

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

NAPERVILLE PARK DISTRICT,)

Plaintiff,)

v.)

GOVERNOR JAY ROBERT PRITZKER,)

In his official capacity,)

Defendant.)

Case No. 2020 CH 399

Chris Kachiroubas
e-filed in the 18th Judicial Circuit Court
DuPage County
ENVELOPE: 9289662
2020CH000399
FILEDATE: 5/20/2020 9:41 AM
Date Submitted: 5/20/2020 9:41 AM
Date Accepted: 5/20/2020 9:52 AM
KC

**PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiff, Naperville Park District, an Illinois park district, body corporate and politic, and Illinois unit of local government, by and through its attorneys, Ancel Glink, P.C., moves this Honorable Court for the entry of a Temporary Restraining Order and Preliminary Injunction and in support thereof states as follows:

1. On the same date as the filing of this Motion, Plaintiff has filed its Verified Complaint and the facts alleged therein are incorporated in this Motion.

INTRODUCTION

2. This Court should grant a temporary restraining order and a preliminary injunction prohibiting the Governor from continuing to thwart the Naperville Park District Board of Commissioners from exercising their statutory jurisdiction over the Park District's property and programs in response to a variety of threats to health confronting the community. The Illinois Park District Code, 70 ILCS 1205/1-1 *et seq.*, vests authority over the park properties and programs in the Park District. (See, e.g., 70 ILCS 1205/8-1; 8-10). Governor Pritzker has, however, displaced and thwarted the Park District from exercising that jurisdiction by certain provisions of Executive

Order 32 (“EO 32”) issued in response the COVID-19 pandemic. Governor Pritzker issued Executive Order pursuant to Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/1 *et seq.* But no provision of Section 7 (or any other section of the IEMAA) authorizes Governor Pritzker to displace the Park District from exercising its statutory duties. As a result, opportunities for the use of facilities and recreation are being denied to the constituents of the Park District.

3. The spread of COVID-19 is not the only threat to health confronting the constituents of the Park District. The fight against the virus has exacerbated the threat of child abuse, domestic violence, depression, substance abuse, and suicide in the community. Being physically active and pursuing recreational opportunities are recognized methods of dealing with these health issues. The Park District is vested with the statutory authority to make decisions about how to use its facilities to address this complex and evolving series of health threats.

4. The harm to the community from this unauthorized restriction upon the Park District is of such a serious nature that a temporary restraining order needs to be entered immediately so that decisions can be made about how best to deal with the various health threats confronting the constituents of the Park District, so that the statutory power of the Park District is not thwarted, and so that the power exercised by the Governor is properly limited to that which is given under the IEMAA.

5. The Park District is suffering and will continue to suffer irreparable harm unless the breadth of EO 32 is more narrowly tailored to exclude application to decisions over the Park District’s properties, facilities and programs. Every day that the Park District is deprived of its statutory jurisdiction to strike the balance for its constituents is a day where the deleterious effects

of an artificial lack of recreational opportunities will needlessly multiply, constituents will be deprived of the properties and programs they need, and the health of the constituents harmed.

6. Moreover, there is no adequate remedy at law for the unlawful exercise of authority against the Park District set forth in EO 32. The statutory structure must be set right and EO 32 restrained as to the Park District.

7. The seasonal nature of recreation in DuPage County combined with the stress of the COVID-19 Pandemic means that time is of the essence so that the response can continue to evolve and the appropriate balance can be struck between the social distancing necessary to combat COVID-19 and the recreational opportunities that are also necessary to combat the community's other health issues.

8. The Park District will face greater harm in the absence of injunctive relief than the harm that would result to Governor Pritzker if injunctive relief is granted. If no injunctive relief is granted for the Park District, then the Park District will not be able to determine how to make as many of its facilities and programs available to as many constituents as might be possible to answer the particular mix of health threats in its community and balance all of the different health needs of its constituents. If injunctive relief is granted, EO 32 will continue in force and effect for the private purveyors of such facilities and programs that are not run by a duly elected and accountable body of elected officials.

9. The Park District is merely requesting that the Governor abide by the limits of his authority in the IEMAA, not disregard the jurisdiction conferred by the Park District Code to the Park District, and honor paragraph 10 of the EO 32 to permit the Naperville Park District to determine its Essential Governmental Functions.

10. The Park District has a reasonable likelihood of success on the merits based upon a plain reading of the statutory provisions cited above and, further, based upon the Illinois Supreme Court’s opinion in *Wilmette Park Dist. v. Wilmette*, 112 Ill. 2d 6, 490 N.E.2d 1282, 1986 Ill. LEXIS 234, 96 Ill. Dec. 77 (Ill. 1986) (stating: “Illinois case law has long acknowledged the statutory basis of the park district as an independent body charged with the responsibility of managing its parks [citations omitted],” and holding that another unit of government may not use its power “to thwart or frustrate the park district’s statutory duties.” *Id.* at 18).

