IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

DAVID SHELDON et al.,

Plaintiffs,

v.

LORI LIGHTFOOT and JB PRITZKER,

Defendants.

No. 2020 CH 04727

Hon. Franklin Ulyses Valderrama

GOVERNOR'S MOTION TO DISMISS

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INTRODUCTION

Plaintiffs are Chicago residents who object to Mayor Lightfoot's and Governor Pritzker's responses to the Covid-19 pandemic. The complaint presents just one question concerning the Governor. Does the Illinois Emergency Management Agency Act, 20 ILCS 3305 *et seq.* ("Emergency Management Act") limit him to 30 days of emergency powers per disaster?

As state and federal judges throughout Illinois have confirmed over the last few months, the answer to that question is "no." "In the event of a disaster," the Emergency Management Act authorizes the Governor to issue a "proclamation declar[ing] that a disaster exists." 20 ILCS 3305/7. "Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days" certain defined "emergency powers." *Id.* If the "disaster" no longer exists when those 30 days run out, then the Governor's emergency powers also come to an end. But if the "disaster" continues to "exist" at the end of those 30 days, the plain language of the statute authorizes the Governor to issue a successive disaster proclamation and exercise emergency powers for an additional 30-day period—and to continue to do so until the disaster abates.

The existence of a disaster is the only limitation the General Assembly placed on the Governor's authority to issue a proclamation and trigger his powers under the Emergency Management Act. Plaintiffs are wrong as a matter of law to insist the statute limits the Governor to just 30 days of emergency powers per disaster—even when the disaster continues to exist. The complaint therefore fails to state a cause of action and should be dismissed with prejudice.

BACKGROUND

Covid-19 is a serious and potentially fatal illness caused by a novel coronavirus that has spread, in just a few months, throughout the world.[1] "Everyone is at risk of getting Covid-19."[2] It has infected more than 25.7 million people worldwide and killed more than 857,000.[3] It has infected more than 6 million people in the United States and killed more than 183,000.[4] And in Illinois, it has infected 236,515 people and killed 8,064.[5]

Covid-19 is transmitted primarily from person to person, particularly by "respiratory droplets when an infected person coughs, sneezes, or talks."[6] Because there is no vaccine or cure for Covid-19, "[t]he best way to protect yourself is to avoid being exposed to the virus that causes" it.[7] Public health officials advise people to "[s]tay home as much as possible and avoid close contact with others," "[w]ear a cloth face covering that covers your nose and mouth in public settings," and practice social distancing whenever possible.[8]

The Governor implemented life-saving public health guidance using his powers under the Emergency Management Act. The statute authorizes the Governor to exercise these powers for a

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[1] Centers for Disease Control ("CDC"), *What you should know about COVID-19 to protect yourself and others*, https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf ("CDC Factsheet"). The court may take judicial notice of these and other facts cited in this motion because they are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." ILL. R. EVID. 201(b)(2); *see K. Miller Constr. Co. v. McGinnis*, 238 Ill. 2d 284, 291 (2010) (court may consider "matters of which the court can take judicial notice" in evaluating 2-615 motion to dismiss).

[2] CDC Factsheet, *supra* note 1.

[3] Johns Hopkins University & Medicine, *Coronavirus Resource Center*, https://coronavirus.jhu.edu/.

[4] CDC, *Cases in the U.S.*, https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.

[5] Illinois Department of Public Health ("IDPH"), *COVID-19 Statistics*, https://www.dph.illinois.gov/covid19/covid19-statistics.

[6] CDC Factsheet, *supra* note 1.

[7] CDC Factsheet, *supra* note 1.

