclamation #2 to expire 30 days from issuance.
15. On April 30, 2020, Pritzker issued his third and most recent disaster proclamation (“Proclamation #3”) regarding the COVID-19 virus. (See Exhibit 3 attached to the Complaint.)
16. Pritzker stated in Proclamation #3, he issued the proclamation pursuant to the authority granted him under the IEMAA.
17. In Proclamation #3, Pritzker acknowledges “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.” (See whereas clause 52 in Proclamation #3.) (Emphasis Added.)
18. As a product of COVID#3, Pritzker issued Executive Order 2020-32 (hereinafter “EO 32”). (See Exhibit 4 attached to the Complaint.)

19. Section 4 of the IEMAA 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. Emphasis Added.)
20. An express requisite for Pritzker to have authority to issue a disaster proclamation under the IEMAA is the existence of an ‘occurrence or threat’, and the occurrence or threat requires emergency action to avert, *inter alia*, a public health emergency.
21. Pritzker expressly acknowledges in Proclamation #2 that a public health emergency existed prior to April 01, 2020, and that public health emergency was the very same COVID-19 which was the genesis of Proclamation #1 on March 09, 2020, so by clear definition of what constitutes a disaster under Section 4 of the IEMAA, an ‘occurrence or threat’ for issuing Proclamation #2 did not lie.
22. As of April 01, 2020, the only occurrence existing which required the issuance of Proclamation #2 regarding COVID-19 was Pritzker’s arbitrary 30-day deadline he placed in Proclamation #1.
23. On April 01, 2020, Pritzker did not require emergency powers to avert a public health emergency caused by COVID-19 given he acknowledged in Proclamation #2 an extant public health emergency had existed since March 09, 2020.
24. Also, Pritzker expressly acknowledges in Proclamation #3 the disaster which existed on April 30, 2020 was the same disaster which existed on March 09, 2020, all being due to the same COVID-19 virus.

25. As of April 30, 2020, the only occurrence existing which required the issuance of Proclamation #3 regarding COVID-19 was Pritzker's arbitrary 30-day deadline he had placed in Proclamation #2.
26. Until such time as the legislature defines an allowable "occurrence" under Section 4 of the IEMAA to be an arbitrary deadline which artificially terminated an otherwise allowable disaster proclamation, such an occurrence does not fit the definition of a disaster under the law.
27. Given no disaster existed as defined by Section 4 of the IEMAA, Pritzker had no authority to issue Proclamation #2 and/or Proclamation #3 for the purpose of triggering the emergency powers of Section 7 of the IEMAA.

WHEREFORE, Plaintiff, Darren Bailey, herein request that this court enter an Order entering judgment in his favor against the Defendant for the following relief:

- A. declaring Pritzker admitted in Proclamation #2 that the disaster which existed on April 01, 2020 was the same disaster which existed on March 09, 2020;
- B. declaring Pritzker admitted in Proclamation #3 that the disaster which existed on April 30, 2020 was the same disaster which existed on March 09, 2020;
- C. declaring that Section 4 of the IEMAA defines a disaster exists only when a threat or occurrence requires emergency powers to avert, *inter alia*, a public health emergency;
- D. declaring the arbitrary deadlines placed in prior proclamations fail to be allowable occurrences under Section 4 of the IEMAA to authorize the issuance of Proclamation #3.

- E. finding Proclamation #3 is void *ab initio* as no threat or occurrence existed on that date as defined in Section 4 of the IEMAA;
- F. finding that any emergency powers under Section 7 of the IEMAA which were invoked in EO 32 by authority are null and void *ab initio*;
- G. Awarding Bailey his costs incurred in this matter as may be allowed by law;
- H. That the Court grant such other and further relief as is just and proper.

