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

DARREN BAILEY, )  
 )  
Plaintiff, )  
 )  
vs. ) NO. 20-CH-6  
 )  
GOVERNOR JB PRITZKER, in his, )  
official capacity, )  
 )  
Defendant. )

REPORT OF PROCEEDINGS of the hearing held  
before the Honorable MICHAEL D. MCHANEY on the 15th day  
of May, 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  
111 Chestnut  
Louisville, Illinois 62858

1 THE COURT: Once again, I remind everybody  
2 recording this proceeding is strictly forbidden and, at  
3 the conclusion of these proceedings, please exit as  
4 directed by the sheriff.

5 Before me are two motions. First, by the  
6 plaintiff, motion for leave to amend pleading. Second,  
7 motion by the defense to move this case to Sangamon  
8 County pursuant to *forum non conveniens*. Defense, you  
9 got any objection to the plaintiff motion to amend their  
10 pleading?

11 MR. VERTICCHIO: Given liberal pleading rules,  
12 Your Honor, no, no objection. We would just like time  
13 to respond.

14 THE COURT: All right. Motion is granted.  
15 Amended pleadings filed instanter.

16 MR. VERTICCHIO: Your Honor, the amended  
17 complaint then is deemed filed?

18 THE COURT: Pardon me.

19 MR. VERTICCHIO: The amended complaint is then  
20 deemed filed?

21 THE COURT: Yes.

22 MR. VERTICCHIO: Thank you.

23 MR. DeVORE: Just so I'm clear, Judge, you don't  
24 need me to file it again? The one that was filed that  
25 was already executed by my client is sufficient for the

1 parties?

2 THE COURT: It is.

3 MR. DeVORE: Thank you, sir.

4 THE COURT: Defense motion to transfer. You may  
5 proceed.

6 MR. VERTICCHIO: Thank you, Your Honor. Your  
7 Honor, the Governor filed a motion to transfer this  
8 cause pursuant to the doctrine of *forum non conveniens*  
9 after an identical motion was considered by a circuit  
10 court judge in Peoria County considering transfer of an  
11 action with identical issues as this one. Judge Derek  
12 Asbury in Peoria County concluded that it was  
13 appropriate to transfer the action before him to  
14 Sangamon County, Illinois. Judge Asbury made that  
15 decision on May 12th, three days ago.

16 He authored a written opinion that bears  
17 directly upon the issues before you and the motion to  
18 transfer pending before you this afternoon. Here's what  
19 Judge Asbury wrote about generally the action.

20 THE COURT: I did read it, counsel. I have read  
21 it.

22 MR. VERTICCHIO: I understand, Your Honor. May  
23 I?

24 THE COURT: Yeah.

25 MR. VERTICCHIO: Thank you. Quote, The

1 Plaintiff's verified complaint strictly deals with the  
2 executive order promulgated and issued from Sangamon  
3 County. Continuing, the majority of the verified  
4 complaint addresses a requested declaration that affects  
5 the entire state. While the plaintiff requests that  
6 this court only consider it in the context of his case,  
7 the pleadings seem to suggest otherwise. The court can  
8 not ignore the public interest factor of this being a  
9 localized versus state-wide controversy touching every  
10 corner of the state. Close quote. That's the  
11 characterization that Judge Asbury gave to the complaint  
12 in Peoria County. The exact same situation exists here,  
13 and, when considering the six factors that the Supreme  
14 Court directs should be considered on a *forum non*  
15 *conveniens* motion like the one here, like the one filed  
16 in Peoria County, here's what Judge Asbury concluded and  
17 ruled. Quote, it is logical that transferring venue on  
18 a state-wide issue for the purpose of uniformity is in  
19 the public's greater interest. The court finds it is as  
20 important to have consistency in rulings on a state-wide  
21 issue during this pandemic. Therefore, the court grants  
22 the defendant's motion and transfers venue to Sangamon  
23 County where the executive order originated as to all of  
24 the state's citizens and businesses. That was three  
25 days ago. Same facts. Same legal issues. Same

1 state-wide issues touching every resident of the state  
2 of Illinois. Hence, the motion to transfer in front of  
3 you.

