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IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS Clerk of the
Circuit Court

IN RE: COVID-19 LITIGATION

Case No: 2020-MR-589

TEMPORARY RESTRAINING ORDER

This cause coming to be heard on plaintiffs Governor JB Pritzker, Dr. Ngozi Ezike, and Dr. Carmen I. Ayala Motion for a Temporary Restraining Order filed on July 16, 2020 against defendants Board of Education of Hutsonville CUSD #1, Christian Child Development Corporation and Parkview Christian Academy (“TRO Defendants”). The motion hearing was originally set for July 23, 2020 and rescheduled to August 4, 2020 due to the unavailability of defense counsel. On July 31, 2020, TRO Defendants filed a Motion To Stay Proceedings due to filing a Motion To Transfer and Consolidate Cases Under Illinois Supreme Court Rule 384 with the Illinois Supreme Court. In that motion, the TRO Defendants asked to have the cases consolidated with Clay County Case No: 2020-CH-13. The Supreme Court issued its ruling on August 11, 2020 consolidating the matters in Sangamon County Case No: 2020-MR-557. Over TRO Defendants’ objection, this matter was set for oral arguments on the Motion for a Temporary Restraining Order on August 18, 2020 as school was set to commence on August 19, 2020 for one of TRO Defendants. Prior to the hearing, and upon the suggestion of the attorneys from both parties, consolidation of all the cases was agreed upon. The Court ordered that all the cases would be consolidated under *Case No. 2020-MR-589* and entitled: *In Re: COVID-19 Litigation*.

Case No: 2020-MR-557 proceeded to hearing on August 18, 2020. The TRO Defendants received adequate notice of the Motion for a Temporary Restraining Order.¹

¹ Defendant Board of Education of Hutsonville CUSD #1 (“Hutsonville”) also received notice of the motion for temporary restraining order. Before the August 18, 2020, hearing on the motion, Hutsonville represented to the

The Court having considered the record, including arguments, statements of counsel, all filed pleadings, memoranda, affidavits, exhibits, amicus brief filed over TRO Defendants' objection and other materials relating to the motion, finds as follows:

Legal Standard

A temporary restraining order (“TRO”) is a drastic, emergency remedy which may issue only in exceptional circumstances. *Delgado v. Bd. Of Education Comm’rs*, 224 Ill.2d 481, 483 (2007). The purposes of a temporary restraining order is to preserve the status quo. Sometimes the status quo is not a condition of rest but rather a condition of action that is necessary to prevent irreparable harm.

To obtain a temporary restraining order, plaintiff must establish:

- 1) A certain and clearly ascertainable right or interest needing protection;
- 2) No adequate remedy at law;
- 3) Irreparable harm will result if the injunction is not granted; and
- 4) A reasonable likelihood of success on the merits.

If these elements are met, then the court must balance the hardships and consider the public interests involved. *Makindu v. Illinois High Sch. Ass’n*, 2015 IL App (2d) 141201, ¶ 31.

Ascertainable Right

1. In light of the TRO defendants' announced refusal to comply with the Executive Orders and Guidance, plaintiffs have a clearly ascertainable right to a judicial determination that the Governor's Executive Orders 2020-40, 2020-44, and 2020-47 and the Illinois Department of Public Health and the Illinois State Board of Education's Transition Joint Guidance (“Guidance”) were lawfully issued. Plaintiffs also have a vital interest in regulating the response to Covid-19 and setting minimum standards for the health and safety of students, teachers, other

Court that it will voluntarily follow, comply with, and implement the Illinois Department of Public Health and the Illinois State Board of Education's Transition Joint Guidance until further order of the Court. As a result, Plaintiffs' request for a temporary restraining order is rendered moot as to Hutsonville. See separate order.

school personnel, and the public. There is a public interest in combating the spread of COVID-19 and protecting the health of its citizens is of prime importance.

Irreparable Harm

2. Plaintiffs have established that absent an injunction the harm will be irreparable in that the virus will continue to spread. In turn, this could potentially cause increased risks to the community at large, up to and including varying degrees of sickness, including death.

