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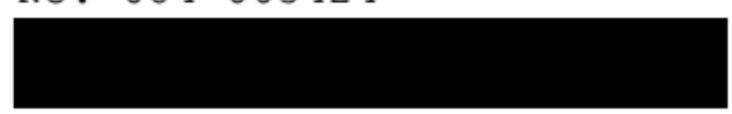
IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT
CLAY COUNTY, ILLINOIS

DARREN BAILEY,)
)
Plaintiff,)
)
vs.) NO. 2020-CH-6
)
GOVERNOR JAY ROBERT PRITZKER,)
in his official capacity,)
)
Defendant.)

REPORT OF PROCEEDINGS of the hearing held
before the Honorable MICHAEL D. MCHANEY on the 2nd day
of July, 2020.

APPEARANCES: MR. THOMAS DeVORE
on behalf of the Plaintiff
MR. THOMAS VERTICCHIO
on behalf of the Defendant

PREPARED BY: LORI SIMS
Certified Shorthand Reporter
No. 084-003424



1 THE COURT: 20-CH-6, Bailey versus Pritzker.
2 Counsel, case has been remanded from federal court back
3 here. Plaintiff.

4 MR. DEVORE: Your Honor, before we get to CH-6.
5 I would ask the court to consider, if we could address,
6 it will be very brief, 20-CH-13. It won't take very
7 long at all, Judge.

8 THE COURT: Now I'm going to call 20-CH-13,
9 Mainer versus Illinois Department of Public Health, et
10 al.

11 MR. DEVORE: Yes, sir. Your Honor, this case
12 was filed where my client alleges that the directive
13 issued by the Department of Health and State Board of
14 Education is unlawful for a variety of reasons. It's
15 set today for temporary restraining order. I just had
16 received in my e-mail, and it may be in the court record
17 right now, that the attorney general's office has
18 entered their appearance on behalf of the defendants.
19 They didn't file any other responsive pleadings but,
20 based upon their entry of appearance, I would ask the
21 court to accept our oral motion to withdraw the request
22 for temporary restraining order and set a hearing next
23 Friday. We would then file a motion for summary
24 judgment on Monday. I believe it will be the easiest
25 summary judgment motion this court may have ever seen,

1 and set that summary judgment for Friday afternoon.

2 THE COURT: Defense.

3 MR. VERTICCHIO: Good afternoon, Your Honor.
4 Thomas Verticchio for the defendant. Certainly no
5 objection to withdrawing the motion for temporary
6 restraining order.

7 THE COURT: That oral motion will be granted.

8 MR. VERTICCHIO: With regard to summary
9 judgment, I believe, since we've appeared, under the
10 rules, Mr. DeVore and his client can file a motion for
11 summary judgment whenever they want. I do note that
12 under the local rules that motion cannot be heard until,
13 at the earliest, ten days from the filing of the motion.
14 So I don't know about next Friday. We would certainly
15 like time to respond to the motion for summary judgment,
16 ten days to respond, and have a hearing after that.

17 THE COURT: Plaintiff.

18 MR. DEVORE: Judge, to the extent that Mr.
19 Verticchio is correct, there is a local rule regarding
20 ten days on a summary judgment, he didn't bring that up
21 when we were in the Bailey case but, nonetheless, I
22 would ask that we conform to local rules. So if there
23 is a local rule that says ten days, and I would have to
24 look --

25 MR. VERTICCHIO: I have it in my hand, Your

1 Honor.

2 MR. DEVORE: Then we would do the ten days from
3 today if that's okay -- or ten days from Monday. I file
4 it on Monday, which would be fine with me. I certainly
5 don't want to violate local rule. If the court has
6 discretion on that ten days, I would ask the court to
7 exercise that discretion and set it for Friday.

8 THE COURT: I'm not going to set it for Friday.
9 I'm not going to shorten this local rule. It's at least
10 ten days.

11 MR. VERTICCHIO: The rule says, Your Honor, and
12 you obviously know it, but for Mr. DeVore's benefit,
13 it's Local Rule 5-1(e), summary judgment: Quote, a
14 motion for summary judgment will not be heard, will not
15 be heard before ten days after service of the notice of
16 motion under Supreme Court Rule 11.

17 MR. DEVORE: Fair enough, Judge.

18 THE COURT: You're going to have to file your
19 motion, notice it up, they get to respond and then
20 you're going to have to ask the clerk for a date after
21 all of that happens.

22 MR. DEVORE: Fair enough.

23 THE COURT: Does that conclude 20-CH-13?

24 MR. DEVORE: As far as I'm concerned, yes, Your
25 Honor.

1 THE COURT: Very well. Back to 20-CH-6.

2 MR. DEVORE: Your Honor, as the court pointed
3 out, this matter was set for summary judgment in your
4 court some time ago. On the eve of that hearing on
5 summary judgment, the Governor's office removed this
6 case to federal court. The case lingered in federal
7 court for a brief amount of time, as matters typically
8 move in the federal court. I thought it moved quite
9 expeditiously. It was remanded back to your court by
10 the federal court here recently.

11 After that, we filed a motion or notice of
12 hearing for our motion for summary judgment to be heard
13 by this court and we're asking to hear it today.

14 THE COURT: Defense.

15 MR. VERTICCHIO: A few procedural matters, Your
16 Honor. I don't believe that jurisdiction has yet vested
17 in the court from the federal court because the
18 certified order of remand has not yet been filed with
19 the court. The Illinois Supreme Court has addressed
20 this specific issue, and I have a copy for the court and
21 Mr. DeVore, of course. The case is *Hartlein versus*
22 *Illinois Power*, H-a-r-t-l-e-i-n, 601 N.E.2d 720. May I,
23 Your Honor?

24 THE COURT: Yes.

25 MR. VERTICCHIO: Thank you. In *Hartlein*,

1 similar to here, there was a case removed to federal
2 court that was subsequently remanded. The Illinois
3 Supreme Court noted that when a motion or when a
4 petition for removal has been filed in the federal
5 district court, the, quote, and I'm reading at head note
6 [3] now, Your Honor, quote, State court loses
7 jurisdiction to proceed further until the case is
8 remanded. Furthermore, when a case is removed from
9 State to Federal court, the entire action, including all
10 of the parties and their claims, is transferred to the
11 Federal court, close quote.

12 In *Hartlein*, what happened was the case was
13 remanded on July 23rd, the year was 1991, and on, the
14 court took judicial notice that the certified copy of
15 the remand order was filed in the circuit court on
16 July 24th and the court cited and quoted 28 U.S.C.
17 Section 1447(c), which reads as follows: Quote, a
18 certified copy of the order of remand shall be mailed by
19 the clerk of the court of the State court. The State
20 court may thereupon proceed with such case. Close
21 quote. The issue in *Hartlein* was when did jurisdiction
22 vest back in to the circuit court, and the reason that
23 was important in *Hartlein* is because there was an issue
24 of when the statute of limitations started to run again
25 because, as the Illinois Supreme Court noted, while the

1 case was removed into the federal court, all time
2 periods had tolled. And I misspoke. It wasn't the
3 statute of limitations. It was a time period during
4 which to file a petition for leave to the Illinois
5 Supreme Court. The *Hartlein* court determined that the
6 petition for leave time frame of 35 days was tolled
7 until the filing of the certified letter by the clerk of
8 the circuit court received from the federal court, and
9 in *Hartlein* the facts were such that the letter was
10 filed on the 24th of July. Illinois Power filed their
11 petition for leave to appeal to the supreme court the
12 next day on the 25th of July and that happened to be the
13 35th day when you added up all of the time period, and
14 the court ruled that the petition was therefore timely.

15 Therefore, in this case, and I looked right
16 before the hearing started, Your Honor, because the
17 certified order of remand has not yet been filed with
18 this court, jurisdiction, so says the Illinois Supreme
19 Court, has not yet vested back into the circuit court.
20 For that reason, not only the certainly filing of Mr.
21 DeVore's motion and Mr. DeVore's notice was premature,
22 this court really doesn't have jurisdiction to do
23 anything until the certified order is filed. That
24 hasn't happened.

25 THE COURT: So are you saying because the Clay

1 County Circuit Clerk has not put a stamp saying this is
2 a certified copy of the federal mandate, I don't have
3 jurisdiction?

4 MR. VERTICCHIO: I'm saying that the Illinois
5 Supreme Court, relying on 28 U.S.C. 1447(c), has held
6 that the tolling and lack of jurisdiction of the circuit
7 court on a case removed and then subsequently remanded
8 does not vest back into the court until, as the Illinois
9 Supreme Court ruled, that certified letter from the
10 clerk of the federal district court is filed. That
11 hasn't happened.

12 Now, we're here. It seems to me it doesn't make
13 any sense for us not to talk about scheduling of the
14 motion for summary judgment. We know that plaintiff is
15 going to bring it, which raises a different issue
16 obviously which we just talked about in the Mainer case
17 Mr. DeVore served his notice of motion on June 30th.
18 Under the local rules, that motion cannot be heard
19 earlier than July 9th.

20 THE COURT: For that argument, you're relying on
21 the failure to get the certified remand from the federal
22 court. Right?

23 MR. VERTICCHIO: No, not at all. Not at all.
24 That argument is just simple looking at the calendar.
25 There was a previous notice and the court had ordered

1 that summary judgment would be heard on a date certain.

2 THE COURT: May 22nd.

3 MR. VERTICCHIO: And the court had ordered that
4 a response to that motion would be filed on a date
5 certain.

6 THE COURT: May 21st.

7 MR. VERTICCHIO: At noon, and this court lost
8 jurisdiction of the case *in toto* at approximately 6:00
9 a.m. on May 21st. So, again, in *Hartlein*, the law is
10 that once that happened on the early morning of
11 May 21st, everything was tolled and everything went to
12 the district court. Because those two dates were date
13 certainties, the date of filing and the date of the summary
14 judgment hearing, May 22nd and May 21 respectively, they
15 obviously now have come and gone so we must start anew.
16 And even if we are to accept Mr. DeVore's premature
17 filing of his notice on June 30th, which I'm not sure
18 that the court can given there was no jurisdiction, but,
19 even if we are to assume that, the motion under the
20 local rule cannot be heard until, the earliest,
21 July 9th.

22 Now, when we were here last, the court admitted,
23 issued a truncated schedule related to the motion for
24 summary judgment. There were, I think Mr. DeVore used
25 the word emergency issues. Can't imagine what those are

1 at this point given that the executive order that's the
2 subject of the complaint no longer exists, but that's
3 really neither here nor there. There's a jurisdictional
4 problem and if, even if not, the defendant has a right
5 to rely on this court's local rules and a service of a
6 notice of motion for summary judgment on June 30th under
7 Local Rule 5.1(e) means that that motion cannot be heard
8 until, at the earliest, July 9th. We would just like an
9 opportunity to respond to the motion and have it heard
10 in due course just like the court ordered a few minutes
11 ago in Mainer. Thank you.

12 THE COURT: Plaintiff.

13 MR. DEVORE: You know, I tried to sit here and
14 read the case that the Governor's counsel brings up
15 here, Judge. Interesting enough he didn't bring this up
16 at any point in time before but, as I read through it, I
17 was getting confused with what my colleague is trying to
18 argue. Is he trying to argue the court has no
19 jurisdiction because of some federal overlap of which I
20 don't read in here? When I read petition for removal
21 has been filed, Section 1446(e) says this court loses
22 jurisdiction until the case is remanded. The case has
23 been remanded. There is no doubt about that. I don't
24 see anything in here about certification of a certified
25 order. If it's in there, I would ask Mr. Verticchio to

1 point that out to us.