4 The plaintiff filed a ten-page response to the  
5 motion to transfer venue. I believe it was captioned as  
6 an objection, ten pages. The most striking thing about  
7 those ten pages, Your Honor, is what the plaintiff said  
8 about Judge Asbury's ruling and about Judge Asbury's  
9 reasoning and about Judge Asbury's conclusions. Here's  
10 what the plaintiff said: Nothing. Not a whisper. Ten  
11 pages in response to a motion that's premised upon Judge  
12 Asbury's ruling. Plaintiff said nothing, not that Judge  
13 Asbury was wrong, not that his reasoning was  
14 inappropriate, not that the rules he applied were wrong.  
15 The plaintiff said nothing.

16 What else is the plaintiff silent on in those  
17 ten pages? Well, one of the requirements for a motion  
18 to transfer venue pursuant to *forum non conveniens*, of  
19 course, is that venue in the proposed transferee forum  
20 is proper, Sangamon County. We established in the  
21 motion that Sangamon County is the proper venue for this  
22 action. Mr. Bailey said nothing.

23 MR. DeVORE: We don't object, Your Honor, that  
24 Sangamon County could have been a proper venue, but this  
25 is not a venue question. This is a *forum non conveniens*

1 question so it's not even relevant, but we would  
2 stipulate it could have been filed there potentially.

3 THE COURT: All right.

4 MR. VERTICCHIO: Thank you for the stipulation.

5 MR. DeVORE: No problem.

6 MR. VERTICCHIO: It's certainly relevant because  
7 it's a requirement of the motion. But what does the  
8 plaintiff say?

9 THE COURT: Before you go on to what he does  
10 say, let's talk about what he didn't say. Judge Asbury  
11 may be the greatest judge whoever walked the earth, but  
12 he ain't got no authority over me, does he?

13 MR. VERTICCHIO: There's no question, Your  
14 Honor. Judge Asbury's opinion and written order in  
15 Peoria County is persuasive authority for you.

16 THE COURT: How?

17 MR. VERTICCHIO: He in no way binds you. It's  
18 impossible for one circuit judge to bind another. There  
19 is no question about that.

20 THE COURT: All right.

21 MR. VERTICCHIO: No question about that.

22 THE COURT: So why is he obligated to even  
23 comment on Judge Asbury's decision?

24 MR. VERTICCHIO: Because Judge Asbury's decision  
25 is the basis for the entire motion, that Judge Asbury's

1 decision is an issue that touches every citizen in this  
2 state. It's appropriate for the decision of the circuit  
3 court to be made in the seat of government in this  
4 state, in Sangamon County. That case from Peoria, same  
5 issues, same executive orders, same statute, now lodged  
6 at the seat of government in Sangamon County. For  
7 uniformity purposes, it makes all the sense in the world  
8 that cases filed in other circuit courts equally should  
9 be at the seat of government in Sangamon County and,  
10 when you look at the six issues and factors that the  
11 Supreme Court has directed should be looked at, this  
12 one, it's not even close.

13 Here's what Mr. Bailey says about the private  
14 factors. The private factors are, the first one is the  
15 convenience of the parties. Well, I think Mr. Bailey is  
16 correct, that one is a wash. It's more convenient for  
17 Mr. Bailey to be here. It's more convenient for the  
18 government and the Governor to litigate this in Sangamon  
19 County. That issue is a wash. The next private factor,  
20 access to proof. Mr. Bailey says not relevant. Why?  
21 Paragraph 64 of his objection, this case, quote,  
22 fundamentally and virtually is exclusively an issue of  
23 law, close quote. So access to proof, according to Mr.  
24 Bailey, is not relevant. Okay.

25 The third factor, practical problems of trial

1 ease. Mr. Bailey says not relevant. Okay. So of the  
2 private factors, one is a wash, two aren't relevant  
3 according to Mr. Bailey.