[8] CDC Factsheet, *supra* note 1.

period of 30 days upon declaring by proclamation "that a disaster exists." 20 ILCS 3305/7. A "disaster" is defined as "an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause." *Id.* § 4. The statute then enumerates a nonexhaustive list of examples, including both an "epidemic" and a "public health emergency." *Id.* A "public health emergency" is further defined as "an occurrence or imminent threat of an illness or health condition that: (a) is believed to be caused by any of the following: (i) bioterrorism; (ii) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; (iii) a natural disaster; (iv) a chemical attack or accidental release; or (v) a nuclear attack or accident; and (b) poses a high probability of any of the following harms: (i) a large number of deaths in the affected population; (ii) a large number of serious or long-term disabilities in the affected population; or (iii) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population." *Id.*

In accordance with the Emergency Management Act, the Governor issued proclamations on March 9, April 1, April 30, May 29, June 26, July 24, and August 21 declaring the Covid-19 pandemic to be both an "epidemic" and a "public health emergency"—and therefore a "disaster"—within the meaning of the statute.[9] As a result, the Governor was authorized to exercise emergency powers for a period of 30 days following each proclamation. He invoked those powers to issue a total of 49 executive orders designed to protect the public and halt the spread of the deadly virus.[10] Residents are currently required to practice social distancing, wear

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[9] The March 9 proclamation is attached as Exhibit 1 to the complaint. The April 1, April 30, May 29, June 26, July 24, and August 21 proclamations are attached as Exhibits 1, 2, 3, 4, 5, and 6 to this motion.

[10] The Governor's executive orders relating to Covid-19 are available at https://coronavirus.illinois.gov/s/resources-for-executive-orders.

face coverings in public, and generally limit gatherings to 50 or fewer people.[11] Businesses may open but must operate in accordance with health and safety guidance issued by the Department of Commerce and Economic Opportunity in partnership with the Department of Public Health.[12]

Plaintiffs are four Chicago residents who allege they have lost business revenue, wages, and jobs because of the Governor's executive orders. Complaint ¶¶ 1–3.[13] They assert four counts, but only one is against the Governor. *Id.* ¶¶ 99–106 (Count IV). Plaintiffs contend the Emergency Management Act authorizes the Governor to issue just one proclamation—and exercise statutory powers for just 30 days—with respect to any particular disaster. *Id.* ¶ 102. Therefore, Plaintiffs conclude, all the Governor's Covid-19 disaster proclamations but the first "are ultra vires and void *ab initio*"—along with all his Covid-19 executive orders that rely on emergency powers acquired pursuant to those successive proclamations. *Id.* ¶ 105. They ask the Court to enter a declaration to this effect. *Id.* at 25, prayer for relief ¶ E.

LEGAL STANDARD

The Governor moves to dismiss Count IV of the complaint pursuant to 735 ILCS 5/2-615 because it fails to state a cause of action. "In determining the propriety of the granting of a motion to dismiss under section 2–615, a court must accept all properly pleaded facts as true and be concerned only with the question of law presented by the pleadings." *Lissner v. Michael Reese Hosp. & Med. Ctr.*, 182 Ill. App. 3d 196, 206 (1st Dist. 1989). "The critical inquiry is whether the allegations of the complaint, when construed in the light most favorable to the

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[11] Executive Order 2020-43 ¶ 2 (June 26, 2020), attached as Exhibit 7, reissued in its entirety and extended through September 19 by Executive Order 2020-52 (Aug. 21, 2020), attached as Exhibit 8.

[12] Executive Order 2020-43 ¶ 3, *supra* note 11, reissued in its entirety and extended through September 19 by Executive Order 2020-52, *supra* note 11.

[13] One plaintiff, William Kelly, does not allege he has suffered any harm because of the Governor's executive orders. *See* Complaint ¶¶ 4, 55–74.

plaintiff, are sufficient to establish a cause of action upon which relief may be granted." *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2017 IL 121297 ¶ 5.

ARGUMENT

The plain language of the Emergency Management Act permits the Governor to issue successive proclamations regarding the same disaster—and continue to exercise statutory powers for additional 30-day periods—as long as a disaster exists in the State. Contrary arguments that purport to limit the Governor to one proclamation per disaster—and therefore just 30 days of powers no matter how long the disaster continues to exist—violate multiple principles of statutory interpretation and have been resoundingly rejected. Further, the Governor's interpretation of the Emergency Management Act is consistent with historical practice in which the General Assembly has acquiesced.

I. The Plain Language of the Emergency Management Act Authorizes the Governor to Exercise Defined Powers for 30 Days Whenever He Determines a Disaster Exists.

Plaintiffs contend Section 7 of the Emergency Management Act limits the Governor to one proclamation and 30 days of emergency powers per disaster—even if the disaster continues to exist for longer. Complaint ¶¶ 102–05. According to this theory, the Governor's powers under the statute "lapsed" on April 8—30 days after his first proclamation relating to Covid-19. *Id.* The problem for Plaintiffs is the Emergency Management Act contains no such limitation.