2 MR. VERTICCHIO: I'm happy to do that, Your
3 Honor, whenever you like.

4 MR. DEVORE: And beyond that, Your Honor, we're
5 talking -- I also think I heard my colleague say
6 something to the affect that he gets ten days from the
7 time that there was a notice filed and he keeps, he
8 relies upon the June 30th notice. Again, this was set
9 for summary judgment hearing the first time back in May
10 and they took -- at no point in time prior to that did
11 they raise that argument, and I would have to do the
12 math, Your Honor, but if the court is going to consider
13 some kind of ten-day argument, I'd ask the court to
14 consider how many days they had between the time it was
15 filed initially and then they removed it and, if it was
16 tolled during the time it was in federal court, so be
17 it, but then the court could then add the days that
18 we've had here now and I believe it would get to the ten
19 days.

20 But if Mr. Verticchio wants to point out that
21 there's a requirement of some certified copy of remand
22 somehow, again, I'd like to read that, Judge, so we can
23 talk about it again, I still believe the motion for
24 summary judgment is proper and, at a minimum, the
25 Governor's office is playing games for the purpose of

1 delay. Thank you.

2 THE COURT: Go ahead.

3 MR. VERTICCHIO: Thank you, Your Honor. This is
4 at page 154 in the Illinois 2d cite, Your Honor. I'm
5 quoting the court in *Hartlein* now. Quote, on July 23,
6 1991, the Federal district court remanded the case to
7 the circuit court. We take judicial notice that a
8 certified copy of that order was filed in the circuit
9 court on July 24, 1991. 28 U.S.C. 1447(c), year was
10 1988, provides, quote, I'm quoting the court quoting the
11 rule, a certified copy of the order of remand shall be
12 mailed by the clerk to the clerk of the State court.
13 The State court may there upon proceed with such case.
14 Close quote. And in *Hartlein*, again, the issue of days
15 was critical to the case because Illinois Power filed
16 their petition for leave to appeal to the Illinois
17 Supreme Court on July 25th, the day after the certified
18 order was filed, and the court ruled that, because it
19 was filed the day after the certified letter was filed
20 on which jurisdiction re-vested, Illinois Power's
21 petition for leave to appeal was timely because it was
22 filed on the 35th day, the last possible day. The
23 courts, therefore, ruled all the period had tolled while
24 it was in federal court and remand occurred on the 23rd.
25 Jurisdiction vested back in the circuit court on the

1 24th, not before the certified order was filed. That
2 hasn't happened, happened here and, as a result, there
3 is, indeed, a jurisdictional problem.

4 The rest of my comments were addressed to the,
5 well, we're here, we might as well schedule it. It
6 doesn't solve the jurisdictional problems, but we're
7 here and we got a notice on June 30th. It's premature
8 for lack of jurisdiction but, even if you assume that
9 means something, under the local rules, which the
10 defendant has the right to rely upon, that motion can't
11 be heard until, at the earliest, July 9th. For that
12 reason, we would ask the court for time to respond to
13 the motion for summary judgment, a short time, and a
14 setting of the motion for summary judgment for hearing.
15 For the convenience of everyone, including the court,
16 maybe they can both be heard the same day, the Mainer
17 motion and the Bailey motion, but obviously I leave that
18 to the court's judgment. But, under the local rules,
19 that hearing, even if we take Mr. DeVore's notice of
20 motion and count it as being served the day after
21 jurisdiction vests, it can't be heard until ten days
22 later, so say the court's local rules, which,
23 respectfully, the defendant has the right to rely upon.
24 Thank you, Your Honor.

25 THE COURT: You got this federal court opinion?

1 MR. DEVORE: I have the docket pulled up, Your
2 Honor. On June 29th the docket entry was --

3 THE COURT: Can I see your copy, please?

4 MR. VERTICCHIO: And let me just check it real
5 quick, Your Honor. I don't think it has any notes.

6 MR. DEVORE: Just reading the docket, Judge, it
7 said the clerk of their court was directed to transmit a
8 certified copy to your court and close the case. That
9 was June 29th.

10 MR. VERTICCHIO: Your Honor, I can tender this.
11 There is some yellow highlight on the last page but
12 there's no notes or anything.

13 THE COURT: *Hartlein* was decided in 1992. Since
14 then, we now have electronic filing. Does that change
15 the argument?

16 MR. VERTICCHIO: No, because nothing is filed.
17 That certified order has not been filed electronically,
18 manually, hard copy or any other way. It just hasn't
19 been filed.

20 THE COURT: For whatever reason that the federal
21 district clerk hasn't pushed a button electronically
22 filing it in this case, I don't have jurisdiction.

23 MR. VERTICCHIO: That's not it at all, Your
24 Honor. The provision of the United States code has not
25 changed. 1447(c) has not changed. It exists today word

1 for word in the same fashion that it existed in 1992,
2 and there's a direction in the United States code that
3 requires the clerk of the federal court to mail the
4 certified order to this court. There's -- *Hartlein* says
5 the case, the court doesn't have jurisdiction.

6 THE COURT: Madam Clerk, do you have your
7 certification stamp here?

8 CIRCUIT CLERK: In my office.

9 THE COURT: Please go get it.

10 MR. VERTICCHIO: Respectfully, Your Honor, it
11 needs to be certified by the federal court, not this
12 one.

13 THE COURT: I understand that.

14 MR. DEVORE: Judge, may I?

15 THE COURT: Yes.

16 MR. DEVORE: Reading out of the case that
17 counsel cites, and in the case, the court merely says we
18 take judicial notice that a certified copy of that order
19 was filed in the circuit court. Says that. If you go
20 to 1447(c), and I've actually pulled it up and I'm
21 reading from the actual statute, it says a certified
22 copy of the order of remand shall be mailed by the clerk
23 to the clerk of the State court. The State may therein
24 proceed with the case. Read that again. A certified
25 copy of the order of remand shall be mailed. There is

1 nothing in the statute itself that says that that
2 certified copy has to actually be on file in this court.
3 This case doesn't hold that. The statute doesn't say
4 it.

5 On June 30th in the federal court registers,
6 there is the letter that was actually sent to your state
7 court with a copy of that order of remand. So I'm not
8 even sure I would agree with my colleague that there is
9 a requirement as a matter of law that it actually be
10 filed in this court. The statute merely says it has to
11 be mailed to this court and then this court can proceed.

12 MR. VERTICCHIO: That would be the case but for
13 one small detail. The Illinois Supreme Court held that
14 the filing was the trigger. Your Honor, if you're going
15 to stamp that order, could it not be the one with my
16 highlighting in it?

17 THE COURT: Do you have one without it?

18 MR. VERTICCHIO: I don't. Maybe we can get a
19 copy.

20 THE COURT: I'll tell you what we're going to
21 do. At the conclusion of the hearing, I will have the
22 clerk make a copy of yours and then ask her to certify
23 it. All right. I understand you're saying that's
24 meaning- less, but that's what I'm going to have her do.

25 MR. VERTICCHIO: Understood.

1 THE COURT: So at the conclusion of the hearing,
2 Madam Clerk, have your staff maybe go down now and make
3 a copy without the highlight. All right.

4 I'm going to find this *Hartlein* case
5 distinguishable. I'm finding I do have jurisdiction to
6 proceed. Go ahead.

7 MR. DEVORE: Thank you, Your Honor. Proceed
8 with argument on summary judgment?

9 THE COURT: Well --

10 MR. VERTICCHIO: Respectfully, we have the local
11 rule. We would like time to respond.

12 THE COURT: With respect to the local rule, this
13 case was already set for summary judgment May 22nd.
14 Already set in plenty of time pursuant to the local
15 rule. The fact that the defendant chose to go to
16 federal court is the defendant's problem.

17 MR. VERTICCHIO: Your Honor, this case was
18 tolled as if it didn't exist at the time of removal.
19 That's irrefutable. That's the law under the federal
20 law. That's the law in the state law. *Hartlein* is
21 right on point. This case did not exist after around
22 6:00 a.m. on May 21st. It's -- the true, true situation
23 on jurisdiction, the court has held otherwise, that it
24 still doesn't exist but, regardless, the May 21 noon
25 filing date did not exist. This case did not exist.

1 This motion noticed on the 30th of June -- we just heard
2 from the court, itself, that the local rules are
3 meaningful. We heard that in the Mainer case. They're
4 still meaningful 20 minutes later.

5 We received that notice on June 30th. The
6 defendant has a right, has a right to rely on this
7 court's local rules. This motion can be heard no sooner
8 than July 9th. I understand the court may go forward,
9 but it's turning its back on its own rules.

10 THE COURT: You didn't make this argument
11 May 15th when I made this entry.

12 MR. VERTICCHIO: Absolutely did not, because the
13 court, on its own motion, made a setting, and I'm not
14 going to stand here and even suggest that the court, in
15 that situation when it determined there was an emergency
16 situation and the motion needed to be heard, did not
17 have the discretion to expedite summary judgment. It
18 did. The court did. And that's what you did. There
19 was no reason to cite the local rule. You, on your own
20 motion, said this case is going to be concluded. That
21 emergency, to the extent it existed because the stay at
22 home order that was being challenged existed as
23 executive order 32, is no longer the case. That
24 executive order expired on its own terms and there is no
25 stay at home order anymore. There is no emergency.

1 There is nothing to justify the court turning its back
2 on its own rules.

3 Respectfully, Your Honor, I would like an
4 opportunity to respond to the motion and have it heard
5 on July 9th or some day thereafter as required by the
6 rules.

7 THE COURT: These two -- both of you were before
8 this court 30 days on another case. What was the name
9 of that case?

10 MR. DEVORE: That was another Mainer case, Your
11 Honor.

12 THE COURT: Another Mainer case.

13 MR. DEVORE: Versus Pritzker.

14 THE COURT: For which this court heard hours of
15 argument from both sides and considered responsive
16 pleadings from both sides. All right. That's the same
17 exact argument there you got here.

18 MR. VERTICCHIO: Not at all, Your Honor. That
19 was a motion for temporary restraining order, by its
20 nature, by its nature an emergency. This is a motion
21 for summary judgment in the normal course.

22 THE COURT: The underlying arguments are
23 identical. All you have to do is cut and paste and
24 change the name of the plaintiff or the defendant.

25 MR. VERTICCHIO: Your Honor, the executive

1 orders have changed over time. The entire factual
2 landscape has changed over time.

3 THE COURT: These executive orders change every
4 week.

5 MR. VERTICCHIO: They change approximately every
6 30 days, the ones that we're dealing with. And I know
7 the courtroom thinks that's funny, but they change about
8 every 30 days.

9 THE COURT: And they're getting ready to change
10 again because now we have a new spike. Don't we?

11 MR. VERTICCHIO: Well, yesterday in the United
12 States, Your Honor, we set a record, 50,000 cases. So
13 yes.

14 THE COURT: We'll get to that.

15 MR. VERTICCHIO: Yes, we do. Your Honor, none
16 of that bears upon the issue. The issue is was proper
17 notice given. The court has ruled it was because
18 jurisdiction somehow vested. That's beyond me but
19 that's irrelevant. If it was given, it was given on
20 June 30th. Local Rule 5.1(e) says that motion, quote,
21 will not, close quote, will not be heard any sooner than
22 ten days from notice. That's July 9th. This motion
23 under the court's own rules can be heard no sooner than
24 July 9th.

25 THE COURT: Based upon the procedural history

1 and the history of this case, I'm proceeding. I got
2 jurisdiction. We're going to hear this case. Go.

3 MR. DEVORE: Thank you, Your Honor.

4 THE COURT: For the record, I am allowing the
5 arguments made in the prior Mainer case by the defense
6 to be utilized in this case if the defense wishes to do
7 so and the defense may argue whatever else they want.
8 Go ahead.