4 How about the public factors? Burden on the  
5 forum. Mr. Bailey says, paragraph 74 of his objection,  
6 it's not relevant. Two, administrative difficulties.  
7 Mr. Bailey says, paragraph 74 of his objection, not  
8 relevant. That leaves one. That leaves one only  
9 relevant issue according to Mr. Bailey, and he's right.

10 The final issue, the final public factor,  
11 interest in deciding local controversies. Mr. Bailey  
12 says it's the governor's burden to show that that  
13 interest, the only one he thinks is relevant and I agree  
14 with him, to show that it greatly outweighs staying  
15 here, that interest greatly favors sending this case to  
16 Sangamon County and, interestingly enough, in his  
17 objection, Mr. Bailey concedes this is not a local  
18 controversy. It's not a local controversy. It's a  
19 state-wide controversy that touches every citizen in  
20 this state.

21 Paragraph 67, quote, the controversy is far from  
22 localized and has far-reaching effects, close quote.  
23 That's Mr. Bailey's objection. Quote, paragraph 70, it  
24 applies equally to every county in the state, close  
25 quote, and the way the amended complaint is drafted, it

1 shows that he's right. It shows that he's right. This  
2 complaint, this lawsuit and the amended complaint which  
3 Your Honor just granted leave to file, the wherefore  
4 clause in Count I, paragraph E seeks a, quote, finding  
5 that the emergency powers under Section 7 of the act  
6 which were invoked in EO 32 are null and void *ab initio*.  
7 That's Count I, every citizen of the state.

8 Count II, declaring that the proclamation and  
9 executive orders had no authority under the emergency  
10 powers of the act, again, quote, void *ab initio*. Count  
11 III, again, void *ab initio*, every citizen of the state  
12 impacted and, Count IV, the injunction count, quote,  
13 enter an injunction permanently enjoining Pritzker, or  
14 anyone under his authority, from enforcing EO 32 from  
15 this date forward, close quote, every citizen of the  
16 state and it did not have to be drafted this way.

17 Mr. Bailey could have crafted this complaint to  
18 impact him, only him. He chose not to do that. He went  
19 far reaching, far reaching. His relief touches every  
20 citizen of the state. Mr. Bailey has made public  
21 statements to the same effect, all of which, and I  
22 understand it's not binding, but all of which brings us  
23 back to Judge Asbury's reasoning. It is logical to  
24 transfer venue, quote, on a state-wide issue for the  
25 purpose of uniformity and the public's greater interest,

1 close quote.

2           Transfer of venue to the seat of government in  
3 Sangamon County on an issue that touches every citizen  
4 in this state is appropriate under *forum non conveniens*.  
5 The parties agree that the only real factor is is this a  
6 localized controversy or is it a state-wide controversy.  
7 Not only do they agree that that's the factors that the  
8 court should concentrate on, they agree it's a state-  
9 wide controversy. Greatly outweighs. Their agreement  
10 shows that transfer of the forum to Sangamon County  
11 under the doctrine of *forum non conveniens* greatly  
12 outweighs the interest of leaving this state-wide  
13 dispute in Clay County.

14           For that reason, Your Honor, the Governor would  
15 respectfully request that the motion to transfer  
16 pursuant to *forum non conveniens* be granted and a  
17 transfer order be entered. Thank you.

18           THE COURT: What say you, Plaintiff?

19           MR. DeVORE: Thank you, Your Honor. My client  
20 doesn't disagree that this cause of action can affect  
21 every citizen in this state, every business in this  
22 state. That is not a product of what my client's  
23 complaint has drafted. That's a product of executive  
24 orders that were written in such a way to touch the  
25 lives of every human being in this state that's a

1 citizen or business. That was by the construct of the  
2 executive orders. So to suggest that my client's cause  
3 of action does that is a little bit of a mis-  
4 characterization. It's the actions of the Governor that  
5 have caused this to be a state-wide issue. I wanted to  
6 start with that.