Section 7 of the Emergency Management Act authorizes the Governor to issue a disaster proclamation whenever, in his judgment, a disaster "exists." That is the statute's only condition for the Governor to issue a disaster proclamation, and it expressly provides that when he does so, he has prescribed emergency powers for 30 days thereafter. The Governor therefore acted within his authority under Section 7 in declaring a disaster related to Covid-19 existed on March 9, April 1, April 30, May 29, June 26, July 24, and August 21—and in exercising his statutory

powers under the Emergency Management Act for 30 days after each proclamation. "Textually, contextually, and historically, it is evident that the [Emergency Management Act] permits successive disaster proclamations." *JL Props. Grp. B LLC v. Pritzker*, No. 20-CH-601, slip op. at 12 (Ill. 12th Jud. Cir. Ct. Will Cty. July 31, 2020), attached as Exhibit 9; *see also Edwardsville / Glen Carbon Chamber of Commerce v. Pritzker*, No. 20-MR-550, slip op. at 8 (Ill. 3d Jud. Cir. Ct. Madison Cty. June 5, 2020), attached as Exhibit 10 ("Plaintiff's claim that the Governor cannot proclaim successive disasters over COVID-19 finds no support in the plain reading of the statute."); *Running Central, Inc. v. Pritzker*, No. 2020 CH 105, slip op. at 4–5 (Ill. 7th Jud. Cir. Ct. Sangamon Cty. May 21, 2020), attached as Exhibit 11 ("[Plaintiff's] assertion that Section 7 emergency powers were statutorily permitted for only one single 30-day period after the initial March 9, 2020 disaster proclamation is, thus, contrary to the plain reading of the Act."); *Mahwikizi v. Pritzker*, No. 20 CH 04089, slip op. ¶ 27 (Ill. Cook Cty. Cir. Ct. May 8, 2020), attached as Exhibit 12 ("[T]he Act grants Governor Pritzker the authority to extend his power beyond an initial 30-day period where, as here, the disaster is ongoing and has not abated."); *Cassell v. Snyders*, No. 20 C 50153, 2020 WL 2112374, at *13 (N.D. Ill. May 3, 2020), attached as Exhibit 13 ("text and structure of the Act" permit successive disaster proclamations).

"The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *Whitaker v. Wedbush Secs., Inc.*, 2020 IL 124792 ¶ 16. Section 7 of the Emergency Management Act authorizes the Governor to declare that a disaster exists; meanwhile, Section 4 defines what constitutes a disaster. Upon the Governor's declaration of a disaster through a proclamation, Section 7 confers "emergency powers" on the Governor and states the following regarding the time period in which the Governor may exercise those powers:

> Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers . . . .

Critically, there is no limitation in Section 7 or elsewhere in the statute on the number of proclamations the Governor may issue regarding a particular "disaster."

Section 7 of the Emergency Management Act is unambiguous in establishing a single criterion necessary for the Governor to issue a disaster proclamation: that a disaster "exists." Section 7 vests the Governor with the authority to determine whether a disaster "exists." In this case, the Governor concluded that a disaster existed on March 9, when he issued his first proclamation. He concluded that a disaster also existed on April 1, April 30, May 29, June 26, July 24, and August 21 when he issued subsequent proclamations.[14] Because a disaster existed on each of those dates, Section 7 conferred on the Governor the authority to issue contemporaneous disaster proclamations. By issuing those proclamations, the Governor obtained the ability to exercise the emergency powers made available under Section 7.