9 MR. DEVORE: Judge --

10 MR. VERTICCHIO: Without the opportunity -- for
11 the record, without the opportunity to file a written
12 response to the motion?

13 THE COURT: For the record, counsel, you could
14 have shown up here right now and asked for leave to file
15 it instanter. You chose not to do so. Go ahead.

16 MR. DEVORE: Thank you. Judge, we filed a
17 motion to bar a responsive pleading. To the extent now
18 I believe that's moot, we would ask the court to with-
19 draw it.

20 THE COURT: Granted.

21 MR. DEVORE: Thank you. Your Honor, the issue
22 before the court is the motion for summary judgment. It
23 was a three-count motion. It was filed in this court on
24 May 18th.

25 THE COURT: You say three counts?

1 MR. DEVORE: Three counts for motion for summary
2 judgment. Correct, sir.

3 THE COURT: I got you.

4 MR. DEVORE: We're going to, at least
5 temporarily, withdraw the request for motion for summary
6 judgment on Count I. Count I deals with the issue of
7 specifically as it related to the language within the
8 first three proclamations and, for reasons that aren't
9 necessary to go into, I would ask the court to at least
10 not hear and withdraw request for summary judgment on
11 Count I and proceed to Count II and Count III.

12 MR. VERTICCHIO: For clarity, Your Honor, is
13 Count I being withdrawn from the case?

14 THE COURT: Yeah. You can't just say now we're
15 not going to worry about Count I.

16 MR. DEVORE: No. Just for summary judgment
17 purposes, Your Honor.

18 MR. VERTICCHIO: So, to quote the court, this
19 case is not going to end. That was the whole point of
20 Your Honor's --

21 MR. DEVORE: We'll hear all three of them,
22 Judge. I withdraw my request to withdraw. We'll hear
23 all three of them.

24 MR. VERTICCHIO: And Count IV?

25 THE COURT: Go ahead.

1 MR. DEVORE: Count I, Your Honor, was a request
2 for summary judgment as to the first count of the first
3 amended complaint. What this did, Your Honor, is it
4 took on the issue of the definition of a disaster and a
5 disaster proclamation.

6 We've argued all three of these issues in front
7 of the court *ad nauseam* not only in this case but in
8 other cases. Governor stated in his first proclamation
9 on March 9th he was entering that pursuant to the
10 definition of a disaster and he declared at that point
11 in time that COVID-19 was a disaster. Based upon that,
12 he began issuing executive orders. His first executive
13 order, I believe, had something to do with marijuana
14 but, beyond that, some time shortly thereafter he,
15 within May 16th, or March 16th or 17th, issued an order
16 closing businesses.

17 On April 1st -- strike that. Court is aware
18 that on that first proclamation of disaster there was a
19 30-day time line placed on that proclamation. Statute
20 doesn't require that 30-day time frame or expiration
21 date but, nonetheless, Governor Pritzker put it in
22 there. On April 1st, we have a second proclamation of
23 disaster. Again, court has read it. It's attached to
24 the complaint where the court declares or the Governor
25 declared that COVID-19 was a continuing disaster, same

1 COVID-19 virus. Based upon his April 1st proclamation
2 number two, he then re-energized certain executive
3 orders and they continued on.

4 April 30th, proclamation number three regarding
5 the same COVID-19 virus, constituted an epidemic
6 emergency and public health emergency is what the
7 Governor said. The reason, and the only reason, that
8 those proclamations, and even continuing now but they're
9 not in front of the court, doesn't matter, those
10 proclamations had to be re-issued for the same COVID-19
11 virus was because the Governor's office had put a 30-day
12 deadline, expiration date in each of those proclamations
13 of disaster. Absolutely no legislative reason to do so,
14 and I'm suggesting to this court that it was done so for
15 reasons to energize the emergency powers under
16 Section 7.

17 As to the basis for proclamation two and
18 proclamation three, Your Honor, the court need only go
19 to the definition of a disaster to see whether those
20 proclamations were proper or not. Reading from
21 Section 4, it says a disaster means an occurrence or a
22 threat requiring emergency action to avert. Those are
23 the main language requirements of Section 4, an
24 occurrence or a threat requiring emergency action to
25 avert. There's two problems the Governor's

1 proclamations have using the language of Section 4,
2 Judge.

3 As to the subsequent proclamations of disaster,
4 all of them, what is the occurrence that requires the
5 issuance of that proclamation? On that day, what is the
6 occurrence? Is it COVID-19? No, it's not. COVID-19
7 has been around at least since, according to the
8 Governor, March 9th. The occurrence that existed on
9 those subsequent proclamations, Judge, was one and one
10 thing only. It was these arbitrary and capricious end
11 dates placed in those proclamations of disaster.
12 Without having done that, there's no reason to issue a
13 new proclamation of disaster. It's a fiction that was
14 created by the Governor, and we'll get in Count II what
15 that fiction was all about, but as it relates to the
16 definition of a disaster, his serial proclamations don't
17 even meet the very definition in the Emergency
18 Management Agency Act because the occurrence or threat
19 on that day is, again, only one thing, the 30-day
20 termination.

21 Requiring emergency action to avert is the
22 second part of the problem the Governor has with these
23 serial proclamations, Judge. Requires emergency action
24 to avert. The word avert means to keep something from
25 happening. It's coming, we've got to stop it. The

1 Governor admits in his proclamations that that disaster
2 exists right now. It's here. He wants to manage it
3 from the executive branch. He believes -- I guess he
4 thinks he knows better than the legislative branch. The
5 ink that continues to get spilled on these serial
6 proclamations about the facts and science that get
7 pontificated across our state continues to get more and
8 more where the court reading that can draw the
9 conclusion that the Governor's no longer trying to
10 engage in emergency action to avert anything. He's
11 wanting to manage it and, if you read some of the cases
12 that the Governor used, again, they were just cases of
13 temporary restraining orders, not on the merits, et
14 cetera, but they've been using those across the state,
15 those courts got it wrong. They used the word abate,
16 Your Honor. The Governor can do these things to abate a
17 public health emergency. Abate is not the same word as
18 avert. If we're going to abate, means you got to keep
19 going until you get rid of it. This definition says
20 avert, Judge.

21 As to Count I, the court should find that the
22 serial proclamations that were entered, based upon the
23 very definition of disaster, is improper. My colleague
24 has been in this court for, since the beginning saying
25 that the only reason, the only basis by which a citizen

1 of this state can contest the Governor's authority, and
2 I disagree but this is their words, is to look to the
3 good faith or the bad faith of these proclamations and,
4 if he's issued a proclamation in bad faith, we can
5 attack it. The court remembers that. My colleague
6 mentioned it on numerous occasions. Not only does it
7 not meet the definition, Your Honor, the court can find
8 that that failure to meet the definition is also in bad
9 faith.

10 If the Governor had not put a 30-day arbitrary
11 deadline in these proclamations, we wouldn't be standing
12 here today because the language in Section 7 that we'll
13 get to says upon the issuance of the proclamation, the
14 Governor shall have emergency powers for 30 days. We've
15 heard it forever. They're trying to convince this court
16 that that means they can bunny hop these serial
17 proclamations and continue to do that.

18 There's an overlap between our request under
19 Count I and Count II that plays this definition but, as
20 to Count I, Judge, the court should find that these
21 subsequent proclamations after the first proclamation
22 did not meet the definition of a disaster because the
23 occurrence or threat at that time was not COVID-19, it
24 had always been there since March 9th. The occurrence
25 was the artificial date and the Governor was no longer

1 needing emergency action to avert. He was trying to
2 manage this through executive fiat outside the purview
3 of the legislative branch.

4 For Count I, we would ask the court to enter an
5 order declaring that those, after the first declaration,
6 these subsequent declarations were improper as they
7 didn't meet the definition.

8 Count II. Count II, Your Honor, deals with
9 Section 7. This is the one that's been getting the most
10 chatter as to what does it mean on these 30-day powers
11 and the court has read it. Section 7 of the Emergency
12 Management Agency Act, upon such proclamation, the
13 Governor shall have and may exercise for a period not to
14 exceed 30 days the following emergency powers. It says
15 that. This court has to interpret what the legislature
16 might have meant.

17 What does it mean, Your Honor, to issue the
18 proclamation? The proclamation that was entered on
19 April 1st and April 30th, the Governor then re-energized
20 these powers. Now, we've argued that it didn't meet the
21 definition but, on top of that, if the court were to
22 interpret the Emergency Management Agency Act in such a
23 way to say that these serial proclamations are
24 allowable, this fiction, and lets the Governor
25 arbitrarily create that fiction, the 30-day emergency

1 power limitation is rendered meaningless. It means
2 nothing anymore. This court has said it on prior
3 occasions, if that's the interpretation of this section
4 of the statute, the Governor can run this state by
5 executive fiat as long as he wants until he feels that
6 the facts and science no longer require it.

7 What burden does that place on the citizens of
8 this state to go out amongst themselves, my client in
9 particular, one man to go out and develop facts and
10 science that can weather the storm against hundreds of
11 people in a state agency who are out there creating
12 their facts and science? If that's the burden that the
13 statute is going to put on a citizen, the citizen can
14 never defend itself in court as to this issue. I don't
15 know how many medical professionals the Governor has at
16 his disposal in these state agencies, but there's not a
17 man or citizen in this state that can weather that,
18 Judge.

19 So this court should look at that and say it
20 will not interpret this to require these good faith
21 attacks only being the recourse. The court should not
22 allow them to create this fiction with their facts and
23 science and allow them to artificially bunny hop these
24 30-day proclamations.

25 THE COURT: Counsel.

1 MR. DEVORE: Yes.

2 THE COURT: You're assuming there are buildings
3 full of scientists that are guiding this, these
4 executive orders. That's not on this record, is it?

5 MR. DEVORE: It's conjecture I guess at best,
6 Your Honor.

7 THE COURT: All right. Go ahead.

8 MR. DEVORE: For argument purposes only, I can
9 tell you my legislative representatives have never seen
10 it and they've asked for it. Take that for what it's
11 worth.

12 In Count II, Judge, again, we've argued it. I'm
13 not going to beat it to death forever. What we're
14 asking the court to do is to find, and this is the most
15 important part of today, Judge, is to find that this
16 particular issue, this 30-day issue, that these fictions
17 that the Governor has created should not be allowed as
18 an interpretation of the statute. The court should find
19 that the very first proclamation on March 9th issued,
20 not being questioned but, as of April 8th, his 30-day
21 emergency powers expired and any executive order that
22 they're trying to enforce under Section 7 of the
23 Illinois Emergency Management Agency Act after that date
24 is beyond the authority delegated to the Governor by the
25 legislative branch in the Emergency Management Agency

1 Act.

2 Now, they've tried to do quite a bit of work to
3 contest it. The court can give it whatever persuasive
4 authority it chooses, if none. Attorney General Ryan
5 agreed with that proposition.

6 The third one, Your Honor, deals with,
7 regardless of the 30 days, what authority did the
8 Emergency Management Agency Act or the Constitution give
9 the Governor to deal with certain things and, in this
10 particular Count III, it deals with business closures,
11 restricting people's freedoms.

12 My colleague, I'm quite certain, is going to
13 stand in front of the court here in about 15 minutes and
14 talk about mootness. They don't have that anymore.
15 I've got the case for the court if it wants it but, if
16 there was ever an issue brought in front of the court
17 that should fall within the public interest exception to
18 mootness, this is it, Judge. You couldn't write any
19 bigger case that deals with that.