7 The issue of the basis for the entire motion --  
8 I heard my colleague say to this court that the basis of  
9 this entire motion was an order entered by a judge  
10 somewhere up north dealing with centralized matters to  
11 Springfield. I believe that's what the court said.  
12 Maybe I'm wrong, sir, but it was my impression that the  
13 basis for an entire motion for a *forum non conveniens* is  
14 grounded in supreme court rule and supreme court  
15 precedent and that's what the court is considering and  
16 not whether a judge someplace else may have made a  
17 decision, for what it's worth to this court, based upon  
18 factor analysis that I don't even understand.

19 They talk about -- and my colleague talks about  
20 this local, local desire. What is local under the  
21 circumstances of this cause of action that's predicated  
22 on this executive order? It's the state of Illinois.  
23 It's local. Because of that reason, the Governor would  
24 ask this court to find that, since it's local, we should  
25 do, for the whole state, that it should be in Sangamon

1 County. I don't know what's so special about Sangamon  
2 County, sir, the fact that our county seat or our state  
3 legislature is there or the governor's mansion is there?  
4 The mere fact that that's the place where a state's  
5 legislative body takes place, if the legislature had  
6 been doing anything for the last two months, we may not  
7 be sitting here. So the fact that they're all housed in  
8 Springfield I think is moot.

9 THE COURT: Well, the Defendant stated in his  
10 motion that the, any witnesses or documents are in  
11 Springfield.

12 MR. DeVORE: Well, I don't know that he  
13 specifies Springfield in his motion. I think he points  
14 out -- and I'll get to that. I don't know that he  
15 specifically says in Sangamon County. He doesn't go  
16 that far. I'm going to get to that, and my colleague  
17 will look that up. He talks about the convenience  
18 factor. He didn't argue it here today, but the  
19 convenience factor for the Defendant. That's got  
20 nothing to do with Sangamon County because we put in our  
21 order, every press release that my client has ever seen  
22 comes out of Thompson Center in Chicago. So it appears  
23 that's happening in Chicago and, more importantly,  
24 Judge, we're not talking about the legislative body  
25 doing things or meeting, et cetera. What are we talking

1 about? We're talking about executive orders that have  
2 been signed and we're talking about proclamations of  
3 disaster that have been signed.

4           There is no evidence in front of this court to  
5 suggest, even though I don't think it's a relevant  
6 factor, that that's being done in Sangamon County. Is  
7 Sangamon County -- could it have been a venue for this?  
8 Yeah. There's 102 counties that could have been a venue  
9 for this issue because of the grand impact it's had on  
10 every citizen.

11           THE COURT: Isn't he arguing that these  
12 executive orders were written based upon guidance from  
13 expert witnesses who are in Sangamon County? Isn't that  
14 what he's saying?

15           MR. DeVORE: I think he says Sangamon and Cook  
16 County in his pleading and we're looking at that right  
17 now. But, again, Your Honor, I don't think -- and if  
18 you look at some of the case law on this when it talks  
19 about what you have to allege, who are these witnesses?  
20 Again, when the Governor signs an executive order,  
21 that's what's under attack in this court and whoever  
22 signed witnesses -- all of the materials and doc -- I'm  
23 reading here, Your Honor, page 5 of their motion, all of  
24 these materials and documents and the individuals who  
25 will testify can be most easily accessed, that's

1 important language, Judge, and I'm glad Mr. Hyam found  
2 it for me, can be most easily accessed in Sangamon  
3 County. That is not the same thing to say they are  
4 there. I suspect the Governor is getting some kind of  
5 direction from the Department of Health director. I  
6 don't know because that's not laid out in this motion.  
7 She's right there with the Governor the whole time. So  
8 it does not say that, Judge. It says can most easily be  
9 accessed.

10 Let's talk about these documents and this  
11 evidence. This is a declaratory judgment action. If we  
12 weren't talking about issues of such great importance,  
13 the court and the attorneys in the room are likely aware  
14 dec actions deal with interpretation, they deal with  
15 applying the law. These are public documents.