Section 7 of the Emergency Management Act permits the Governor to exercise those emergency powers for "a period not to exceed 30 days" following the issuance of "such proclamation." In other words, Section 7 makes clear that the 30-day period during which the Governor may exercise the emergency powers is triggered by the Governor's proclamation declaring a disaster, not by the date on which the disaster initially arises. If a disaster still "exists," Section 7 permits the Governor to continue declaring its existence by proclamation and

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[14] Plaintiffs do not dispute the Governor's determination that a disaster existed on any of these dates. Nor do they dispute any of the facts cited in his proclamations in support of his determinations. *See* 20 ILCS 3305/4 (defining "disaster" to include, among other things, an "epidemic" and a "public health emergency"); *see also JL Props.*, slip op. at 20–21 ("[The Emergency Management Act] gives the Governor exclusive authority to determine whether a public health emergency or other disaster exists. 20 ILCS 3305/7. The Governor's latitude in reaching this conclusion, based on the broad language of the [Emergency Management Act] and the general police power, is necessarily sweeping. . . . Absent arbitrariness or a clear abuse of the Governor's authority (neither of which are apparent here), it would take an act of extraordinary judicial activism for a court to substitute its judgment for that of the Governor as to whether there is a 'public health emergency.' . . . Further, it would be folly to suggest otherwise anyway; it is painfully obvious that we are in the midst of a state-wide public health emergency.").

utilizing the powers conferred on him for the 30-day period following each such proclamation. This interpretation is consistent with Section 4 of the Emergency Management Act, in which the General Assembly identified many disaster phenomena that could reasonably be anticipated to outlast an arbitrary 30-day limit. "Those events pose a threat that may persist for long periods of time and certainly beyond a single 30-day period. It is difficult to see why the legislature would recognize these long-running problems as disasters, yet divest the Governor of the tools he needs to address them." *Cassell*, 2020 WL 2112374, at *14; *accord JL Props.*, slip op. at 11 ("The practical reality is that some disasters last more than 30 days.").

The Governor's actions in response to the Covid-19 pandemic are consistent with Section 7 of the Emergency Management Act. *JL Props.*, slip op. at 10–12; *Edwardsville*, slip op. at 6–8; *Running Central*, slip op. at 4–5; *Mahwikizi*, slip op. ¶¶ 21–27; *Cassell*, at *13–*14. When it became clear the disaster associated with the pandemic would continue 30 days after the March 9 proclamation, the Governor issued the April 1 proclamation to begin a second 30-day period under Section 7. He did the same on April 30, May 29, June 26, July 24, and August 21 when Covid-19 continued to affect Illinois. Under the August 21 proclamation, which is currently in effect, the Governor may exercise the emergency powers under Section 7 through September 20. If the Governor determines that the Covid-19 disaster continues to exist at that time, Section 7 authorizes him to issue another disaster proclamation to be in effect for an additional 30 days. The statutory guardrail on this authority to trigger emergency powers for an additional 30-day period is the requirement for the Governor to make a factual determination that a disaster exists.

Elsewhere in the Emergency Management Act, the General Assembly demonstrated it was capable of creating restrictions when it wished to do so. Section 3 enumerates the statute's "limitations" but says nothing about the Governor's authority to issue more than one

proclamation per disaster. Sections 6 and 9 specify that the General Assembly must be involved in certain unrelated aspects of an emergency, but do not require that body to approve a successive disaster proclamation. And Section 11(a) permits the principal executive officer of a political subdivision to declare a "local disaster," but mandates it "***shall not be continued or renewed*** for a period in excess of 7 days except by or with the consent of the governing board of the political subdivision" (emphasis added). If the General Assembly had intended to similarly limit the Governor, it would have said so. *Edwardsville*, slip op. at 8 ("Unlike local executive authorities whose emergency powers are limited in time, the Governor is not required to seek approval for proclamations under the [Act] after 30 days."); *accord In re Detention of Lieberman*, 201 Ill. 2d 300, 308 (2002) ("words and phrases . . . must be interpreted in light of other relevant provisions of the statute").

II. Arguments that the Emergency Management Act Contains a "One Proclamation Per Disaster" Limit Violate Multiple Principles of Statutory Interpretation.