Likelihood of Success on the Merits

3. The Court finds that plaintiffs are likely to succeed on the merits of their claims because the Governor’s Executive Orders 2020-40, 2020-44, and 2020-47 and Guidance were lawfully issued both statutorily and constitutionally. Both are enforceable pursuant to the Governor’s authority under both (a) Article V, Section 8 of the Illinois Constitution to take immediate measures necessary to protect the public health in the event of a crisis and (b) Sections 7(1), 7(2), 7(8) and 7(12) of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7(1), 7(2), 7(8), and 7(12).

Over a century ago the United States Supreme Court developed a framework by which to evaluate a State’s exercise of emergency powers during a public health crisis in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). There is no doubt Illinois is in the middle of a public health crisis as outlined in *Jacobson*. Neither this Court, nor any vocal citizen or school district has the authority to second guess that policy decision as outlined in *Jacobson*.

As to the police powers that are outlined in both the Federal and State Constitutions, this Court concurs with the Honorable Judge Anderson and his analysis as outlined in his order issued in *JL Properties Group B LLC v. Pritzker*, No. 20-CH-601, slip op. at 12–16, 20–22 (Ill. 12th Jud. Cir. Ct. Will Cty. July 31, 2020). As the United States Supreme Court held in *Jacobson*,

the liberties secured by the Constitution do “not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. . . . [It is] a fundamental principle that ‘persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the state’” 197 U.S. at 26.

No Adequate Remedy at Law

4. Plaintiffs have no adequate remedy at law if the TRO Defendants are not enjoined from refusing to follow the Executive Orders and Guidance. The injury to the public cannot be measured in dollars. The harm of being infected with COVID-19 is not something that a monetary award would rectify.

Balancing of the Equities

5. In balancing the equities a party must show that the benefits of granting the injunction outweigh any injury to the defendants. When the injunction implicates the importance of public interests, the court should consider the effect the injunctive relief would have on the public. Plaintiffs have established the public will suffer more harm in the absence of an injunction. The hardships the TRO Defendants might suffer by being forced to follow the Executive Orders and Guidance is slight. However, the potential risks to the TRO Defendants’ students, faculty, staff, as well as the community at large, is great. It could very well be a matter of life or death for certain individuals if they contract COVID-19. As such, the balancing of equities leans in favor of granting the injunction.

6. IT IS ORDERED that the Motion for Temporary Restraining Order is granted.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

A. This Court’s rulings of record from August 18, 2020 and memorized by court reporter Nancy Flynn are hereby incorporated and made a part of this Order; and

B. The TRO Defendants, their officers, agents, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, are enjoined from refusing to follow the Governor’s Executive Orders 2020-40, 2020-44, and 2020-47 and the Illinois Department of Public Health and the Illinois State Board of Education’s Transition Joint Guidance. The TRO Defendants are ordered to comply with the Governor’s Executive Orders and Guidance which applies to all public and nonpublic schools in Illinois serving prekindergarten through 12th grade students. This Guidance includes, but is not limited to:

1. Requiring the use of appropriate personal protective equipment (PPE), including face coverings;
2. Prohibiting more than 50 individuals from gathering in one space;
3. Requiring social distancing be observed, as much as possible;
4. Requiring schools symptom screening and temperature checks or require that individuals self-certify that they are free of symptoms before entering school buildings;
5. Requiring an increase in school wide cleaning and disinfection; and
6. Following any requirements as outlined in the Guidance as well as any changes that occur as a result of changing public health conditions.²

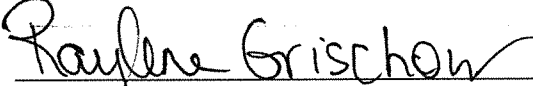
² These requirements were taken directly from the Illinois Department of Public Health and the Illinois State Board of Education’s Transition Joint Guidance included as Exhibit 1 to plaintiffs’ Verified Complaint for Declaratory Relief and Injunctive Relief.

C. This temporary restraining order is entered at 2:57 p.m. on August 18, 2020, and shall remain in full force and effect until a decision has been made on the merits or until the Governor's office changes its Guidance on facial coverings and other safety measures required by the Guidance.

D. For good cause shown, bond is waived.

E. This cause is set for further hearing on September 2, 2020 at 1:30 p.m. by Zoom. The Court will send a Zoom invite to the attorneys of record with Remote Hearing Instructions that must be followed.

ENTERED: August 18, 2020



Honorable Raylene D. Grischow
Circuit Court Judge