16 THE COURT: You also filed a count for  
17 injunctive relief, right?

18 MR. DeVORE: That is pending, yes. Correct.  
19 Whether my client calls that or not is, we haven't  
20 determined, but it is there. As to the declaratory  
21 judgment, which are things that my colleague raises  
22 about the ramifications if this court would make, those  
23 issues are dealing with public documents and the  
24 authority of statutes as those public documents are  
25 applied to. The amount of -- they're taking about

1 evidence, as I believe my colleague has pointed out,  
2 putting on evidence for days regarding the nature of  
3 this pandemic and --

4 THE COURT: We're going to get to that later.

5 MR. DeVORE: But I would suggest to the court as  
6 to this issue of -- maybe they've not read the amended  
7 complaint, but as to this issue of there being, actually  
8 existing a public health emergency, my client is not  
9 going to even argue about that. I don't even think it's  
10 relevant in this case because the fact that there is and  
11 has been, at least since April 1st, May 1st, constitute  
12 is the word they use, Your Honor, a public health  
13 emergency, it cuts against their very ability to say  
14 there's a disaster in the first place because the  
15 disaster can only be proclaimed if you're invoking  
16 emergency powers to avert is the language in the  
17 statute.

18 So if they want to come in and put on two days  
19 of testimony that we have a public health emergency,  
20 they're not going to get any resistance from us. We're  
21 going to go, okay, you just pled yourself out of court.  
22 So all of that evidence for this motion to transfer,  
23 Judge, is not relevant because that's not really what's  
24 in front of the court.

25 We have laid out in our objection that I'm quite

1 certain the court has read, you know, this centralized  
2 argument, I would ask the court to consider this is a  
3 state-wide issue. None of us disagree with that. Why  
4 is Sangamon County more convenient? I would ask the  
5 court why? Why is this court right here any less able  
6 to manage and handle this case than a court in Sangamon  
7 County? The Governor's in Cook County. We don't know  
8 who these witnesses are that are more easily accessible.  
9 Why are they more easily accessible? I don't know who  
10 they are. I don't know where they live. I don't know  
11 what they're going to testify to. If they really wanted  
12 to put forth a motion for this court to consider, they  
13 should have pled those things and they didn't.

14 For those reasons, Your Honor, we don't think  
15 that they have pled, they have not met the burden that  
16 the supreme court has set which says, and I'm going to  
17 pull to that, it says that my client's initial choice of  
18 forum will prevail unless they put forth something that  
19 substantially outweighs that, Judge. It's the  
20 *Langenhorst* case, I think it's been quoted  
21 significantly, and the factors, all of them together  
22 have to strongly favor the court transferring this for  
23 non conveniens. Strongly favor, Your Honor, is the  
24 standard and, unless the balance of those factors  
25 strongly favors Governor Pritzker, my client's choice of

1 forum should not be disturbed.

2           The best they've put forth to you is that this  
3 is a state-wide issue and it should be handled in a  
4 central location. I don't believe geography has  
5 anything to do with it. Just because Sangamon County is  
6 in the center, that's not a factor. I mean I know the  
7 judge from up north talked about that. With all due  
8 respect to another member of our bar and to a judge,  
9 those six factors, none of them talk about the central  
10 location. I don't even understand it, and we didn't  
11 respond to it because I didn't think it was necessary.

12           As to the actual factors elicited, we have the  
13 issue of access to documents and people and we have this  
14 locality thing that you know of, centralized locality.  
15 Neither one of those get them there, Judge. They don't  
16 get them there at all. The access to documents and to  
17 people is pure conjecture at this point because they  
18 haven't adequately laid that out. The nature of this  
19 very cause of action -- I can let the court know that  
20 sometime in the very near future my client is going to  
21 be bringing summary judgment motions. There's not a lot  
22 of facts at issue in this case, Judge. It's all  
23 applying the law of the Emergency Management Act and  
24 Department of Health Act to the disaster proclamations  
25 and to the executive orders. That's not going to take a

1 significant amount of evidence and, as I've heard, there  
2 is an airport three miles from this court that a plane  
3 in the state of Illinois could land at anytime the court  
4 thinks that Governor Pritzker might need to come. I  
5 don't even see that basis to be necessary at this point.

6 Judge, I think the conclusion is clear. I  
7 believe that the elephant in the room is everyone  
8 involved knows why this motion for transfer was brought  
9 and that's not a proper reason, Judge. We'd ask you to  
10 deny it. Thank you.