To read into the Emergency Management Act a "one proclamation per disaster" limit, as Plaintiffs urge, would violate multiple principles of statutory interpretation. This outcome would disregard relevant statutory language. *See People ex rel. Birkett v. Dockery*, 235 Ill. 2d 73, 81 (2009). It would add a restriction on the Governor's authority that the General Assembly did not intend or include. *See id.*; *accord JL Props.*, slip op. at 11 ("[T]he text of the statute doesn't prohibit [successive proclamations]."). And it would produce absurd, unjust, and profoundly harmful results that are contrary to the Emergency Management Act's express purpose. *See People v. Austin*, 2019 IL 123910 ¶ 15. It would strip the Governor of his emergency powers ***for the duration of the pandemic*** and could cause Covid-19 to resume its spread across the State. The Governor would be paralyzed to act as lives are lost. That cannot be the result the General Assembly intended. *See JL Props.*, slip op. at 11 ("[T]his interpretation is inconsistent with the

purpose of the [Emergency Management Act], which is to ensure that the State can 'adequately deal with any disasters, preserve the lives and property of the people of this State and protect the public peace, health, and safety in the event of a disaster.' The practical reality is that some disasters last more than 30 days.").

The relevant portion of Section 7 reads: "In the event of a disaster, as defined in Section 4, the Governor may, by proclamation declare that a disaster exists. Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers . . . ." Plaintiffs' argument for a "one proclamation per disaster" limit invites the Court to read the phrase "in the event of a disaster" to mean "at the ***onset*** of a disaster." But this interpretation is at odds with the General Assembly's use of those same words elsewhere in the Emergency Management Act. Section 2(a) provides (emphasis added):

> Because of the possibility of the occurrence of disasters of unprecedented size and destructiveness resulting from the explosion in this or in neighboring states of atomic or other means from without or by means of sabotage or other disloyal actions within, or from fire, flood, earthquake, telecommunications failure, or other natural or technological causes, and in order to insure that this State will be prepared to and will adequately deal with any disasters, preserve the lives and property of the people of this State and protect the public peace, health, and safety ***in the event of a disaster***, it is found and declared to be necessary: . . . (2) To confer upon the Governor and upon the principal executive officer of the political subdivisions of the State the powers provided herein.

In this context, "in the event of a disaster" clearly means "during a disaster." There is no logical reason why the General Assembly's concern for the public's peace, health, and safety should be at its height on Day 1 of a disaster only to diminish or disappear by Day 31.[15] Likewise, Section 13(a) provides in relevant part when discussing mutual aid arrangements between political

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[15] That the General Assembly expressed its concern for the public welfare ***during a disaster*** as a justification for its conferring emergency powers on the Governor is further evidence of the legislature's intent to allow the Governor to exercise those powers for the duration of that disaster.

subdivisions: "The arrangements shall be consistent with the State Emergency Operations Plan and State emergency management program, and ***in the event of a disaster*** as described in Section 4 of this Act, it shall be the duty of each emergency services and disaster agency to render assistance in accordance with the provisions of the mutual aid arrangements" (emphasis added). Again, the only rational meaning of "in the event of a disaster" is "during a disaster." The General Assembly could not have intended political subdivisions' duty to provide mutual aid to shrink or evaporate over time even as a disaster continues to rage. Because the same phrase must be given a consistent interpretation wherever it appears in the Emergency Management Act, *Maksym v. Bd. of Election Comm'rs*, 242 Ill. 2d 303, 322–23 (2011), the phrase "in the event of a disaster" has the same meaning in Section 7 as in sections 2(a) and 13(a): "***During a disaster***, as defined in Section 4, the Governor may, by proclamation declare that a disaster exists."

Plaintiffs urge a contrary interpretation because, they insist, the Governor has purported to exercise these emergency powers indefinitely. Complaint ¶ 34 & n.2. Not so. Instead, each of the Governor's disaster proclamations acknowledges it is in effect only for the 30-day period prescribed by Section 7 of the Emergency Management Act. This compels the Governor to make the periodic determination required by the statute that a "disaster" still in fact "exists" in the State. If the factual circumstances change in the future—as everyone hopes they will—then there will come a time when the Governor will be unable to conclude that a disaster still "exists" in Illinois. In those circumstances, the Governor's emergency powers would lapse 30 days after the issuance of his most recent disaster proclamation pursuant to Section 7. *See Edwardsville*, slip op. at 8 (identifying this critical restraint on Governor's authority); *Running Central*, slip op. at 5 (same); *Mahwikizi*, slip op. ¶ 27 (same); *Cassell*, at *14 (same). Far from disregarding the time limitation in Section 7, the Governor is conscientiously abiding by it.