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- 28. On March 09, 2020, Pritzker issued a Proclamation #1 declaring, as of that date, a disaster existed within Illinois as a result of the COVID-19 virus. (See Exhibit 1 attached to the Complaint.)
- 29. COVID#1 was proclaimed in response to COVID-19 which Pritzker defines as a novel severe acute respiratory illness. (See 2nd whereas clause of Proclamation #1.)
- 30. Pritzker's Proclamation #1 remained in effect for only 30 days due to its express terms. (See Section 11 of Proclamation #1.)
- 31. The IEMAA contains no provision which states Proclamation #1 must have provided a limit on its period of effectiveness.
- 32. On April 01, 2020, Pritzker issued Proclamation #2 regarding COVID-19. (See Exhibit 2 attached to the Complaint.)
- 33. In Proclamation #2, Pritzker states the COVID-19 virus is a novel severe acute respiratory illness. (See 1st whereas clause of Proclamation #2)

34. 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.)
35. Pritzker's Proclamation #2 remained in effect for only 30 days due to its express terms. (See Section 12 of Proclamation #2.)
36. The IEMAA contains no provision which states Proclamation #2 must have provided a limit on its period of effectiveness.
37. On April 30, 2020, Pritzker issued Proclamation #3 regarding COVID-19. (See Exhibit 3 attached to the Complaint.)
38. In Proclamation #3, Pritzker states the COVID-19 virus is a novel severe acute respiratory illness. (See 3rd whereas clause of Proclamation #3.)
39. Pritzker's Proclamation #3 is to remain in effect for 30 days. (See Section 12 of Proclamation #3.)
40. The IEMAA contains no provision which states Proclamation #3 must provide a limit on its period of effectiveness.
41. Given Pritzker declared Proclamation #3 a disaster, Pritzker further declares his authority to wield the emergency powers of section 7 of the IEMAA. (See Section 1 of Proclamation #2.)
42. Pritzker's Proclamation #3 is to remain in effect for 30 days. (See Section 12 of Proclamation #3.)
43. As a result of Proclamation #3, Pritzker issued Executive Order 2020-32 (hereinafter "EO 32"). (See Exhibit 4 attached to the Complaint.)

44. In EO 32, Pritzker cites subsections 7(1), 7(2), 7(3), 7(8), 7(9) and 7(12) of Section 7 of the IEMAA as authority to exercise emergency powers.
45. Upon a proclamation of disaster, the Governor shall have and may exercise for a period not to exceed 30 days certain enumerated emergency powers. (See 20 ILCS 3305/7.)
46. Section 4 of the IEMAA 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.)
47. The very “occurrence or threat” for which Pritzker found a disaster existed in Proclamation #2 and Proclamation #3 is the exact same ‘occurrence or threat, for which a disaster was declared in Proclamation #1.
48. The novel severe acute respiratory virus, being COVID-19, was the exact ‘occurrence or threat’ in each of the three disaster proclamations.
49. The only reason Proclamation #2 and Proclamation #3 issued was due to the arbitrary 30-day termination provision Pritzker placed in each of the disaster proclamations.
50. The IEMAA is clear a Governor shall have and may exercise the emergency powers for a period not to exceed 30 days from the date of a proclamation of a disaster.
51. The serial proclamations, being Proclamation #1, Proclamation #2 and Proclamation #3 were a product of the exact same “occurrence or threat” which gave rise to a disaster being declared in Proclamation #1.

52. It should be readily apparent to this Honorable Court that Pritzker issued Proclamation #2 and Proclamation #3 for the sole purpose of triggering the reanimation of the emergency powers of Section 7 of the IEMAA.

53. The Attorney General's Office acknowledged this scheme in this Honorable Court on April 27, 2020.

54. Pritzker's arbitrary 30-day disaster proclamations, as to the emergency provisions to trigger the emergency powers provisions, are ultra vires efforts and beyond the powers of Section 7 authorized by the legislature in the IEMAA.

WHEREFORE, Plaintiff, Darren Bailey, herein requests that this court enter an Order:

A) declaring Pritzker issued Proclamation #2 and Proclamation #3 for the same occurrence or threat 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 provided to the Governor to address the COVID-19 lapsed on April 08, 2020;

C) declaring any provision within Proclamation #2 and Proclamation #3 triggering a reset of the 30-day emergency powers under Section 7 of the IEMAA be invalid;

D) declaring any executive orders finding their authority under the emergency powers of Section 7 of the IEMAA are void ab initio subsequent to April 08, 2020;

E) Awarding Bailey his 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.

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55. 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.)