11 THE COURT: I'll give you one final word if you  
12 want it.

13 MR. VERTICCHIO: Thank you, Your Honor. Mr.  
14 DeVore just confirmed the point. He's confirmed that in  
15 Plaintiff's view there are no factual disputes. They're  
16 not even going to contest the public health emergency.  
17 In Plaintiff's view, this is all issues of law. This is  
18 all issues of law. He's conceded that the only factor  
19 for this court to consider is the same one that Judge  
20 Asbury has considered, localized controversy, state-wide  
21 controversy. That was all conceded in his objection and  
22 we heard it just now, and the suggestion, I think he  
23 used the word suggestion, that I suggested it touches  
24 everybody in the state, I'm not suggesting anything. I  
25 can read.

1           His amended complaint, the relief sought can be  
2 read in no other way and for the rhetorical question of  
3 why is this court less able than some judge in Sangamon  
4 County to decide the issue, well, of course, it's not.  
5 This court is as able to decide the issue as the court  
6 in Sangamon County. It's, of course, as able to decide  
7 the issue as the court in Peoria County. The reasoning  
8 though holds true.

9           There is a case now pending in Sangamon County  
10 with the identical issues in Springfield, Illinois,  
11 where the seat of state government lies. Uniformity of  
12 decision on an issue that touches not everybody in the  
13 room, not everybody in the county, but everybody in the  
14 state strongly favors, strongly favors transfer to  
15 Sangamon County. We respectfully request the motion be  
16 granted. Thank you, Judge.

17           THE COURT: All right. This court finds  
18 guidance in the case of *Fennell*, F-e-n-n-e-l-l, *versus*  
19 *Illinois Central Railroad*, 2012 IL 113812, *forum non*  
20 *conveniens* motions hinge on private interest and public  
21 interest factors. Private interest factors include the  
22 convenience of the parties; the relative ease of access  
23 to sources of testimonial, documentary and real  
24 evidence; the availability of compulsory process to  
25 secure attendance of unwilling witnesses; the cost to

1 obtain attendance of willing witnesses; the possibility  
2 of viewing the premises, if appropriate; and all other  
3 practical problems that make trial of a case easy,  
4 expeditious, and inexpensive.

5 The public interest factors include the  
6 administrative difficulties caused when litigation is  
7 handled in congested venues instead of being handled at  
8 its origin; the unfairness of imposing jury duty upon  
9 residents of a community with no connection to the  
10 litigation; and the interest in having local  
11 controversies decided locally.

12 The *Fennell* case states unless the factors weigh  
13 strongly in favor of transfer, the Plaintiff's forum  
14 choice should rarely be disturbed. If substantial  
15 deference is owed to the Plaintiff's choice, a transfer  
16 is not proper in most instances despite substantial ties  
17 between the suit and the alternative forum. That is  
18 *Cradle Society versus Adopt American Network*, 389 Ill.  
19 App.3d 73 (1st District 2009).

20 A court generally denies the motion when the  
21 potential witnesses are scattered among the potential  
22 fora, f-o-r-a, Madam Reporter, including the chosen  
23 forum, (ii) the suit has significant ties to the chosen  
24 forum, and (iii) a jury view of the accident site is  
25 unnecessary. That's *Langenhorst versus Norfolk Southern*

1 *Railroad*, 219 Ill. 2d 430 (2006).

2           Significantly here, *Taylor versus Lemans*  
3 *Corporation*, 2013 Ill App (1st) 130033, states if the  
4 defendant fails to present affidavits from the witnesses  
5 whose inconvenience is claimed to require a transfer,  
6 this failure of proof can justify denial of the  
7 defendant's motion. In *Cotton versus Louisville &*  
8 *Nashville Railroad Company*, 14 Ill. 2d 144, a *forum non*  
9 *conveniens* affidavit cannot simply state the conclusion  
10 that the alternative forum would be more convenient,  
11 without identifying the potential witnesses and  
12 indicating what their testimony would be.