III. The Outlier Decisions from Clay County Are "Bereft of Meaningful Legal Analysis" and "Wholly Unpersuasive."

Every judge except one in Clay County has agreed with the Governor's interpretation of the Emergency Management Act. The outlier judge expressed his contrary view in an interlocutory summary judgment order, *Bailey v. Pritzker*, No. 2020-CH-06 (Ill. 4th Jud. Cir. Ct. Clay Cty. July 2, 2020), attached as Exhibit 14, and two temporary restraining orders, *Mainer v. Pritzker*, No. 2020-CH-10 (Ill. 4th Jud. Cir. Ct. Clay Cty. May 22, 2020), attached as Exhibit 15; *Bailey v. Pritzker*, No. 2020-CH-06 (Ill. 4th Jud. Cir. Ct. Clay Cty. Apr. 27, 2020), attached as Exhibit 16, both of which plaintiffs agreed to vacate rather than defend on appeal, *Mainer v. Pritzker*, 2020 IL App (5th) 200163-U; *Bailey v. Pritzker*, 2020 IL App (5th) 200148-U.

The Clay County judge never issued a written ruling with reasoning to justify these outcomes. His orders are "bereft of meaningful legal analysis, and are wholly unpersuasive for that reason." *JL Props.*, slip op. at 9. His oral rulings are equally lacking. Perhaps for these reasons, the Supreme Court sua sponte transferred *Bailey* from the Clay County judge to the Sangamon County circuit court. Order, *Pritzker v. McHaney*, No. 126261 (Ill. Aug. 11, 2020).

These contrary Clay County decisions are relevant to this Court's consideration only to the extent their analysis is persuasive. *See O'Casek v. Children's Home & Aid Soc'y of Ill.*, 229 Ill. 2d 421, 440 (2008) (courts not required to follow decisions of equal courts); *accord JL Props.*, slip op. at 9 (Clay County rulings "are not binding on this Court"). The Clay County judge offered no reasoning; indeed, it is not clear whether the text of the Emergency Management Act forms any basis of his rulings. The Court should therefore ignore them.[16]

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[16] In addition to being wrong on the merits, the *Bailey* summary judgment ruling was entered when the court lacked jurisdiction over the case. The Governor's motion for vacate it on that ground remains pending. *See* Motion to Vacate July 2, 2020 Order for Lack of Jurisdiction, *In re: Covid-19 Litigation*, No. 2020 MR 589 (Ill. 7th Jud. Cir. Ct. Sangamon Cty. Aug. 17, 2020), attached as Exhibit 17.

IV. The Governor's Interpretation of the Emergency Management Act Is Consistent with Historical Practice and Enjoys the General Assembly's Acquiescence.

Not only does the plain language of the Emergency Management Act compel the conclusion that the Governor may issue successive disaster proclamations. This interpretation is also consistent with the historical practice and enjoys the General Assembly's acquiescence. Since the statute became law more than 40 years ago, Illinois governors have issued multiple and often successive proclamations regarding the same disaster.[17] In just over the last decade, governors issued successive disaster proclamations in 2009 to address the H1N1 virus; and in 2011, 2017, and 2019 to respond to flooding.[18] The General Assembly has amended the Emergency Management Act at least 11 times but did not make any changes to prevent governors from maintaining this practice.[19]

What's more, the legislature convened in May 2020, as the pandemic reached its height in Illinois and the Governor's exercise of emergency powers was under attack across the State. But the General Assembly did not amend the Emergency Management Act to impose a "one proclamation per disaster" limit. In fact, it took the opposite tack by passing three bills (two of them unanimously) specifically recognizing the Governor's successive disaster proclamations regarding Covid-19.[20] The Court must give "great weight" to a consistent and longstanding

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[17] A list of all such proclamations dating back to 1980 is attached as Exhibit 18.

[18] Copies of these proclamations are attached as Exhibit 19.

[19] *See* P.A. 88-606; P.A. 92-73; P.A. 94-733; P.A. 98-465; P.A. 98-756; P.A. 99-36; P.A. 100-508; P.A. 100-444; P.A. 100-587; P.A. 100-863; P.A. 100-1179.

