

E-FILED
1/29/2021 10:13 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

No. _____

IN THE
SUPREME COURT OF ILLINOIS

GOVERNOR JB PRITZKER,	)	Original Action for Mandamus
	)	Under Illinois Supreme Court Rule
Movant-Plaintiff,	)	381 or Supervisory Relief Under
	)	Illinois Supreme Court Rule 383
v.)	
)	
HON. JOHN M. MADONIA, Chief)	
Circuit Judge of Circuit Court of)	
Sangamon County,)	
)	
Respondent-Defendant.)	
)	
)	
LISA MOORE, MANDY WORKER,)	
JILL PEARSON LAYNE, KATE)	
BENTON, CHRISTINE SIMMONS, and)	
THE ILLINOIS HIGH SCHOOL)	
ASSOCIATION,)	
)	
Nominal Parties.)	

**MOTION FOR LEAVE TO FILE *MANDAMUS* COMPLAINT
OR FOR SUPERVISORY ORDER**

Governor JB Pritzker, by his attorney Kwame Raoul, Attorney General of the State of Illinois, moves for leave to file the original complaint for *mandamus* relief attached as Exhibit A to this motion under Illinois Supreme Court Rule 381 or, in the alternative, for a supervisory order under Illinois Supreme Court Rule 383. In support of this motion, the Governor states as follows.

INTRODUCTION

1. This motion arises from *Moore v. Pritzker*, No. 2020 MR 426, a case that Lisa Marie Moore, Mandy Worker, Jill Pearson Layne, Kate Benton, and Christine Simmons (collectively, “*Moore* plaintiffs”) initiated in LaSalle County circuit court against the Governor and the Illinois High School Association. That action challenged the Covid-19 mitigations the Governor imposed on high school athletes as a violation of the Equal Protection Clause of the Illinois Constitution. Relying on Illinois Supreme Court Rule 187(c)(1), the Governor filed a motion to transfer *Moore* to Sangamon County circuit court so that it could be consolidated into *In re Covid-19 Litigation*, No. 20 MR 589, an action into which this Court has repeatedly consolidated Covid-19-related litigation from around the State. The LaSalle County circuit court granted the Governor’s motion and so the case was sent to Sangamon County circuit court.

2. But before *Moore* could be docketed or assigned to a judge in Sangamon County, Respondent-Defendant The Honorable John M. Madonia, Chief Judge of the Circuit Court of Sangamon County, *sua sponte* entered an order stating that the court was refusing to accept jurisdiction over the case. As detailed below, Chief Judge Madonia had no authority to interrupt the transfer. That is because under Rule 187(c)(1), there is no discretion: once a transferor court has granted an intrastate motion to transfer for *forum non conveniens*, the transferee court must docket the transferred action and proceed over the transferred action as if it had originated in that court.

3. The Governor respectfully requests that this Court grant him leave to file the attached *mandamus* complaint to compel Chief Judge Madonia to comply with his mandatory, nondiscretionary duty under Rule 187(c)(1). Alternatively, he respectfully requests that this Court issue a supervisory order vacating Chief Judge Madonia's order and requiring that *Moore* be docketed in Sangamon County circuit court for further proceedings.

BACKGROUND

Covid-19 And The Governor's Response

4. Covid-19 is an acute respiratory illness that is easily spread between individuals in close contact with one another through droplets produced when a person coughs, sneezes, talks, sings, or breathes.¹

5. Covid-19 continues to infect and claim the lives of individuals in Illinois and around the world. As of January 28, 2021, there have been more than 1.1 million cases of Covid-19 in Illinois, and 19,067 Illinoisans have died.²

6. On March 6, 2020, the Governor invoked his authority under section 7 of the Illinois Emergency Management Agency Act ("Act"), 20 ILCS 3305/7 (2018),

¹ Centers for Disease Ctrl. & Prevention ("CDC"), How COVID-19 Spreads, <http://bit.ly/3ckzpKG> (last updated Oct. 28, 2020). This court may take judicial notice of information about Covid-19 from mainstream Internet sources, including data from government websites. *See Kopnick v. JL Woode Mgmt. Co.*, 2017 IL App (1st) 152024, ¶ 26 (collecting cases).

² Ill. Dep't of Pub. Health, Coronavirus Disease 2019 (COVID-19), <http://bit.ly/3pk8jXZ> (last updated Jan. 28, 2021).

to designate the State of Illinois as a disaster area due to the spread of Covid-19.³ Consistent with the Act, he issued new disaster proclamations on April 1, April 30, May 29, June 26, July 24, August 21, September 18, October 16, November 13, and December 11, 2020, and January 8, 2021.⁴

7. Pursuant to these disaster proclamations and the Governor’s powers under the Act, the Governor issued Executive Order 2020-47, which outlines Covid-19 safety requirements applicable to public and nonpublic schools in Illinois serving prekindergarten through 12th grade students. One of those provisions obliges schools to follow all guidance issued by the Illinois Department of Public Health (“IDPH”).⁵ The Governor has reissued this requirement every 30 days, most recently in Executive Order 2021-01.

This Court Consolidates Numerous Lawsuits Into A Single Action In Sangamon County

8. Across the State, numerous individuals and entities have filed lawsuits challenging the Governor’s Covid-19 disaster proclamations and various executive orders under the Act and the Illinois Constitution. SR31-34.⁶

9. In August and September 2020, this Court entered four orders transferring six such actions to Sangamon County and consolidating those six

³ All disaster proclamations and executive orders are available at <http://bit.ly/39h1IYz>.

⁴ *Id.*

⁵ IDPH’s “Sports Safety Guidance” is available at <http://bit.ly/2MzgJvS>.

⁶ This motion cites the pages of the supporting record filed with this motion as, “SR____.”

actions with other Covid-19 lawsuits then pending in that court. SR67-71, SR75-77, SR79-81, SR83-87. In its September 9 order, this Court clarified that these actions would be consolidated in front of Sangamon County circuit court Judge Raylene Grischow. SR87.

10. On November 17, 2020, this Court transferred another nine actions pending in counties across the State to Sangamon County and consolidated them in front of Judge Grischow under the caption, *In re Covid-19 Litigation*, No. 20 MR 589. SR138-39.

11. Several of these lawsuits raised challenges to the Governor's executive orders on equal protection grounds, and two specifically challenged the Governor's executive orders regulating Illinois schools. SR35.

The LaSalle County Court Transfers The *Moore* Action, But Chief Judge Madonia Refuses Jurisdiction Based On Illinois Supreme Court Rule 187

12. On December 21, 2020, the *Moore* plaintiffs filed a complaint in the circuit court of LaSalle County claiming that the Governor's executive orders violated their children's rights to equal protection under the Illinois Constitution by prohibiting them from participating in school sports. SR2-10.

13. On January 5, 2021, the Governor moved to transfer the *Moore* complaint to Sangamon County circuit court so that it could be consolidated in *In re Covid-19 Litigation*. SR30, 38. The Governor argued that the issues presented in *Moore* overlapped with issues raised in other cases pending in that consolidated action, SR35-36, that transfer would promote the just and efficient resolution of all Covid-19 litigation, SR37, SR150, and that LaSalle County had a limited interest in

resolving the dispute because three of the *Moore* plaintiffs did not reside there, SR37, SR150-52.

14. In response, the *Moore* plaintiffs argued that their action was dissimilar from the other cases in *In re Covid-19 Litigation* because only their action brought equal protection challenges on behalf of student athletes. SR140-45. They also asserted that the Governor’s motion “smack[ed] of forum shopping” because “he had received favorable rulings in Sangamon County.” SR143.

15. On January 19, 2021, the LaSalle County circuit court granted the Governor’s motion to transfer. SR161. The court noted that three of the five plaintiffs did not reside in LaSalle County, two of those three plaintiffs lived in counties closer to Sangamon County than LaSalle County, and plaintiffs had conceded that their action largely involved legal issues, so they would not have to call numerous witnesses who resided in LaSalle County. SR164. By contrast, the Governor, his counsel, and any potential state witnesses would be located in Cook or Sangamon County. SR164-65. The circuit court also stated that the statewide scope of the Governor’s Covid-19 mitigations relating to high school athletes meant that LaSalle County did not have any particular localized interest in the *Moore* plaintiffs’ claims, whereas Sangamon County had a strong interest in that order’s validity because it is the location of the seat of Illinois government. SR165-66. Accordingly, the LaSalle County circuit court directed the action to be transferred to Sangamon County. SR167.

16. On January 25, 2021, before *Moore* had been docketed by the clerk of the Sangamon County circuit court, Chief Judge Madonia sent an e-mail to Judge Grischow stating that he was “declining jurisdiction of this case and referring it back to LaSalle [C]ounty for further proceedings.” SR168. Noting that the *Moore* plaintiffs did not reside in Sangamon County and that the State had prevailed in several Covid-19-related lawsuits in Sangamon County, Chief Judge Madonia expressed “concern . . . that [the Governor’s] motion to change venue to Sangamon County [was] a not-so-veiled disguise to shop for a friendly forum.” SR168-69. He stated that his e-mail should be considered “as an ‘order’ refusing to accept jurisdiction within the meaning of Supreme Court Rule 187” and directed that it be forwarded to the Governor, the *Moore* plaintiffs, and the clerk of the LaSalle County circuit court. SR169.

ARGUMENT

I. This Court Should Grant The Governor Leave To File His Complaint For *Mandamus*.

17. This Court possesses discretionary original jurisdiction to consider requests for *mandamus* relief, *People ex rel. Berlin v. Bakalis*, 2018 IL 122435, ¶ 16, including actions “to review a judge’s judicial act,” Ill. Sup. Ct. R. 381(c). *Mandamus* is a remedy that “compels a public official to perform a purely ministerial duty that does not involve an exercise of discretion.” *Berlin*, 2018 IL 122435, ¶ 16. This Court will award *mandamus* relief if the plaintiff establishes a clear right to the relief requested, a clear duty of the public official to act, and clear authority in the public official to comply. *Id.* More specifically, *mandamus* is “an

appropriate remedy to compel compliance with mandatory legal standards.” *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 193 (2009).

18. Here, the Sangamon County circuit court had a mandatory duty to exercise its jurisdiction over the *Moore* litigation once the LaSalle County circuit court granted the Governor’s motion to transfer. In interpreting its rules, this Court’s primary goal is to give effect to the drafters’ intent, and the rule’s plain language is the most reliable indicator of that intent. *In re Michael D.*, 2015 IL 119178, ¶ 9. Under the plain language of Illinois Supreme Court Rule 187(c)(1), when a court grants a motion to transfer, “[t]he clerk of the court to which the transfer is ordered *shall file* the documents and transcript transmitted to him or her and docket the case, and the action *shall proceed* and be determined as if it had originated in that court.” Ill. Sup. Ct. R. 187(c)(1) (emphases added). By its unambiguous terms, Rule 187(c)(1) imposes a mandatory obligation that leaves the transferee court no discretion to refuse to exercise jurisdiction over the transferred action absent some other jurisdictional defect. *See, e.g., People ex rel. Alvarez v. Gaughan*, 2016 IL 120110, ¶¶ 1, 34 (granting *mandamus* relief where judge failed to comply with statute stating that 15 years “shall” be added to prison term); *Konetski*, 233 Ill. 2d at 194 (2009) (statute providing that individuals convicted of certain offenses “shall” register as sex offenders imposed mandatory obligation, and “*mandamus* [was] an appropriate remedy to compel [judge’s] compliance with [those] mandatory terms”); *see also People v. Campbell*, 224 Ill. 2d 80, 87 (2006)

(noting that Illinois Supreme Court Rules “are not suggestions,” “have the force of law,” and must be followed by lower courts).

19. Chief Judge Madonia incorrectly interpreted Rule 187 as giving him discretion to refuse jurisdiction over *Moore*. Rule 187(c)(1), which governs intrastate transfers like the LaSalle County circuit court’s order, contains no language authorizing the transferee court to refuse jurisdiction. *See* Ill. Sup. Ct. R. 187, Committee Comments (Feb. 21, 1986) (“[p]aragraph (c)(1) establishes the procedure to be followed when a transfer to another Illinois county on *forum non conveniens* grounds is granted”).

20. Although Illinois Supreme Court Rule 187(c)(2) states that, after an action is dismissed for *forum non conveniens*, the plaintiff may “reinstate the action in the court in which the dismissal was granted” if “the court in the other forum refuses to accept jurisdiction,” that provision applies only to interstate *forum non conveniens* motions. When an Illinois court grants an interstate *forum non conveniens* motion, it must dismiss the action because it “lacks the power to transfer the action to the court of another state.” *Fennell v. Ill. Cent. R.R.*, 2012 IL 113812, ¶ 13. By contrast, a court granting an intrastate *forum non conveniens* motion — like the Governor’s motion to transfer in *Moore* — need not dismiss the action; it simply “transfers the action to the circuit court of the most convenient county.” *Id.* at ¶ 13 n.2; *see also Merit Chevrolet, Inc. v. Dep’t of Revenue*, 33 Ill. 2d 207, 213-14 (1965) (order transferring action from DuPage to Cook County “did not abate the action”; it was merely “a continuation . . . of the suit”). And because Rule 187(c)(2) applies

only to “*dismissals on forum non conveniens grounds*,” Ill. Sup. Ct. R. 187, Committee Comments (Feb. 21, 1986) (first emphasis added), it does not apply to intrastate transfers.

21. That interpretation of Rule 187(c) is bolstered when it is read in conjunction with Illinois Supreme Court Rule 306(a)(2), which allows a party to petition for leave to appeal to the appellate court from the grant or denial of a *forum non conveniens* motion. *See Jackson v. Bailey*, 384 Ill. App. 3d 546, 549 (1st Dist. 2008) (“The supreme court rules . . . should be read in conjunction with each other and in harmony with the rest of the law.”). Rule 306(a)(2) allows a party to petition for leave to appeal from two distinct types of orders: (1) an order “allowing or denying a motion to dismiss on the grounds of *forum non conveniens*,” or (2) an order “allowing or denying a motion to transfer a case to another county within this State on such grounds.” Ill. Sup. Ct. R. 306(a)(2). The language of Rule 306(a)(2) further demonstrates that an order transferring a case from one county to another is different from a dismissal on *forum non conveniens* grounds. Because Rule 187(c)(2) is limited to dismissals, it does not apply to intrastate transfer orders.

22. Here, the Governor sought an intrastate transfer and the LaSalle County circuit court did not dismiss *Moore*. *See* SR29, SR161, SR167. Rule 187(c)(2) was thus irrelevant to the transfer at issue here. Accordingly, because Chief Judge Madonia exceeded his authority under Rule 187 in refusing to take jurisdiction over *Moore*, this Court should grant the Governor leave to file the

attached *mandamus* complaint seeking to compel his compliance with the plain language of that rule. *See* Ex. A.

23. This Court also should grant the Governor leave to file the attached complaint because he has no other adequate avenue to challenge Chief Judge Madonia’s order. *Round v. Lamb*, 2017 IL 122271, ¶ 8 (*mandamus* is available when a party has “no other adequate remedy”) (internal quotation marks omitted). The Governor cannot appeal Chief Judge Madonia’s order under Rule 306(a)(2), as there was no motion to transfer pending before him when he refused jurisdiction. *See* Ill. Sup. Ct. R. 306(a)(2) (allowing party to petition for leave to appeal from order “allowing or denying a motion to transfer a case to another county”). No other rule permits an interlocutory appeal of that order. *See* Ill. Sup. Ct. R. 306, 307. Nor would appealing *Moore* after the LaSalle County circuit court enters final judgment afford the Governor adequate relief — at that point, the Governor will have already been forced to litigate the action to a final judgment in an improper forum.

II. Alternatively, This Court Should Issue A Supervisory Order Requiring Respondents To Accept Jurisdiction Over *Moore*.

24. Alternatively, this Court should exercise its supervisory authority to require the Sangamon County circuit court to accept jurisdiction over *Moore*. Under this Court’s “general administrative and supervisory authority over Illinois’s judicial system,” it has “unlimited” authority to award supervisory relief. *Vasquez Gonzalez v. Union Health Serv., Inc.*, 2018 IL 123025, ¶ 16. “[A]s a general rule, this court will issue a supervisory order only if the normal appellate process will not afford adequate relief and the dispute involves a matter important to the administration of

justice, or where intervention is necessary to keep an inferior court or tribunal from acting beyond the scope of its authority.” *People v. Salem*, 2016 IL 118693, ¶ 21 (internal quotation marks omitted). This Court has exercised its supervisory authority to address lower court issues of venue. *See First Am. Bank v. Guerine*, 198 Ill. 2d 511, 520 (2002) (collecting cases).

25. Here, the appellate process will not afford the Governor adequate relief, because, as explained, there is no avenue for the Governor to appeal Chief Judge Madonia’s incorrect order.

26. And, as also explained, Chief Judge Madonia exceeded his authority in refusing to accept jurisdiction over the *Moore* case.

CONCLUSION

WHEREFORE, the Governor respectfully requests that this Court grant him leave to file the attached *mandamus* complaint or, in the alternative, issue a supervisory order directing The Honorable John M. Madonia, Chief Judge of the Circuit Court of Sangamon County to accept jurisdiction over the *Moore* case.

Respectfully submitted,

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VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this motion are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Executed on January 29, 2021.

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Exhibit A

No. _____

IN THE
SUPREME COURT OF ILLINOIS

GOVERNOR JB PRITZKER,)	Original Action for Mandamus
	)	Under Illinois Supreme Court Rule
Plaintiff,	)	381 or Supervisory Relief Under
	)	Illinois Supreme Court Rule 383
v.)	
)	
HON. JOHN M. MADONIA, Chief)	
Circuit Judge of Circuit Court of)	
Sangamon County,)	
)	
Defendant.)	
)	
)	
LISA MOORE, MANDY WORKER,)	
JILL PEARSON LAYNE, KATE)	
BENTON, CHRISTINE SIMMONS, and)	
THE ILLINOIS HIGH SCHOOL)	
ASSOCIATION,)	
)	
Nominal Parties.)	

ORIGINAL COMPLAINT FOR *MANDAMUS* RELIEF

Plaintiff Governor JB Pritzker, by his attorney Kwame Raoul, Attorney General of the State of Illinois, brings this original complaint for *mandamus* relief and states as follows.

NATURE OF THE ACTION

1. On March 9, 2020, the Governor invoked his authority under section 7 of the Illinois Emergency Management Agency Act (“Act”), 20 ILCS 3305/7, to designate the State of Illinois as a disaster area due to the spread of Covid-19. Consistent with the Act, he issued new disaster proclamations on April 1, April 30,

May 29, June 26, July 24, August 21, September 18, October 16, November 13, and December 11, 2020; and on January 8, 2021.

2. Pursuant to these disaster declarations and his powers under the Act, the Governor issued Executive Order 2020-47, which outlines Covid-19 safety requirements applicable to public and nonpublic schools in Illinois serving prekindergarten through 12th grade students. One of those provisions obliges schools to follow all guidance issued by the Illinois Department of Public Health (“IDPH”).¹ The Governor has reissued this requirement every 30 days, most recently in Executive Order 2021-01.

3. On December 21, 2020, Nominal Parties Lisa Moore, Mandy Worker, Jill Pearson Layne, Kate Benton, and Christine Simmons (collectively, the “*Moore* plaintiffs”) filed their complaint in *Moore v. Pritzker*, No. 2020 MR 426, in the circuit court of LaSalle County against the Governor and Nominal Party the Illinois High School Association (“IHSA”), claiming that the Governor’s executive orders violated their children’s rights to equal protection under the Illinois Constitution by prohibiting them from participating in school sports. *See* Ex. 1.

4. On January 5, 2021, pursuant to Illinois Supreme Court Rule 187(c)(1), the Governor moved to transfer *Moore* to the Circuit Court of Sangamon County for *forum non conveniens*, so that it could be consolidated with the Covid-19-related litigation pending in *In re Covid-19 Litigation*, No. 20 MR 589. *See* Exs. 2-4.

¹ IDPH’s “Sports Safety Guidance” is available at <http://bit.ly/2MzgJvS>.

5. On January 19, 2021, the LaSalle County circuit court granted the Governor's motion to transfer *Moore* to Sangamon County. *See* Ex. 5.

6. On January 25, 2021, Defendant The Honorable John M. Madonia, Chief Judge of the Circuit Court of Sangamon County, issued an order in which he refused to accept jurisdiction over *Moore* and directed the clerk of the Sangamon County circuit court to transfer that action back to LaSalle County. *See* Ex. 6.

7. Under Illinois Supreme Court 187(c)(1), once a motion to transfer venue has been granted, “[t]he clerk of the court to which the transfer is ordered *shall* file the documents and transcript transmitted to him or her and docket the case, and the action *shall* proceed and be determined as if it had originated in that court.” Ill. Sup. Ct. R. 187(c)(1) (emphases added).

8. Rule 187(c)(1) imposes a mandatory, nondiscretionary duty on a transferee court to exercise jurisdiction over a case that has been transferred for *forum non conveniens*.

PARTIES

9. Plaintiff Governor Pritzker is an elected constitutional officer of the State of Illinois, Ill. Const., art. V, § 1, and a defendant in *Moore*.

10. Defendant Chief Judge Madonia is the Chief Judge of the Circuit Court for the Seventh Judicial Circuit, Sangamon County. He is sued in his official capacity.

11. Nominal parties Lisa Moore, Mandy Worker, Jill Pearson Layne, Kate Benton, and Christine Simmons are individuals residing in the State of Illinois and plaintiffs in *Moore*.

12. Nominal party IHSA is a private, nonprofit organization headquartered in Bloomington, Illinois, and a defendant in *Moore*.

JURISDICTION

13. This Court has original jurisdiction pursuant to Article VI, Section 4(a) of the Illinois Constitution and pursuant to Illinois Supreme Court Rule 381. An actual, immediate, and justiciable controversy exists with respect to whether Chief Judge Madonia's refusal to exercise jurisdiction over *Moore* is unlawful and without authority.

COUNT I

14. The Governor incorporates paragraphs 1 through 11 above.

15. By refusing jurisdiction over *Moore*, Chief Judge Madonia has violated his mandatory, nondiscretionary duty under Rule 187(c)(1).

16. The Governor has a clear right to the relief requested. The LaSalle County circuit court granted the Governor's motion to transfer *Moore* to Sangamon County, and Governor Pritzker is entitled have that order given effect.

17. Chief Judge Madonia has a clear duty to act under Rule 187(c)(1), which requires the court to which an action has been transferred to docket that action and proceed over that action as if it originated in the transferee court.

18. Chief Judge Madonia has the authority to comply with the relief sought because he is responsible for the general administration of the Sangamon County circuit court, including the assignment of judges to certain cases, and maintenance of that court's records and docket. *See* Ill. Sup. Ct. R. 21(e), 187(c)(1).

19. The Governor has no other adequate remedy for Chief Judge Madonia's noncompliance with his duties under Rule 187(c)(1).

20. This Court should exercise its original jurisdiction and award the Governor *mandamus* relief to compel Chief Judge Madonia's compliance with his mandatory, nondiscretionary duties under Rule 187(c)(1).

PRAYER FOR RELIEF

WHEREFORE, Governor Pritzker prays that this Court: (1) vacate the order entered on January 25, 2021, by The Honorable Chief Judge John M. Madonia of the Circuit Court of Sangamon County; (2) order Chief Judge Madonia to allow the clerk of the circuit court of Sangamon County to file any documents or transcripts filed in *Moore* and transmitted to him by the clerk of the circuit court of LaSalle County; (3) order Chief Judge Madonia to allow the clerk of the circuit court of Sangamon County to docket the *Moore* case; (4) order that *Moore* should proceed in the Sangamon County circuit court as if it had originated in that court; and (5) grant any further relief this Court deems just and proper.