13           And, finally, and of particular significance  
14 here from the *Fennell* case, a concern animating *forum*  
15 *non conveniens* jurisprudence is, quote, curtailing forum  
16 shopping by plaintiffs, end quote. That also applies to  
17 defendants. This court previously granted a temporary  
18 restraining order. Included in that order was a finding  
19 that the plaintiff has a substantial likelihood of  
20 success on the merits. The defendant, not liking that  
21 order, immediately appealed. When the plaintiff bellied  
22 up on the TRO, the defendant went to the supreme court  
23 saying we don't need to worry about these circuit and  
24 appellate court. You tell me, supreme court, I'm right.  
25 Well, they didn't.

1           Any pleading filed in this state regarding these  
2 executive orders that even mentions the word  
3 constitutional, United States Constitution is  
4 immediately whisked to federal court. Now, I'm not  
5 accusing you, Defense, of judge shopping.

6           MR. VERTICCHIO: Thank you, Your Honor.

7           THE COURT: But if it walks like a duck and  
8 quacks like a duck. In any event, I have considered all  
9 of these factors. I have exercised my discretion, and  
10 the motion to transfer pursuant to *forum non conveniens*  
11 is denied.

12           Now, this case needs to be heard. I mean now.  
13 So when we going to do it, folks?

14           MR. DeVORE: Judge, I'll have a motion for  
15 summary judgment on file Monday.

16           THE COURT: What's your response to that,  
17 Defense? Are you saying that I can't go further until  
18 you present witnesses or evidence? Isn't this a  
19 question of law?

20           MR. VERTICCHIO: I haven't even seen the motion,  
21 Your Honor. I can't respond to what do I think about a  
22 motion for summary judgment that I have not seen. I  
23 think we heard today from the plaintiff that there's  
24 going to be no witnesses.

25           THE COURT: You're an excellent lawyer and you

1 know what he's going to say. Are you planning on  
2 calling any witnesses? And, if so, what are they going  
3 to say?

4 MR. VERTICCHIO: In light of the concessions  
5 made today, depending on what count he's moving for  
6 summary judgment --

7 MR. DeVORE: All three, sir.

8 MR. VERTICCHIO: There's four.

9 MR. DeVORE: Not the injunction.

10 MR. VERTICCHIO: So not Count IV.

11 MR. DeVORE: It would be moot if any relief is  
12 granted in the other, sir.

13 MR. VERTICCHIO: I need to see the motion, Your  
14 Honor. I really -- in fairness, to ask me to comment on  
15 a motion for summary judgment that I haven't seen is,  
16 frankly, it's just not fair.

17 THE COURT: All right. Are you going to file  
18 this Monday, Plaintiff?

19 MR. DeVORE: 100 percent certainty, sir. I  
20 would ask the court to consider if it can give them a  
21 week then we can maybe set it for hearing next Friday.

22 THE COURT: Well, I was getting ready to get  
23 there.

24 MR. DeVORE: Yes, sir. I'm sorry.

25 THE COURT: When you get down to it, this ain't

1 a complicated case and the issues are not complicated  
2 and they're actually very simple.

3 MR. DeVORE: Yes, sir.

4 THE COURT: And I don't need to hear two days of  
5 testimony from a medical expert that if these executive  
6 orders aren't continued the world is going to end. I  
7 don't need to hear that. This is a legal issue, a legal  
8 argument on whether this Governor had the authority to  
9 issue this executive order under Illinois law and  
10 pursuant to the Illinois Constitution. Period. That  
11 ain't hard. File your motion Monday.

12 MR. DeVORE: Yes, sir.

13 THE COURT: We're going to hear this -- this  
14 case ends in this court anyway next Friday.

15 MR. DeVORE: Yes, sir.

16 MR. VERTICCHIO: Your Honor, respectfully, I  
17 think -- again, I haven't seen the motion, but it's a  
18 motion that presumably is seeking judgment on three  
19 counts of a 126 paragraph count, paragraph complaint. I  
20 would like ten days to respond.