ARGUMENT

The Park District is Entitled to a Temporary Restraining Order and Preliminary Injunction.

11. The Park District is entitled to a temporary restraining order and preliminary injunction preventing the Governor from enforcing EO 32 and any guidance issued thereunder by DCEO against the Park District concerning the use of Park District properties or the programs operated thereon. “In order to obtain preliminary injunctive relief, the party seeking the injunction must establish by a preponderance of the evidence: (1) a clearly ascertainable right in need of protection; (2) irreparable injury in the absence of the injunction; (3) the lack of an adequate remedy at law; and (4) a likelihood of success on the merits of the case.” *Fraternal Order of Police, Chicago Lodge No. 7 v. City of Chicago*, 2016 IL App (1st) 143884, ¶ 27. Illinois courts employ an equitable balancing test to determine whether injunctive relief is appropriate. *See ABC Trans National Transport, Inc. v. Aeronautics Forwarders, Inc.*, 62 Ill.App.3d 671, 682 (1st Dist. 1978). This test weighs the harm an injunction would impose on a defendant against the benefit it would provide a plaintiff. *Id.*

12. “A plaintiff seeking a preliminary injunction does not carry the same burden of proof that is required to prevail on the ultimate issue. Instead, the plaintiff must make a *prima facie*

showing that there is a fair question about the existence of the claimed right and that the circumstances lead to a reasonable belief that the plaintiff will be entitled to the relief sought.” *Bollweg v. Richard Marker Assocs., Inc.*, 353 Ill. App. 3d 560, 572 (2d Dist. 2004) (citations omitted).

13. The Park District has satisfied the elements for injunctive relief. It has statutory rights concerning its jurisdiction over park properties and programs in need of protection. Second, if a preliminary injunction is not granted, constituents will be illegally denied safe recreational opportunities essential to combating health issues in the community. Third, the Park District lacks an adequate remedy at law. Monetary relief cannot fix the lost opportunities to further the health of the citizens who need these resources. Fourth, the Park District will succeed on the merits of his case as there simply is no statutory authority for the Governor (and DCEO) to exercise jurisdiction over the park properties and programs. Finally, the harm that the injunction would impose on the Governor is non-existent as it would merely confine EO 32 to be within its lawful statutory boundaries. Consequently, the balancing of the equities clearly favors the granting of an injunction.

14. A temporary restraining order is an emergency remedy issued pending a full hearing on an application for a preliminary injunction. As such, “[the movant has] only to make a summary showing that a TRO [is] necessary to prevent immediate and irreparable harm.” *People Gas Light & Coke Co. v. City of Chicago*, 117 Ill.App.3d 353 (1st Dist. 1983). “A party is not required to make out a case which will in all events warrant relief at the final hearing. It is only necessary for the petitioning party to raise a fair question as to the existence of the right claimed, lead the court to believe that he probably will be entitled to the relief prayed for if the proof should sustain his allegations, and make it appear advisable that the positions of the parties should stay as

they are until the court has the opportunity to consider the case on the merits.” *Toushin v. City of Chicago*, 23 Ill. App. 3d 797, 801 (1st Dist. 1974).

15. The Park District has provided evidence that there are health needs that are within the mission and jurisdiction of the Park District to meet, but from which it is prevented in so doing due to the provisions, interpretation and application of EO 32. An injunction is the only way that such an outcome can be avoided. Therefore, the Park District has provided at least a summary showing that a temporary restraining order is necessary to avert this harm.

WHEREFORE, Plaintiff Naperville Park District respectfully requests that this Court enter a temporary restraining order and a preliminary injunction preventing the Governor from enforcing EO 32 and any guidance issued thereunder by DCEO against the Park District concerning the use of Park District properties or the programs operated thereon, and for such other and further or different relief as may be just and equitable.

Respectfully submitted,

NAPERVILLE PARK DISTRICT

By: /s/ Derke J. Price
One of its Attorneys

Derke J. Price (dprice@ancelglink.com) ARDC #: 6198737
Christy L. Michaelson (cmichaelson@ancelglink.com) ARDC #: 6309696
ANCEL GLINK, P.C.
Attorneys for Plaintiff
140 S. Dearborn, 6th Floor
Chicago, IL 60603
P: 312-782-7606

1979 N. Mill Street
Naperville, IL 60563
P: 630-596-4610

Firm ID #: 1300
4811-6320-3772, v. 1