Respectfully submitted,

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Attorney General
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VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this complaint are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Executed on January 29, 2021.

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Exhibit 1

(Complaint, *Moore v. Pritzker*, No. 2020 MR 426)

FILED13TH JUDICIAL CIRCUIT
12/21/2020 4:39 PM
KBGina Vaccaro
CLERK OF THE CIRCUIT COURT
LASALLE COUNTY, ILLINOIS**IN THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT
LASALLE COUNTY, ILLINOIS****LISA MARIE MOORE, MANDY WORKER
JILL PEARSON LAYNE, KATE BENTON
and CHRISTINE SIMMONS****Plaintiff,****v.****JAY ROBERT "J. B." PRITZKER,
GOVERNOR OF THE STATE OF ILLINOIS,
and the ILLINOIS HIGH SCHOOL
ASSOCIATION****Defendants.****2020MR000426****No.****COMPLAINT FOR DECLARATORY, INJUNCTIVE
AND OTHER RELIEF**

NOW COMES, Plaintiffs, LISA MARIE MOORE, MANDY WORKER, JILL PEARON LAYNE, KATE BENTON and CHRISTINE SIMMONS by and through their attorney, Laura Grochocki, complaining of Defendants, JAY ROBERT "J.B." PRITZKER, GOVERNOR OF THE STATE OF ILLINOIS, and the ILLINOIS HIGH SCHOOL ASSOCIATION as follows:

INTRODUCTION

1. As all citizens of the State of Illinois are aware, starting in March 2020, the Defendant Governor "J.B." Pritzker ("Governor") has issued a series of disaster declarations, executive orders, rules and regulations¹ because of an outbreak of a novel coronavirus in late 2019 (COVID-19), which the World Health Organization ("WHO") and the Center for Disease Control ("CDC") have declared to be a pandemic. Because COVID-19 was novel, very little was known about it in the medical community, and therefore the responses of different governments around the world, and different states, counties, and cities within the United States, has varied and changed over time. Some of the changes in the responses were driven by the

¹ Available at <https://www2.illinois.gov/government/executive-orders>

increasing knowledge about COVID-19 and other changes were driven by politics and the political concerns of elected officials.

2. The declarations, orders, rules and regulations issued by the Governor which this case addresses concern those which have canceled or indefinitely delayed the winter 2020-2021 high school sports season for football, basketball, hockey and other sports. These declarations, orders, rules and regulation arbitrarily prohibit these high school winter sports, while allowing the same sports to be played by colleges and professional sports teams. There is no rational or reasonable basis to prohibit certain high school sports while at the same time allowing the same sports to be played by college and professional athletes.

3. A bedrock principle which underlies the Constitution and laws of the State of Illinois is that the citizens of the State of Illinois are free to live their lives in any manner they seem fit, and that any governmental law, rule or regulation which restricts those freedoms must not restrict the freedoms of one group while not restricting another groups unless there is a rational basis for doing so in accomplishing a legitimate governmental interest. This principle is enshrined in the equal protection clause of the Illinois Constitution. In violation of this principle and the equal protection clause, the Governor has issued the aforesaid emergency declarations, executive orders, and rules and regulations regarding high school sports which are arbitrary, irrational, and bear no relation to reducing the spread of, or remediating the risks posed by the COVID-19 virus.

4. This is the only case, as far as the Plaintiffs are aware, that challenges the actions of the Governor on an equal protection basis under the Constitution of the State of Illinois. Other recent decisions of the Illinois Circuit and Appellate Courts addressing the Governor's powers during the COVID-19 pandemic do not concern the restrictions the Governor has placed on high school sports in violation of equal protection under the Constitution of the State of Illinois.

THE PARTIES

5. Plaintiff Lisa Mara Moore, (hereinafter “Moore”) is an individual who resides in LaSalle County in the State of Illinois, and who is the mother of Trevor Till (“Trevor”) who was a student at Seneca High School in LaSalle County, Illinois. Trevor was an athlete at Seneca High School, was class president, NHS president, drum major, speech team captain, Spanish Club president, XC captain, lead in his school’s play, “The Music Man,” band, chorus, clubs and much more. After COVID-19 hit and restrictions on school sports and activities were put in place, Trevor was devastated that he didn't have his senior year track and pole vaulting season. The final blow was when winter sports were canceled. Trevor committed suicide on October 21, 2020, a proximate cause of which was the Governor Pritzker’s restrictions on high school sports programs.

6. Plaintiff Mandy Worker, (hereinafter “Worker”) is an individual and is a resident of Fayette County, Illinois, and who is the mother of Miley Worker (“Miley”) and Tiler Worker (“Tiler”). Miley and Tiler both attend Vandalia High School in Fayette County, Illinois. Miley played volleyball and Tiler plays football and wrestling at Vandalia High School. Both Miley and Tiler are struggling with the depression and stress because missing out on their senior year high school sports and education.

7. Plaintiff Jill Pearson Layne, (hereinafter “Layne”) is an individual and is a resident of Schuyler County, Illinois, who is the mother of Jonah Layne (“Jonah”). Jonah attended Rushville-Industry High School in Schuyler County. Jonah played high school football and drums. Because of the Governor’s COVID-19 restrictions Jonah has been prevented from playing football

and as a result he has become depressed. Due to his depression, Jonah had a emotional meltdown and was sent home to learn virtually.

8. Plaintiff Kate Benton, (hereinafter “Benton”) is an individual and is a resident of DuPage County, Illinois, who is the mother of Brian Benton (“Brian”) and Molly Benton (“Molly”). Brian attends Downers Grove North High School in Downers Grove, Illinois. Brian played varsity soccer and Molly played basketball and softball, but due to the Governor’s COVID-19 restrictions all of their high school sports programs have been canceled. As a result Brian and Molly have not been able be seen by college recruiters and have lost the opportunity for college scholarships. Molly has suffered socially with no contact with peers, has lost most of her friends and rarely leaves the house.

9. Plaintiff Christine Simmons, (hereinafter “Simmons”) is an individual and is a resident of LaSalle County, Illinois, who is the mother of Tristan Simmons (“Tristan”). Tristan attends Ottawa Township High School in LaSalle County. Tristan has an IEP which has been adjusted for remote learning and is passing his classes in hopes of a wrestling season. He has put a lot of time into to training for this year’s wrestling season, which has been postponed until April because of the Governor’s COVID-19 restrictions. Tristan used to be happy, but after the Governor’s COVID-19 restrictions on high school sports he has become angry and depressed. Wrestling was an outlet Tristan no longer has for his anger and stress. Because of the cancellations of the Governor’s COVID-19 restrictions on high school sports, Tristan is no longer able to qualify for a college wrestling scholarship.

10. Defendant Jay Robert “J.B.” Pritzker (hereinafter “Governor” or “Pritzker”) is the current Governor of the State of Illinois who assumed office on January 14, 2019. He is the person who issued Illinois Emergency Executive Orders regarding the COVID-19 pandemic, including

eleven (11) disaster proclamations from March 8, 2020 through December 11, 2020, and seventy (70) executive orders, numbering 2020-3 through 2020-48 and 2020-50 through 2020-74. Pritzker's conducts the business of the Office of Governor in every county in the State of Illinois.

11. The Defendant Illinois High School Association ("IHSA") supervises and regulates the interscholastic activities in which its member schools may engage. (IHSA Handbook - Constitution § 1.130(a)).² The IHSA Board of Directors has complete authority to organize and conduct the statewide interscholastic activities of member schools, subject to the provisions of the IHSA Constitution and By-laws. (IHSA Handbook - Constitution § 1.450).³ The IHSA has decided that it will abide with all restrictions put on interscholastic sports by the Governor through his disaster proclamations, the executive orders he issues, and the rules and regulations adopted pursuant to those proclamations and orders.

ALLEGATIONS COMMON TO ALL COUNTS

12. On March 11, 2020, the World Health Organization (WHO) declared the COVID-19 a pandemic. Then on March 13, 2020, the President of the United States declared the COVID-19 pandemic to be a national emergency. Prior to that, WHO declared COVID-19 a Public Health Emergency of International Concern on January 30, 2020, and the United States Secretary of Health and Human Services declared that COVID-19 -19 presents a public health emergency on January 27, 2020.

13. On March 9, 2020, the Governor made a proclamation of disaster for the State of Illinois stating that the COVID-19 virus posed a public health emergency, and invoked the provision of the Illinois Emergency Management Act, 20 ILCS 3305/7, (IEMA) which granted him limited emergency powers for thirty (30) days. Pritzker has reissued this disaster proclamation every thirty (30) days thereafter through December 11, 2020.²

² Available at https://www.ihsa.org/documents/forms/current/IHSA_Section1.pdf

³ *Ibid.*

14. Under the powers allegedly granted to the Governor under the aforesaid disaster proclamations, he has issued a series of seventy (70) orders, numbered 2020-3 through 2020-48 and 2020-50 through 2020-74.⁴ These executive orders have resulted in the adoption of emergency rules and regulations by the various agencies and departments of the State of Illinois, including the Restore Illinois Plan by which the Governor decrees on an irregular but frequent basis which personal, scholastic, and business activities citizens of the State of Illinois may engage in and which they may not.

15. The aforesaid Restore Illinois Plan has certain “tiers” of “mitigation” by which agencies and departments of the State of Illinois issue emergency rules and regulations restricting various activities of the citizens of the State of Illinois.

16. On November 18, 2020, the Governor issued Executive Order 2020-73, which re-imposed Tier 3 mitigation levels on the citizens of the State of Illinois.

17. Pursuant to the re-imposition of Tier 3 mitigation by Executive Order 2020-73, the Illinois Department of Health has issued rules and regulations that provided for the cancellation of the sports of football, basketball and hockey for the winter 2020-2021 season. (Exhibits “A” and “B”) This prevents high school aged students ages 14 through 18 from engaging in the interscholastic football, basketball and hockey during the winter 2020-2021 season, resulting in the harm and damages outlined to the Plaintiff’s children in paragraphs one (1) through five (5) of this Complaint.

18. The aforesaid Illinois Department of Health rules and regulations have been adopted by and adhered to by the IHSA, which has therefore canceled or indefinitely delayed the high school interscholastic sports of football, basketball and hockey for the winter 2020-2021 high school interscholastic season.

⁴ *Supra*, note 1.

19. The ages of those athletes playing high school interscholastic sports of football, basketball and hockey are between fourteen (14) and seventeen (17) years old. The ages of those athletes playing the college or professional sports of football, basketball and hockey are from eighteen (18) and twenty-nine (29) years old.¹

20. The Center for Disease Control (“CDC”) of the United States of America has published data and figures on the rate of infection, hospitalization, and deaths caused by COVID-19. These figures breakdown the rates of these infections by the COVID-19 virus by age groups.^{21.} According to the CDC data and figures regarding the COVID-19 virus, the rate of hospitalization and death from the COVID-19 virus broken down by age group are **nine (9) times lower** for the 14 to 17 year old age group than they are for the 18 to 29 year old age group. (Exhibit “C”)

22. Further according to the CDC data and figures regarding the COVID-19 virus, the rate of infection from the COVID-19 virus broken down by age group are 23.3% of cases for the 18 to 29 year old age group but only 8.3% for the 5 to 17 year old age group. (Exhibits “D” and “E”)

23. The unequal treatment by Governor Pritzker against athletes in the 14 to 17 year old age group prohibiting them from playing high school interscholastic football, basketball and hockey because of the COVID-19 virus, while allowing those aged 18 to 29 to play those sports, is without any rational basis and does not serve or relate to any legitimate state interest. The aforesaid actions of Governor Pritzker, which resulted in the ISHA cancelling the 2020-2021 high

1. The 18 to 29 figure is a typical figure, and Plaintiffs do acknowledge that there are some professional athletes playing football, basketball and hockey who are over the age of 29. However, the CDC figures show that those athletes are at a higher rate hospitalization and death than the 18 to 29 year old age group.

school interscholastic winter season, is an arbitrary and invidious discrimination against the parents of children attending high school in Illinois who wish to play high school interscholastic football, basketball or hockey, and therefore violates the rights of the Plaintiffs to equal protection under the Constitution of the State of Illinois.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court grant them the following relief:

A. Enter a declaratory judgment that the re-imposition of Tier 3 mitigation by Governor Pritzker pursuant to Executive Order 2020-73 and the resulting rules and regulations issued by the Illinois Department of Health cancelling the interscholastic high school sports of football, basketball and hockey for the winter 2020-2021 season is an unconstitutional violation of the Plaintiffs right to equal protection under the Constitution of the State of Illinois, and impose suitable and equitable injunctive relief;

B. Enter a declaratory judgment that the actions of the Illinois High School Association actions in reliance on the actions of Governor Pritzker canceling the interscholastic high school sports of football, basketball and hockey for the winter 2020-2021 season is an unconstitutional violation of the Plaintiff's right to equal protection under the Constitution of the State of Illinois, and impose suitable and equitable injunctive relief ;

C. Enter a preliminary and then a permanent injunction barring Governor Pritzker and his officers, agents, servants, employees and all of those acting in concert with them, from enforcing the cancellation of the interscholastic high school sports of football, basketball and hockey for the winter 2020-2021 season;

D. Award to Plaintiffs their attorneys' fees, costs of suit as provided under applicable law; and

E. Grant such further relief as the parties may fashion and agree to or as the Court may deem just and proper.

Respectfully Submitted,

By: /s/ Laura Grochocki

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EXHIBIT A

RESTORE
ILLINOIS

Winter Updates to All Sports Policy

This guidance issued by the Department of Commerce and Economic Opportunity (DCEO), the Illinois Department of Public Health (IDPH), and the Illinois State Board of Education (ISBE) pertains to all youth and adult recreational sports, including, but not limited to, school-based sports (high school and elementary school), travel clubs, private leagues and clubs, recreational leagues and centers, and park district sports programs. This guidance does NOT pertain to professional sports leagues or college division level sports.

These guidelines do not apply to adult sport activities subject to existing DCEO guidance identified below:

- For golf, refer to existing guidance on the [DCEO website](#).
- For tennis, refer to existing guidance on the [DCEO website](#).

Wearing face coverings or masks, including during competition, may further reduce the transmission of disease and is recommended for all sports below where face coverings do not unduly interfere with participation.

This guidance will be regularly updated as public health conditions change and new information becomes available.

HIGHER RISK	MODERATE RISK	LOWER RISK
<ul style="list-style-type: none"> • Basketball • Boxing • Football • Hockey • Lacrosse • Martial Arts • Rugby • Ultimate Frisbee • Wrestling 	<ul style="list-style-type: none"> • Fencing • Flag Football or 7v7 Football • Paintball • Racquetball • Soccer • Volleyball • Water Polo • Wheelchair Basketball 	<ul style="list-style-type: none"> • Archery • Badminton • Baseball • Bass Fishing • Bowling • Competitive Cheer • Competitive Dance • Climbing • Crew • Cross Country • Cycling • Disc Golf • Golf • Gymnastics • Horseback Riding • Ice Skating • Ropes Courses • Sailing, Canoeing, Kayaking • Sideline Spirit • Skateboarding • Softball • Skiing • Swimming/Diving • Tennis • Track and Field • Weight Lifting

Additional detailed guidance on sport-specific mitigation efforts, including appropriate distance, cleaning of equipment, and use of masks by participants, are included below.

The level of play allowed is dictated by current public health conditions.

Below are the **Type of Play Levels**:

Level 1	No-contact practices, and trainings only
Level 2	Intra-team scrimmages allowed, with parental consent for minors; no competitive play
Level 3	Intra-conference or Intra-EMS-region ¹ or intra-league play/meets only; state- or league-championship game/meet allowed for low-risk sports only
Level 4	Tournaments, out-of-conference/league play, out-of-state play allowed; championship games allowed

Current Conditions Allow for the Following Types of Play per Sport Risk Level:

- Lower-risk sports can currently play at Levels 1, 2, and 3
- Medium-risk sports can currently play at Level 1 and 2
- Higher-risk sports can currently play at Level 1

¹ EMS Regions are the 11 regions IDPH uses for the Restore Illinois boundaries

The following mitigation efforts can lower the risk of COVID-19 transmission while engaged in the following sports:

Baseball	Maintain at least 6-feet apart in dugout areas or if players are seated in bleachers behind dugout
Basketball	Maintain at least 6 feet of distance on the bench
Bass Fishing	Limit number of individuals on boat to allow for social distancing
Bowling	Clean and sanitize equipment, including bowling balls
Competitive Cheer	Minimize contact between participants by maintaining at least 6 feet of distancing on the floor during routines, including when changing formations, and by prohibiting lifts, stunts, pyramids, and tosses as well as shared equipment (e.g., signs, flags, poms)
Competitive Dance	Minimize contact between dancers by maintaining at least 6 feet of distance (i.e., spacing) on the floor during routines, including when changing formations, and by prohibiting lifts and stunts and shared equipment (e.g., poms)
Cross Country	Significantly limit the number of teams and follow physical workspace guidelines
Cycling	Play individually or use only every other track in velodrome

Gymnastics	Clean equipment between participants and limit sharing of personal equipment or materials (e.g., chalk)
Ice Skating	Play individually
Ropes Courses	Maintain at least 6 feet of socially distance and clean equipment between each individual
Sailing	Limit number on boat to socially distance
Sideline spirit	Maintain social distance at least 6-feet apart and do not perform stunts or lifts
Softball	Maintain at least 6-feet apart in dugout areas or when players are seated in bleachers behind dugout
Swimming/Diving	Restrict play to a single lane and singles diving; no relays, synchronized swimming, or paired diving
Tennis	Minimize touching of shared objects and limit play to singles
Track and Field	Apply delayed starts, use every other track, and clean equipment between usage
Volleyball	Maintain distance of at least 6 feet between players on each side of net and on the bench; clean and sanitize shared equipment
Weight Lifting	Clean between each individual

Follow the latest regional metrics at: <https://dph.illinois.gov/regionmetrics>

For more information on guidance for businesses, please visit the [FAQ on DCEO's website](#).



EXHIBIT B



Today's Press Conference for COVID-19 will begin at 2:30 pm Click Here to Watch Live

(<https://www.illinois.gov/livevideo>)

Sports Safety Guidance



DCEO Sports Safety Guidance (<https://dceocovid19resources.com/assets>

/Restore-Illinois/businessguidelines4/youthsports.pdf)

This guidance issued by the Department of Commerce and Economic Opportunity (DCEO), the Illinois Department of Public Health (IDPH), and the Illinois State Board of Education (ISBE) pertains to all youth and adult recreational sports, including, but not limited to, school-based sports (high school and elementary school), travel clubs, private leagues and clubs, recreational leagues and centers, and park district sports programs. This guidance does NOT pertain to professional sports leagues or college division level sports.

These guidelines do not apply to adult sport activities subject to existing DCEO guidance identified below:

- For golf, refer to existing guidance on the DCEO website (<https://dceocovid19resources.com/assets/Restore-Illinois/businessguidelines4/golf.pdf>).
- For tennis, refer to existing guidance on the DCEO website (<https://dceocovid19resources.com/assets/Restore-Illinois/businessguidelines4/tennis.pdf>).

Wearing face coverings or masks, including during competition, may further reduce the transmission of disease and is recommended for all sports below where face coverings do not unduly interfere with participation.

This guidance will be regularly updated as public health conditions change and new information becomes available.

Higher Risk

- Basketball
- Boxing
- Football
- Hockey
- Lacrosse
- Martial Arts
- Rugby
- Ultimate Frisbee
- Wrestling

Moderate Risk

- Flag Football or 7v7 Football
- Futsal
- Paintball
- Racquetball
- Soccer
- Volleyball
- Water Polo
- Wheelchair Basketball

Lower Risk

- Archery
- Badminton
- Baseball
- Bass Fishing
- Bowling
- Climbing
- Competitive Cheer
- Competitive Dance
- Crew
- Cross Country

- Cycling
- Disc Golf
- Fencing
- Gymnastics
- Horseback Riding
- Ice Skating
- Ropes Courses
- Sailing, Canoeing, Kayaking
- Scholastic Golf
- Sideline Spirit
- Skateboarding
- Softball
- Skiing
- Swimming/Diving
- Tennis
- Track and Field
- Weight Lifting

Additional detailed guidance on sport-specific mitigation efforts, including appropriate distance, cleaning of equipment, and use of masks by participants, are included below.

All Sports Policy

The level of play allowed is dictated by current public health conditions.

Below are the **Type of Play Levels**:

Level 1	No-contact practices, and trainings only
Level 2	Intra-team scrimmages allowed, with parental consent for minors; no competitive play

Level 3	Intra-conference or Intra-EMS-region ¹ or intra-league play/meets only; state- or league-championship game/meet allowed for low-risk sports only
Level 4	Tournaments, out-of-conference/league play, out-of-state play allowed; championship games allowed

Current Conditions Allow for the Following Types of Play per Sport Risk Level:

- Lower-risk sports can currently play at Levels 1, 2, and 3
- Medium-risk sports can currently play at Level 1 and 2
- Higher-risk sports can currently play at Level 1

¹ EMS Regions are the 11 regions IDPH uses for the Restore Illinois boundaries

The following mitigation efforts can lower the risk of COVID-19 transmission while engaged in the following sports:

Baseball	Maintain at least 6-feet apart in dugout areas or if players are seated outside of dugout.
Bass Fishing	Limit number of individuals on boat to allow for at least 6 feet social distance.
Bowling	Clean and sanitize equipment, including bowling balls, before and after each game. Do not share equipment between players. Limit bowlers per lane to maintain at least 6 feet social distance throughout play.
Competitive Cheer	Minimize contact between participants by maintaining at least 6 feet of social distance on the floor during routines, including when changing formations, and by prohibiting lifts, stunts, pyramids, and tosses as well as shared equipment (e.g., signs, flags, poms). Avoid shouting, singing, and chanting.
Competitive Dance	Minimize contact between dancers by maintaining at least 6 feet social distance (i.e., spacing) on the floor during routines, including when changing formations, and by prohibiting lifts and stunts and shared equipment (e.g., poms). Avoid shouting, singing, and chanting.
Cross Country	Limit the number of teams such that runners can always maintain at least 6 feet social distance throughout the course

Cycling	Play individually or use only every other track in velodrome
Gymnastics	Clean equipment between participants and limit sharing of personal equipment or materials (e.g., chalk). All non-participant personnel (e.g., spotters) should wear masks at all times.
Ice Skating	Play individually or have one exclusive skating partner.
Ropes Courses	Maintain at least 6 feet of socially distance and clean equipment between each individual
Sailing	Limit number on boat to socially distance
Sideline spirit	Minimize contact between participants by maintaining at least 6 feet of social distance on the floor during routines, including when changing formations, and by prohibiting lifts, stunts, pyramids, and tosses as well as shared equipment (e.g., signs, flags, poms). Avoid shouting, singing, and chanting.
Softball	Maintain at least 6 feet social distance in dugout areas or when players are seated in bleachers behind dugout
Swimming/Diving	Restrict play to a single lane. No synchronized swimming
Tennis	Minimize touching of shared objects
Track and Field	Apply delayed starts, use every other track, and clean equipment between usage. Modify relays and team races to minimize contact between players, including by not sharing equipment (e.g., batons).
Volleyball	Maintain at least 6 feet social distance between players on each side of net and on the bench
Weight Lifting	Clean between each individual

Uniform guidelines across businesses, industries, and nonprofits within the State of Illinois; the following two categories do not apply to school-based activities.