20 Supreme court, just for the record because I
21 know what my colleague is going to do, the mootness
22 doctrine, when the question involves an issue of a
23 public nature, affecting 13 million people is a public
24 nature. The circumstances are likely to recur. One
25 only listens to the Governor pontificate about how he

1 will, at the drop of a hat, draw the people and
2 businesses of the state backwards should he feel
3 necessary. He's made that clear. An authoritative
4 determination for future guidance of public officers is
5 desirable. Those are the standards. Judge, if this
6 case doesn't fit those standards, I don't believe there
7 would ever be one in the history of this country that
8 would fit. So to the extent that my colleague might
9 believe that any of this in these counts is moot, I
10 would ask the court to consider that.

11 They would probably ask the court to say got to
12 amend your complaint. Okay. By the time we ever get
13 around to an amended complaint, Judge, you know what's
14 going to happen? We'll have three versions later of
15 what the Governor decided to do.

16 So as to this Count III, Judge, what authority
17 does the Governor have under either the Constitution or
18 Emergency Management Agency Act as it relates to dealing
19 with businesses, closing a business, you can't be open,
20 closing a church, can't be open, telling citizens you're
21 restricted in your movement, you've got to stay home
22 except for these reasons that the Governor's facts and
23 science allow?

24 Now, it's worth mentioning for the record that
25 the Governor's all along said that's not a quarantine,

1 yet the 120-page pandemic plan says a quarantine is
2 defined as restricting people's movement. That's what
3 he did, but, since he doesn't call it a quarantine, he
4 likes to gaslight to a point to try to get people to
5 agree with what he thinks.

6 So getting to the authority that he was using in
7 executive order 32, still the same authority used now,
8 by the powers vested in me as Governor of the State of
9 Illinois and under Sections 7(1), 7(2), 7(3), 7(8), 7(9)
10 and 7(12) of the Illinois Emergency Management Agency
11 Act, I find as follows, and as it relates to the issue
12 of the Constitution, he cites Section 8, Governor shall
13 have the supreme executive power and shall be
14 responsible for faithful execution of the laws. That's
15 his constitutional authority.

16 I guess they didn't pay attention to former
17 Attorney General Lisa Madigan's opinion where she cited
18 *Buettell* that says that general Section 8 power doesn't
19 give you the ability to make law. I think she was
20 pretty clear on that. I think the case is pretty clear.
21 The Governor never at any time has pointed to any
22 specific deviation from that supreme court case or her
23 opinion or any other section of the Constitution. So
24 I'm certain my colleague will stand up and say how the
25 Constitution gives the Governor, gave the Governor power

1 to do that but it won't be a specific response, Judge.

2 Now, let's get to the Emergency Management
3 Agency Act, where it's really at. I've listed in my
4 motion each of the sections of the Emergency Management
5 Agency Act that the Governor cites as authority and, if
6 you read through them, Judge, it's really hard to find
7 any of them that you can point to say, yeah, legislature
8 delegated that. Now, we also have the next step where,
9 if the legislature delegated that, was that a lawful
10 delegation. Set that aside for a second, Judge.

11 Section 8, to control ingress and egress to and
12 from a disaster area, the movement of persons within the
13 area and the occupancy of the premises therein. That's
14 number 8. It's the only one that anybody with any level
15 of education could read through in all of these other
16 sections and find where closing businesses, restricting
17 businesses -- because, as the court is aware, right now
18 businesses might not be closed but the Governor, in his
19 wisdom, in phase four I think we're in right now, has
20 significantly limited those and still has some
21 businesses closed but he's limited bars and restaurants
22 to minimal indoor occupancy. I guess if you're a church
23 now, it doesn't apply anymore, but that's the section,
24 Judge, 7 sub-section (8), to control ingress and egress
25 to and from a disaster area.

1 Does that specific statute, according to this
2 court's interpretation, that section, confer and
3 delegate authority to him to do those things? What
4 about other statutes the legislature has enacted on the
5 same issue? Well, we have, and it's nothing new, the
6 Illinois Department of Public Health Act. It's been
7 around a long time, and it says the supreme authority
8 over these matters has been delegated to the Illinois
9 Department of Public Health by the legislative branch of
10 government. 20 ILCS 2305, it has general supervision of
11 the interests of the health and lives of the people of
12 this state, supreme authority in matters of quarantine
13 and isolation.

14 If you read through -- as the court's aware, if
15 you're going to implicate a right of a citizen, there's
16 this thing, I remember it from law school, Judge, I
17 think it was called due process. The Illinois
18 Department of Public Health Act is replete with due
19 process if you're going to start affecting the rights
20 and movements of people, closing businesses. It's
21 replete. There's a ton of it in there. In the
22 Emergency Management Agency Act, there's none. Zero. I
23 say that to the court because, when it has to decide for
24 itself which of these statutes controls that issue, does
25 this court believe that a legislative branch of

1 government would affect a right of that significance in
2 a legislative act and not put any due process in it?
3 Arguably it would make it unconstitutional, but I'm
4 suggesting also to the court when it's balancing, when
5 it has to with statutory interpretation and the court
6 knows specific over general, one of those factors is
7 legislative branch never gave you this authority in this
8 act, Governor, because, if they would have been doing
9 that, there would have been due process to have a right
10 to defend yourself like the Department of Public Health
11 Act has.

12 Is he asking this court, he is, that you can
13 shut a business down into perpetuity, you can tell
14 people to stay home into perpetuity as long as he thinks
15 the facts and science warrant it, and, guess what, you
16 have no recourse, you have no redress because my
17 promulgated proclamation was done in good faith. I'm
18 asking the court to find that that was not the case.
19 It's clear that the legislative branch of this
20 government vested that extraordinary power over our
21 people to the Illinois Department of Public Health.

22 The *Barmore* case we cited from 1922 makes it
23 clear. They didn't give that authority to any one man
24 and, for that reason, Judge, we're asking in Count III
25 for the court to find that, as to these issues of

1 restricting people's movement and to closing of
2 businesses, restricting of businesses, that those
3 particular decisions are relegated to the Department of
4 Health and not to the Governor through the Emergency
5 Management Agency Act. Thank you.

6 THE COURT: Defense, you may proceed. Before
7 you do, I'll make a specific finding that, if you choose
8 to respond, you're not waiving your right to argue later
9 that this court has no jurisdiction and, in fact, is in
10 violation of whatever you want to say I'm in violation
11 of. You may proceed if you wish.

12 MR. VERTICCHIO: Thank you, Your Honor. Your
13 Honor, given the court's determination or denying my
14 request, at least the request made today, to file a
15 written response to this motion, I would move the court
16 to allow me to adopt the previously filed memorandum in
17 opposition to Mr. Bailey's motion for temporary
18 restraining order.

19 THE COURT: I will absolutely do that.

20 MR. VERTICCHIO: The transcript and arguments
21 made in the transcript of the hearing --

22 THE COURT: I will absolutely do that.

23 MR. VERTICCHIO: -- of Mr. Bailey's motion for
24 temporary restraining order, the motion to dismiss
25 initially filed by the Governor in response to Mr.

1 Bailey's first pleading, and, at the court's invitation,
2 the memorandum in opposition and the arguments made
3 therein in response to the motion for temporary
4 restraining order filed in the first Mainer action and,
5 with the court's permission, the arguments in the
6 transcript of the first Mainer action hearing on the
7 motion for temporary restraining order which the court
8 referred to earlier in the case.

9 THE COURT: I will take judicial notice of all
10 of that and allow the defense in this case to adopt and
11 make a part of this record everything you requested.

12 MR. VERTICCHIO: Okay.

13 MR. DEVORE: Could the record reflect there was
14 never any objection by my client to any of that as well,
15 Judge, please.

16 THE COURT: All right.

17 MR. VERTICCHIO: Should I actually -- I guess I
18 should file all of that, Your Honor.

19 THE COURT: I'm not going to make you do that.
20 You can if you want but I'm going to rule I'm taking
21 judicial notice, that's now all part of this record.

22 MR. VERTICCHIO: Thank you, Your Honor. Your
23 Honor, since we're here now on summary judgment motion
24 and since the court has, I don't think I'm overstating
25 it, been very clear in its desire that this case come to

1 an end, at least in the circuit court, I note that
2 there's four counts to this complaint and we have a
3 motion for summary judgment on three of them, but to
4 foster the court's desire to have this case come to an
5 end, I move and make an oral motion for summary judgment
6 on behalf of the Governor for all four counts of the
7 plaintiff's amended complaint. At least then the court
8 will be in a procedural posture that, at the end of this
9 hearing, this case could come to finality.

10 So I would like the court's permission to,
11 throughout the course of my argument, and I will point
12 out where they fit, but the Governor is also making an
13 oral motion for summary judgment on Counts I, II, III
14 and IV of the plaintiff's amended complaint if the court
15 will entertain it so we can be done.

16 THE COURT: What's your response to that,
17 plaintiff?

18 MR. DEVORE: One, I'm not sure you have to have
19 cross motions for summary judgment for a case to be done
20 and, beyond that, Judge, I'd make the same argument my
21 colleague has been belaboring for a long time. This is
22 the first I've heard about it and I'm sure his ten days
23 are probably not going anywhere. So, yeah. I mean I
24 don't even know what that means, his oral motion. I've
25 never heard of an oral motion for summary judgment,

1 Judge.

2 MR. VERTICCHIO: As to the first point, Your
3 Honor, of course we need to dispose of Count IV in some
4 way to be done because, if all the court does is rule on
5 three counts, we don't have a final judgment.

6 THE COURT: What is Count IV?

7 MR. DEVORE: It's an injunction request, Judge.
8 It's going to be moot depending on how the court rules
9 on the other issues.

10 MR. VERTICCHIO: If plaintiff wants to withdraw
11 Count IV, that's certainly a good way to do it, but
12 there's nothing in the rules that prohibit an oral
13 motion for summary judgment. More importantly, in terms
14 of the ten-day local rule, that horse left the barn
15 about 30 minutes ago. So, again, if the court will
16 entertain it, the Governor is making an oral motion for
17 summary judgment on all four counts of the plaintiff's
18 complaint, all of which I will support by argument.

19 THE COURT: Now, with respect to your request to
20 do this in the interest of ending the case, finality, if
21 the court denies your request for oral summary judgment
22 on all four counts, and let's assume this court denies
23 the plaintiff's request for summary judgment as to Count
24 I but grants it as to other counts, does that mean this
25 is not a final and appealable order?

1 MR. VERTICCHIO: That means exactly that.

2 Denial --

3 THE COURT: Which is why you're doing your oral
4 motion.

5 MR. VERTICCHIO: Exactly. I'm just -- I think,
6 Your Honor, you certainly expressed, and it's hard to
7 disagree, that if we're going to entertain these issues,
8 then let's entertain them, and it will come as no
9 surprise that, once there is a final judgment, whichever
10 party comes up short is going to take it to the
11 appellate court. Well, we've tried to do that now
12 twice. We tried to do it in this case when you
13 originally granted the motion for temporary restraining
14 order and Mr. Bailey refused to defend the appeal.
15 Instead he said, no, vacate that TRO.

16 We tried to do it in the Mainer case where you
17 granted a temporary restraining order in favor of Mr.
18 Mainer. We appealed and, again, Mr. DeVore on behalf of
19 Mr. Mainer said no, no, no, no, no. We're just kidding.
20 We'll vacate that motion for temporary restraining
21 order. The point is let's move forward and, oftentimes
22 when I say things, there's laughter in this courtroom
23 but these are serious matters and the appellate court
24 should have the opportunity to hear from which one of
25 these parties lose and the only way we're going to get

1 there is if we have finality.