[20] P.A. 101-632, https://www.ilga.gov/legislation/publicacts/101/PDF/101-0632.pdf (adding 60 ILCS 1/30-5(d), which references when "a subsequent disaster is declared under Section 7 of the Illinois Emergency Management Agency Act"); P.A. 101-633, https://www.ilga.gov/legislation/publicacts/101/PDF/101-0633.pdf (adding 820 ILCS 405/500(D-5), which references "any subsequent Gubernatorial Disaster Proclamation in response to COVID-19"); P.A. 101-634, http://www.ilga.gov/legislation/publicacts/101/PDF/101-0634.pdf (adding 410 ILCS 70/2-1(b-5) and 410 ILCS 70/2.05-1(b)(6), both of which reference "a successive proclamation regarding the same disaster").

interpretation of the Emergency Management Act in which the General Assembly has acquiesced. *See Pielet Bros. Trading v. Pollution Control Bd.*, 110 Ill. App. 3d 752, 756 (5th Dist. 1982); *accord JL Props.*, slip op. at 11 (citing historical practice in support of conclusion that Governor may issue successive disaster proclamations); *Edwardsville*, slip op. at 7 (same).

V. Plaintiffs' Conclusions of Law and Fact Unsupported by Specific Factual Allegations Must Be Disregarded.

The only cause of action asserted against the Governor concerns the question discussed above regarding his authority to issue successive disaster proclamations under the Emergency Management Act. Complaint ¶¶ 99–106. And the only relief Plaintiffs seek against the Governor is a declaration that his successive proclamations (and the executive orders issued pursuant to them) "are *ultra vires* and void *ab initio*." *Id.* at 25, prayer for relief ¶ E. But the complaint also contains a few undeveloped assertions of other wrongdoing by the Governor that are not "stated in a separate count" and "separately pleaded, designated and numbered" as required by 735 ILCS 5/2-603(b).[21] *See Cable Am., Inc. v. Pace Elecs., Inc.*, 396 Ill. App. 3d 15, 19 (1st Dist. 2009) ("Failure to comply with section 2–603 may be grounds for dismissal of the complaint.").

Regardless, the Court must disregard these conclusory allegations. "Bare conclusions of law, or conclusory factual allegations that parrot the elements of a cause of action without

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[21] For example, the complaint includes an assertion that the Governor's executive orders violate Plaintiffs' "constitutional rights under Article I of the [Illinois] Constitution." Complaint ¶ 100. But Plaintiffs do not specify which rights or how they have been violated. Likewise, Plaintiffs accuse the Governor of "regularly exempt[ing] thousands of Black Lives Matter organizers . . . and protesters from emergency executive orders and restrictions." *Id.* ¶ 19. But they plead no specific facts to support this (false) conclusion. Plaintiffs imply the Governor favored "marijuana dispensaries" in his Covid-19 executive orders because that "industry were [sic] large contributors to [his] campaign," *id.* ¶ 10, but again neglect to support this (false) conclusion with specific factual allegations. Finally, Plaintiffs allege the Governor's "designation of which businesses, houses of worship, and public/private spaces were 'non-essential', and which workers [sic] jobs were 'essential'" was "arbitrary, capricious, and [was], in the vast majority of cases, unrelated to the purpose of stopping the spread of the COVID-19 virus or 'flattening the curve.'" *Id.* ¶ 31. But that is all Plaintiffs have to say on the topic. They do not provide any elaboration—and certainly no factual allegations to support their conclusory accusation.

underlying factual support, are not taken as true in considering a section 2-615 motion to dismiss." *Selby v. O'Dea*, 2020 IL App (1st) 181951 ¶ 59; *see Daniel v. CTA*, 2020 IL App (1st) 190479 ¶ 31 ("Illinois is a fact-pleading jurisdiction, and a plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action, not simply conclusions."). Plaintiffs' gratuitous, one-sentence accusations of wrongdoing must play no role in the Court's evaluation of whether the complaint states a cause of action against the Governor. *See Patrick Eng'g, Inc. v. City of Naperville*, 2012 IL 113148 ¶ 31 (on 2-615 motion "a court cannot accept as true mere conclusions unsupported by specific facts").

CONCLUSION

The plain language of the Emergency Management Act authorizes the Governor to issue successive disaster proclamations. Plaintiffs' complaint therefore fails to state a cause of action. It should be dismissed with prejudice.

Dated: September 2, 2020

Respectfully Submitted,

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