General Health

Minimum guidelines

1. All employees who can work from home should continue to do so

2. Employees should wear face coverings over their nose and mouth when within 6-ft. of others (cloth masks preferred). Exceptions may be made where accommodations are appropriate – see IDHR’s guidance
3. Social distance of at least 6-ft. should be maintained between non-household individuals
4. Frequent hand washing by employees, and an adequate supply of soap/ paper towels and/or disinfectant/ hand sanitizer should be available

HR and Travel Policies

Minimum guidelines

1. All employees and workers who perform work at the worksite (such as temporary or contract workers) should complete health and safety training related to COVID-19 when initially returning to work. Resources to design a training are posted on the DCEO Restore Illinois guidelines website
2. When travel is necessary, employees should follow CDC travel guidance to protect themselves and others.
3. Employees should follow IDPH travel guidance to protect themselves and others by not traveling to states at higher risk for transmission of COVID-19.
 - a. When traveling domestically or international, avoid travel to areas of higher risk. Wear a face covering while in the airport, during the flight, and during any shared transit. If your essential travel requires you to be in areas of higher risk, attempt to travel during less crowded or lower-demand travel times in order to reduce exposure. Upon returning home, stay home if possible, and monitor your health for 14 days.
4. Employees should not report to, or be allowed to remain at, work if sick or symptomatic (with cough, shortness of breath or difficulty breathing, fever of 100.4 degrees or above, chills, muscle pain, headache, sore throat, new loss of taste or smell, or other CDC-identified symptoms), and sick or symptomatic employees should be encouraged to seek a COVID-19 test at a state or local government testing center, healthcare center or other testing locations, and follow CDC guidelines for self-isolation.
5. Employees who come into close contact with an infected employee– i.e., employees who were within 6 feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period – should follow CDC guidelines for self-quarantine.
6. Employers should clearly explain all paid leave policies and make workers aware that they may be eligible for benefits if they are sick or symptomatic
7. Employers should be aware that the Occupational Safety and Health Act of 1970 and provisions of state law prohibit employers from retaliating against workers for raising safety or health concerns

Encouraged best practices

1. Provide reasonable accommodation for COVID-19-vulnerable employees, including but not limited to work from home (if feasible), reduced contact with others, use of barriers to ensure minimum distance between others whenever feasible or other accommodations that reduce chances of exposure
2. When possible, limit travel to within each of the 11 regions IDPH uses for the Restore Illinois

guidelines.

3. Encourage employees to cooperate with contact tracing efforts to identify and inform their close contacts of their potential exposure to SARS-CoV-2.

Health Monitoring

Minimum guidelines

1. Sports organizations should encourage the practice of temperature checks by employees. Organizers should post information about the symptoms of COVID-19 in order to allow employees, participants, and spectators to self-assess whether they have any symptoms
2. All employers should have a wellness screening program. Resources outlining screening program best practices are posted on the DCEO Restore Illinois guidelines website
3. Before allowing participation in sporting activities, sport organizers or coaches should ask whether participant is currently exhibiting COVID-19 symptoms. If participant does have symptoms, they should wait to enter premises or participate in any sporting activity for a minimum of 10 days after symptom onset OR until feverless and feeling well (without fever-reducing medication) for at least 24 hours
4. Sport organizers or coaches should maintain attendance log of participants for contact tracing purposes. Sports organizers should maintain attendance logs of all facility rentals, spectators, and employees for contact tracing purposes
5. If employee, coach, participant, or spectator reports having any COVID-19 related symptoms, sports organizer should encourage individual to contact their health care provider; if multiple individuals report having any COVID-19 related symptoms, sports organizer or coach should notify their local health department within three days of being informed of the presence of COVID-19 symptoms; if multiple individuals test positive for COVID-19, sports organizer or coach should notify their local health department within one day of positive test results
6. If an employee, athlete, coach, or spectator is identified as being COVID-19 positive by testing, cleaning and disinfecting should be performed according to CDC guidelines
7. Where appropriate, notify individuals who have been exposed. Individuals who tested positive should not be identified by name.
8. Any individual who has had close contact (15 min or more) with any other person who is diagnosed with COVID-19 should quarantine for 14 days after the last/ most recent contact with the infected individual and should seek a COVID-19 test at a state or local government testing center, healthcare center or other testing locations. All other individuals should be on alert for symptoms of fever, cough, or shortness of breath and taking temperature if symptoms develop

Physical Workspace

Minimum guidelines

1. Sports organizers should display signage at entry with face covering requirements, social distancing

guidelines, cleaning protocols, behavioral guidance, and any reduced capacity limit, in multiple languages as needed.

2. Non-competitive activities (activities in Level 1) should be set up to allow for at least 6 feet social distance between participants whenever possible, both during active gameplay and for other participants not actively exercising or involved in the activity.
3. Sports organizers should allow for at least 6 feet social distance for all participants not actively exercising or involved in the sporting activity (e.g., on the bench or sidelines, in the stands) If a sporting facility has stations for individual recreation activities, sport organizers should ensure at least 6 feet between stations. If stations cannot be moved, sport organizers should limit the number of open stations to ensure participants can maintain at least 6 feet social distance whenever possible.
4. Sports organizers should prohibit access to locker rooms whenever possible. Participants should arrive to the venue dressed for play. If locker rooms and showers are a necessity, sports organizers should require all entrants to wear a face covering at all times and the space should be configured with signage, tape, and other markings to ensure participants can maintain 6 feet social distance at all times.
5. Sport organizers should designate an area for spectators with existing seating (e.g., bleachers) or in space around area of play. Organizers should ensure there is space available such that spectators can maintain at least 6 feet social distance between themselves and spectators that are not members of the same household or party.
 - a. Display visual markers (e.g., tape, cones) at least 6 feet apart for seating.
 - b. Remove any furniture and restrict spectators' access to any areas not conducive to maintaining at least 6 feet social distance.
 - c. If seats cannot be moved, venue operators should limit the number of open seats to ensure spectators can maintain at least 6 feet social distance (e.g., zip tie unused seats, remove seat bottoms, cover unused seats).
6. Sports organizers or venues should configure space to ensure there is at least 30 feet social distance between spectators and participants.
7. Sports organizers and venues that provide concessions should follow Restaurant and Bar guidelines for all food and beverage operations in line with the regional Tier mitigation levels as outlined in the Restore Illinois guidelines.

Encouraged best practices

1. Whenever possible, configure the area of play to allow for at least 6 feet social distance between participants, including for sports at Play Levels 2-4. Refer to the guidance above regarding mitigation efforts to lower transmission risk for particular sports.
2. Display visual markers at least 6 feet apart at any queue points (e.g. check-in, along sidelines, concessions).
3. Designate an area separate from others for anyone who exhibits COVID-like symptoms during the activity session to isolate from others before being picked up to leave.
4. If practical, expand seating beyond current capacity (e.g., bleachers, stands) by utilizing any available field or court space to encourage social distancing between spectators.
 - a. Use portable seating from other activity areas.
 - b. Encourage spectators to bring their own additional seating (e.g., chairs) from home.

5. Stream practices and games online, if possible, to promote virtual spectating.
6. Provide “grab-and-go” concessions that are pre-packaged and individually wrapped with markers spaced at least 6 feet apart to represent appropriate social distance between queued spectators and participants.

Procedures for Cleaning and Disinfecting

Minimum guidelines

1. Cleaning and disinfecting of premises should be conducted on a weekly basis in compliance with protocols from the CDC and EPA.
2. Clean and disinfect common areas (e.g., restrooms) and surfaces which are touched by multiple people (e.g., entry/exit doorknobs, stair railings) frequently
3. Sports organizers should make hand sanitizer or hand washing stations available to participants.
4. Minimize sharing of high-touch equipment between non-household individuals. If equipment is to be shared, sports organizers should sanitize equipment before and after use (see EPA approved list of disinfectants).
 - a. Athletic equipment such as bats and batting helmets should be cleaned between each use. Other equipment, such as catchers gear, hockey helmets/ pads, wrestling ear guards, football helmets/other pads, lacrosse helmets/ pads/gloves/eyewear should be worn by only one individual and not shared
5. Sanitization of locker rooms and showers should be completed at the beginning and end of practice/games at minimum.
6. Sport organizers should sanitize any individual recreation stations before and after participant use.
7. All required disinfecting, cleaning, or sanitizing activities to be conducted by employees should be within their normal workday or during otherwise compensated time.

Encouraged best practices

1. If practical, sanitize shared equipment during use (e.g., between drills) and encourage frequent hand sanitizing or hand washing, including during gameplay (e.g., between quarters, at time outs, when returning to the bench)
2. Athletes should be encouraged to shower and wash their workout clothing immediately upon returning home.

Staffing and Attendance

Minimum guidelines

1. For contact tracing purposes, sports organizers or venues should maintain a log of all spectators and non-participant visitors in attendance and schools or coaches should maintain a log of all participants in attendance.

2. Sports organizers should limit spectator attendance as follows, in accordance with regional Tier mitigation levels as outlined in the Restore Illinois guidelines:
 - a. When located in a region not facing specific mitigation efforts outlined in the Restore Illinois guidelines:
 - Gatherings of up to 50 spectators, indoors or outdoors, are allowed.
 - b. When located in a region under Tier 1 mitigation efforts per the Restore Illinois guidelines:
 - Gatherings of up to 25 spectators, indoors or outdoors, are allowed.
 - c. When located in a region under Tier 2 or more restrictive mitigation efforts per the Restore Illinois guidelines:
 - No spectators are allowed, whether indoors or outdoors.
3. Sports organizers should limit spectators to immediate household members or guardians of participants. Others should be considered only if space allows.
4. Sports organizers or venues may host multiple groups of participants engaged in active exercise or gameplay (e.g., multiple games happening in the same location), both indoors and outdoors, as long as:
 - a. The region in which the practice or game is not facing specific mitigation efforts, at Tier 1 or higher, as outlined in the Restore Illinois Guidelines.
 - b. The venue allows for all attendees to maintain at least 6 feet social distance throughout gameplay and during any ancillary contacts (e.g., spectator areas, entry, exit, concessions, etc.).
 - c. The venue allows for separation of at least 30 feet between contests, with areas for each contest marked to discourage interaction and limit contacts between groups when not actively exercising or engaged in competitive play.
5. Sport organizers should design a plan to allow all attendees to maintain at least 6 feet social distance within the venue and, if needed, designate employee(s) or coaches to monitor capacity limits and social distancing.
6. Sports organizers should ensure that any participants not actively exercising or participating in gameplay should sit on the sidelines at least 6 feet apart from one another.
7. Sports organizers should designate employee(s) or coaches to remind spectators, participants, and others to follow state guidance regarding face coverings, social distance, hygiene, behavior, and other rules.
8. Sport organizers should limit the occupancy of common areas and break rooms to allow for at least 6 feet social distance by removing or decommissioning furniture or staggering break times; this guideline is not intended to diminish employees break time requirements.

Encouraged best practices

1. Limit the number of individuals from separate organizations who attend games or contests to keep sports gatherings as small as possible. Individual organization should consider higher priority attendance for athletes, coaches, officials, medical staff, event staff, and security, and lower priority for others, such as spectators, media, and vendors.
2. Stagger game and practice times to minimize congregation of groups.
3. Teams/ groups should be static, with no mixing of employees or participants between groups for the duration of the season, if practical.
4. If practical, assign participants from the same household to the same team or group.

5. When possible, spectators from the same household should sit together.

External Interactions

Minimum guidelines

1. Before allowing external supplier or non-participant visitor to enter, or while requiring them to wait in a designated area, sport organizers should ask whether an external supplier or nonparticipant visitor is currently exhibiting COVID-19 symptoms.
 - a. If practical, sport organizers should take external supplier or non-participant visitor temperature using thermometer (infrared/ thermal cameras preferred, touchless thermometers permitted).
2. Sport organizers should keep log of all external suppliers, visitors, spectators who enter premises.
3. Suppliers and other visitors should wear face coverings over their nose and mouth when entering premises (exceptions can be made for people with medical conditions or disabilities that prevent them from safely wearing a face covering).

Encouraged best practices

1. Limit contact between external suppliers/ non-participant visitors and employees.
2. For youth sports, suspend post-activity group snacks.
3. As practical, adults dropping off or picking up participants should wait at designated drop-off/ pick-up areas and should arrive during a designated time window that limits congregation of persons at any one location.
4. Volunteers should abide by static team/ group guidelines applied to employees with no mixing between groups for the duration of the season/ volunteer period, if practical.
5. When possible, sports organizers should make lower-cost personal protective equipment available to spectators and other non-participant visitors to ensure they comply with stated guidance regarding face coverings, social distance, and hygiene.

Customer Behaviors

Minimum guidelines

1. Spectators and non-participant visitors must wear a face covering at all times that fully covers their nose and mouth and fits snugly against the sides of the face with no gaps, whether indoors or outdoors, except for
 - a. when eating or drinking,
 - b. people with medical conditions or disabilities that prevent them from safely wearing a face covering,
 - c. Individuals younger than 2 years of age, and
 - d. Individuals who have trouble breathing or are unconscious, incapacitated, or otherwise unable to remove the cover without assistance.

2. All participants must wear a face covering at all times that fully covers their nose and mouth and fits snugly against the sides of the face with no gaps, whether indoors or outdoors, except for
 - a. When eating or drinking,
 - b. When engaged in vigorous or high-intensity exercise, including practices or competitions,
 - c. For individuals with medical conditions or disabilities that prevent them from safely wearing a face covering, and
 - d. During activities where coverings could pose an injury risk by getting caught on equipment or accidentally covering eyes.
3. Sports organizers should direct all individuals not actively exercising or participating in sports activities to refrain from shouting, singing, or chanting.
4. Participants should wash hands with soap and water or use hand sanitizer before participating and, when practical, during gameplay (e.g., between quarters, at time outs, when returning to the bench).
5. Participants should bring their own source of water and refrain from using any communal sources of hydration (e.g., team water or sports drink jug).
6. Participants should not share athletic towels, clothing, or shoes.
7. All attendees should refrain from handshakes, high fives, fist bumps, hugs, “go-team” hand raises, etc.
8. All attendees should refrain from spitting or blowing of the nose without the use of a tissue.

Encouraged best practices

1. All participants should wear a face covering when engaged in non-vigorous exercise, including practices and competitions, and when maintaining at least 6 feet social distance is not possible.
2. Require physicians notes for individuals who have a medical contraindication to wearing a face covering.
3. If practical, sport organizers should take participant temperature using thermometer (infrared/ thermal cameras preferred, touchless thermometers permitted) prior to participation in the activity.
4. When possible, sports organizers should make lower-cost personal protective equipment available to spectators and others to ensure they comply with stated guidance regarding face coverings, social distance, and hygiene.
5. Activity sessions should be held by appointment only (e.g., limit walk-ins, limit pick-up games)
6. Participants should sanitize hands regularly.
7. Participants should avoid touching facility accessories (e.g., goal posts, flags).
8. Participants should use their own equipment (e.g., helmet, bat, gloves) as much as practical.
9. Participants should place personal belongings at least 6 feet away from others’ personal belongings.

Follow the latest regional metrics at: <https://dph.illinois.gov/regionmetrics> (<https://dph.illinois.gov/regionmetrics>)

For more information on guidance for businesses, please visit the [FAQ on DCEO's website](https://www2.illinois.gov/dceo/Documents/Phase%204%20Business%20Guidance%20FAQ.pdf) (<https://www2.illinois.gov/dceo/Documents/Phase%204%20Business%20Guidance%20FAQ.pdf>).

Audience:

[Colleges & Universities \(/colleges-universities\)](#)

[Community Settings \(/community-settings\)](#)

[Home \(/home\)](#)

[Local Health Departments \(/local-health-departments\)](#)

[Schools \(/schools\)](#)

Protecting health, improving lives.

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[Privacy \(/content/privacy-policy\)](#)

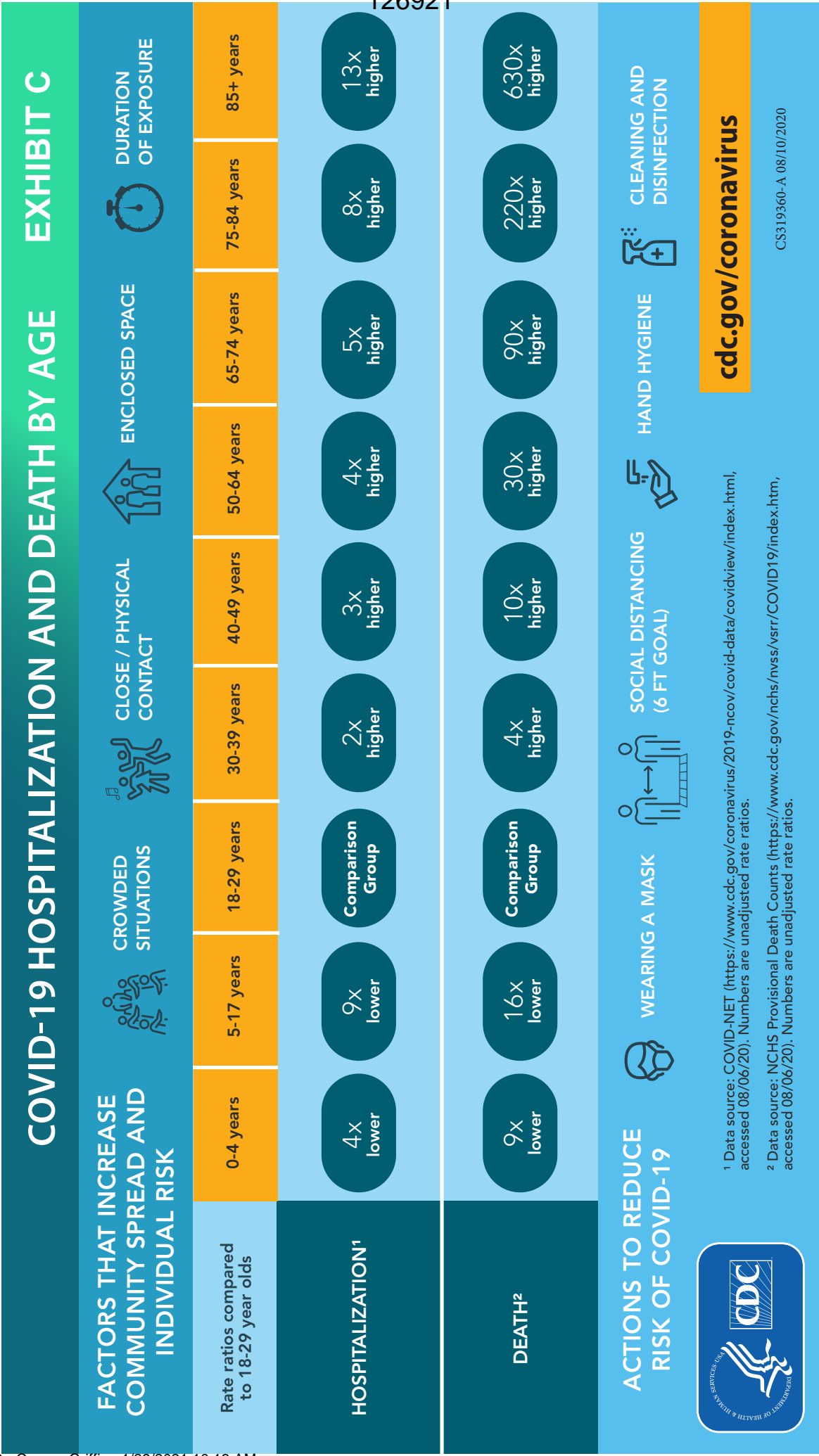


EXHIBIT D

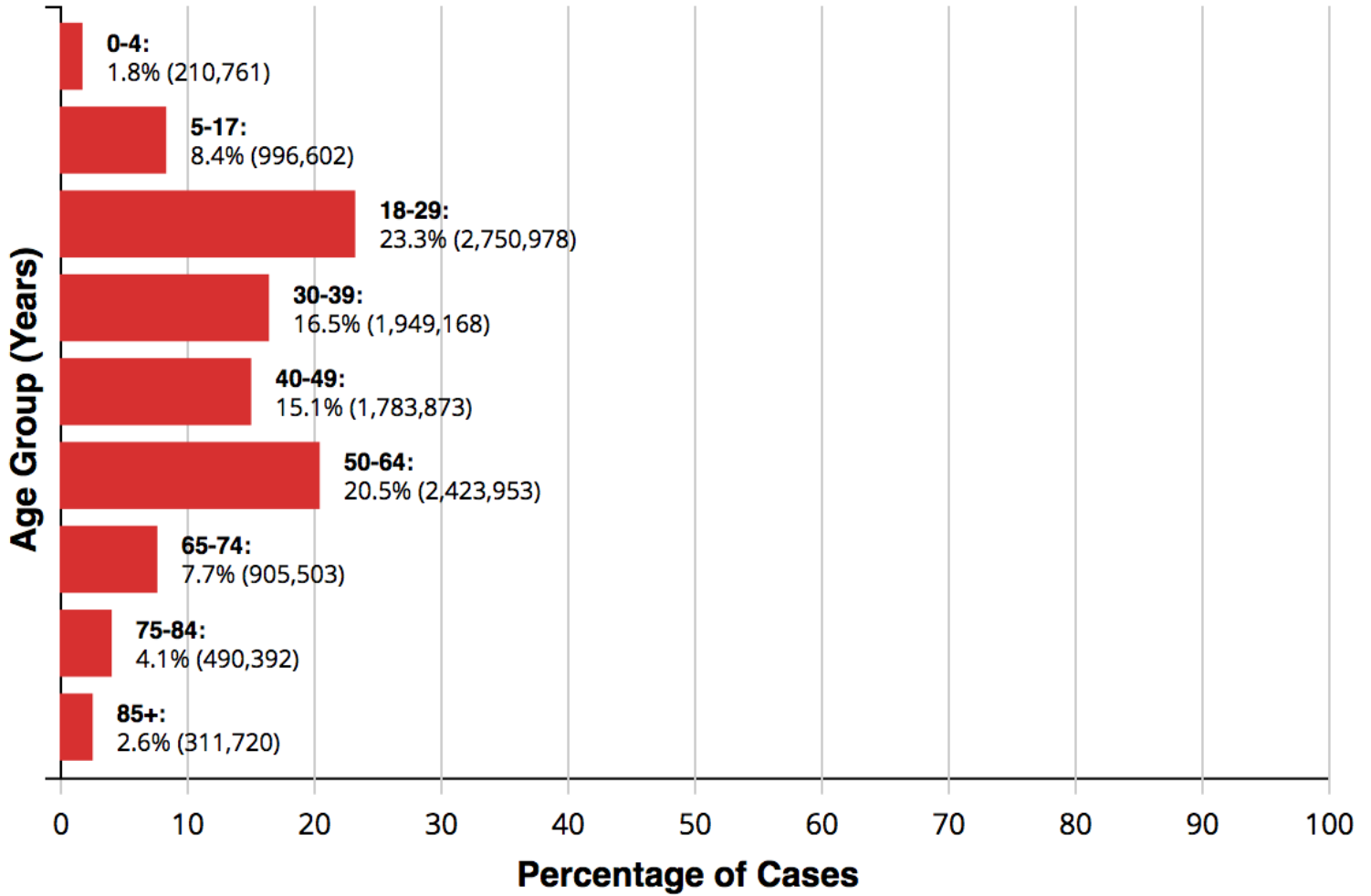


EXHIBIT E

Cases by Age Group

Date generated: Sun Dec 13 2020 16:56:01 GMT-0600 (Central Standard Time)

Age Group	Percentage	Count
0 - 4 Years	1.8	210761
5 - 17 Years	8.4	996602
18 - 29 Years	23.3	2750978
30 - 39 Years	16.5	1949168
40 - 49 Years	15.1	1783873
50 - 64 Years	20.5	2423953
65 - 74 Years	7.7	905503
75 - 84 Years	4.1	490392
85+ Years	2.6	311720

Exhibit 2

(Motion to Transfer, *Moore v. Pritzker*, No. 2020 MR 426)

FILED

13TH JUDICIAL CIRCUIT

1/5/2021 12:55 PM

BW

**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT
LASALLE COUNTY, ILLINOIS**

Gina Vaccaro
CLERK OF THE CIRCUIT COURT
LASALLE COUNTY, ILLINOIS

Lisa Marie Moore, <i>et al.</i> ,)	
)	
Plaintiffs,)	
	)	Case No. 2020 MR 426
vs.)	
	)	Judge Troy D. Holland
Governor JB Pritzker, <i>et al.</i>)	
)	
Defendants.)	