2 I respectfully request let me plow through with
3 my oral motion and then the court will at least have a
4 dispositive motion on each count of the amended
5 complaint.

6 THE COURT: I'm going to take your request under
7 advisement. I'm not going to rule until later but I
8 will let you proceed.

9 MR. VERTICCHIO: Thank you. The Governor's
10 efforts, as evidenced by the executive orders, to stem
11 the tide of COVID-19, I'll go out on a limb here, has
12 saved lives, saved lives. We're seeing in other states
13 that cases are going up quickly. Yesterday we set a
14 record, I've already mentioned, yesterday we set a
15 record, 50,000 cases in the United States. And yet Mr.
16 Bailey, for certainly reasons known to him, reasons
17 suspected by many, continues to persist on this matter
18 relating to an executive order from the Governor that
19 has long ago expired on its own terms and been
20 superceded by subsequent orders.

21 When we first walked into this courtroom on this
22 case, the issue at hand was the right to travel, the
23 right to leave my home, the right to go to church.
24 Those issues are no longer, they're no longer relevant
25 because the executive orders in no way limit Mr.

1 Bailey's right to travel, his right to worship, his
2 right to go see his friends. Those issues don't exist
3 anymore, and yet we're here.

4 Count I he seeks a finding from this court that
5 there was no disaster in the subsequent executive
6 orders, and the reliance is on the definition of
7 disaster in the Emergency Management Act. I think I
8 mentioned to you, Your Honor, maybe in the Mainer case,
9 that my first boss in this business said when the case
10 is about a statute, read the statute. Well, Mr. Bailey
11 needs to read the statute because the argument he makes
12 is completely out of line with the statute.

13 Here's what the statute says in the definition
14 of disaster, Section 4, disaster means an occurrence or
15 threat of wide spread or severe damage, injury or loss
16 of life or property resulting from any natural or
17 technological cause, including but not limited to, and
18 then there is a long list of causes and the last one is
19 public health emergencies. Mr. Bailey's entire argument
20 stems on an interior clause that says, we just heard it,
21 I've heard it in other courtrooms in this state and now
22 we just heard it again today, Mr. Bailey's entire
23 argument on disaster says that you have to look at the
24 word avert and nothing has been averted here, but the
25 word avert is contained in an interior clause that has

1 nothing to do with public health emergencies because
2 avert is contained in a clause that's surrounded by
3 commas. When the legislature listed the types of
4 disasters, among them were, quote, wind, storm,
5 hazardous material spills or other water contamination
6 requiring emergency action to avert danger or damage,
7 comma.

8 The whole -- this whole house of cards argument
9 about avert only applies to hazardous material spills.
10 It's just not relevant. The issue is, in this record,
11 much of which the court can take judicial notice of, was
12 there a threat or a widespread or severe damage, injury
13 or loss of life as a result of a public health
14 emergency.

15 Mr. Bailey has filed briefs in this case saying,
16 well, yeah, but the statute doesn't define public health
17 emergencies. Yes, it does. Read the statute.
18 Section 4 of the statute, definitions, public health
19 emergencies, quote, means an occurrence or imminent
20 threat of an illness or health condition that, (a), is
21 believed to be caused by any of the following: Romanic
22 II, the appearance of a novel or previously controlled
23 or eradicated infectious agent, close quote, and we
24 all -- I don't know about the court, but the notion, the
25 parlance of a novel virus, novel virus is new to me, but

1 late winter, early spring it began to become clear what
2 that was. We're living in it. We're living within a
3 novel virus. That's the exact definition, and the
4 definition of a public health emergency continues. So
5 not only does it have to be believed to be caused by,
6 among other things, an novel virus but, subparagraph
7 (b), quote, pose a high probability of any of the
8 following harms: Romanic III, widespread exposure to an
9 infectious or toxic agent that poses a significant risk
10 of substantial future harm to a large number of people.
11 That is where we are. It cannot be a serious argument
12 that we're not in a disaster.

13 Count II is a different issue, but Count I, it
14 cannot be a serious argument that we're not in a
15 disaster and, in terms of the record, there's a few
16 things there. This court can certainly take judicial
17 notice of the Center for Disease Control's postings and
18 the Illinois Department of Public Health postings about
19 the disaster that we are, in fact, in, but it doesn't
20 really have to because the proclamations and the
21 executive orders themselves contain the facts, and where
22 are they? Well, they're attached to Mr. Bailey's
23 amended complaint, and under rule, Section 2-606 of the
24 Illinois Code of Civil Procedure, quote, exhibits
25 constitute a part of the pleading for all purposes.

1 Mr. Bailey walked into this courtroom with the
2 evidence and, to the extent he's going to say, well, but
3 that, those facts are not my facts, they're just the
4 exhibits, the Illinois Supreme Court tells us, and I'm
5 citing the case of *Bajwa, B-a-j-w-a, versus Metropolitan*
6 *Life Insurance Company*, 208 Illinois 2d 414 at 431, 432,
7 the court said, quote, in the case of a conflict between
8 such written exhibits and the allegations of the
9 pleading, the exhibits control. So the proof is in the
10 pleading.

11 The statute could not be more clear. This is a
12 disaster. Now, whether there's the power to exercise
13 emergency powers under the Emergency Management Act is a
14 Count II issue, but as to Count I, there's just no
15 possible reading of the pleading with its exhibits in
16 conjunction with the statute in conjunction with the
17 facts. It's a disaster. For that reason, Count I, the
18 Governor moves for summary judgment. Summary judgment
19 is appropriate for the Governor on Count I and it should
20 most certainly be denied Mr. Bailey on Count I.

21 Count II deals with the issue of the Governor
22 being limited to a single disaster proclamation and
23 Count III is the issue of the COVID responses by the
24 Governor had to follow the procedures of the Illinois
25 Department of Public Health. On those issues, Your

1 Honor, and this comes as no surprise to the court, but
2 you're not the only one to have dealt with them, to have
3 put on the judge's robe and grappled with the precise
4 legal issues presented in Count II and Count III. If I
5 could tender to the court an order of June 5th from the
6 circuit court of Madison County in the case of
7 Edwardsville/Glen Carbon Chamber of Commerce versus
8 Pritzker, 20-MR-550. The arguments that are in Mr.
9 Bailey's amended complaint, the arguments that we heard
10 a few moments ago from Mr. DeVore all rejected by Judge
11 Threlkeld, Circuit Judge Christopher Threlkeld,
12 T-h-r-e-l-k-e-l-d, on June 5th when he determined that
13 the plaintiff in that case, same issues, same pleading,
14 same argument, same lawyer, the arguments made by
15 plaintiff there had no likelihood of success.

16 May 21st, an opinion and order from the Seventh
17 Judicial Circuit, Sangamon County, Illinois, in the case
18 of Running Central, Inc., versus Pritzker, 2020-CH-105,
19 opinion authored by Circuit Judge Raylene Grischow,
20 G-r-i-s-c-h-o-w. In Running Central, Judge Grischow was
21 presented with the same arguments we just heard today.
22 Like Judge Threlkeld, she determined no likelihood of
23 success. The plaintiff's theories have no likelihood of
24 success in denying the motion for temporary restraining
25 order.

1 May 8, 2020, in the Circuit Court of Cook
2 County, case of Mahwikizi, M-a-h-w-i-k-i-z-i, versus
3 Pritzker, Circuit Judge Cecilia Gamrath, G-a-m-r-a-t-h.
4 Judge Gamrath, like Judge Threlkeld, like Judge
5 Grischow, same arguments heard today, same result, no
6 likelihood of success. The Governor's arguments are the
7 correct ones.

8 May 3rd, 2020, case of Stephen Cassell and The
9 Beloved Church versus, among others, Pritzker in the
10 United States District Court for the Northern District
11 of Illinois, Western Division, 20-CH-50153, Judge John
12 Lee. Judge Lee wrote a memorandum opinion and order,
13 same statutory arguments we heard today, same conclusion
14 reached by Judge Threlkeld, Judge Grischow and Judge
15 Gamrath, no likelihood of success on the merits.
16 Count II is simply wrong as a matter of law.

17 In Count III, one of the things with Count III,
18 Your Honor, and I'll get to it, is precisely what Mr.
19 DeVore predicted, it's moot. Count IV, we didn't hear
20 from Mr. DeVore on Count IV, but provisionally the
21 Governor's motion for summary judgment on Count IV,
22 Count IV has multiple problems. Count IV is a count
23 entitled, quote, injunctive relief, close quote.

24 THE COURT: Isn't that moot?

25 MR. VERTICCHIO: I think it's moot. Perhaps

1 more importantly to address matters in a proper
2 sequence, it's not a cause of action and I've got the
3 authority for it.

4 MR. DEVORE: Make an oral motion to withdraw
5 Count IV, Judge.

6 MR. VERTICCHIO: Does that mean dismiss Count
7 IV?

8 MR. DEVORE: Yes.

9 MR. VERTICCHIO: With prejudice?

10 MR. DEVORE: Yes.

11 MR. VERTICCHIO: No objection.

12 THE COURT: Count IV is dismissed with
13 prejudice. Before the court now is Counts I, II and
14 III.

15 MR. VERTICCHIO: Thank you, Your Honor. With
16 that rather lengthy wind-up, COVID-19 is still here,
17 Judge. I heard from either one of the court deputies
18 today or someone in the clerk's office there's just not
19 a lot of cases in Clay County and, from the stats that
20 I've seen, it appears that's the case, but in Illinois
21 as a whole there's been over 145,000 cases reported and,
22 more heartbreaking, over 7,100 deaths. The threat has
23 not passed and the measures taken were required and
24 supported, Your Honor.

25 Your Honor made the motion regarding the

1 observation that the science isn't in the record. Well,
2 it's in the record in terms of the proclamations and
3 executive orders. The science is indeed in the record.

4 On the statutory arguments, I think I've beat
5 Count I to death, Your Honor, but on Count II, the
6 statutory arguments, the basic theory of the plaintiff
7 is that the Governor had one shot to exercise the
8 emergency powers under the Emergency Management Act and
9 that was a one 30-day window and he did it, and then
10 when April 8th came around, he was done because those
11 original 30 days had lapsed such that when he issued
12 subsequent proclamations and executive orders relying on
13 the emergency powers act or Emergency Management Act on
14 April 30, May 29, and now most recently June 26th, all
15 of that was void because the 30-day window closed but
16 that's just not in the Act. I won't belabor it, I
17 promise, because you've heard it before.

18 Section 7 of the Act provides that the Governor
19 can issue proclamations of disaster for the reasons just
20 explained in Count I, it was appropriate for him to do
21 so each time that he issued proclamations because the
22 facts supported them. So the proclamations of March 9,
23 April 1, April 30, May 29 and June 26, all of which the
24 court can take judicial notice, were appropriate, and
25 then Section 7 provides that, quote, upon such

1 proclamation, the Governor shall have and may exercise
2 for a period not to exceed 30 days the following
3 emergency powers. There is no limitation in Count (sic)
4 7 as to how often the Governor can do that. The guard-
5 rail, the regulator as it were is is there a disaster,
6 and if there's a disaster, then upon that proclamation,
7 he can exercise the emergency powers and that is exactly
8 what he did.

9 So Mr. Bailey's argument that, no, he can't,
10 runs contrary to that clear language of the Act. So
11 found Judges Threlkeld, Grischow, Gamrath and Lee. Now,
12 just give you a quote from Judge Threlkeld. It's the
13 most recent opinion. Quote, the Plaintiff's claim that
14 the Governor cannot proclaim successive disasters over
15 COVID-19 finds no support in the plain reading of the
16 statute. That's at the Edwardsville opinion on page 8.
17 Same thing in Running Central at pages 4 and 5. Same
18 thing in Mahwikizi, paragraphs 21 through 27. Same
19 thing in the Cassell case with Judge Lee at pages 13 and
20 14.