21 THE COURT: I'm going to deny that request.  
22 This issue needs resolved. It begs to be resolved.  
23 It's got to be resolved in this court and it's going to  
24 be and it's going to be resolved Friday. Now what time?

25 MR. VERTICCHIO: Your Honor, I'm sorry.

1 Respectfully, could we have it Tuesday or Wednesday of  
2 the following week so that we could have appropriate  
3 time to respond to a motion seeking judgment on three  
4 counts? I don't think that's too much to ask to get an  
5 additional weekend to absorb the motion that's going to  
6 be filed on Monday. If the court is going to hear it on  
7 Friday, we have virtually no time to respond. I'm  
8 respectfully requesting the weekend to respond to a  
9 motion for summary judgment on a 126 count, paragraph  
10 rather, complaint seeking judgment on three counts on  
11 issues that impact every citizen in this state.

12 There's been a representation that it's going to  
13 be filed on Monday. It's not asking too much to let the  
14 Governor have a week to respond. Respectfully, Your  
15 Honor, can we hear the motion the following week so that  
16 the Governor can appropriately respond to this motion?  
17 Thank you.

18 THE COURT: And it's not asking too much  
19 pursuant to the citizens of this state that every hour  
20 that goes by they're being deprived of the right to  
21 leave their house or make a living is not too much to  
22 ask this court to rule Friday. What time?

23 MR. DeVORE: Any time I'm available, sir. Any  
24 time.

25 THE COURT: I'll let you pick the time, Mr.

1 Attorney General.

2 MR. VERTICCHIO: 3:00.

3 THE COURT: 3:00 p.m.?

4 MR. VERTICCHIO: Yes, sir.

5 THE COURT: 1:00 p.m. All right. Anything  
6 further on behalf of either party?

7 MR. VERTICCHIO: When is my response due, Your  
8 Honor? Thursday? Thursday morning?

9 THE COURT: I'll let you respond Thursday  
10 morning. Thursday by noon at the latest.

11 MR. VERTICCHIO: Thursday noon. Thank you.

12 THE COURT: All right. Anything further on  
13 behalf of either party?

14 MR. DeVORE: Not from the plaintiff, sir. Thank  
15 you.

16 MR. VERTICCHIO: Given Your Honor's ruling on  
17 the motion for summary judgment, it's somewhat  
18 collateral, but just so we have it in the record, could  
19 I have 14 days to respond to the amended complaint? I  
20 think that the issues will be moot by Friday one way or  
21 another but just so we're clear in the record.

22 THE COURT: That's fine. We're still going to  
23 proceed on the motion for summary judgment Friday, 1:00  
24 p.m.

25 MR. DeVORE: Court will have it Monday, sir.

1 THE COURT: Very well. Again, leave as directed  
2 by the sheriff. We're in recess.

3 MR. VERTICCHIO: One more issue. I'm sorry,  
4 Your Honor. I almost hate to bring this up, but there  
5 has been an issue with plaintiff's not serving the  
6 Governor immediately upon filing things. I would  
7 respectfully request that an e-mail copy of the filed  
8 motion for summary judgment be sent to the Governor's  
9 counsel, me, as soon as it's filed because there's been  
10 a problem with that in the past. I mean the court knows  
11 that Mr. DeVore has come before you on motion for  
12 temporary restraining order on these issues without  
13 notice to the Governor, even though he knows where I am,  
14 so could we get served with this on Monday if it's going  
15 to be filed Monday?

16 THE COURT: He's got to be electronically filed,  
17 right?

18 MR. DeVORE: Absolutely. I don't even know what  
19 he's talking about.

20 MR. VERTICCHIO: The court doesn't automatically  
21 send it to us, Your Honor. I'm just asking for counsel  
22 to send it to me electronically when he files it.

23 MR. DeVORE: I will absolutely do that, and I  
24 would ask counsel to not accuse me of something unless  
25 he's going to be specific.

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THE COURT: All right. We're done here.

MR. DeVORE: Thank you, sir.

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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 15th day of May, 2020.

*Lori Sims*

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Lori Sims  
Official Court Reporter  
CSR #084-003424