MOTION TO TRANSFER

Defendant Governor JB Pritzker, through his attorney, Kwame Raoul, Illinois Attorney General, respectfully moves to transfer this action to Sangamon County pursuant to Illinois Supreme Court Rule 187 (“Rule 187”) and the doctrine of *forum non conveniens*.

In late July, multiple lawsuits raising challenges to the Governor’s legal authority to address the ongoing Covid-19 pandemic were pending in various circuit courts in the State. In four orders issued in August and September, 2020, the Illinois Supreme Court transferred and/or permanently assigned nine of those cases to a single judge in Sangamon County because “consolidation [of those cases] would serve the convenience of the parties and witnesses and would promote the just and efficient conduct of such actions.” Ill. S. Ct. R. 384(a) (“Rule 384”). In November, the Illinois Supreme Court transferred nine additional cases challenging the validity of the Governor’s actions in response to Covid-19 to Sangamon County pursuant to Rule 384, and, along with a tenth case already pending there, consolidated them with the earlier cases before the same judge.

All of the transferred and consolidated cases were brought against the Governor or state agencies implementing his executive orders, and several of them concerned issues that substantially overlap with the core constitutional questions raised by Plaintiffs here. Through its

various transfer and consolidation orders, the Illinois Supreme Court has made clear that cases such as this one should be transferred to Sangamon County for adjudication in the State's primary consolidated Covid-19-related action: *In re Covid-19 Litigation*, Case No. 2020-MR-589 (Sangamon County). The Court should follow the Illinois Supreme Court's lead and exercise its powers under the doctrine of *forum non conveniens* to transfer this action to Sangamon County.

BACKGROUND

The Governor's emergency authority is challenged in numerous cases filed statewide.

In late July, multiple cases raising challenges to the Governor's legal authority to address the ongoing Covid-19 pandemic were pending in various circuit courts in the State:

- *Bailey v. Pritzker*, Case No. 2020-CH-6 (originally filed in Clay County), challenged the authority of the Governor to issue more than a single, 30-day disaster proclamation under the Illinois Emergency Management Agency Act, 20 ILCS 3305/1 *et seq.*, argued that the Governor unlawfully exercised public health powers reserved to the Illinois Department of Public Health, and contended that the Governor's orders failed to follow the quarantine and closure procedures required by the Illinois Department of Public Health Act, 20 ILCS 2305/1 *et seq.*
- *Mainer v. IDPH, et al.*, Case No. 2020-CH-13 (originally filed in Clay County) argued that the Governor's executive orders and the guidance implementing those orders in schools was arbitrary and capricious. *See Mainer* 1st Am. Compl. ¶¶ 25 (attached as Exhibit 1).
- *Pritzker, et al. v. Bd. of Educ. of Hutsonville, et al.*, Case No. 2020-MR-557 (Sangamon County), an affirmative action brought by the Governor, sought a declaration that the Governor's executive orders and the guidance implementing those orders in schools are

enforceable and lawful. *See Hutsonville Compl.* at 13 (wherefore clause) (attached as Exhibit 2).

- Six cases filed in six different counties (the “County Disaster Cases”)¹ challenged the Governor’s ability to exercise certain emergency powers in six specific counties where, those plaintiffs contended, no emergency circumstances existed that would justify the exercise of those powers.

The Illinois Supreme Court enters four orders transferring and consolidating cases in Sangamon County.

In August and September 2020, the Illinois Supreme Court entered four orders that collectively transferred six cases from around the state to the circuit court of Sangamon County and consolidated them with cases already pending there.

- In Matter No. 126204, the Supreme Court on August 5 transferred four of the County Disaster Cases that were pending in Bond, Clinton, Edgar, and Richland Counties to Sangamon County and ordered them consolidated with the fifth County Disaster Case *Craig v. Pritzker*, No. 20-MR-589 (order attached as Exhibit 3).²
- In Matter No. 126232, the Supreme Court on August 11 transferred *Mainer v. Pritzker*, No. 20-CH-13 (“*Mainer*”), which was pending in Clay County, to Sangamon County and ordered it consolidated with *Pritzker v. Board of Education of Hutsonville CUSD #1*, No.

¹ *Allen et al. v. Pritzker*, Case No. 2020-MR-45 (originally filed in Edgar County); *Craig et al. v. Pritzker*, Case No. 2020-MR-000589 (Sangamon County); *DeVore v. Pritzker*, Case No. 2020-MR-32 (originally filed in Bond County); *English v. Pritzker*, Case No. 2020-MR-48 (originally filed in Richland County); *Gorazd et al. v. Pritzker*, Case No. 2020-MR-79 (originally filed in Clinton County); *Quinn v. Pritzker*, Case No. 2020-MR-173 (originally filed in Adams County).

² The sixth County Disaster Case, *Quinn v. Pritzker*, was filed later than the others, and was transferred from Adams County to Sangamon County by the circuit court in Adams County at a later date pursuant to the doctrine of *forum non conveniens*. *See* Docket Entry dated August 18, 2020, *Quinn v. Pritzker*, Case No. 2020-MR-173 (originally filed in Adams County) (attached as Exhibit 4).

20-MR-557 (order attached as Exhibit 5).

- In Matter No. 126261 (initiated under Rule 383), the Supreme Court on August 11, on its own motion pursuant to Rule 384, transferred *Bailey v. Pritzker*, No. 20-CH-6 (“*Bailey*”), which was pending in Clay County, to Sangamon County and ordered it consolidated with *Craig* (order attached as Exhibit 6).
- In a single order entered in all three of the above-referenced Supreme Court matters, on September 9 the Illinois Supreme Court clarified that all the previously consolidated actions were consolidated before and permanently assigned to a single judge, Judge Raylene Grischow in Sangamon County (order attached as Exhibit 7).

The Governor’s Executive Orders prohibiting indoor dining are challenged by restaurants around Illinois.

In October and November, restaurants in eight jurisdictions around the state filed ten separate lawsuits challenging the Governor’s executive orders prohibiting indoor dining. As in this case, three of those cases challenge the Governor’s actions on the grounds that they deprive plaintiffs of equal protection of the law.³

- *RAD Gaming, Inc., et al., v. Governor Jay Robert Pritzker, et al.*, No. 2020 MR 109 (originally filed in Clinton County), challenges the Governor’s restrictions on indoor dining on the grounds that they violate the equal protection clause of the Illinois

³ The remaining indoor dining cases were *Shakou, LLC, et al., v. Governor Jay Robert Pritzker, et al.*, No. 2020 CH 6526 (originally filed in Cook County); *Fox Fire Tavern, LLC, et al., v. Governor Jay Robert Pritzker, et al.*, No. 2020 CH 348 (originally filed in Kane County); *NKG Pingree Grove LLC, et al., v. Governor Jay Robert Pritzker, et al.*, No. 2020 CH 353 (originally filed in Kane County); *SDDL, LLC, et al., v. Governor Jay Robert Pritzker, et al.*, No. 2020 CH 596 (originally filed in DuPage County); *251 Pub, Inc., et al., v. Governor Jay Robert Pritzker, et al.*, No. 2020 MR 1121 (originally filed in McHenry County); *Niko's Red Mill, Inc., et al., v. Governor Jay Robert Pritzker, et al.*, No. 2020 CH 287 (originally filed in McHenry County); and *Millertime Partners, LLC, et al., v. Governor Jay Robert Pritzker, et al.*, No. 2020 CH 179 (originally filed in Sangamon County).

Constitution. *RAD Gaming* Compl. ¶¶ 77–80 (attached as Exhibit 8).

- *Orphan Smokehouse, LLC, et al., v. Governor Jay Robert Pritzker, et al.*, No. 2020 MR 140 (originally filed in Marion County), likewise challenged the indoor dining bans, alleging that other businesses in the same health region were not subject to similar restriction and that such different treatment lacks a rational basis, all in violation of the equal protection clause of the Illinois Constitution. *Orphan Smokehouse* Compl. ¶¶ 75–78 (attached as Exhibit 9)
- *Haymaker Enterprises, Inc., et al., v. Governor Jay Robert Pritzker, et al.*, No. 2020 CH 65 (originally filed in DeKalb County), alleged that the indoor dining restrictions deprive plaintiffs of the equal protection of the law because DeKalb County restaurants are being treated differently from restaurants in other counties with similar test positivity rates.

Haymaker 1st Am. Compl. ¶ 51 (attached as Exhibit 10).

The Illinois Supreme Court Again transfers and consolidates the cases in Sangamon County.

On November 5, 2020, the Illinois Supreme Court transferred nine restaurant cases, including the equal protection cases of *RAD Gaming*, *Orphan Smokehouse*, and *Haymaker*, to the Circuit Court of Sangamon County. It also consolidated all nine cases, along with a tenth case, *Millertime*, that originated in Sangamon County, with other Covid-related cases already pending in front of Judge Grischow in *In re COVID-19 Litigation*, No. 2020 MR 589. (Order attached as Exhibit 11).

Plaintiffs file suit seeking to enjoin enforcement of the Governor’s executive orders.

On December 21, 2020, Plaintiffs, residents of LaSalle, Fayette, Schuyler and DuPage Counties, filed this action. Plaintiffs’ complaint closely resembles a number of the cases transferred to Sangamon County and consolidated by the Illinois Supreme Court into *In re*

COVID-19 Litigation, No. 2020 MR 589. Specifically, like here, the defendant named in each of the previously filed cases (with the obvious exception of *Hutsonville*) is the Governor, in his official capacity, and/or officials of state agencies charged with implementing his executive orders. In addition, the core legal theory that Plaintiffs advance here overlaps with arguments made in the cases now consolidated in Sangamon County. As in *RAD Gaming*, *Orphan Smokehouse*, and *Haymaker*, Plaintiffs raise the question of whether equal protection claims exist as a result of the Covid-related restrictions implemented by the Governor. *See* Ex. 8 ¶¶ 77–80; Ex. 9 at ¶¶ 75–78; Ex. 10 ¶ 51. Further, as in both *Mainer* and *Hutsonville*, Plaintiffs’ challenge here raises questions about the scope of the Governor’s power to impose public health-related restrictions on schools in particular. *See* Ex. 1 ¶¶ 19–22. Ex. 2 ¶¶ 53–56. And as in all of the consolidated cases, Plaintiffs seek declaratory relief to establish whether the Governor’s emergency actions are lawful, and an injunction supporting such a declaratory judgment. *Compare* Compl. at 8 (prayer for relief, ¶¶ A, C); *with, e.g.*, Ex. 1 at 4 (wherefore clause); Ex. 2 at 13 (wherefore clause); Ex. 8 at 6–7 (wherefore clause), 9 (wherefore clause), 11 (wherefore clause), 13 (wherefore clause), 14–15 (wherefore clause); Ex. 9 at 8 (wherefore clause), 10 (wherefore clause) 12 (wherefore clause), 14 (wherefore clause), 15–16 (wherefore clause); Ex. 10 at 9 (wherefore clause).

LEGAL STANDARD

Rule 384 provides that “[w]hen civil actions involving one or more common questions of fact or law are pending in different judicial circuits,” and the Supreme Court “determines that consolidation would serve the convenience of the parties and witnesses and would promote the just and efficient conduct of such actions,” then it may “transfer all such actions to one judicial circuit for consolidated pretrial, trial, or post-trial proceedings.” Similarly, a court applying the

doctrine of *forum non conveniens* under Rule 187 must balance relevant public or private interest factors, including the same factors considered by the Supreme Court under Rule 384, such as: (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial evidence such as witnesses; (3) all other practical problems making trial of a case easy, expeditious, and inexpensive; and (4) factors affecting the public interest, including considering whether the matter “touch[es] the affairs of many persons” not parties to the action. *See Gridley v. State Farm Mut. Auto. Ins. Co.*, 217 Ill. 2d 158, 169–70 (2005); *McClain v. Illinois Cent. Gulf R. Co.*, 121 Ill. 2d 278, 289 (1988).⁴ Where the Illinois Supreme Court has already acted to transfer and consolidate cases pursuant to Rule 384, circuit courts in Illinois may use their *forum non conveniens* authority to transfer a case pursuant to Rule 187 in a manner consistent with the Supreme Court’s Rule 384 orders. *See* Ex. 4 (Docket Entry dated August 18, 2020, *Quinn v. Pritzker*, Case No. 2020-MR-173 (originally filed in Adams County)).

ARGUMENT

This Court should follow the lead of the Illinois Supreme Court and transfer this case to Sangamon County pursuant to the doctrine of *forum non conveniens*.⁵ The Illinois Supreme Court has repeatedly ruled that it is appropriate to transfer to Sangamon County cases brought against the Governor which substantially overlap with the core argument raised by Plaintiffs

⁴ While *McClain* was an inter-state transfer action, the Illinois Supreme Court has held that the factors that may be considered when evaluating a motion for intra-state transfer or dismissal under the doctrine of *forum non conveniens* are the same as the factors considered for inter-state transfer or dismissal. Accordingly, the reasoning used in both types of cases may guide the Court. *See Torres v. Walsh*, 98 Ill. 2d 338, 350 (1983); *see also Fennell v. Ill. Cent. R. Co.*, 2012 IL 113812, ¶ 17.

⁵ A court may transfer a case through *forum non conveniens* to any venue where venue is proper. *Gridley*, 217 Ill. 2d at 169–70. Venue is proper in Sangamon County in this action because the Governor maintains his official residence in Sangamon County, and venue is proper in any county in which a defendant resides. 735 ILCS 5/2-101; *see also* Ill. Const., art. V, § 1 (requiring the Governor to “maintain a residence at the seat of government during [his] term[] of office”); 5 ILCS 190/0.01 *et seq.* (“[T]he seat of government shall continue to be at Springfield, in the County of Sangamon, at which place all acts shall be done which are required to be done at the seat of government.”).

here, and then consolidate them with *In re Covid-19 Litigation*, Case No. 2020-MR-589, for resolution by Judge Grischow.

As the Supreme Court recognized in orders transferring similar actions, both private and public interest factors plainly weigh in favor of transfer. The Supreme Court has already determined that in similar actions “consolidation would serve the convenience of the parties and witnesses and would promote the just and efficient conduct of such actions,” a determination substantively identical to the private factor analysis under Rule 187.

The public factors also favor transfer. Plaintiffs reside in four different counties, so there is no “localized controversy” here and no “local interest” to be served by deciding this case in LaSalle County. *McClain*, 121 Ill. 2d at 289 (reversing denial of *forum non conveniens* relief). On the contrary, Plaintiffs’ central claim concerns issues that are of significant interest to all Illinois residents, because they relate to the ongoing fight against Covid-19, and as a result “touch the affairs of many persons” not parties to the action. *Id.*; *see also Wieser v. Missouri Pac. R. Co.*, 98 Ill. 2d 359, 371 (1983) (applying *forum non conveniens* and noting public interest factors include considering whether the case will “touch the affairs of many persons”); *Jones v. Searle Labs.*, 93 Ill. 2d 366, 373 (1982) (same). Moreover, through its Rule 384 orders, the Supreme Court made clear that cases such as this one should be consolidated before a single judge, as a means of avoiding inconsistent rulings or public confusion and encouraging the expeditious resolution of issues of critical importance to the entire state. Sangamon County is therefore the most convenient and central place for this dispute to be resolved. *See Healey v. Teachers Ret. Sys.*, 200 Ill. App. 3d 240, 246–47 (4th Dist. 1990) (showing case against Illinois state official and agency was transferred to Sangamon County on the basis of *forum non conveniens*).

CONCLUSION

For the foregoing reasons, the State respectfully asks the Court to transfer this case to Sangamon County under the doctrine of *forum non conveniens* so that it may be consolidated with *In re Covid-19 Litigation*, Case No. 2020-MR-589 (Sangamon County), the consolidated action relating to the State's emergency authorities to confront the Covid-19 pandemic, currently pending in Sangamon County.

Dated: January 5, 2021

Respectfully Submitted,

KWAME RAOUL
Attorney General of Illinois

/s/ Gretchen E. Helfrich

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**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT
LASALLE COUNTY, ILLINOIS**

Lisa Marie Moore, <i>et al.</i> ,)	
)	
Plaintiff,)	
	)	Case No. 2020 MR 426
vs.)	
	)	Judge Troy D. Holland
Governor JB Pritzker, <i>et al.</i>)	
)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned hereby certifies the statements set forth in this certificate of service are true and correct and that he has caused a copy of the foregoing to be served upon:

Laura Grochocki
200 East Illinois Street
Suite 3211
Chicago, Illinois 60611
lauraglaw@aol.com

David J. Bressler
Clingen, Callow and McLean
2300 Cabot Drive
Suite 500
Lisle, Illinois 60532
bressler@ccmlawyer.com

via email at the address noted above on January 5, 2021.

By: /s/ Gretchen Helfrich
Gretchen Helfrich
Assistant Attorney General

EXHIBIT 1

Amended Complaint, *Mainer v. IDPH, et al.*, Case No. 2020-CH-13
(Ill. 4th Jud. Cir. Ct.)

**STATE OF ILLINOIS
IN THE FOURTH JUDICIAL CIRCUIT
CLAY COUNTY**

JAMES MAINER, KALI MAINER, as the)
parents and guardians of H.J.M, C.J.M,)
L.E.M., on their behalf and on behalf of all)
parents and guardians of minor children)
similarly situated in the State of Illinois.)

Plaintiffs,)

Vs.)

Case No. 2020-CH-13)

ILLINOIS DEPARTMENT OF PUBLIC)
HEALTH and DR. NGOZI EZIKE, in her)
official capacity as Director of the Illinois)
Department of Public Health, ILLINOIS)
STATE BOARD OF EDUCATION,)
DR. CARMEN I. AYALA in her official)
capacity as Director of the Illinois State)
Board of Education.)

Defendants.)

FIRST AMENDED VERIFIED COMPLAINT

Plaintiffs, JAMES MAINER and KALI MAINER, as the parents and guardians of their three minor children, H.J.M, C.J.M. and L.E.M., on their behalf, and on behalf of all parents and guardians of their minor children similarly situated in the State of Illinois, by and through their attorneys, Thomas G. DeVore, Erik D. Hyam, and the Silver Lake Group, Ltd., for their First Amended Verified Complaint for Declaratory and Injunctive Relief against Defendants, ILLINOIS DEPARTMENT OF PUBLIC HEALTH, DR. NGOZI EZIKE in her official capacity as Director of the Illinois Department of Public Health, ILLINOIS STATE BOARD OF

EDUCATION, DR. CARMEN I. AYALA in her official capacity as Director of the Illinois State Board of Education, hereby state as follows:

FACTS COMMON TO ALL COUNTS

1. Plaintiffs JAMES MAINER and KALI MAINER (the "Mainers") are husband and wife who reside in Clay County, Illinois.
2. The Mainers bring this cause of action on their own behalf, on behalf of their minor children, and on behalf of all parents and guardians and their minor children similarly situated in the State of Illinois.
3. The Mainers are the biological parents and guardians of three (3) children ages 12, 10 and 8.
4. H.J.M. is in the 7th grade in the Clay City Community Unit School District #10.
5. C.J.M. is in the 5th grade in the Clay City Community Unit School District #10.
6. L.E.M. is in the 3rd grade in the Clay City Community Unit School District #10.
7. Defendant, Dr. Ngozi Ezike ("Ezike") is the Director of the Illinois Department of Public Health ("IDPH") who is tasked with administering, overseeing, and executing all the duties and functions of the IDPH.
8. Defendant, Dr. Carmen Ayala ("Ayala") is the Director of the Illinois State Board of Education ("ISBE") who is tasked with administering, overseeing, and executing all the duties and functions of the ISBE.
9. On or about June 23, 2020, the IPDH and the ISBE issued a 63-page joint directive outlining their "guidelines" for the 2020-2021 school year. (hereinafter referred to as the "Directive") (See attached Exhibit A)
10. All public and nonpublic schools in Illinois serving prekindergarten through 12th

grade students must follow the guidelines according to the Directive. (See page 3 of Exhibit A.)

11. The Directive includes mandatory health and safety protocols for school buildings which purpose are to try and prevent the spread of COVID-19 or any other infectious disease. (See page 30 of Exhibit A.)

12. Unless excepted out for one of the narrow reasons, the Directive requires all individuals in school buildings, including all public and nonpublic schools that serve students in prekindergarten through grade 12, must wear face coverings at all times. (See page 32 of Exhibit A.)

13. According to the Directive, schools and districts must conduct temperature and symptom screenings or require self-certification and verification for all staff, students, and visitors entering school buildings. (See page 34 of Exhibit A.)

14. According to the Directive, no more than 50 individuals may be in one space at any one time inside a school building. (See page 42 of Exhibit A.)

15. On or about May 28, 2020, the IDPH issued guidance for all buildings which hold church services. (See attached Exhibit B.)

16. As it relates these assemblages, IDPH merely recommended face-coverings and limitations on group size, and makes no reference to the necessity of temperature checks.

COUNT I **DECLARATORY JUDGMENT**

17. The Mainers restate and reallege the facts and allegations contained in paragraphs 1 through 16, inclusive, as if fully restated herein.

18. The Mainers, and all parents and guardians and their minor children similarly situated in the State of Illinois, have a right to seek a declaration that IDPH and ISBE promulgated certain provisions in the Directive which are beyond their authority as well as arbitrary and

capricious.

19. The Directive states the purpose of the mandatory health and safety protocols is to prevent the spread of COVID-19 and other infectious diseases.

20. As such, mandatory face-coverings, temperature checks, and 50-person limitations in group gatherings, are being thrust upon the Plaintiffs for no other reason than the general purpose of trying to prevent the spread of an infectious disease.

21. Health regulations which merely tend to prevent the spread of an infectious disease are unlawful.

22. More importantly, the Defendants, as administrative agencies, have no authority to enact a general rule or regulation which has the force and effect of a general law.

23. Finally, the mandatory face-coverings, temperature checks, and 50-person limitations on group gatherings, are being arbitrarily and unreasonably applied to school buildings.

24. IDPH has issued similar health and safety protocols for other assemblages, yet those health and safety protocols were merely recommendations and not rules which have the force and effect of general law.

25. It is arbitrary and capricious to place such mandates on school buildings while at the same time making substantively similar requirements merely voluntary for other assemblages.

26. A justiciable controversy exists between the Plaintiffs and the Defendants concerning the mandatory rules of the Directive.

27. This Court is vested with the power to declare the rights of the parties and to provide such other and further relief as may be necessary to enforce the same.