21 So the Governor proclaimed those disasters and
22 then accordingly exercised his emergency powers. Mr.
23 Bailey says, well, that can't be so. It can't work that
24 way. He has to go back to the legislature, the general
25 assembly. After the initial 30 days, the general

1 assembly has to do something. Well, that's not what the
2 statute says and, again, all of the other judges that
3 have addressed the point have taken the position and
4 ruled as a matter of law that the statute doesn't say
5 that and, again, Judge Threlkeld, page 7 of the
6 Edwardsville opinion, holding that the 30-day period is,
7 quote, triggered by the Governor's proclamation
8 declaring a disaster, not by the date on which the
9 disaster initially arises. Same thing in Running
10 Central at page 4. Same thing in Mahwikizi at para-
11 graph 22. Same thing in Cassell at page 13.

12 Beyond the plain reading of Section 7, elsewhere
13 in the Act, as we've talked about before, the
14 legislature did put time limits on the ability to
15 exercise emergency powers. It did so with subdivisions
16 of this state, political subdivisions. With regard to
17 political subdivisions, Section 11 says you can only
18 exercise emergency powers for seven days and, after
19 that, you have to go to the governing body of the
20 subdivision. Didn't say that in Section 7 with regard
21 to the Governor, and that nuance of the statute was, of
22 course, relied upon by the other judges in this state to
23 have considered the issue.

24 Again, Judge Threlkeld, because he was the most
25 recent, here's what he said: Quote, the General

1 Assembly demonstrated it was capable of creating limits
2 on successive disaster declarations when it believed
3 they were appropriate, close quote, and he's citing
4 Section 11 and that's at page 7 of his opinion. He
5 cited Section 11 and held they didn't do that in
6 Section 7, they did it in 11, and that's evidence of the
7 clear reading of the statute.

8 So this notion of you only get one 30-day shot
9 at emergency powers is contrary to the plain language of
10 the statute. It just simply disregards the language in
11 the statute and it adds restrictions to the statute that
12 don't exist. For example, Section 3 of the statute, the
13 limitation section, puts no limitations on the Governor
14 with regard to the number of times he can exercise
15 emergency powers provided that there is a disaster.
16 Sections 6 and 9 of the statute specifically include
17 provisions in which a role for the general assembly
18 exists. So the general assembly knew, of course, when
19 writing the statute how to create a role for itself. It
20 did that in Section 6. It did that in Section 9. It's
21 not in Section 7. And, third, it creates an absurd
22 result in that, in the case of a pandemic, clearly with
23 an exact definition of a public health emergency under
24 the statute, which public health emergency is a disaster
25 under the statute, it would make no sense to limit it to

1 30 days. If that were true, then after April 8th the
2 Governor could do nothing to help stem the tide of this
3 particular pandemic that we now know as COVID-19.

4 Beyond the normal statutory construction rules,
5 there's also the historical application of the statute
6 by other Governors. We've given you the exhibits in
7 other cases, Your Honor, and I believe in the initial
8 Bailey case but certainly in the Mainer case which is
9 now in this record. Over the last decade alone,
10 Governors Quinn, Rauner and Pritzker have issued
11 successive disaster proclamations relating to H1N1 and
12 flooding and the court, I don't know if it was in the
13 original Bailey TRO or in the Mainer TRO, took the
14 position, well, or made the observation that, well,
15 that's flooding. Well, to the person being flooded,
16 that is life altering and catastrophic. So that that
17 was flooding and this is a virus really doesn't matter
18 in terms of construction of the statute and, more
19 importantly, the conduct of the Governors in issuing
20 successive proclamations, and we've cited to you before
21 the Piolet case, Piolet Brothers, P-i-e-l-e-t, Piolet
22 Brothers Trading. It's at 110 Illinois Appellate 3d 752
23 at page 756 where the Piolet court, Fifth District, said
24 that the historical application of the Act by the
25 governors is entitled to great weight, and acquiescence

1 by the general assembly with regard to that historical
2 application is required great weight, and here, not only
3 do we have historical application by other governors and
4 acquiescence by the general assembly, because over the
5 course of time the statute I believe was amended 11
6 times and at no time did anybody in the general assembly
7 say time out, we need to amend Section 7 to make clear
8 to these governors that they are way out of line. They
9 can't keep declaring disasters. Legislature, the
10 general assembly didn't do that.

11 As a matter of fact, at the end of May 2020,
12 weeks ago, they did just the opposite. The general
13 assembly passed three pieces of legislation that
14 ultimately became law. They are House Bill 2096, Senate
15 Bill 557, House Bill 2455 dealing with sexual assault
16 survivors emergency treatment act, the township code and
17 the unemployment insurance act. Each one of those
18 legislations passed by the general assembly in May of
19 2020, passed nearly unanimously, confirmed the
20 Governor's ability to exercise successive disaster
21 proclamations and emergency powers under the Emergency
22 Management Agency Act and, while it's not particularly
23 relevant, it says a lot that Mr. Bailey voted for all of
24 them. He voted yes. Three pieces of legislation passed
25 weeks ago confirming that the Governor could do exactly

1 what now he says in this courtroom he can't do.

2 We heard a bit from Mr. DeVore in passing,
3 because there's really not much more to it than passing,
4 that Attorney General Ryan in his 2001 opinion letter
5 from a member of his staff took the position that the
6 Governor could not issue successive disaster
7 proclamations in exercise of emergency power. That's
8 just not quite so, and there's problems with the 2001
9 opinion letter. First, it was rejected by all four
10 judges that have considered the issue, Threlkeld,
11 Grischow, Gamrath and Lee. Second, it's just -- it's an
12 oddity on the facts. It concerned a single case of foot
13 and mouth disease in a single county in Illinois. It's
14 fundamentally different than the situation we have here.

15 Third, in looking at the Illinois Emergency
16 Management Agency Act, that particular Act has now been
17 amended multiple times since 2001. Most importantly
18 there's been an amendment that added, quote, public
19 health emergencies, close quote, as disasters.

20 Fourth, the issue that Governor Ryan's staff or
21 Attorney General Ryan's staff looked at was can the
22 30-day period for emergency, exercise of emergency
23 powers be extended? Can it be extended? That was the
24 issue. The answer was no. That's not the issue here.
25 No one is saying that 30 days doesn't mean 30 days. The

1 issue here is whether 30 days re-triggers upon a
2 proclamation of a disaster. The answer is yes. So the
3 issue being addressed by Attorney General Ryan is, in
4 fact, a different issue.

5 Fifth, it's a summary opinion letter that
6 doesn't dive deep in the statutory construction rules
7 that we've talked about today and, fifth, or finding
8 rather, it didn't take into account the Governor's
9 historical use of multiple and excessive disaster
10 proclamations and exercises of emergency power.

11 Your Honor, the judges in the opinions that I
12 tendered to the court considered the issues,
13 deliberately wrote opinions on them on this precise
14 issue of Count II. The statutory construction and all
15 that goes with it on Count II soundly and loudly
16 proclaims that the construction offered in Section 7 by
17 Mr. Bailey is simply not the law and the court need not
18 concern itself with factual disputes on the point. It's
19 a pure issue of law, and that's why Mr. Bailey's motion
20 for summary judgment on Count II should be denied and
21 Governor Pritzker's motion for summary judgment on
22 Count II should be granted.

23 Count III, there's two declarations sought in
24 Count III. First, the Governor was not authorized to
25 issue executive order 2020-32 under the Illinois

1 Constitution and executive order 2020-32 is invalid
2 because it doesn't comply with the procedures of the
3 Illinois Public Health Act relating to isolation and
4 quarantine, and, on that issue, first as a preliminary
5 matter, with regard to, we've heard a lot about it
6 today, it's sprinkled in the amended complain but we
7 heard more about it today about these business closures.
8 Business closures, there's no authority for the business
9 closures. The business closures are unconstitutional.
10 Absolute standing issue on that one. There's nothing in
11 this record, it's not alleged, it's not hinted upon,
12 there's no whiff of it that Mr. Bailey owns a business.
13 It's not in the record. He simply has no standing to
14 take the position that these executive orders are
15 improper with regard to business closures. There is no
16 standing. He's not a business owner. Mr. Mainer was,
17 not so Mr. Bailey.

18 So that part, summary judgment on that
19 particular issue on Count III is appropriate. Beyond
20 that, it's moot. It's moot. Here's what the *Garlick*,
21 G-a-r-l-i-c-k, court said, this is at 2018 Ill.App.2d
22 171013, paragraph 38, quote, an issue is moot where an
23 actual controversy no longer exists between the parties
24 or where events have occurred that make it impossible
25 for the court to grant relief, close quote. That's the

1 situation that we have here.

2 The complaint in Count III is about executive
3 order 32. It ceased to have any effect on this state on
4 May 30th. We're standing here on July 2nd. There's
5 been now subsequent orders, including executive order 38
6 and 43, and it's more than, it's much more than, well,
7 that order is dead and the other orders are now here.
8 It's the subject of the orders. Executive order 32 was
9 what people have come to call the stay at home order.
10 That's the one that Mr. Bailey filed his initial
11 complaint and his amended complaint about. There is no
12 stay at home required provisions in the current
13 executive orders and, as a result, there is no, quote,
14 actual controversy, close quote, between Mr. Bailey and
15 the Governor that needs to be resolved by this court
16 with regard to the stay at home order.

17 It's even more clear on the mootness issue given
18 the procedural posture of the complaint. It's a
19 declaratory judgment action, and with regard to
20 declaratory judgment actions, I'm quoting *A.G. Farms*,
21 296 Illinois Appellate 3d at 689, quote, requires a
22 plaintiff with a tangible legal interest and an actual
23 controversy regarding that interest. There's simply no
24 tangible legal interest in the limitations of executive
25 order 32. They don't exist anymore. The claim in Count

1 III is, indeed, moot.

2 Not only that, but the Public Health Act simply
3 doesn't apply. There's no suggestion that the executive
4 orders resulted in a Public Health Act closure order.
5 There's no suggestion that Mr. Bailey is now or has ever
6 been hampered by a Public Health Act closure order. The
7 executive orders were all issued and authorized not only
8 by the Act but by the Illinois Constitution. The Public
9 Health Act didn't come into play in these specific
10 executive orders, and to the extent that there's this
11 characterization of, well, there are isolations and
12 quarantines, Mr. DeVore made an argument to that affect
13 at the time of the TRO, and at least there was in the
14 neighborhood of sense to the argument when there was a
15 stay at home order in place.

16 Judge Lee at the time a week earlier said, no,
17 that's not right. These limitations are not isolations,
18 they're not quarantines. It's in the Cassell opinion,
19 but at least there was a sense that kind of a gut level
20 appeal to it when there was a stay at home order. Not
21 the case anymore. So not only is it not a quarantine or
22 isolation within the Public Health Act, if it ever was,
23 it certainly isn't now.

24 With regard to the Act itself, the Public Health
25 Act itself refutes the notion that it and only it is the

1 vehicle to utilize in the case of a pandemic. The
2 Public Health Act itself makes clear that it works in
3 tandem with the Emergency Management Agency Act. For
4 example, Section 2(m), as in Mary, of the Act says,
5 quote, nothing in this section shall supercede
6 procedures established pursuant to IEMA statutes, close
7 quote. Of course, that means Illinois Emergency
8 Management Act statutes, of which the Act itself is one,
9 and Section 2.1(d) of the Public Health Act says, quote,
10 the operation of the language of this section is not
11 dependent upon a declaration of disaster by the Governor
12 pursuant to the Illinois Emergency Management Agency
13 Act, close quote.