56. As a result of Proclamation #3, Pritzker issued Executive Order 2020-32 (hereinafter “EO 32”).
57. Section 2, Part 1, of EO 32, ordered all citizens of the state of Illinois to stay at home, or at their place of residence, except as allowed by EO 32. (See the referenced provision of EO 32.)
58. This stay at home provision practically separated and restricted the movement and activities of all citizens of this state, whether they be ill or not.
59. As it relates to citizens, EO 32 states “the intent of the executive order is to ensure that the maximum number of people self-isolate in the places of residence...” (See section 16 of EO 32.)
60. Section 2, Part 2, of EO 32, ordered all “non-essential” businesses cease all activity, except for minimum basis operations. (See the referenced provision of EO 32.)
61. 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; and,
 - 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)
62. 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 2nd to last whereas clause of EO 32.)
63. The following provisions of the IEMAA are also cited as authority.

64. Section 7(1) states:
- (1) To suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder or delay necessary action, including emergency purchases, by the Illinois Emergency Management Agency, in coping with the disaster. (See 20 ILCS 3305/7(1).)
65. Section 7(2) states:
- (2) To utilize all available resources of the State government as reasonably necessary to cope with the disaster and of each political subdivision of the State. (See 20 ILCS 3305/7(2).)
66. Section 7(3) states:
- (3) To transfer the direction, personnel or functions of State departments and agencies or units thereof for the purpose of performing or facilitating disaster response and recovery programs. (See 20 ILCS 3305/7(3).)
67. 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).)
68. Section 7(9) states:
- (9) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles. (See 20 ILCS 3305/7 (9).)
69. Section 7(12) states:
- (12) Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, feed,

- fuel, clothing and other commodities, materials, goods, or services; and perform and exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population. (See 20 ILCS 3305/7(12).)
70. The Illinois Constitution does not confer upon Pritzker the power to issue EO 32 for the purpose of separating and restricting the movement and activities of every citizen of this state, whether they be ill or not.
71. None of the six enumerated provisions of the IEMAA cited by Pritzker in EO 32 delegate authority for him to separate and restrict the movement and activities of every citizen of this state, whether they be ill or not.
72. The Illinois Constitution does not confer upon Pritzker the power to issue EO 32 for the purpose of forcibly closing every business in this state which he concluded to be non-essential.
73. None of the six enumerated provisions of the IEMAA delegate authority to Pritzker the power to forcibly close every business in this state which he concluded to be non-essential.
74. Any strained interpretation of any of the six enumerated provisions of the IEMAA which Pritzker may argue delegated him arbitrary authority to separate and restrict the movement and activities of every citizen of this state, whether they be ill or not, or to forcibly close all businesses which he concluded to be non-essential, would be in direct contravention to the **supreme authority** delegated to the Illinois Department of Health (“IDPH”) by the legislative branch of government pursuant to 20 ILCS 2305 *et seq.*
75. IDPH has general supervision of the interests of the health and lives of the people of the State. (See 20 ILCS 2305/2(a).)
76. It has **supreme authority** in matters of quarantine and isolation. (See 20 ILCS 2305/2(a).)

77. 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.)
78. 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).)
79. 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).)
80. 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.*)
81. 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).)

82. Nothing written in the IEMAA can be construed as an intent by our legislature to delegate to the executive office such extraordinary power over our people.

83. Our legislature in 20 ILCS 2305 *et seq.* and 55 ILCS 5/5-25001 *et seq.* has clearly given supreme authority over such matters to IDPH and each local county board of health.

WHEREFORE, Plaintiff, Darren Bailey, herein requests that this court enter an Order:

- A. declaring Pritzker had no Illinois constitutional authority as Governor to restrict a citizen's movement or activities and/or forcibly close business premises in EO 32;
- B. declaring that none of the cited provisions of the IEMAA in EO 32 delegated Pritzker any authority to restrict a citizen's movement or activities and/or forcibly close business premises;
- C. declaring the proper authority to restrict a citizen's movement or activities and/or forcibly close their business due to any public health risks has been expressly delegated to the Department of Health under the Illinois Department of Public Health Act and the County Code;
- D. Declaring any provision of EO 32 which restrict a citizen's movement or activities and/or forcibly closes business premises is void ab initio;
- E. Awarding Bailey his 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.

Respectfully submitted,

By: /s/ Thomas Devore
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CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that, the undersigned hereby certifies, that a true and correct copy of the foregoing was served via the electronic filing system, this 18th Day of May, 2020, to:

Thomas J. Verticchio
Assistant Chief Deputy Attorney General
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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