WHEREFORE, Plaintiffs JAMES MAINER, KALI MAINER on behalf of their minor children, and on behalf of all parents and guardians and their minor children similarly situated in

the State of Illinois, respectfully pray this Honorable Court enter an order:

(a) Declare the health regulation issued in the Directive requiring Plaintiff's children to wear a face-covering inside a school building for the general purpose of trying to prevent the spread of COVID-19 or any other infectious disease is beyond Defendants authority and hence unlawful;

(b) Declare the health regulation issued in the Directive mandating Plaintiff's children to submit to a temperature check before entering inside a school building for the general purpose of trying to prevent the spread of COVID-19 or any other infectious disease is beyond Defendants authority and hence unlawful;

(c) Declare the health regulation issued in the Directive mandating Plaintiff's children to not congregate in a group of more than 50-persons inside a school building for the general purpose of trying to prevent the spread of COVID-19 or any other infectious disease is beyond Defendants authority and hence unlawful;

(d) Declare the health regulation issued in the Directive mandating Plaintiff's children to wear a face-covering inside a school building while at the same time not mandating face-coverings inside other assemblages is arbitrary and capricious and hence unlawful;

(e) Declare the health regulation issued in the Directive mandating Plaintiff's children to submit to a temperature check inside a school building while at the same time not mandating a temperature check inside other assemblages is arbitrary and capricious and hence unlawful;

(f) Declare the health regulation issued in the Directive mandating Plaintiff's children not congregate in a group of more than 50-persons inside a school building while at the same time not mandating the same inside other assemblages is arbitrary and capricious and hence unlawful;

(g) An award of costs; and

- (h) Such other relief as this Court deems to be equitable and just.

COUNT II
COMPLAINT FOR PERMANENT INJUNCTION

28. The Mainers restate and reallege the facts and allegations contained in paragraphs 1 through 27, inclusive, as if more fully restated herein.

29. The implementation of the Directive will cause irreparable damage to The Mainers, and all parents and guardians and their minor children similarly situated in the State of Illinois, as among other things, their minor children's right to an education is being infringed upon by these rules which are beyond the Defendant's authority and are otherwise arbitrary and capricious.

30. The Mainers, and all parents and guardians and their minor children similarly situated in the State of Illinois, will suffer irreparable injuries based on the implementation of the Directive because the Directive infringes on their minor children's right to an education free from unlawful, arbitrary and capricious rules.

31. The Mainers, and all parents and guardians and their minor children similarly situated in the State of Illinois, have no adequate remedy at law because their minor children's only option is to risk being deprived of their right to an education, or acquiesce to these unlawful, arbitrary and capricious rules.

32. The Mainers, and all parents and guardians of their minor children similarly situated in the State of Illinois, have shown the Directive requiring their children to wear a face-covering inside a school building for the general purpose of trying to prevent the spread of COVID-19 or any other infectious disease is unlawful, arbitrary and capricious.

33. The Mainers, and all parents and guardians and their minor children similarly situated in the State of Illinois, have shown the Directive requiring their children to submit to temperature checks inside a school building for the general purpose of trying to prevent the spread

of COVID-19 or any other infectious disease is unlawful, arbitrary and capricious.

34. The Mainers, and all parents and guardians of their minor children similarly situated in the State of Illinois, have shown the Directive requiring their children to limit the size of their congregation to less than 50 persons inside a school building for the general purpose of trying to prevent the spread of COVID-19 or any other infectious disease is unlawful, arbitrary and capricious.

35. Absent this permanent injunction, there is a sufficient probability that future conduct of the Defendants will violate the rights of The Mainers, and all parents and guardians and their minor children similarly situated in the State of Illinois.

WHEREFORE, Plaintiffs JAMES MAINER, KALI MAINER, as the parents and guardians of their three minor children, H.J.M, C.J.M. and L.E.M, and all parents and guardians and their minor children similarly situated in the State of Illinois, respectfully pray this Honorable Court enter an order in their favor and against Defendants that grants the following relief:

- (a) Find Plaintiffs, and all parents and guardians and their minor children similarly situated in the State of Illinois, have a right to insist any rulemaking of the ISBE and IDPH be within their authority as well as not arbitrary and capricious;
- (b) Find Plaintiffs, and all parents and guardians and their minor children similarly situated in the State of Illinois, are being irreparably harmed in having their minor children subjected to these rules within the Directive;
- (c) Find Plaintiffs, and all parents and guardians and their minor children similarly situated in the State of Illinois, have no adequate remedy at law to protect their minor children's rights against these unlawful rules beyond injunctive relief.
- (d) Find Plaintiffs, and all parents and guardians and their minor children similarly

situated in the State of Illinois, have succeeded in proving the Defendants mandating their children to wear a face-covering inside a school building for the general purpose of trying to prevent the spread of COVID-19 or any other infectious disease is beyond their authority as well as arbitrary and capricious.

- (e) Find Plaintiffs, and all parents and guardians and their minor children similarly situated in the State of Illinois, have succeeded in proving the Defendants mandating their children to submit to temperature checks inside a school building for the general purpose of trying to prevent the spread of COVID-19 or any other infectious disease is beyond their authority as well as arbitrary and capricious.
- (f) Find Plaintiffs, and all parents and guardians and their minor children similarly situated in the State of Illinois, have succeeded in proving the Defendants mandating their children congregate in groups of less than 50 persons inside a school building for the general purpose of trying to prevent the spread of COVID-19 or any other infectious disease is beyond their authority as well as arbitrary and capricious.
- (g) Entering a permanent injunction barring the Defendants from enforcing any or all of the aforementioned rules from this date forward against the Plaintiffs, as well as all parents and guardians and their minor children similarly situated in the State of Illinois.
- (h) An award of costs; and
- (i) Such other relief as this Court deems to be equitable and just.

Respectfully submitted,

JAMES MAINER, KALI MAINER,
as the parents and guardians of
H.J.M, C.J.M. and L.E.M. Plaintiffs.

By: /s/ Thomas G. DeVore
One of Their Attorneys

EXHIBIT 2

Complaint, *Pritzker, et al. v. Bd. of Educ. of Hutsonville, et al.*,
Case No. 2020-MR-557 (Ill. 7th Jud. Cir. Ct.)

**IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS**

GOVERNOR JB PRITZKER, in his official capacity; DR. NGOZI EZIKE, in her official capacity as Director of the Illinois Department of Public Health; and DR. CARMEN I. AYALA, in her official capacity as the State Superintendent of Education,

Plaintiffs,

v.

BOARD OF EDUCATION OF HUTSONVILLE CUSD #1; CHRISTIAN CHILD DEVELOPMENT CORPORATION, an Illinois not-for-profit corporation, doing business as FAMILIES OF FAITH CHRISTIAN ACADEMY; and PARKVIEW CHRISTIAN ACADEMY, Inc., an Illinois not-for-profit corporation,

Defendants.

Case No. 2020MR000557

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Governor JB Pritzker, in his official capacity; Dr. Ngozi Ezike, in her official capacity as Director of the Illinois Department of Public Health; and Dr. Carmen I. Ayala, in her official capacity as State Superintendent of Education (collectively, the “State”), bring this complaint for declaratory and injunctive relief against school systems in three Illinois counties (the “Schools”) that have announced their refusal to follow public health guidance that the Governor, the Illinois State Board of Education (“ISBE”), and the Illinois Department of Public Health (“IDPH”) are requiring schools to follow to allow public and nonpublic schools to resume in person instruction during the ongoing COVID-19 pandemic.

NATURE OF THE ACTION

1. COVID-19, the disease caused by the novel coronavirus, has claimed more than 7,200 lives in Illinois. More than 156,000 cases have been confirmed throughout the State. In response to this unprecedented and ongoing public health emergency, the Governor has taken a number of steps to prevent the spread of COVID-19 and protect Illinois residents, including those who work in and attend Illinois schools. These actions include issuing Executive Order 2020-05 (“EO5”) on March 13, 2020 to close preK–12 schools, and then later issuing Executive Orders 2020-40 (“EO40”) and 2020-44 (“EO44”) (collectively the “executive orders”) to allow schools to resume in-person instruction subject to the public health measures issued by IDPH and ISBE.

2. As directed in the Governor’s executive orders, IDPH and ISBE developed and issued the Transition Joint Guidance (“Guidance”) to make the reopening of Illinois schools for in-person instruction for the 2020–2021 school year as safe as possible. Exhibit 1. The Guidance includes mandatory health and safety protocols that public and nonpublic schools must implement in order to reopen, including requiring everyone over the age of two who is medically able to wear a face covering to do so at all times in a school facility.

3. Despite the ongoing health crisis caused by the COVID-19 pandemic and the public health measures contained in the Guidance as part of the effort to combat that crisis, the Schools have announced their refusal to comply with the Governor’s executive orders and the Guidance.

4. The Defendant Schools are represented by the same attorney, Thomas G. DeVore, who sent Dr. Ezike and Dr. Ayala essentially the same form letter on behalf each of the Schools (the “Letter”), contending that the Guidance is unlawful, is arbitrary and unreasonable, and was issued without legal authority. (The Letters on behalf of the Schools are attached as Group Exhibit 2.) In the Letter, the Schools announce their intention to refuse to comply with the Guidance. (*Id.*)

The Letter states that the Schools alone will determine what, if any, health and safety protocols they might choose to add to their current guidelines for the upcoming school year. (*Id.*)

5. By refusing to follow the Guidance, the Schools are also refusing to follow the Governor's applicable executive orders.

6. The Letter has no valid legal basis. The Illinois Constitution and the Illinois Emergency Management Agency Act (the "Emergency Management Act" or the "Act"), 20 ILCS 3305/1 *et seq.*, provide the Governor with broad powers, including the power to protect the State when faced with a disaster and to utilize the services of state agencies, such as IDPH and ISBE, to do so.

7. The State seeks a judicial declaration confirming the legality of the Governor's executive orders and the Guidance, and injunctive relief to require the Schools to stop refusing to comply with the executive orders and Guidance.

PARTIES

8. Governor Pritzker is an elected constitutional officer of the State of Illinois. Ill. Const. Art. V, § 1. The Illinois Constitution provides that the Governor shall have "supreme executive power, and shall be responsible for the faithful execution of the laws." Ill. Const. Art. V, § 8. Under this constitutional authority and under the powers the General Assembly granted to him under the Emergency Management Act, the Governor issued disaster proclamations and executive orders in response to the COVID-19 pandemic.

9. Dr. Ngozi Ezike is the Director of IDPH. Dr. Ezike administers, oversees, and executes all duties and functions of IDPH. 20 ILCS 5/5-20. As directed by the Governor's executive orders, IDPH jointly developed and issued the Guidance with ISBE as part of the services offered by IDPH.

10. Dr. Carmen I. Ayala is the State Superintendent of Education. Dr. Ayala administers, oversees, and executes all duties and functions of ISBE. 105 ILCS 5/1A-4. As directed by the Governor's executive orders, ISBE jointly developed and issued the Guidance with IDPH as part of the services offered by ISBE.

11. The Board of Education of the Hutsonville Community Unit School District #1 is the governing body of the Hutsonville Community Unit School District #1 (the "Hutsonville School District"), a public school district organized under the Illinois Constitution that operates pursuant to the laws of the State of Illinois. Ill. Const. Art. VII, § 8. The Hutsonville Board of Education consists of seven members duly elected pursuant to the general election laws of the State. 105 ILCS 5/10-1, 9-1. For the 2018–2019 school year, the Hutsonville School District enrolled approximately 313 students in its high school, middle school, elementary school, and preK school, while employing approximately 31 teachers and additional staff.

12. Christian Child Development Corporation, doing business as Families of Faith Christian Academy, is an Illinois not-for-profit corporation providing private education to students in daycare, pre-school, and kindergarten through high school in Channahon, Illinois.

13. Parkview Christian Academy, Inc., is an Illinois not-for-profit corporation providing private education to students in pre-school through high school in Yorkville, Illinois. Parkview Christian Academy currently has approximately 363 students enrolled from 196 families and 39 teachers.

JURISDICTION AND VENUE

14. This action is filed pursuant to section 2-701 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, which allows a party, on application to the Court, to seek a binding declaration of rights that has the force of a final judgment.

15. Venue is proper in the Circuit Court of Sangamon County, Illinois, pursuant to 735 ILCS 5/2-101 *et seq.*, because the acts giving rise to the Complaint occurred in Sangamon County. Plaintiffs developed and issued the executive orders and the Guidance from their official offices in Cook and Sangamon County. The executive orders were filed with the Secretary of State in Sangamon County. The executive orders and Guidance affect all public and nonpublic preK–12 schools in Illinois.

FACTUAL ALLEGATIONS

The COVID-19 Pandemic Ravages the World and the State of Illinois

16. COVID-19 has spread invisibly and indiscriminately throughout the world. On January 30, 2020, the World Health Organization (“WHO”) declared the global outbreak of COVID-19 to be a public health emergency of international concern.

17. On March 11, 2020, the WHO elevated COVID-19 to a pandemic.

18. As of July 15, 2020, the WHO reported more than 13 million confirmed cases of COVID-19 and more than 570,000 confirmed deaths across 216 countries or territories.

19. The United States has by far the most COVID-19 cases of any country. As of July 15, 2020, the WHO reported more than 3 million confirmed cases of COVID-19 in the United States and over 135,000 confirmed deaths.

20. There is no vaccine or cure for COVID-19. The Centers for Disease Control and Prevention (“CDC”) cautions that “[e]veryone is at risk of getting COVID-19” and “[t]he best way to protect yourself is to avoid being exposed to the virus that causes COVID-19.”

21. The CDC therefore has urged Americans to stay home as much as possible and avoid close contact with others, to practice social distancing, and to limit in-person contact as much as possible.

22. The CDC also advises individuals to wear a cloth face covering in public settings because COVID-19 can be spread through respiratory droplets when an infected person coughs, sneezes, or talks.

23. COVID-19 is spread by people who have the virus, regardless of whether an individual is exhibiting any symptoms.

24. IDPH confirmed the first death of a COVID-19 patient in Illinois on March 17, 2020. By March 30, 2020, the number of confirmed deaths from COVID-19 in Illinois had reached 99, and as of July 15, 2020, IDPH reported more than 7,200 confirmed deaths and more than 155,000 confirmed cases of COVID-19 in the State.

25. COVID-19 outbreaks may begin with just one infected person. For example, Randolph County in southwestern Illinois has one of the highest COVID-19 infection rates in the State. Public health officials traced its surge of cases to a single event in mid-March.

26. COVID-19 cases are occurring throughout the State at the same frequency as cases in Chicago. For example, as of July 3, 2020, an average of 202 cases were added outside the Chicago area compared with Chicago’s average of 217.

**The Illinois Constitution and the Emergency Management Act
Provide the Governor with Emergency Powers During Disasters**

27. The Illinois Constitution grants the Governor “supreme executive power.” Ill. Const. Art. V, § 8. This power gives the Governor constitutional authority to order immediate measures necessary to protect the public health in the event of a public health emergency like the one currently sweeping this State.

28. In addition, the General Assembly passed the Emergency Management Act to provide the Governor with the tools necessary to combat public health emergencies like COVID-19. The Act’s purpose is to ensure “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.” 20 ILCS 3305/2(a).

29. The Act provides broad emergency management powers to the Governor. Section 7 authorizes the Governor to “utilize all available resources of the State government as reasonably necessary to cope with the disaster” and to “suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance ... would in any way prevent, hinder or delay necessary action ... in coping with the disaster.” 20 ILCS 3305/7(1), (2).

30. Section 7 authorizes the Governor to “control ingress and egress to and from a disaster area, the movement of the persons within the area, and the occupancy of the premises therein” and to “[c]ontrol, restrict, and regulate ... the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services; and perform and exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population.” 20 ILCS 3305/7(8), (12).

31. Section 19 directs the Governor “to utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the State and of the political subdivisions of this State, to the maximum extent practicable, and the officers and personnel of all such departments, offices and agencies are directed, upon request, to cooperate with and extend such services and facilities to the Governor, the Director and the emergency services and disaster agencies.” 20 ILCS 3305/19.

The Governor Responds to the COVID-19 Pandemic

32. In response to the ongoing COVID-19 public health emergency, the Governor has taken a number of steps to prevent the spread of COVID-19 in Illinois and to protect those who work in and attend Illinois schools.

33. On March 9, 2020, in response to the exponential spread of COVID-19, the Governor found that a disaster existed in all 102 Illinois counties and issued a disaster proclamation pursuant to his power under the Illinois Constitution and Section 7 of the Act, 20 ILCS 3305/7. Exhibit 3, March 9, 2020 Disaster Proclamation.

34. On March 13, 2020, based on his constitutional authority as Governor of Illinois and under Sections 7(1), 7(8), and 7(12) of the Act, the Governor issued EO5, closing all Illinois preK–12 schools for educational purposes until March 30, 2020. Exhibit 4. The closure was extended by subsequent executive orders until June 27, 2020.

35. After the Governor issued EO5, the State made progress against the virus. Recognizing this progress, as well as its fragility, the Governor developed a comprehensive plan (the “plan” or “Restore Illinois”) for a careful, phased reopening of the economic, social, and educational activities of the State consistent with public health guidance. *See* Exhibit 5, Restore Illinois.

36. Restore Illinois initially divided the State into four independent health regions: Northeast Illinois, North-Central Illinois, Central Illinois, and Southern Illinois. Each of the four regions could independently move through the plan's five phases based upon certain health metrics. But the Governor has also recognized that these health metrics may require regions to return to a prior phase.

37. On June 4, 2020, the Governor issued EO40. Exhibit 6. Noting that "all four health regions have moved into Phase 3 of the Restore Illinois plan" and that "Phase 3 allows for schools to reopen and provide limited in-person instruction, in accordance with Illinois Department of Public Health (IDPH) guidance" the Governor allowed preK–12 schools to reopen following the completion of the 2019–20 school year.

38. EO40 required schools to "follow IDPH guidance during Phase 3," and to limit gatherings to 10 people and require the use of face coverings by students and staff.

39. The Governor directed this reopening to be carried out under guidance and recommendations issued by ISBE and IDPH.

40. On June 26, 2020, the Governor issued EO44, which amended EO40 to accommodate the transition to Phase 4, under which gatherings of up to 50 people are permitted. Exhibit 7.

41. EO44 provides that "Schools must follow IDPH guidance."

42. EO44 also requires schools to "[l]imit[] the number of people in one space to fifty or fewer, consistent with public health guidance [and] . . . [r]equire the use of appropriate personal protective equipment, including the use of face coverings by students, staff, and visitors who are over age two and able to medically tolerate a face covering."

43. On July 15, 2020, the Governor issued an updated mitigation plan as part of Restore Illinois. The updated plan divides the State into 11 health regions. This updated mitigation plan does not change the Guidance or executive orders applicable to preK–12 schools.

IDPH and ISBE Issue the Joint Guidance

44. As directed by the Governor in EO40 and EO44, and consistent with Section 19 of the Act allowing the Governor to utilize the services of state agencies, ISBE and IDPH collaborated to produce the Guidance for the 2020–21 school year. Exhibit 1.

45. The Guidance mandates that schools must require all individuals over the age of 2 to wear face coverings in school buildings unless they are medically unable to do so, conduct temperature and symptom screenings (or obtain self-certifications) for students, staff, and visitors, and prohibit gatherings of more than 50 people. Exhibit 1, Guidance, at 3, 32, and 34.

46. The Guidance applies to “All public and nonpublic schools in Illinois serving prekindergarten through 12th grade students.” *Id.* at 3.

47. The Guidance calls on schools and districts to “proactively prepare staff and students to prevent the spread of COVID-19 or any other infectious disease.” *Id.* at 30.

48. Implementing the Guidance requires schools and school districts to allocate staff and other resources to carry out the safety protocols required by the Guidance. The Guidance also advises that “[a]ll employees should be trained on health and safety protocols related to COVID-19 *prior to resuming in-person instruction.*” *Id.* (emphasis added). And schools and school districts will need to communicate their new practices to parents in advance of the start of school.

49. Without adequate preparation, schools, including the Defendant Schools, will not be able to implement the Guidance on day one of the new school year, and students and teachers will be at risk as a result.

50. The Schools have each sent Dr. Ezike and Dr. Ayala a letter contending that the Guidance that ISBE and IDPH issued is unlawful, is arbitrary and unreasonable, and was issued without legal authority. *See* Group Exhibit 2. The Schools have further stated that they are “declining to implement the health and safety protocols as outlined in the [G]uidance.”

51. The Schools have informed IDPH and ISBE that they alone will determine what, *if any*, additional health and safety protocols they might choose to add to their current guidelines for the upcoming year.

BASIS FOR DECLARATORY RELIEF

52. The purpose of the Act is to ensure that the “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.” 20 ILCS 3305/2 (emphasis added).

53. The Act grants the Governor broad statutory authority to respond to an emergency. 20 ILCS 3305/7. This statutory authority applies to the entire area of the declared disaster. *Id.*

54. The Act does not exempt the Schools from abiding by the Governor’s executive orders or the Guidance issued as a result of the COVID-19 pandemic.

55. Despite the Act’s clear grant of authority, the Schools are refusing to comply with the Guidance and the executive orders.

56. The State and the Schools are at an impasse over the Schools’ mistaken insistence that the Act and the Illinois Constitution do not authorize the State to require them to comply with the executive orders and the Guidance.

57. This dispute is appropriate for the entry of declaratory relief. Illinois law authorizes a court to “make binding declarations of rights . . . having the force of final judgments . . . including

the determination, at the instance of anyone interested in the controversy, of the construction of any statute.” 735 ILCS 5/2–701(a).

BASIS FOR INJUNCTIVE RELIEF

58. The Schools’ refusal to comply with the Governor’s executive orders and the Guidance will cause immediate and irreparable harm, including by undermining Plaintiffs’ ability to cohesively respond to the COVID-19 pandemic.

59. If the Schools are not enjoined from refusing to comply with the executive orders and Guidance, the result would undermine the Governor’s constitutional authority and statutory authority under the Act and ISBE’s and IDPH’s authority to assist the Governor, and would threaten the health of the students and families within the Schools, as well as every Illinoisan alike.

60. The State has no adequate remedy at law to prevent the Schools from refusing to comply with the executive orders and the Guidance.

61. The State has a likelihood of success on the merits because the Governor’s executive orders and the Guidance were issued under the Governor’s authority granted in the Illinois Constitution and the Act.

62. Based on this constitutional and statutory authority, the State has the right to the statewide unified implementation and enforcement of the Governor’s executive orders and the Guidance. The State also has a vital interest in regulating the response to COVID-19 and setting minimum public health standards.

63. The benefits of granting an injunction outweigh any possible injury the Schools might suffer as a result of the injunction. The executive orders and Guidance embody public health measures necessary to protect every person in the State and particularly students and school staff when they return to in-person instruction. An injunction would help support and protect the public

interest by allowing the State to exercise the powers granted under the Illinois Constitution and the Act to cohesively address the health concerns faced by everyone within this State during public health emergencies.

64. When a court enters a declaratory judgment, it may also grant other appropriate relief, including injunctive relief. Such injunctive relief is appropriate in this case to protect the State's unified response to COVID-19.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

- A. Declare that the Governor lawfully issued EO5, EO40, and EO44.
- B. Declare that IDPH and ISBE lawfully issued the Guidance.
- C. Declare that the Schools, their officers, employees, agents, and all persons acting in active concert with them, are not exempt from the public health measures required under the executive orders and the Guidance.
- D. Enjoin the Schools, their officers, employees, agents, and all persons acting in active concert with them, from refusing to comply with the requirements of the executive orders and the Guidance.
- E. Grant such other relief as is warranted in the circumstances.