14 These statutes work in tandem, and the
15 emergency, the Emergency Management Agency Act -- I
16 remember it so clearly the first time I walked in this
17 courtroom. You were making the observation of the
18 distinction between these two acts because, yes, in the
19 case of utilization of the Public Health Act, there are
20 procedures in place but, in the event of the Emergency
21 Management Agency Act, I remember it so clearly, you
22 said to Mr. DeVore twice there's no time, there's no
23 time. That's the reason for the Act. You don't have to
24 look any further than the title of the Act. It's an
25 emergency. There's simply no time to apply, not

1 thousands, not tens of thousands, maybe not even
2 hundreds of thousands, but millions of procedures and
3 rights to counsel and hearings. The courts in the state
4 would be overwhelmed if that's what was required in
5 order to take action to stem a pandemic.

6 Different example, terrorism attack where there
7 was a nuclear event here. You're certainly not going to
8 serve a million people, 13 million people with petitions
9 and come to the courts and the Judge McHaneys of this
10 state and say can you appoint me a lawyer. Emergency
11 Act is exactly that. The two work in tandem.

12 THE COURT: Are you comparing thermal nuclear
13 war to the flu?

14 MR. VERTICCHIO: No. I'm comparing -- I'm
15 comparing the very distinctions between the Act and, as
16 you observed, there's no time in this case of an
17 emergency.

18 THE COURT: When I said that, I was referencing
19 what if this was an Ebola virus with a mortality rate
20 approaching 90 to 100 percent. That's what I was
21 referring to.

22 MR. VERTICCHIO: I think you did. I think you
23 did.

24 THE COURT: Not COVID-19 with a mortality rate,
25 a survival rate of 98 plus percent, if not 99 percent,

1 plus percent survival rate.

2 MR. VERTICCHIO: And I think -- that's certainly
3 true, Your Honor, but the simple observation and
4 response to that is over 7,000 people in the state have
5 died, and the last time I checked, don't hold me to
6 this, but I think it's about somewhere near 140,000
7 Americans have died. So, yes, it's not 99 percent
8 fatality but it's serious stuff.

9 THE COURT: I agree to serious stuff. You've
10 now argued twice and now we've got 7,100 deaths. If the
11 due process requirements of the Act were in effect as
12 they are written, that they're required, then the
13 plaintiff would be entitled to hire a lawyer and have a
14 hearing before the court and discover how many of those
15 7,100 cases was COVID the sole cause of death rather
16 than it was a heart attack and the guy also tested
17 positive for COVID. How many of these positive tests
18 are false? How much of this data is being manipulated
19 for whatever reason, for whatever agenda that the public
20 is denied from discovering under your argument?

21 MR. VERTICCHIO: Actually, you know what, Your
22 Honor, it's not. Mr. DeVore could conduct that
23 discovery in this very case, in this case, and he has
24 elected not to. You know why? Doesn't care about the
25 facts, but there's a funny thing about that. He's the

1 plaintiff. Mr. Bailey is the plaintiff. He has what's
2 called the burden. He could walk into this courtroom
3 with his expert witnesses and they could testify from
4 that very chair and say that Dr. Ezike in Chicago, she's
5 out of her mind. She doesn't know what she's talking
6 about. This is all a hoax.

7 THE COURT: Actually it's the Department of
8 Public Health's burden by clear and convincing evidence
9 to prove I'm shutting your business down because, if I
10 don't, everybody is going to die.

11 MR. VERTICCHIO: That presumes a proceeding
12 under the Public Health Act.

13 THE COURT: Right.

14 MR. VERTICCHIO: And there hasn't been one.
15 And, finally, Your Honor, on the public health claim,
16 the Governor had the constitutional right to exercise
17 his authorities. I think we've covered them all in the
18 prior, between prior two transcripts and prior two
19 briefs, I think they're covered, but I do want to just
20 point out on the constitutional issue that we've heard
21 from the plaintiff that there's this, somehow this
22 distinction in the *Barmore* case and in the *Apollon*,
23 A-p-o-l-l-o-n. That was the United States Supreme Court
24 where the court made clear that, in case of an
25 emergency, the executive needs to move swiftly.

1 There's been this notion that, well, those are
2 police powers and police powers lodge only with the
3 legislature, the general assembly. The court need not
4 look further than the Emergency Management Act itself
5 because the Emergency Management Act itself in Section 3
6 notes the powers of the Governor, that it does not, it
7 is not limited and among which is the ability to declare
8 martial law. You don't have -- there is no greater
9 police power than the ability to declare martial law.
10 So to the extent the plaintiff's theory is that the
11 executive branch does not have police powers, that's
12 simply not supported by the law.

13 So with regard to Count III, finally, Your
14 Honor, this notion that in the *Buettell* case,
15 B-u-e-t-t-e-l-l, that Mr. DeVore referenced and Attorney
16 General Madigan's letter opinion, both of which loosely
17 stand for the proposition that Governors don't have the
18 power to legislate, that's not what happened here. The
19 powers exercised by the Governor here are specifically
20 delegated to him by the general assembly. This is
21 not -- this is not legislation. For all of those
22 reasons, Count III is moot. The Public Health Act
23 simply doesn't apply to the facts, and the Governor had
24 the constitutional authority to undertake the action
25 that he has undertaken. For that reason, the motion for

1 summary judgment on Count III by the plaintiff should be
2 denied and the motion for summary judgment by Governor
3 Pritzker should be granted, leaving us only with
4 Count IV and perhaps, mercifully, given the hour, Mr.
5 DeVore has dismissed it with prejudice.

6 So my final parting shot, Your Honor, is -- this
7 truly is -- with all respect, please consider, consider
8 the possibility that your fellow brethren, Lee,
9 Grischow, Gamrath and Threlkeld, just the possibility
10 that they got it right and please at least consider the
11 possibility, just the possibility that your initial
12 views at early proceedings at a TRO stage were not
13 consistent with the law and your fellow brethren got it
14 right.

15 We have a system of justice that relies upon the
16 rule of law. It is not -- it is not determined by the
17 views of the citizens that happen to reside in the
18 county where the court sits. It's determined by the
19 rule of law and, if the court is guided by the rule of
20 law, the Governor's motion for summary judgment should
21 be granted and the plaintiff's denied. Thank you, Your
22 Honor.

23 THE COURT: Brief response.

24 MR. DEVORE: Briefly, Judge.

25 THE COURT: Specifically these three bills your

1 guy just voted for, what do you got to say about that?

2 MR. DEVORE: I can ask him in a second, Judge.
3 I've not read them. As it relates to the
4 constitutionality, the only thing that I just heard my
5 colleague say is that the Governor can declare martial
6 law.

7 MR. VERTICCHIO: Your Honor, I'm sorry. I'm
8 sorry. That's just not true, because I specifically
9 said -- I've gone through this before. I'm happy to do
10 it again, but I adopted it in, from the earlier TRO
11 transcript and the Mainer hearing. I'm happy to do it
12 again, but to say that the only argument on
13 constitutionality that the Governor put forth today is
14 that he can declare martial law, that's a gross mis-
15 characterization of what went on here a few minutes ago.
16 If the court wants me to march through the
17 constitutional arguments again, I will.

18 THE COURT: You don't have to. You made them.
19 Go ahead.

20 MR. DEVORE: Judge, as to the issue of mootness,
21 I got a June 27th article pulled up the court can take
22 judicial notice of where our honorable Governor says,
23 and I quote, I'm not afraid to protect the people of
24 Illinois by moving a region back to an earlier phase if
25 we see a surge. Ours will not be one of the states that

1 takes no action in response to a return to a peak.
2 Public interest exception could be no more important in
3 this case, if the court even finds that it needs to
4 consider Count III, than that, Judge.

5 As to Count III, my colleague suggested I
6 believe, and he can stand up if he wants to again I
7 guess, that the procedural due process of the Department
8 of Public Health Act is not something that had to be
9 followed because the Governor issued his edict under the
10 Emergency Management Agency Act. That's not the crux of
11 Count III, Judge. The crux of Count III is that that
12 authority, my colleague never gave you the word, he
13 skirt tailed around it in the Department of Public
14 Health Act, but it has the word supreme, supreme
15 authority over those issues, which means in Count III
16 we're asking the court to find that those rules, that
17 administrative body, under our legislative branch, takes
18 care of those matters. No where did my colleague point
19 out that if, and the court kind of alluded to it, if
20 we're going to allow a Governor, by interpretation of
21 this statute, to do what he's been doing, call it an
22 Emergency Management Agency Act, we're going on five
23 months, Judge, where the Governor has been controlling
24 the lives of every citizen in this state directly and
25 directly and every business for five months and he does

1 that by continuing to say we have a public health
2 emergency. He suggests my client needs to bring in a
3 team of medical experts in order to address that.

4 I want to talk about these decisions a little
5 bit from these judges. Specifically I want to point to
6 Judge Threlkeld, who I know personally. I didn't want
7 to have to point at his ruling but I guess I'm going to
8 have to. Judge Threlkeld got it wrong big time. I'm
9 going to read it to the court, page 7. The chamber
10 alleges that reissuing a disaster proclamation for the
11 same COVID virus due to an unnecessary self-serving
12 termination date placed in a previous proclamation of
13 disaster is not a threat or occurrence satisfying the
14 definition of a disaster. The court is familiar with
15 that.

16 The plaintiff is incorrect that the termination
17 date is unnecessary as Section 7 mandates that the
18 proclamations are only valid for 30 days. With all due
19 respect to my colleague, who I know, Judge, he is
20 100 percent wrong. Section 7 does not mandate that
21 proclamations are only valid for 30 days. It says that
22 emergency powers are only valid for 30 days after a
23 proclamation is issued. So, Judge Threlkeld -- I didn't
24 go back on this denial of a TRO, wasn't necessary. Then
25 he goes on to say the 30 days mandated by statute

1 requires the Governor to issue a new proclamation before
2 the end of the preceding proclamation.

3 Now, again, with all due respect to my
4 colleague, who I have immense respect for, that's not
5 completely what the statute says. He got that wrong.
6 That's fine. It was not on the merits, Judge, but,
7 again, I'm going to read it again. The 30 days mandated
8 by statute require the Governor to issue a new
9 proclamation on or before the end. Now, I guarantee
10 you, as esteemed as my colleague sitting next to me is,
11 he knew that the judge got that wrong. He didn't
12 mention that to this court.

13 As to the issue of Count III that we're here
14 today, that we asked Judge Threlkeld for an emergency
15 TRO, not an issue on the merits. He didn't take that
16 issue on because he said that, guess what, Judge? When
17 Mr. Verticchio and I were arguing that case in front of
18 Madison County, guess what came out? He had a new
19 executive order, and Mr. Verticchio made sure to throw
20 that in front of Judge Threlkeld to say that executive
21 order 32 was no longer the prevailing executive order.

22 For a TRO purpose, which the public interest
23 exception doesn't apply, it was moot. So Judge
24 Threlkeld didn't even address that issue, but read
25 page 7, Judge, of what the Honorable Judge Threlkeld

1 said. He missed the statute significantly.

2 Let's talk about these other colleagues that my
3 colleague asked this court to acquiesce to, and I'm
4 going to start with the first one, which is out of the
5 federal court where they're dealing with this language.
6 This judge says it doesn't -- it's not to say that the
7 Governor's authority to exercise his emergency
8 management powers is without restraint. Page 33. To
9 support each successive emergency declaration, the
10 Governor must identify an occurrence or threat of a
11 widespread or severe damage. Once an emergency has
12 abated, again, abated, the facts on the ground will no
13 longer justify such findings.