Dated: July 16, 2020

KWAME RAOUL
Attorney General
State of Illinois
Atty. Code 99000

By: /s/ R. Douglas Rees
Deputy Attorney General, Civil Division

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Gretchen Helfrich
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Attorneys for Plaintiffs

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this Verified Complaint for Declaratory and Injunctive Relief are true and correct.

Dated: July 16, 2020

By:



Ann Spillane
General Counsel
Office of the Governor

EXHIBIT 33

August 5, 2020 Order of the Illinois Supreme Court in
Matter No. 126204



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CAROLYN TAFT GROSBOLL
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

August 05, 2020

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

Sarah Ann Hunger
Deputy Solicitor General
Office of the Illinois Attorney General
100 West Randolph Street, 12th Floor
Chicago, IL 60601

In re: Craig v. Pritzker
126204

Dear Sarah Ann Hunger:

Enclosed is a certified order entered August 05, 2020, by the Supreme Court of Illinois in the above-captioned cause.

Very truly yours,

A handwritten signature in cursive script that reads "Carolyn Taft Grosboll".

Clerk of the Supreme Court

cc: Bond County Circuit Court
Clinton County Circuit Court
Edgar County Circuit Court
Richland County Circuit Court
Sangamon County Circuit Court
Thomas Guy DeVore

State of Illinois
Supreme Court

I, Carolyn Taft Grosboll, Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files and Seal thereof do hereby certify the following to be a true copy of an order entered August 05, 2020, in a certain cause entitled:

126204)	
)	
Riley Craig, Keith Ayre, and Chris Schmulback,)	
)	
Respondents)	
)	
v.)	
)	
Governor Jay Robert Pritzker, in his official)	
capacity,)	
)	
Movant)	
)	
Kirk Allen and John Kraft,)	
)	
Respondents)	
)	
v.)	
)	
Governor Jay Robert Pritzker, in his official)	
capacity,)	
)	
Movant)	
)	
Thomas DeVore,	)	Bond County Circuit Court
	)	Clinton County Circuit Court
Respondent	)	Edgar County Circuit Court
	)	Richland County Circuit Court
v.	)	Sangamon County Circuit Court
	)	20MR32
Governor Jay Robert Pritzker, in his official	)	20MR45
capacity,	)	20MR48
	)	20MR589
Movant	)	20MR79
)	
Steve Gorazd and Angela Gorazd,)	
)	
Respondents)	
)	
v.)	
)	
Governor Jay Robert Pritzker, in his official)	
capacity,)	
)	
Movant)	
)	
Daniel English,)	
)	
Respondent)	
)	
v.)	
)	
Governor Jay Robert Pritzker, in his official)	
capacity,)	
)	
Movant)	

Filed in this office on the 27th day of July A.D. 2020.



IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of said Supreme Court, in Springfield, in said State, this 5th day of August, 2020.

Carolyn Taft Gosbell Clerk,
Supreme Court of the State of Illinois

SUPREME COURT OF ILLINOIS

Riley Craig, Keith Ayre, and Chris Schmulback,)	
)	
Respondents)	
	)	Bond County Circuit Court
v.	)	Clinton County Circuit Court
	)	Edgar County Circuit Court
Governor Jay Robert Pritzker, in his official	)	Richland County Circuit Court
capacity,	)	Sangamon County Circuit Court
	)	20MR32
Movant	)	20MR45
	)	20MR48
Kirk Allen and John Kraft,	)	20MR589
	)	20MR79
Respondents)	
)	
v.)	
)	
Governor Jay Robert Pritzker, in his official)	
capacity,)	
)	
Movant)	
)	
Thomas DeVore,)	
)	
Respondent)	
)	
v.)	
)	
Governor Jay Robert Pritzker, in his official)	
capacity,)	
)	
Movant)	
)	
Steve Gorazd and Angela Gorazd,)	
)	
Respondents)	
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v.)	
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Governor Jay Robert Pritzker, in his official)	
capacity,)	
)	
Movant)	
)	
Daniel English,)	
)	
Respondent)	
)	
v.)	
)	
Governor Jay Robert Pritzker, in his official)	
capacity,)	
)	
Movant)	

O R D E R

This cause coming to be heard on the motion of movant, Jay Robert Pritzker, due notice having been given, and the Court being fully advised in the premises;

IT IS ORDERED that the motion to transfer and consolidate pursuant to Supreme Court Rule 384 is allowed. Pursuant to Supreme Court Rule 384, Kirk Allen et al. v. Governor Jay Robert Pritzker, etc., Edgar County No. 20 MR 45, Thomas DeVore v. Governor Jay Robert Pritzker, etc., Bond County No. 20 MR 32, Steve Gorazd et al. v. Governor Jay Robert Pritzker, etc., Clinton County No. 20 MR 79, and Daniel English v. Governor Jay Robert Pritzker, etc., Richland County No. 20 MR 48, are transferred to the Circuit Court of Sangamon County and consolidated with Riley Craig et al. v. Governor Jay Robert Pritzker, etc., Sangamon County No. 20 MR 589.

Order entered by the Court.

FILED
August 05, 2020
SUPREME COURT
CLERK

EXHIBIT 4

August 18, 2020 Docket Entry in *Quinn v. Pritzker*,
Case No. 2020-MR-173 (Ill. 8th Jud. Cir. Ct.)

judici.com/courts/cases/case_history.jsp?court=IL001025J&oc=IL001025J,2020MR173,IL001025JL2020MR173P1

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Adams County, IL

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Date	Entry	Judge
Entered Under: GOVERNOR JAY ROBERT PRITZKER		
08/19/2020	Certification of Transfer to Sangamon County.	UNASSIGNED
08/18/2020	Agreed Order to Transfer filed. It is hereby ordered this matter is to be transferred to the Circuit Court for the Seventh Judicial Circuit, Sangamon County, Illinois.	SDL
08/13/2020	Affidavit of Special Process Server filed by DEVORE, THOMAS.	UNASSIGNED
08/11/2020	Notice Of Appearance filed by VERTICCHIO, THOMAS. Motion To Transfer filed by VERTICCHIO, THOMAS. Motion To Transfer - Ex. A - Supreme Court Filing To Consolidate filed by VERTICCHIO, THOMAS. Motion To Transfer - Ex. B - Ilsc Transfer Order filed by VERTICCHIO, THOMAS.	UNASSIGNED
07/28/2020	Complaint for Declaratory Judgment and Injunctive Relief filed by DEVORE, THOMAS. Summons - Issued filed by DEVORE, THOMAS.	UNASSIGNED

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EXHIBIT 5

August 11, 2020 Order of the Illinois Supreme Court in
Matter No. 126232



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CAROLYN TAFT GROSBOLL
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

August 11, 2020

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

Thomas Guy DeVore
Silver Lake Group, Ltd.
118 N. 2nd Street
Greenville, IL 62246

In re: Mainer v. Illinois Department of Public Health
126232

Dear Thomas Guy DeVore:

Enclosed is a certified order entered August 11, 2020, by the Supreme Court of Illinois in the above-captioned cause.

Very truly yours,

A handwritten signature in cursive script that reads "Carolyn Taft Grosboll".

Clerk of the Supreme Court

cc: Circuit Court of Sangamon County
Clay County Circuit Court
Sarah Ann Hunger
Thomas John Verticchio

State of Illinois Supreme Court

I, Carolyn Taft Grosboll, Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files and Seal thereof do hereby certify the following to be a true copy of an order entered August 11, 2020, in a certain cause entitled:

126232

James Mainer and Kali Mainer, as the parents
and guardians of H.J.M., C.J.M., and L.E.M., on
their behalf and on behalf of all parents and
guardians of minor children similarly situated in
the State of Illinois,

Movants

v.

Illinois Department of Public Health, Dr. Ngozi
Ezike, in her official capacity as Director of the
Illinois Department of Public Health, Illinois
State Board of Education, and Dr. Carmen I.
Ayala, in her official capacity as Director of the
Illinois State Board of Education,

Respondents

Governor J.B. Pritzker, in his official capacity,
Dr. Ngozi Ezike, in her official capacity as
Director of the Illinois Department of Public
Health, and Dr. Carmen I. Ayala, in her official
capacity as the State Superintendent of
Education,

Respondents

v.

Board of Education of Hutsonville CUSD #1,
Christian Child Development Corporation, an
Illinois not-for-profit corporation, doing business
as Families of Faith Christian Academy, and
Parkview Christian Academy, Inc., an Illinois
not-for-profit corporation,

Movants

Clay County Circuit Court
Sangamon County Circuit Court
20CH13
20MR557

Filed in this office on the 31st day of July A.D. 2020.



*IN TESTIMONY WHEREOF, I have set my
hand and affixed the seal of said
Supreme Court, in Springfield, in said
State, this 11th day of August, 2020.*

Carolyn Taft Grosboll Clerk,
Supreme Court of the State of Illinois

SUPREME COURT OF ILLINOIS

James Mainer and Kali Mainer, as the parents and guardians of H.J.M., C.J.M., and L.E.M., on their behalf and on behalf of all parents and guardians of minor children similarly situated in the State of Illinois,)	
)	
)	
	)	Clay County Circuit Court
	)	Sangamon County Circuit Court
	)	20CH13
Movants	)	20MR557
)	
v.)	
)	
Illinois Department of Public Health, Dr. Ngozi Ezike, in her official capacity as Director of the Illinois Department of Public Health, Illinois State Board of Education, and Dr. Carmen I. Ayala, in her official capacity as Director of the Illinois State Board of Education,)	
)	
)	
Respondents)	
)	
Governor J.B. Pritzker, in his official capacity, Dr. Ngozi Ezike, in her official capacity as Director of the Illinois Department of Public Health, and Dr. Carmen I. Ayala, in her official capacity as the State Superintendent of Education,)	
)	
)	
Respondents)	
)	
v.)	
)	
Board of Education of Hutsonville CUSD #1, Christian Child Development Corporation, an Illinois not-for-profit corporation, doing business as Families of Faith Christian Academy, and Parkview Christian Academy, Inc., an Illinois not-for-profit corporation,)	
)	
)	
Movants)	

ORDER

This cause coming to be heard on the motion of movants, Board of Education of Hutsonville CUSD#1 et al., etc., an objection having been filed, and the Court being fully advised in the premises;

IT IS ORDERED that the motion to transfer and consolidate pursuant to Supreme Court Rule 384 is allowed in part. Pursuant to Supreme Court Rule 384, James Mainer et al., etc. v. Illinois Department of Public Health et al., etc., Clay County No. 20 CH 13, is transferred to the Circuit Court of Sangamon County and consolidated with Governor J.B. Pritzker, etc., et al. v. Board of Education of Hutsonville CUSD #1 et al., etc., Sangamon County No. 20 MR 557.

Order entered by the Court.

FILED
August 11, 2020
SUPREME COURT
CLERK

EXHIBIT 6

August 11, 2020 Order of the Illinois Supreme Court in
Matter No. 126261



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CAROLYN TAFT GROSBOLL
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

August 11, 2020

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

Sarah Ann Hunger
Deputy Solicitor General
Office of the Illinois Attorney General
100 West Randolph Street, 12th Floor
Chicago, IL 60601

In re: Pritzker v. McHaney
126261

Dear Sarah Ann Hunger:

Enclosed is a certified order entered August 11, 2020, by the Supreme Court of Illinois in the above-captioned cause.

Very truly yours,

A handwritten signature in black ink that reads "Carolyn Taft Grosboll".

Clerk of the Supreme Court

cc: Clay County Circuit Court
Hon. Michael D. McHaney
Nadine Jean Wichern
Sangamon County Circuit Court
Thomas Guy DeVore

State of Illinois Supreme Court

I, Carolyn Taft Grosboll, Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files and Seal thereof do hereby certify the following to be a true copy of an order entered August 11, 2020, in a certain cause entitled:

126261)	
)	
Governor Jay Robert Pritzker, in his)	
official capacity,)	
)	
Movant)	
)	
v.	)	Motion for Supervisory Order
	)	Clay County Circuit Court
Hon. Michael D. McHaney, Judge of the	)	20CH6
Fourth Judicial Circuit,)	
)	
Respondent)	
)	
Darren Bailey)	

Filed in this office on the 10th day of August A.D. 2020.



IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of said Supreme Court, in Springfield, in said State, this 11th day of August, 2020.

Carolyn Taft Grosboll Clerk,
Supreme Court of the State of Illinois

SUPREME COURT OF ILLINOIS

Governor Jay Robert Pritzker, in his)	
official capacity,)	
)	
Movant	)	Motion for Supervisory Order
	)	Clay County Circuit Court
v.	)	20CH6
)	
Hon. Michael D. McHaney, Judge of the)	
Fourth Judicial Circuit,)	
)	
Respondent)	
)	
Darren Bailey)	
)	
)	

ORDER

This cause coming to be heard on the motion of movant, Jay Robert Pritzker, due notice having been given, and the Court being fully advised in the premises;

IT IS ORDERED that the emergency motion for supervisory order is denied. On the Court's own motion, pursuant to Supreme Court Rule 384, Darren Bailey v. Governor Jay Robert Pritzker, in his official capacity, Clay County No. 20 CH 6, is transferred to the Circuit Court of Sangamon County and consolidated with Riley Craig et al. v. Governor Jay Robert Pritzker, etc., Sangamon County No. 20 MR 589.

Order entered by the Court.

FILED
August 11, 2020
SUPREME COURT
CLERK

EXHIBIT 77

September 9, 2020 Order of the Illinois Supreme Court in
Matter No. 126204



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CAROLYN TAFT GROSBOLL
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

September 09, 2020

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

Richard Scott Huszagh
Office of the Illinois Attorney General
100 West Randolph Street, 12th Floor
Chicago, IL 60601

In re: Craig v. Pritzker
126204

Dear Richard Scott Huszagh:

Enclosed is a certified order entered September 09, 2020, by the Supreme Court of Illinois in the above-captioned cause.

Very truly yours,

A handwritten signature in cursive script that reads "Carolyn Taft Grosboll".

Clerk of the Supreme Court

cc: Bond County Circuit Court
Clinton County Circuit Court
Edgar County Circuit Court
Richland County Circuit Court
Sangamon County Circuit Court
Sarah Ann Hunger
Thomas Guy DeVore

State of Illinois Supreme Court

I, Carolyn Taft Grosboll, Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files and Seal thereof do hereby certify the following to be a true copy of an order entered September 09, 2020, in a certain cause entitled:

126204)	
)	
Riley Craig, Keith Ayre, and Chris)	
Schmulback,)	
)	
Respondents)	
)	
v.)	
)	
Governor Jay Robert Pritzker, in his)	
official capacity,)	
)	
Movant)	
)	
Kirk Allen and John Kraft,)	
)	
Respondents)	
)	
v.	)	Bond County Circuit Court
	)	Clinton County Circuit Court
Governor Jay Robert Pritzker, in his	)	Edgar County Circuit Court
official capacity,	)	Richland County Circuit Court
	)	Sangamon County Circuit Court
Movant	)	20MR32
	)	20MR45
Thomas DeVore,	)	20MR48
	)	20MR589
Respondent	)	20MR79
)	
v.)	
)	
Governor Jay Robert Pritzker, in his)	
official capacity,)	
)	
Movant)	
)	
Steve Gorazd and Angela Gorazd,)	
)	
Respondents)	
)	
v.)	
)	
Governor Jay Robert Pritzker, in his)	
official capacity,)	

Movant
Daniel English,
Respondent
v.
Governor Jay Robert Pritzker, in his
official capacity,
Movant

)
)
)
)
)
)
)
)
)
)
)
)

Filed in this office on the 27th day of July A.D. 2020.



*IN TESTIMONY WHEREOF, I have set my
hand and affixed the seal of said
Supreme Court, in Springfield, in said
State, this 9th day of September, 2020.*

Carolyn Taft Gussell Clerk,
Supreme Court of the State of Illinois

Respondent)
)
v.)
)
Governor Jay Robert Pritzker, in his official capacity,)
)
Movant)

ORDER

This cause coming to be heard on the motion of movants, due notice having been given, and the Court being fully advised in the premises;

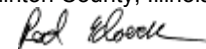
IT IS ORDERED that the motion for clarification is allowed. This court's order of August 5, 2020, transferring cases from Edgar, Bond, Clinton, and Richland Counties to Sangamon County to be consolidated with Sangamon County No. 20 MR 589, is hereby corrected, nunc pro tunc, to specify that these cases and the cases that were transferred to and consolidated in Sangamon County in case Nos. 126232 and 126261, shall be heard by the same judge, Judge Grischow, who was assigned to preside over Riley Craig et al. v. Governor Jay Robert Pritzker, etc., Sangamon County No. 20 MR 589, and Governor J.B. Pritzker, etc., et al. v. Board of Education of Hutsonville CUSD #1 et al., etc., Sangamon County No. 20 MR 557.

Order entered by the Court.

FILED
September 09, 2020
SUPREME COURT
CLERK

EXHIBIT 8

Complaint, *RAD Gaming, Inc., et al., v. Governor Jay Robert Pritzker, et al.*,
No. 2020 MR 109 (Ill. 4th Jud. Cir.)



**IN THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
CLINTON COUNTY, ILLINOIS**

RAD GAMING, INC.,
an Illinois corporation, and on behalf of
similarly-situated bars, restaurants, and
establishments that provide beverage and food
service within Region 4 in the
State of Illinois,

Plaintiffs,

v.

JAY ROBERT PRITZKER,
Governor of the State of Illinois,

NGOZI O. EZIKE, M.D.,
Director of Illinois Department of Public Health,

DR. BRIAN KLOSTERMANN,
Chairman of Clinton County Board of Health,

DR. THOMAS DAWDY,
President of Bond County Board of Health,

JOHN WAGNER,
Administrator for Monroe County Health
Department,

DAVE HOLDER,
President of Randolph County Board of Health,

KELLY WOOD, M.D.,
President of St. Clair County Board of Health,

ELIZABETH LEHDE, R.N., B.S.N.,
Administrator for Washington County Health
Department,

and

TONI CORONA,
Madison County Public Health Director,

Defendants.

2020MR109

Case No. 20-MR-_____

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

NOW COMES Plaintiff RAD Gaming, Inc., on its own behalf, and on behalf of all other similarly-situated bars, restaurants, and establishments that provide beverage and food service for patrons within the Illinois COVID-19 Region 4 (hereinafter “the affected establishments”), by and through their undersigned attorneys, and state their complaint for declaratory judgment and permanent injunction as follows.

PARTIES

1. RAD Gaming, Inc., is an Illinois corporation duly incorporated under the laws of the State of Illinois on March 6, 2019 and operating establishments in the cities of Breese, Illinois in Clinton County and Pocahontas, Illinois in Bond County.
2. Jay Robert Pritzker is the duly elected Governor of the State of Illinois.
3. Ngozi Ezike is the Director of the Illinois Department of Public Health.
4. Klostermann, Dawdy, Wagner, Holder, Wood, Lehde, and Corona are individuals acting as the highest executive authority within their respective county health departments for those counties in Illinois COVID Region 4.

BACKGROUND

5. The Governor of the State of Illinois is the highest elected executive office of the state and, *inter alia*, may issue executive orders in his official capacity.
6. The Illinois Department of Public Health (hereinafter “IDPH”) is an agency of the executive office of Governor whose mission is to “protect the health and wellness of the people of Illinois through the prevention, health promotion, regulation, and the control of disease and injury.”

7. County health departments are tasked with implementing directives and policies formulated by IDPH and enforcing the same and, as necessary, targeting localized public health issues that escape the overarching policies enacted by the state agency.
8. On March 9, 2020, Governor Jay Robert Pritzker (hereinafter, “Governor”) issued a “Gubernatorial Disaster Proclamation” in which he declared each of the 102 counties in the State of Illinois to be a disaster area pursuant to the Illinois Emergency Management Agency Act (hereinafter “IEMAA”), 20 ILCS 3305/1 *et seq.*
9. Section 7 of The IEMAA provides the Governor with certain enumerated emergency powers to take executive action to combat the disaster. By the terms of the IEMAA, the Governor’s authority under a disaster proclamation expires 30 days following the declaration of a disaster. *See* 20 ILCS 3305/7.
10. Ostensibly pursuant to the authority granted to him for 30 days following a declaration of disaster, the Governor issued certain executive orders, including Executive Order 2020-07.¹
11. EO 2020-07 required as of March 16, 2020 that “all businesses in the State of Illinois that offer food or beverages for on-premises consumption—including restaurants, bars, grocery stores, and food halls—must suspend service and may not permit on-premises consumption.”
12. Prior to the expiration of 30 days following the initial Gubernatorial Disaster Proclamation, the Governor issued a second Disaster Proclamation on April 1, 2020²

¹ All executive orders shall be hereinafter referred to as “EO 2020-__”).

² By its own terms and consistent with the IEMAA, the initial Disaster Proclamation included a provision that made it valid for 30 days after issuance. This means that the initial Disaster Proclamation was valid through and until April 8, 2020. However, this does not serve to validate an additional Disaster Proclamation entered prior to the expiration of the initial proclamation pursuant to the express limits found in 20 ILCS 3305/7.

and again invoked the authority of the IEMAA in an effort to extend the disaster declaration another 30 days and to extend the EO's, including EO 2020-07, an additional 30 days.

13. Upon the expiration of the second Disaster Proclamation, the Governor issued a third Disaster Proclamation on April 30, 2020 and again invoked the authority of the IEMAA in an effort to extend the disaster declaration another 30 days and to extend the EO's, including EO 2020-07, an additional 30 days.
14. It was not until May 29, 2020, when the Governor issued EO 2020-38, that restaurants such as Plaintiff's were allowed to resume on-premises dining but only "as permitted by [Illinois Department of Commerce and Economic Opportunity] guidance."
15. Plaintiff reopened indoor dining operations on that same day.
16. On August 18, 2020, the Governor issued EO 2020-51, purporting to again restrict the business operations of restaurants and bars such as Plaintiff's.
17. The Governor also issued EO 2020-54 on September 2, 2020, again purporting to restrict the business operations of restaurants and bars such as Plaintiff's, and all similarly-situated bars and restaurants in Region 4, by making their business premises off limits to the public.
18. Eventually these restrictions were rescinded by EO 2020-58.
19. Once again, the Governor via EO 2020-63, issued on October 27, 2020, purports to restrict Plaintiff's, and other similarly-situated restaurant and bar operations in Region 4, in a manner identical to EO 2020-51 and EO 2020-54 by, *inter alia*, making their business premises off limits to the public.

20. All such disaster proclamations and executive orders are a matter of public record for which this Court can take judicial notice.

21. As an enforcement mechanism to the EO's, the Governor has directed the Illinois State Police to issue citations to businesses found to be in violation of the EO's and has publicly threatened further citations for violations of EO 2020-63.³ He has also threatened revocation of establishments' liquor and gambling licenses.⁴

CLASS DEFINITION

22. Plaintiff seeks to represent a class of businesses in Region 4 whose operations have been impacted or shuttered by the Governor's EO's, notably bars and restaurants as those terms are used in EO 2020-63 and other establishments that provide beverage and food service to patrons that would be forced to cease those operations as part of other services they offer.

23. Because the proposed class includes all restaurants, bars, and other establishments that provide beverage and food service to patrons in Region 4 who have been forced to close or reduce operations, the number of putative class plaintiffs is so numerous that joinder of all members is impracticable.

24. Whether the EO's are legally valid is a question common to all putative class Plaintiffs.

25. This common question controls the outcome of this matter and, therefore, predominates over any questions affecting only individual establishments.

26. The representative party is a restaurant and bar as contemplated by Section 1.a in EO 2020-63 operating in Clinton County, Illinois and is a part of Region 4.

³ See <https://www.chicagotribune.com/news/breaking/ct-illinois-restaurants-defy-covid-closure-20201022-z62xrpplebgmpd3rl1nl5rfeci-story.html>, last visited October 27, 2020.

⁴ See <https://www.chicagotribune.com/coronavirus/ct-coronavirus-illinois-surge-20201022-udmvef3gkfe45gouxznyzaougi-story.html>, last visited October 27, 2020.

27. Its operations have been impacted by the Governor's issuance of EO's and stand to be further threatened and impacted by EO 2020-63.
28. Plaintiff has retained qualified counsel to pursue its rights under the Illinois Constitution and the laws of this State.
29. As such, the representative plaintiff will fairly and adequately protect the interests of the class.
30. The class action is an appropriate method for the fair and efficient adjudication of the controversy, as the outcome will be controlled by a central legal question common to all putative class members.

COUNT I

DECLARATORY JUDGMENT

**IEMAA DOES NOT GRANT AUTHORITY TO ISSUE EXECUTIVE ORDERS
BEYOND 30 DAYS AFTER DISASTER DECLARATION FOR SAME DISASTER**

31. Plaintiff, on its own behalf, and on behalf of all similarly-situated affected establishments, incorporates the allegations set forth in paragraphs 1-30.
32. Upon the initial Disaster Proclamation, the Governor shall have and may exercise for a period not to exceed 30 days certain emergency powers. *See* 20 ILCS 3305/7.
33. The Governor by construct of a fiction has been wielding emergency powers under Section 7 of the IEMAA since March 9, 2020.
34. The Governor has issued serial proclamations from March 9, 2020 through and including November 15, 2020.
35. Each time he issues a new proclamation, he contemporaneously issues new executive order(s) ostensibly under the emergency powers of section 7 of the IEMAA.

36. Notwithstanding there is no 30-day requirement under the IEMAA as to disaster proclamations, Pritzker has included arbitrary 30-day deadlines in all Disaster Proclamations.
37. In each and every Disaster Proclamation, the Governor refers to the same COVID-19 virus as the genesis of his proclaiming a disaster.
38. Upon information and belief, the Governor is the first one of this state to issue serial proclamations, back-to-back-to-back-to-back-to-back-to-back-to-back-to-back-to-back, for the purpose of engaging the 30-day emergency powers to control, *inter alia*, the property rights of business owners into perpetuity.
39. With the chronic utilization of these emergency powers, the Governor has taken unilateral control over the success and failure of every business in the State.
40. That is a precarious proposition given each serial proclamation is for the exact same occurrence with gave rise to the initial proclamation.
41. An actual controversy exists between the parties in regard to the authority of the Governor to issue serial proclamations for the same disaster for the purpose of continuing to exercise emergency powers in violation of the 30-day limitation in Section 7 of the IEMAA.
42. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

WHEREFORE, Plaintiff, on its own behalf, and on behalf of all similarly-situated bars and restaurants in Region 4, respectfully requests that this court enter an Order:

- A) Declaring the Governor issued the second and all subsequent Disaster Proclamations for the same COVID-19 virus which gave rise to the issuance of the initial Disaster Proclamation on March 9, 2020;
- B) Declaring that the 30 days of emergency powers provided under Section 7 of the IEMAA lapsed on April 8, 2020;
- C) Declaring that the second and all subsequent Disaster Proclamations did not reset the 30-day emergency provisions under Section 7 of the IEMAA;
- D) Declaring EO 2020-63 finding any authority under the emergency powers of Section 7 of the IEMAA void *ab initio*;
- E) Awarding Plaintiff its costs incurred in this matter as may be allowed by law;
- F) That the Court grant such other and further relief as is just and proper.

COUNT II
DECLARATORY JUDGMENT
IEMAA DOES NOT GRANT THE GOVERNOR THE AUTHORITY TO
MAKE A BUSINESS PREMISES OFF LIMITS TO THE PUBLIC

- 43. Plaintiff restates paragraphs 1-42 as if more fully stated herein.
- 44. In order to close a business, the Governor must have acted under the Illinois constitutional powers vested in him as Governor, or under the powers delegated to him under the IEMAA by the legislative branch.
- 45. Nowhere in EO 2020-63 does the Governor identify what Illinois constitutional power is vested in him to seize control of any business and order the premises closed.
- 46. As Governor, he is the supreme executive of the State of Illinois.
- 47. In that role, he is charged with the faithful execution of the laws of the State and not the making of laws.

48. Seizing control of a business premises and ordering it restricted or closed is a clear utilization of the police powers of the State.
49. Police powers are vested in the sound discretion of the legislative branch of government.
50. As such, the Governor must find authority to forcibly restrict or close any business premises under the cited sections of the IEMAA.
51. The power would have been delegated to him by the legislative branch, and if he has none, any order restricting or closing any business premises would be unlawful and void.
52. Even under the most strained interpretation of the cited sections of the IEMAA, nowhere can it be found where the legislative branch delegated any power to the Governor to restrict or make private businesses premises off limits to the public.
53. EO 2020-63 states that it supplements EO 2020-43, which in turns states that it does not intend to alter or modify any existing State, County, or local authority over ordering business closures.
54. The Plaintiff does not dispute that the Illinois Department of Public Health has the authority to forcibly close a business premises upon the owner's consent or upon receiving an order from a court of competent jurisdiction if circumstances give rise to a public health risk. *See* 20 ILCS 2305/2(c) (20 ILCS 2305/1.1 *et seq.*, known as the Illinois Department of Public Health Act, is hereinafter referred to as "IDPHA").
55. The legislative branch in its sound discretion placed the "supreme authority" over such matters with the IDPH pursuant to the IDPHA.

56. This authority wielded by IDPH is to be enforced by the various county boards of health consistent with state law.

57. Plaintiff, on its own behalf, and on behalf of all similarly-situated affected establishments in Region 4, has a right to insist that the Governor exceeded his authority under the IEMAA by ordering its business premises off limits to the public.

58. An actual controversy exists between the parties in regard to the authority of the Governor to enter and enforce those provisions of EO 2020-63 which provide for the restriction or closure of businesses.

59. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

WHEREFORE Plaintiff, on its own behalf, and on behalf of all similarly-situated affected establishments in Region 4, respectfully requests that the Court enter an order:

- A. Declaring the Governor has no constitutional authority as Governor to forcibly restrict or close the stated business premises in EO 2020-63;
- B. Declaring that none of the cited provisions of the IEMAA in EO 2020-63 delegated to the Governor any authority to forcibly restrict or close a business premises;
- C. Declaring that the proper authority to forcibly close a business due to any public health risk has been expressly delegated to the IDPH under the IDPHA;
- D. Awarding Plaintiff its costs incurred in this matter as may be allowed by law; and
- E. That the Court grant such other and further relief as is just and proper.

COUNT III

DECLARATORY JUDGMENT

EO 2020-63 IS VOID IN THAT IT VIOLATES AN EXISTING ORDER FROM A COURT OF COMPETENT JURISDICTION FROM THE 4TH JUDICIAL CIRCUIT

60. Plaintiff restates paragraphs 1-59 as if more fully stated herein.
61. Prior to the instant proceedings, Darren Bailey, a citizen and resident of the State of Illinois and a member of the Illinois House of Representatives, sued as a private person the Governor in his official capacity.
62. That case is numbered 20-CH-06 and originated in Clay County, IL.
63. Among other claims made in Mr. Bailey's suit are two that are identical to those complained of here, namely: (COUNT 1) the Governor's authority to issue executive orders pursuant to the IEMAA expired on April 8, 2020, thirty days after issuance of the initial Disaster Proclamation; and (COUNT 2) the Governor has no authority under IEMAA to restrict or close a business premises due to a public health risk as that authority has been expressly delegated to IDPH under the IDPHA.
64. On July 2, 2020, the Circuit Court for the Fourth Judicial Circuit in Clay County, Judge Michael McHaney sitting, issued an order granting Mr. Bailey's request for summary judgment on the substantive relief requested in COUNT 1 and COUNT 2 above.
65. This Court can take judicial notice of Judge McHaney's ruling.
66. Judge McHaney's order entered on July 2, 2020, has not been overturned and remains in full force and effect as of the date of this complaint.
67. The result is that, pursuant to Judge McHaney's order, the Governor has no authority to issue EO 2020-63 and the EO is void *ab initio*.
68. The further result is that, pursuant to Judge McHaney's order, the Governor has no authority to issue executive orders to make a business premises off limits to the public as that authority has been specifically delegated to the IDPH.

69. Plaintiff has a right to insist the Governor issue executive orders only as authorized by law.

70. An actual controversy exists between the parties in regard to the authority of the Governor to continue issuing executive orders such as EO 2020-63 after a court of law has ruled he has no such authority.

71. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

WHEREFORE, Plaintiff, on its own behalf, and on behalf of all similarly-situated affected establishments in Region 4, respectfully requests that the Court enter an order:

- A) Declaring that EO 2020-63 is void *ab initio* as it violates the order of the Honorable Judge McHaney from the Clay County, Illinois Court issued on July 2, 2020.
- B) Awarding Plaintiff its costs incurred in this matter as may be allowed by law; and
- C) That the Court grant such other and further relief as is just and proper.

COUNT IV
DECLARATORY JUDGMENT
EO 2020-63 VIOLATES SECTION 2 OF THE ILLINOIS CONSTITUTION

72. Plaintiff restates paragraphs 1-71 as if more fully stated herein.

73. Section 2 of the Constitution of the State of Illinois states, “No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.”

74. The Governor has asserted that he has valid legal authority to order a business to be unilaterally made off limits to the public as directed in EO 2020-63, pursuant to the powers granted to him in the IEMAA.

75. Although the Plaintiff disagrees with the Governor's interpretation of the IEMAA, even taking the Governor's assertion as correct, his interpretation of the authority granted him under the IEMAA would be tantamount to a taking of Plaintiff's property without due process of law.
76. EO 2020-63 affords Plaintiff no notice, nor does it offer a right to be heard in order to defend against the taking of its property.
77. Also, EO 2020-63 makes Plaintiff's business premises off limits to the public while allowing the public to continue to make entry into substantively all other types of business premises in Region 4.
78. There is no rational basis by which to distinguish Plaintiff's business premises with all other types of business premises within Region 4.
79. It is especially difficult to make a rational distinction of the Governor's order when a bar or restaurant also serves as a gaming venue. In that circumstance, the Plaintiff may open their business premises for video gaming purposes but not for the consumption of food or beverage.
80. Such a distinction is arbitrary and capricious and defies any sense of sound logic. Therefore, EO 2020-63 violates Plaintiff's right to the equal protection of the laws.
81. Plaintiff has a right to insist the Governor not issue executive orders which violate the Illinois Constitution.
82. An actual controversy exists between the parties in regard to EO 2020-63 violating the Illinois Constitution.
83. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

WHEREFORE, Plaintiff, on its own behalf, and on behalf of all similarly-situated affected establishments in Region 4, respectfully requests that the Court enter an order:

- A) Declaring that any interpretation of the IEMAA which allows for businesses premises to be made off limits to the public without providing any due process for the business owner to object would render the statute void for violating the Illinois Constitution;
- B) Declaring EO 2020-63 invalid to the extent it violates the due process clause of the Illinois Constitution.
- C) Declaring EO 2020-63 invalid to the extent it also violates the equal protection clause of the Illinois Constitution.
- D) Awarding Plaintiff its costs incurred in this matter as may be allowed by law; and
- E) That the Court grant such other and further relief as is just and proper.

COUNT V
COMPLAINT FOR INJUNCTIVE RELIEF

84. Plaintiff, and all similarly-situated affected establishments in Region 4, restate paragraphs 1-83 as if more fully stated herein.

85. Plaintiff, and all similarly-situated affected establishments in Region 4, have a protectable interest in not having their businesses be forcibly closed due to executive action which is not allowed by Illinois law and is otherwise violative of the Illinois Constitution.

86. Plaintiff, and all similarly-situated affected establishments in Region 4, are being irreparably harmed each and every day in which they continue to be subjected to the Governor's *ultra vires* executive order.

87. Plaintiff, and all similarly-situated bars and restaurants in Region 4, have no adequate remedy at law to prohibit the Governor from enforcing the executive orders against them as he has threatened, absent an injunction from this Court ordering the same.
88. Monetary damages are not sufficient compensation should the Plaintiff's business premises be closed for an indeterminate time as those transgressions are of a continuing nature which may cause harm to its business which monetary damages cannot compensate.
89. Plaintiff, and all similarly-situated affected establishments in Region 4, has shown the IEMAA does not grant the Governor authority to issue executive orders beyond 30 days from March 9, 2020 for the same disaster.
90. Plaintiff, and all similarly-situated bars and restaurants in Region 4, have shown the IEMAA does not grant the Governor authority to make a business premises off limits to the public as the same has been specifically delegated to the IDPH.
91. Plaintiff, and all similarly-situated bars and restaurants in Region 4, have shown EO 2020-63 is void in that it violates an existing court order from within the 4th judicial circuit.
92. Plaintiff, and all similarly-situated bars and restaurants in Region 4, have shown EO 2020-63 is void in that it violates Section 2 of the Illinois Constitution.

WHEREFORE, Plaintiff, on its own behalf and on behalf of all other similarly-situated affected establishments in Region 4 of the State of Illinois, respectfully prays this Honorable Court enter an order in its favor and against all Defendants that grants the following relief:

- A) Find Plaintiff, and all other similarly-situated affected establishments in Region 4 of the State of Illinois, have a right to insist the Governor does not have authority to issue

executive orders beyond 30 days from March 9, 2020 for the same disaster;

- B) Find Plaintiff, and all other similarly-situated affected establishments in Region 4 of the State of Illinois, have a right to insist the Governor does not have authority to make a business premises off limits to the public as the same has been specifically delegated to the IDPH;
- C) Find Plaintiff, and all other similarly-situated affected establishments in Region 4 of the State of Illinois, have a right to insist EO 2020-63 is void in that it violates an existing court order from within the 4th judicial circuit;
- D) Find Plaintiff, and all other similarly-situated affected establishments in Region 4 of the State of Illinois, have a right to insist EO 2020-63 is void in that it violates Section 2 of the Illinois Constitution;
- E) Find Plaintiff, and all other similarly-situated affected establishments in Region 4 of the State of Illinois, are being irreparably harmed while they are being subjected to the enforcement of EO 2020-63;
- F) Find Plaintiff, and all other similarly-situated affected establishments in Region 4 of the State of Illinois, have no adequate remedy at law to protect themselves beyond injunctive relief.
- G) Enter a permanent injunction barring all Defendants, or anyone under their control, from enforcing any or all of EO 2020-63 against them from this date forward;
- H) An award of costs; and
- I) Such other relief as this Court deems to be equitable and just.

Respectfully submitted,

By: /s/ Thomas Devore
Thomas G. DeVore
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118 N. 2nd St.
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tom@silverlakelaw.com

VERIFICATION

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct except as to matters therein stated to be on information and belief, if any, and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

Date: October 28, 2020

By: /s/ Ashley Drieymeyer
RAD GAMING, INC.
Authorized Representative

EXHIBIT 9

Complaint, *Orphan Smokehouse, LLC, et al.*, v. Governor
Jay Robert Pritzker, et al.,
No. 2020 MR 140 (Ill. 4th Jud. Cir.)

IN THE CIRCUIT COURT
 FOURTH JUDICIAL CIRCUIT
 MARION COUNTY, ILLINOIS

ORPHAN SMOKEHOUSE, LLC.,
 an Illinois corporation, and on behalf of
 similarly-situated bars, restaurants, and
 establishments that provide beverage and food
 service within Region 5 in the
 State of Illinois,

Plaintiffs,

v.

JAY ROBERT PRITZKER,
 Governor of the State of Illinois,

NGOZI O. EZIKE, M.D.,
 Director of Illinois Department of Public Health,

RHONDA RAY,
 Executive Director of the Alexander, Johnson,
 Massac, Hardin, Pope, Union and Pulaski County
 Health Departments,

BELINDA MOORE,
 Administrator for Edwards County Health Office,

KEVIN KAYTOR,
 Administrator for Franklin-Williamson Bi-County
 Health Department,

JAMES BYRD,
 Administrator for Egyptian Health Department
 Serving Gallatin, Saline, and White Counties,

CLARK GRIFFITH,
 Administrator for Hamilton and Wayne County
 Health Departments,

BART HAGSTON,
 Administrator for Jackson County Health
 Department,

AMY HARRISON,
 Administrator for Jefferson County Health

2020MR140

Case No. 20-MR-_____

Department,)
)
 MELISSA MALLOW,)
 Administrator for Marion County Health)
 Department,)
)
 BARB TAYLOR,)
 Administrator for Perry County Health Department,)
)
 and)
)
 JUDY WISSEL,)
 Administrator for Wabash County Health)
 Department,)
)
 Defendants.)

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

NOW COMES Plaintiff, Orphan Smokehouse, LLC, on its own behalf, and on behalf of all other similarly-situated bars, restaurants, and establishments that provide beverage and food service for patrons within the Illinois COVID-19 Region 5 (hereinafter “the affected establishments”), by and through their undersigned attorneys, and state their complaint for declaratory judgment and permanent injunction as follows.

PARTIES

1. Orphan Smokehouse, LLC, is an Illinois limited liability company duly incorporated under the laws of the State of Illinois on April 28, 2018 and operating an establishment in the city of Centralia, Illinois in Marion County.
2. Jay Robert Pritzker is the duly elected Governor of the State of Illinois.
3. Ngozi Ezike is the Director of the Illinois Department of Public Health.

4. Ray, Moore, Kaytor, Byrd, Griffith, Hagston, Harrison, Mallow, Taylor and Wissel are individuals acting as the highest executive authority within their respective county health departments for those counties in Illinois COVID Region 5.

BACKGROUND

5. The Governor of the State of Illinois is the highest elected executive office of the state and, *inter alia*, may issue executive orders in his official capacity.
6. The Illinois Department of Public Health (hereinafter “IDPH”) is an agency of the executive office of Governor whose mission is to “protect the health and wellness of the people of Illinois through the prevention, health promotion, regulation, and the control of disease and injury.”
7. County health departments are tasked with implementing directives and policies formulated by IDPH and enforcing the same and, as necessary, targeting localized public health issues that escape the overarching policies enacted by the state agency.
8. On March 9, 2020, Governor Jay Robert Pritzker (hereinafter, “Governor”) issued a “Gubernatorial Disaster Proclamation” in which he declared each of the 102 counties in the State of Illinois to be a disaster area pursuant to the Illinois Emergency Management Agency Act (hereinafter “IEMAA”), 20 ILCS 3305/1 *et seq.*
9. Section 7 of The IEMAA provides the Governor with certain enumerated emergency powers to take executive action to combat the disaster. By the terms of the IEMAA, the Governor’s authority under a disaster proclamation expires 30 days following the declaration of a disaster. *See* 20 ILCS 3305/7.

10. Ostensibly pursuant to the authority granted to him for 30 days following a declaration of disaster, the Governor issued certain executive orders, including Executive Order 2020-07.¹
11. EO 2020-07 required as of March 16, 2020 that “all businesses in the State of Illinois that offer food or beverages for on-premises consumption—including restaurants, bars, grocery stores, and food halls—must suspend service and may not permit on-premises consumption.”
12. Prior to the expiration of 30 days following the initial Gubernatorial Disaster Proclamation, the Governor issued a second Disaster Proclamation on April 1, 2020² and again invoked the authority of the IEMAA in an effort to extend the disaster declaration another 30 days and to extend the EO’s, including EO 2020-07, an additional 30 days.
13. Upon the expiration of the second Disaster Proclamation, the Governor issued a third Disaster Proclamation on April 30, 2020 and again invoked the authority of the IEMAA in an effort to extend the disaster declaration another 30 days and to extend the EO’s, including EO 2020-07, an additional 30 days.
14. It was not until May 29, 2020, when the Governor issued EO 2020-38, that restaurants such as Plaintiff’s were allowed to resume on-premises dining but only “as permitted by [Illinois Department of Commerce and Economic Opportunity] guidance.”
15. Plaintiff reopened indoor dining operations on that same day.

¹ All executive orders shall be hereinafter referred to as “EO 2020-__”).

² By its own terms, although not required under the IEMAA, the initial Disaster Proclamation included a provision that made it valid for 30 days after issuance. This means that the initial Disaster Proclamation was valid through and until April 8, 2020. However, this fiction does not support issuing additional Disaster Proclamations on or before the expiration of the initial proclamation so to flout the express timeframe limits of emergency powers found in 20 ILCS 3305/7.

16. On October 21, 2020, the Governor issued EO 2020-60, which purports to restrict Plaintiff's, and other similarly-situated restaurant and bar operations in Region 5, in a manner identical to previous EO's by, *inter alia*, making their business premises off limits to the public.
17. All such disaster proclamations and executive orders are a matter of public record for which this Court can take judicial notice.
18. As an enforcement mechanism to the EO's, the Governor has directed the Illinois State Police to issue citations to businesses found to be in violation of the EO's and has publicly threatened further citations for violations of EO 2020-60.³ He has also threatened revocation of establishments' liquor and gambling licenses.⁴

CLASS DEFINITION

19. Plaintiff seeks to represent a class of businesses in Region 5 whose operations have been impacted or shuttered by the Governor's EO's, notably bars and restaurants as those terms are used in EO 2020-60 and other establishments that provide beverage and food service to patrons that would be forced to cease those operations as part of other services they offer.
20. Because the proposed class includes all restaurants, bars, and other establishments that provide beverage and food service to patrons in Region 5 who have been forced to close or reduce operations, the number of putative class plaintiffs is so numerous that joinder of all members is impracticable.
21. Whether the EO's are legally valid is a question common to all putative class Plaintiffs.

³ See <https://www.chicagotribune.com/news/breaking/ct-illinois-restaurants-defy-covid-closure-20201022-z62xrpplebgmpd3rllnl5rfeci-story.html>, last visited October 27, 2020.

⁴ See <https://www.chicagotribune.com/coronavirus/ct-coronavirus-illinois-surge-20201022-udmvcf3gkfe45gouxznyzaougi-story.html>, last visited October 27, 2020.

22. This common question controls the outcome of this matter and, therefore, predominates over any questions affecting only individual establishments.
23. The representative party is a restaurant and bar as contemplated by Section 1.a in EO 2020-60 operating in Marion County, Illinois and is a part of Region 5.
24. Its operations have been impacted by the Governor's issuance of EO's and stand to be further threatened and impacted by EO 2020-60.
25. Plaintiff has retained qualified counsel to pursue its rights under the Illinois Constitution and the laws of this State.
26. As such, the representative plaintiff will fairly and adequately protect the interests of the class.
27. The class action is an appropriate method for the fair and efficient adjudication of the controversy, as the outcome will be controlled by a central legal question common to all putative class members.
28. Furthermore, none of the class members would be prejudiced as each can choose to voluntarily comply with EO 2020-60 should they so desire.

COUNT I

DECLARATORY JUDGMENT

**IEMAA DOES NOT GRANT AUTHORITY TO ISSUE EXECUTIVE ORDERS
BEYOND 30 DAYS BY USING SERIAL DISASTER DECLARATIONS**

29. Plaintiff, on its own behalf, and on behalf of all similarly-situated affected establishments, incorporates the allegations set forth in paragraphs 1-29.
30. Upon the issuance of a Proclamation of Disaster, the Governor shall have and may exercise for a period not to exceed 30 days certain emergency powers. *See* 20 ILCS 3305/7.