14 Now, my colleague has on numerous occasions said
15 that the interpretation this court has taken is no where
16 to be found in the statute. I don't find that in the
17 statute either, that once the emergency has abated, the
18 word abate is not in there anywhere. If that
19 interpretation is what carries the day in this state at
20 the highest courts in this state, then we don't need a
21 legislative branch anymore, Judge. We can just have an
22 executive rule under an emergency.

23 Now if you go on to these other cases that were
24 subsequent to that federal case, they all seemingly,
25 because the date order, Judge, was this one was

1 beginning of May and then these two cases came in state
2 court and they used the same language. To support each
3 successive emergency -- I'm in the Cook County case now.
4 To support each successive emergency, the Governor must
5 identify an occurrence or threat, injury or loss of
6 life. Once an emergency has abated, the facts on the
7 ground will no longer justify, and I believe when that
8 judge ruled, they actually cited as authority in their
9 ruling the ruling of the federal court that, again, was
10 not even on the merits but the judge followed it, so be
11 it.

12 Then we move on to the Sangamon County court
13 where the Governor tried to move many of his cases.
14 Page 5. The court is not saying the Governor's
15 authority to exercise his emergency powers is without
16 restraint. As the Act outlines, he must identify an
17 occurrence to support each emergency declaration. He
18 must identify an occurrence to support each emergency
19 declaration.

20 Gets back to Count I, Judge. I'm asking the
21 court to consider -- I'm aware that when you ruled on
22 the TRO in the Mainer case, you found no likelihood of
23 success on the merits. On that argument, I would ask
24 the court to reconsider it. What was the occurrence,
25 Judge, on these subsequent ones? It's not the public

1 health emergency that's the occurrence that causes those
2 to be reissued. The occurrence is the 30-day date
3 that's not required by statute. That fiction, Judge,
4 that fiction itself that the Governor has been using is
5 why we find ourselves five months still under the
6 control of executive fiat, Judge. We cannot allow an
7 interpretation of this statute that allows that fiction
8 to continue.

9 The court can consider the Count I, that the
10 disaster by definition doesn't meet an occurrence or
11 threat regardless of whether it hinges on avert or abate
12 and the commas that my colleague points out. The
13 occurrence or threat is the main thing.

14 As to Count II, again, Judge, we're dealing with
15 the issue of is the court going to allow the
16 interpretation of that fiction? Yes or no. Did the
17 legislature intend that fiction to be allowed? Yes or
18 no. If the court would allow that fiction to be what
19 this court rules, then there is no due process for the
20 citizens of this state when they go in and they send
21 these, you know, these letters, these administrative
22 agencies hammering down on these people saying we're
23 going to take your licenses away from you. What's their
24 recourse? No due process under the Governor's
25 interpretation. They have to acquiesce or they're

1 threatened. The court should not allow that.

2 As to Count III, Judge, again, it's not moot.

3 The Governor's very own public statements make it not

4 moot. The court should find, also, based upon that,

5 that the Governor does not have authority under the

6 Constitution or the Emergency Management Agency Act to

7 affect businesses or citizens. They want to argue about

8 standing. They've never made an argument about

9 standing. The court can go to Count III. My client

10 does plead the issue of business closure. They never

11 raised it before, and we would ask that you grant

12 summary judgment on Count III, too. Thank you.

13 MR. VERTICCHIO: Your Honor, may I just briefly.

14 I know Mr. DeVore gets the last word, but it is

15 dispositive motions. Just real briefly. Don't --

16 please don't take my word for it but equally, please,

17 don't take Mr. DeVore's word for it. It was not by

18 accident that I handed you each of the four opinions.

19 Please consider them. You decide. Obviously that's

20 your job, not mine, not his, and if I can help you just

21 a little bit, Judge Lee wrote a long opinion. The

22 discussion of the Emergency Management Act and Public

23 Health Act doesn't start until page 31. So if we're

24 catching you at a bad time, you got a lot of slogging to

25 do before you get there. So that's where the issues are

1 in the Judge Lee opinion.

2 Secondly, Mr. DeVore reminded me, I meant to
3 mention and now it's part of the record in the Mainer
4 transcript where you did, in fact, determine that there
5 was no likelihood of success on the merits of this there
6 is no disaster claim, which I think it was Count I in
7 Mainer. It's equally Count I here.

8 The notion that -- we're here by and large about
9 statutory construction. The notion of don't worry about
10 the commas, really? Words have meaning. Punctuation
11 has meaning. Please read the commas when you're
12 considering the statute. And, finally, we heard it in
13 Mr. DeVore's main argument and we just heard it again
14 now. It's kind of a central theme now. No due process,
15 no due process. The only problem with that is there's
16 no claim. No one has made a claim, that due process
17 claim. I think we know why, but arguing, yeah, the
18 Emergency Management Act is trumped by the Public Health
19 Act, that's different than making an actual due process
20 claim.

21 There's no question it's a matter of a
22 stipulation that process is, when you read the Public
23 Health Act, certain process is there, but the claim is
24 not a lack of due process in this case. None of the
25 counts make that claim and, with that, I respectfully

1 make the request that summary judgment for the Governor
2 be granted and denied for the plaintiff. Thank you so
3 much for your patience, Your Honor.

4 THE COURT: All right. The court has considered
5 the arguments of counsel. I've taken judicial notice of
6 all prior arguments in prior cases on related, exact
7 same issues in essence, exact same arguments.

8 Before I rule here, Plaintiff, in a prior
9 hearing you asked this court to not restrict this ruling
10 to the plaintiff but you cited that appellate court
11 opinion asking the court to find it's, what, common,
12 everybody commonly situated and I invited you to
13 supplement that if you wanted to.

14 MR. DEVORE: Correct.

15 THE COURT: All right. You're still making that
16 request, correct?

17 MR. DEVORE: I am, sir, and I think practically
18 speaking that that was a motion on an injunction as to
19 my client, but a ruling in this case -- I am making that
20 request, but to the extent you would invalidate
21 executive orders, I think they would apply across the
22 state, but I am asking that request, too. Yes, Judge.

23 MR. VERTICCHIO: Can I speak to that issue?

24 THE COURT: You can speak to that since I just
25 brought that up.

1 MR. VERTICCHIO: I'm looking at the transcript.
2 Here's what you said at page 78 of the Mainer temporary
3 restraining order hearing on May 22nd. Quote --
4 speaking to Mr. DeVore. Quote, if you develop some
5 other case law or ability to convince me that the
6 appellate court opinion you cite trumps current civil
7 practice rules, I'll be glad to consider it later,
8 period, close quote, and you were referring to this
9 request to expand it beyond the named plaintiff, and we
10 sit here now on July 2nd and there's been no, not even
11 an attempt to develop anything, let alone convince the
12 court that, I think it was a 1938 opinion, quote, trumps
13 the current civil practice rules, close quote. Thank
14 you.

15 THE COURT: The defendant insists that his
16 executive orders are driven by data, research and
17 experts. What data? What research? Which experts?
18 How and by whom was this data and research generated?
19 Was it peer reviewed? Were opposing opinions even
20 considered? Who designated these people as experts?
21 What is their bias? What are their qualifications?
22 There is no transparency, only the pronouncement of the
23 defendant who chooses the data, research and expert that
24 fit his agenda.

25 Illinois citizens cannot be mandated to cede

1 their constitutional rights to some alleged expert. A
2 couple of days ago Dr. Anthony Fauci testified before
3 the United States Senate Committee, and I quote, I am
4 completely unqualified to tell you whether you can play
5 a sport or not, end quote. How is the defendant
6 qualified to tell Illinois citizens what, whether they
7 can play a sport, stay at home, or operate a business?

8 This court read with great interest, and greater
9 chagrin, the Illinois Attorney General's argument in
10 federal court with respect to this case when he stated
11 that due process is, and I quote, flexible depending on
12 the circumstances, end quote. This court vehemently
13 disagrees. Due process is, quote, flexible depending on
14 the circumstances, end quote, if you live in Russia or
15 China or Cuba or Argentina or some banana republic
16 where, after disarming the general population, the
17 person who usually winds up being in charge is the one
18 with the most guns and the least humanity.

19 Due process is not, quote, flexible, end quote,
20 in this or any other state in this nation. Due process
21 is the birthright of every American citizen. It is bed-
22 rock and hell will freeze before this court ever rules
23 that due process is flexible.

24 One of these opinions provided by the defendant
25 by prior, another court states, and I quote, once the

1 emergency has been abated, the Governor's authority to
2 issue executive orders will cease, end quote. You take
3 that argument to its logical conclusion, the defendant
4 and only the defendant, based upon whatever expert fits
5 his agenda, can determine it's not abated. In fact,
6 it's not going to be abated until we get a vaccine and
7 that could be years.

8 This is absolute power and it is
9 unconstitutional. The defendant does not -- it's not
10 30 days and you're done. He's got more than 30 days.
11 The point is, if he goes beyond 30 days, Illinois
12 citizens get due process rights before their business is
13 shut down, before they're told they can't leave their
14 house or engage in any other activities or have to be
15 subjected to restrictions, which we won't even get into
16 at this point.

17 Count I, the motion for summary judgment with
18 respect to Count I is denied. I'm granting the motion
19 for summary judgment as to Counts II and III. I am
20 denying the defendant's request for an oral motion for
21 summary judgment regarding Counts I, II and III. The
22 defendant may file a written motion and it may proceed
23 to hearing at the same time as Count I, if that proceeds
24 to hearing.

25 MR. VERTICCHIO: Your Honor, just for

1 clarification, you're not denying the motion that's made
2 but rather you're not considering it.

3 THE COURT: Right. Yeah. No. I'm in no way,
4 shape, form or fashion denying your motion for summary
5 judgment. I'm just saying you've got to file them in
6 writing.

7 This court has read that 1938 appellate court
8 opinion and has reconsidered its prior ruling with
9 respect to that issue. I am not restricting this ruling
10 to the plaintiff. All citizens commonly situated
11 pursuant to the language of that appellate court
12 opinion. Have you an order, Plaintiff?

13 MR. DEVORE: I didn't draft it, Judge. I will
14 though if the court asks. I did not draft one. I can,
15 Judge, if the court asks and submit it but I wasn't sure
16 what the court would rule. I can write one.

17 THE COURT: Well, the joint is closed tomorrow
18 and starting July 6 I ain't here. So draft an order
19 right now.

20 MR. DEVORE: I've got my computer. I'll go
21 draft it, Judge.

22 THE COURT: And give the defendant the
23 opportunity to approve it as to form.

24 MR. DEVORE: Yes, sir. I'll go do it right now.

25 THE COURT: Now, this is going to take some time

1 and we've been in here for more than two hours. People
2 need to go to the John. So what we're going to do is
3 recess. You all leave as directed by the sheriff.
4 Don't come back in here. If the sheriff tells you to go
5 outside, go. We can stay in here and get this order
6 done. All right.

7 MR. DEVORE: I'll go get my computer, sir.

8 (Court adjourned.)

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CERTIFIED SHORTHAND REPORTER'S CERTIFICATION

I, LORI SIMS, Certified Shorthand Reporter for the Circuit Court of Clay County, Fourth Judicial Circuit of Illinois, do hereby certify that I reported in machine shorthand the proceedings had on the hearing in the above entitled cause; that I thereafter caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript of the proceedings had before the Honorable MICHAEL D. McHANEY, Judge of said Court.

Dated this 8th day of July, 2020.



Lori Sims
Official Court Reporter
CSR #084-003424