31. The Governor by construct of a fiction has been wielding emergency powers under Section 7 of the IEMAA since March 9, 2020.
32. The Governor has issued serial proclamations from March 9, 2020 through and including November 15, 2020 for the same occurrence or threat, being COVID-19.
33. Each time he issues a new proclamation, he contemporaneously issues new executive order(s) ostensibly under the emergency powers of section 7 of the IEMAA.
34. Notwithstanding there is no 30-day requirement under the IEMAA as to disaster proclamations, Pritzker has included arbitrary 30-day deadlines in all Disaster Proclamations.
35. In each and every Disaster Proclamation, the Governor refers to the same COVID-19 virus as the genesis of his proclaiming a disaster.
36. Upon information and belief, the Governor is the first one of this state to issue serial proclamations, back-to-back-to-back-to-back-to-back-to-back-to-back-to-back-to-back-to-back, for the purpose of engaging the 30-day emergency powers to control, *inter alia*, the property rights of business owners into perpetuity.
37. With the chronic utilization of these emergency powers, the Governor has taken unilateral control over the success and failure of every business in the State.
38. That is a precarious proposition given each serial proclamation is for the exact same occurrence or threat with gave rise to the initial proclamation.
39. An actual controversy exists between the parties in regard to the authority of the Governor to issue serial proclamations for the same disaster for the purpose of continuing to exercise emergency powers in violation of the 30-day limitation in Section 7 of the IEMAA.

40. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

WHEREFORE, Plaintiff, on its own behalf, and on behalf of all similarly-situated bars and restaurants in Region 5, respectfully requests that this court enter an Order:

- A) Declaring the Governor issued the second and all subsequent Disaster Proclamations for the same COVID-19 virus which gave rise to the issuance of the initial Disaster Proclamation on March 9, 2020;
- B) Declaring that the 30 days of emergency powers provided under Section 7 of the IEMAA lapsed on April 8, 2020;
- C) Declaring that the second and all subsequent Disaster Proclamations did not reset the 30-day emergency provisions under Section 7 of the IEMAA;
- D) Declaring EO 2020-60 finding any authority under the emergency powers of Section 7 of the IEMAA void *ab initio*;
- E) Awarding Plaintiff its costs incurred in this matter as may be allowed by law;
- F) That the Court grant such other and further relief as is just and proper.

COUNT II
DECLARATORY JUDGMENT
IEMAA DOES NOT GRANT THE GOVERNOR THE AUTHORITY TO
MAKE A BUSINESS PREMISES OFF LIMITS TO THE PUBLIC

41. Plaintiff restates paragraphs 1-40 as if more fully stated herein.

42. In order to close a business, the Governor must have acted under the powers vested in him as Governor, or under the powers delegated to him under the IEMAA by the legislative branch.

43. Nowhere in EO 2020-60 does the Governor identify what power is vested in him as Governor to seize control of any business and order the premises closed.

44. As Governor, he is the supreme executive of the State of Illinois.
45. In that role, he is charged with the faithful execution of the laws of the State and not the making of laws.
46. Seizing control of a business premises and ordering it restricted or closed is a clear utilization of the police powers of the State.
47. Police powers are vested in the sound discretion of the legislative branch of government.
48. As such, the Governor must find authority to forcibly restrict or close any business premises under the cited sections of the IEMAA.
49. The power would have been delegated to him by the legislative branch, and if he has none, any order restricting or closing any business premises would be unlawful and void.
50. Even under the most strained interpretation of the cited sections of the IEMAA, nowhere can it be found where the legislative branch delegated any power to the Governor to restrict or make private businesses premises off limits to the public.
51. EO 2020-60 states that it supplements EO 2020-43, which in turns states that it does not intend to alter or modify any existing State, County, or local authority over ordering business closures.
52. The Plaintiff does not dispute that the Illinois Department of Public Health has the authority to forcibly close a business premises upon the owner's consent or upon receiving an order from a court of competent jurisdiction if circumstances give rise to a public health risk. *See* 20 ILCS 2305/2(c) (20 ILCS 2305/1.1 *et seq.*, known as the Illinois Department of Public Health Act, is hereinafter referred to as "IDPHA").

53. The legislative branch in its sound discretion placed the “supreme authority” over such matters with the IDPH pursuant to the IDPHA.

54. This authority wielded by IDPH is to be enforced by the various county boards of health consistent with state law.

55. Plaintiff, on its own behalf, and on behalf of all similarly-situated affected establishments in Region 5, has a right to insist that the Governor exceeded his authority under the IEMAA by ordering its business premises off limits to the public.

56. An actual controversy exists between the parties in regard to the authority of the Governor to enter and enforce those provisions of EO 2020-60 which provide for the restriction or closure of businesses.

57. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

WHEREFORE Plaintiff, on its own behalf, and on behalf of all similarly-situated affected establishments in Region 5, respectfully requests that the Court enter an order:

- A. Declaring the Governor has authority merely as Governor to forcibly restrict or close the stated business premises in EO 2020-60;
- B. Declaring that none of the cited provisions of the IEMAA in EO 2020-60 delegated to the Governor any authority to forcibly restrict or close a business premises;
- C. Declaring that the proper authority to forcibly close a business due to any public health risk has been expressly delegated to the IDPH under the IDPHA;
- D. Awarding Plaintiff its costs incurred in this matter as may be allowed by law; and
- E. That the Court grant such other and further relief as is just and proper.

COUNT III
DECLARATORY JUDGMENT

EO 2020-60 IS VOID IN THAT IT VIOLATES AN EXISTING ORDER FROM A COURT OF COMPETENT JURISDICTION FROM THE 4TH JUDICIAL CIRCUIT

58. Plaintiff restates paragraphs 1-57 as if more fully stated herein.

59. Prior to the instant proceedings, Darren Bailey, a citizen and resident of the State of Illinois and a member of the Illinois House of Representatives, sued as a private person the Governor in his official capacity.

60. That case is numbered 20-CH-06 and originated in Clay County, IL.

61. Among other claims made in Mr. Bailey's suit are two that are identical to those complained of here, namely: (COUNT 1) the Governor's authority to issue executive orders pursuant to the IEMAA expired on April 8, 2020, thirty days after issuance of the initial Disaster Proclamation; and (COUNT 2) the Governor has no authority under IEMAA to restrict or close a business premises due to a public health risk as that authority has been expressly delegated to IDPH under the IDPHA.

62. On July 2, 2020, the Circuit Court for the Fourth Judicial Circuit in Clay County, Judge Michael McHaney sitting, issued an order granting Mr. Bailey's request for summary judgment on the substantive relief requested in COUNT 1 and COUNT 2 above.

63. This Court can take judicial notice of Judge McHaney's ruling.

64. Judge McHaney's order entered on July 2, 2020, has not been overturned and remains in full force and effect as of the date of this complaint.

65. The result is that, pursuant to Judge McHaney's order, the Governor has no authority to issue EO 2020-60 and the EO is void *ab initio*.

66. The further result is that, pursuant to Judge McHaney's order, the Governor has no authority to issue executive orders to make a business premises off limits to the public as that authority has been specifically delegated to the IDPH.

67. Plaintiff has a right to insist the Governor issue executive orders only as authorized by law.

68. An actual controversy exists between the parties in regard to the authority of the Governor to continue issuing executive orders such as EO 2020-60 after a court of law has ruled he has no such authority.

69. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

WHEREFORE, Plaintiff, on its own behalf, and on behalf of all similarly-situated affected establishments in Region 5, respectfully requests that the Court enter an order:

- A) Declaring that EO 2020-60 is void *ab initio* as it violates the order of the Honorable Judge McHaney from the Clay County, Illinois Court issued on July 2, 2020.
- B) Awarding Plaintiff its costs incurred in this matter as may be allowed by law; and
- C) That the Court grant such other and further relief as is just and proper.

COUNT IV
DECLARATORY JUDGMENT
EO 2020-60 VIOLATES SECTION 2 OF THE ILLINOIS CONSTITUTION

70. Plaintiff restates paragraphs 1-70 as if more fully stated herein.

71. Section 2 of the Constitution of the State of Illinois states, "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."

72. The Governor has asserted that he has valid legal authority to order a business to be unilaterally made off limits to the public as directed in EO 2020-60, pursuant to the powers granted to him in the IEMAA.
73. Although the Plaintiff disagrees with the Governor's interpretation of the IEMAA, even taking the Governor's assertion as correct, his interpretation of the authority granted him under the IEMAA would be tantamount to a taking of Plaintiff's property without due process of law.
74. EO 2020-60 affords Plaintiff no notice, nor does it offer a right to be heard in order to defend against the taking of its property.
75. Also, EO 2020-60 makes Plaintiff's business premises off limits to the public while allowing the public to continue to make entry into substantively all other types of business premises in Region 5.
76. There is no rational basis by which to distinguish Plaintiff's business premises with all other types of business premises within Region 5.
77. It is especially difficult to make a rational distinction of the Governor's order when a bar or restaurant also serves as a gaming venue. In that circumstance, the Plaintiff may open their business premises for video gaming purposes but not for the consumption of food or beverage.
78. Such a distinction is arbitrary and capricious and defies any sense of sound logic. Therefore, EO 2020-60 violates Plaintiff's right to the equal protection of the laws.
79. Plaintiff has a right to insist the Governor not issue executive orders which violate the Illinois Constitution.

80. An actual controversy exists between the parties in regard to EO 2020-60 violating the Illinois Constitution.

81. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

WHEREFORE, Plaintiff, on its own behalf, and on behalf of all similarly-situated affected establishments in Region 5, respectfully requests that the Court enter an order:

- A) Declaring that any interpretation of the IEMAA which allows for businesses premises to be made off limits to the public without providing any due process for the business owner to object would render the statute void for violating the Illinois Constitution;
- B) Declaring EO 2020-60 invalid to the extent it violates the due process clause of the Illinois Constitution.
- C) Declaring EO 2020-60 invalid to the extent it also violates the equal protection clause of the Illinois Constitution.
- D) Awarding Plaintiff its costs incurred in this matter as may be allowed by law; and
- E) That the Court grant such other and further relief as is just and proper.

COUNT V
COMPLAINT FOR INJUNCTIVE RELIEF

82. Plaintiff, and all similarly-situated affected establishments in Region 5, restate paragraphs 1-81 as if more fully stated herein.

83. Plaintiff, and all similarly-situated affected establishments in Region 5, have a protectable interest in not having their businesses be forcibly closed due to executive action which is not allowed by Illinois law and is otherwise violative of the Illinois Constitution.

84. Plaintiff, and all similarly-situated affected establishments in Region 5, are being irreparably harmed each and every day in which they continue to be subjected to the Governor's *ultra vires* executive order.
85. Plaintiff, and all similarly-situated bars and restaurants in Region 5, have no adequate remedy at law to prohibit the Governor from enforcing the executive orders against them as he has threatened, absent an injunction from this Court ordering the same.
86. Monetary damages are not sufficient compensation should the Plaintiff's business premises be closed for an indeterminate time as those transgressions are of a continuing nature which may cause harm to its business which monetary damages cannot compensate.
87. Plaintiff, and all similarly-situated affected establishments in Region 5, has shown the IEMAA does not grant the Governor authority to issue executive orders beyond 30 days from March 9, 2020 for the same disaster.
88. Plaintiff, and all similarly-situated bars and restaurants in Region 5, have shown the IEMAA does not grant the Governor authority to make a business premises off limits to the public as the same has been specifically delegated to the IDPH.
89. Plaintiff, and all similarly-situated bars and restaurants in Region 5, have shown EO 2020-60 is void in that it violates an existing court order from within the 4th judicial circuit.
90. Plaintiff, and all similarly-situated bars and restaurants in Region 5, have shown EO 2020-60 is void in that it violates Section 2 of the Illinois Constitution.

WHEREFORE, Plaintiff, on its own behalf and on behalf of all other similarly-situated affected establishments in Region 5 of the State of Illinois, respectfully prays this Honorable Court

enter an order in its favor and against all Defendants that grants the following relief:

- A) Find Plaintiff, and all other similarly-situated affected establishments in Region 5 of the State of Illinois, have a right to insist the Governor does not have authority to issue executive orders beyond 30 days from March 9, 2020 for the same disaster;
- B) Find Plaintiff, and all other similarly-situated affected establishments in Region 5 of the State of Illinois, have a right to insist the Governor does not have authority to make a business premises off limits to the public as the same has been specifically delegated to the IDPH;
- C) Find Plaintiff, and all other similarly-situated affected establishments in Region 5 of the State of Illinois, have a right to insist EO 2020-60 is void in that it violates an existing court order from within the 4th judicial circuit;
- D) Find Plaintiff, and all other similarly-situated affected establishments in Region 5 of the State of Illinois, have a right to insist EO 2020-60 is void in that it violates Section 2 of the Illinois Constitution;
- E) Find Plaintiff, and all other similarly-situated affected establishments in Region 5 of the State of Illinois, are being irreparably harmed while they are being subjected to the enforcement of EO 2020-60;
- F) Find Plaintiff, and all other similarly-situated affected establishments in Region 5 of the State of Illinois, have no adequate remedy at law to protect themselves beyond injunctive relief.
- G) Enter a permanent injunction barring all Defendants, or anyone under their control, from enforcing any or all of EO 2020-60 against them from this date forward;
- H) An award of costs; and

I) Such other relief as this Court deems to be equitable and just.

Respectfully submitted,

By: /s/ Thomas Devore
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118 N. 2nd St.
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Telephone - 618-664-9439
tom@silverlakelaw.com

VERIFICATION

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct except as to matters therein stated to be on information and belief, if any, and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

Date: October 28, 2020

By: /s/ Kelly Fox
ORPHAN SMOKEHOUSE, LLC
Authorized Representative

EXHIBIT 10

Amended Complaint, *Haymaker Enterprises, Inc., et al.*, v. Governor Jay
Robert Pritzker, et al., No. 2020 CH 65 (Ill. 23d Jud. Cir.)

FILED10/16/2020 10:57 AM
2020CH000065
Maureen A. Josh

STATE OF ILLINOIS
IN THE CIRCUIT COURT FOR THE TWENTY-THIRD JUDICIAL CIRCUIT
COUNTY OF DEKALB

Clerk of the Circuit Court
DeKalb County, Illinois

Haymaker Enterprises, Inc.)
 DBA Fatty's,)
 and JEFF DOBIE, individually,)
 Skikat, Inc., d/b/a Remingtons Gastropub,)
 Lincoln Inn and Faranda's Banquet Center)
 Ellwood Steak & Fish House,)
 Junction Eatery, MVP Sports Club Inc., &)
 El Jimador Mexican Grill,)
 K. Gallagher Inc. d/b/a Karlsbad Tavern & Grill,)
 Uncle Milt's Pizza Palace, Inc.)
 Rambo's Bar & Grill, Inc.)
 PJ's Courthouse Tavern, Inc.)

Case No. 2020 CH 65

Plaintiffs,

vs.

Governor Jay Robert Pritzker,)
 in his official capacity,)
 and Dr. Ngozi Ezike, M.D.,)
 in her official capacity as the Director)
 of the Illinois Department of Public Health)
 Defendants.)

FIRST AMENDED DECLARATORY JUDGMENT ACTION

NOW COMES the Plaintiffs, Haymaker Enterprises, Inc. (DBA Fatty's), (hereinafter referred to as "Fatty's"), and Jeff Dobie, individually, *et al.*, by and through their attorneys, C. Nicholas Cronauer, Bradley D. Melzer, and CRONAUER LAW, LLP, and for their Declaratory Relief seeking a Permanent Injunction and Temporary Restraining Order against Defendant, Jay Robert Pritzker, in his official capacity as Governor (hereinafter referred to as "Governor") and Dr. Ngozi Ezike, M.D., and hereby alleges as follows:

1. Plaintiff Fatty's is a corporation in good standing in the State of Illinois since 1998.

2. Plaintiff Jeff Dobie is a citizen and lawful resident of DeKalb County.
3. Plaintiffs Skikat, Inc., d/b/a Remingtons Gastropub, Lincoln Inn and Faranda's Banquet Center, Ellwood Steak & Fish House, Junction Eatery, MVP Sports Club Inc., and El Jimador Mexican Grill are bars and restaurants operating solely within DeKalb County, including the Cities of Malta, DeKalb, and Sycamore.
4. Plaintiffs K. Gallagher Inc. d/b/a Karlsbad Tavern & Grill, Uncle Milt's Pizza Palace, Inc., Rambo's Bar & Grill, Inc., and PJ's Courthouse Tavern, Inc., are bars and restaurants operating solely within DeKalb County, including the Cities of Genoa, Somonauk, and Sycamore.
5. Defendant Jay Robert Pritzker is currently the duly elected governor of the State of Illinois.
6. Defendant Dr. Ngozi Ezike is the current Director of the Illinois Department of Public Health and tasked with, and delegated some responsibility for, carrying out Governor Pritzker's Revitalize Illinois plan
7. On March 9, 2020, the Governor issued a proclamation declaring, as of that date, a public health emergency in all counties in the State of Illinois in response to the outbreak of COVID-19. (See Exhibit 1).
8. The Governor has continued to enter Disaster Proclamations approximately every 30 days, until the most recent on September 18, 2020. (See Exhibit 2).¹
9. The Governor issued these disaster proclamations under his authority, pursuant to the Illinois Emergency Management Act. 20 ILCS 3305/1 et. seq.

¹ Comprehensive listing of Disaster Proclamations can be found at: <https://coronavirus.illinois.gov/s/resources-for-executive-orders>

10. On May 5, 2020, the Governor, in conjunction with the Illinois Department of Health, announced a 'regional plan' for safely reopening Illinois. The plan noted the 11 traditional Emergency Medical Services Regions. The Governor also divided Illinois into four health regions for the "Restore Illinois" plan. (See Exhibit 3).
11. On July 15, 2020, the Governor and the Illinois Department of Health (hereinafter IDPH) announced a "new" plan to mitigate COVID-19 by modifying and altering the 'health regions'. (See Exhibit 4).
12. On July 15, 2020, when announcing the modification of the health regions, the Governor said, in part:

It's imperative that individuals, families, workers and businesses follow the recommendations doctors have given about vital mitigations and that we act quickly if we see any outbreaks and upticks, signs that could lead to a surge of coronavirus infections. Governor, press release July 15, 2020, ex. 4.

13. The Director of IDPH, Dr. Ngozi Ezike, was also quoted in part:

This plan ensures we are looking at all available data to make timely decisions to protect the health of our communities, By assessing key metrics that indicate both the disease burden and the capacity of each COVID-19 region to respond, we can then take targeted actions within specific regions to help mitigate the spread of this deadly disease while keeping as much of our state open as possible.

Governor, press release July 15, 2020, ex. 4.

14. The Governor's press release goes on to say that the regions that "Expanding to 11 regions allows for a more granular approach in this phase of the response to COVID-19. The new regions follow county lines to account for counties that are in more than one region of the EMS system." Governor press release July 15, 2020, ex. 4.

15. The “new region”, identified Region 1 as “1. North: Boone, Carroll, DeKalb, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, Winnebago.” Governor press release July 15, 2020, ex. 4.
16. On September 29, 2020, the Governor issued another press release announcing “resurgence mitigations” in Region 1, beginning Saturday, October 3, 2020. See Exhibit 5.
17. Nearly all of the ‘mitigation’ factors are directed at Bar and Restaurants, of which Plaintiff(s) are directly impacted. See Exhibit 5.
18. The impact to the Plaintiff involves substantial loss of income and use of their business through these restrictions and insurance policies refusing to cover the costs and losses associated with any civil authority.
19. DeKalb County has established the “DeKalb County Emergency Services & Disaster Agency (ESDA)” by ordinance on June 16, 1976, pursuant to the Illinois Emergency Management Act. 20 ILCS 3305/10(c).
20. The Illinois Emergency Management Act, provides that:

Unless multiple county emergency services and disaster agency consolidation is authorized by the Illinois Emergency Management Agency with the consent of the respective counties, *each county shall maintain an emergency services and disaster agency that has jurisdiction over and serves the entire county*, except as otherwise provided under this Act... (emphasis added)
20 ILCS 3305/10(b)
21. The Illinois Emergency Management Act does not allow for the State of Illinois to infringe on the political subdivision’s authority and jurisdiction.
22. Under the Illinois Emergency Management Act, DeKalb County has jurisdiction over and serves the entire county in relation to disaster management.

23. The Governor, by creating “health regions” unlawfully usurps DeKalb County’s power, by citing the same authority (Illinois Emergency Management Act).
24. DeKalb County can itself, through its own Emergency Management Act, maintain compliance with the resurgence mitigations based on the actual science and data in the County.
25. In announcing the “resurgence mitigations” the Governor pointed directly to the positivity rate increases. See Exhibit 5.
26. Even under the Governor’s goalpost of ‘three consecutive days greater or equal to 8% positivity rate (7 day rolling)’, DeKalb County and the Plaintiff(s) are now bearing, unlawfully, the brunt of increased COVID-19 positivity rates in Boone, Lee and Winnebago Counties on DeKalb County. See Exhibit 6.
27. DeKalb County’s positivity rate for the past three days of most recent reported numbers are 6.8, 7.2, and 6.9 in the dates prior to the “resurgence mitigation” announcement and has not increase since. See Exhibit 6.
28. Furthermore, the Governor in his most recent disaster proclamation singled out counties which “exhibited warning signs of increased COVID-19 risk” including Jo Daviess County, the farthest county from DeKalb in the Governor’s “health regions”. See Exhibit 2.
29. By lumping DeKalb County into a region with the other noted counties in region 1, the Governor’s “resurgence mitigations” under the Illinois Emergency Management Act is a violation of the Act, having the purpose of the disaster proclamations.
30. If the goal of the Governor and IDPH is to “keep as much of our state open as possible”, then the broad overreach by lumping counties together by region frustrates this purpose

and is not narrowly tailored given the science or data presently available to them for each County. See Exhibit 4.

31. Furthermore, the history of the ‘health regions’ indicate that the classifications of the regions are more related to geography than any real basis in fact or science. The regions originally were drawn in between counties for no discernable or stated reason in May 2020. In July 2020, the regions were defined with consideration for county lines.
32. The applicability of changing the regions to county lines is important because it “allows for a more granular approach in this phase of the response to COVID-19.” See exhibit 4.
33. Furthermore, each county (DeKalb included) has a health department which tracks the numbers of coronavirus. The State of Illinois even tracks the numbers of coronavirus by COUNTY, and then aggregates this for ‘health region’. See exhibit 6.
34. By creating the arbitrary ‘health regions’, the Governor is violating the Illinois Emergency Management Act, not abiding by his stated goals in their creation, and, if implemented, violating the Plaintiff(s) State Constitutional Rights.
35. Plaintiff(s) are seeking a temporary injunction from the Governor’s arbitrary implementation of the “resurgence mitigations” until this issue can be fully briefed and decided by this court as a permanent injunction
36. Under Section 2 of the Illinois Constitution, no person shall be deprived of life, liberty, or property without due process of law nor be denied the equal protection of the laws.
Article I, Section 2 of the Illinois Constitution of 1970.
37. If the Governor’s goal is to promote the public comfort, health, safety, morals or welfare of the state, with the “resurgence mitigations”, the Governor is enacting police powers.

38. Police powers have been further defined as the powers of governmental control which is modified to meet changing social and economic conditions.
39. The Governor, by enacting “resurgence mitigations”, is directly claiming that these measures are needed for the changing conditions experienced in the ‘health region’.
40. The Courts have long held that police powers stem from the legislature and not the executive branch.
41. Plaintiff(s) stand to lose 50% of their already reduced business income and ability to employ people during this already turbulent time.
42. Plaintiff(s) are further being denied substantive and procedural due process by the arbitrary and capricious nature of these “resurgence mitigations” that lump various counties into one region rather than consider the County itself, which can be done by the County Emergency Management Act.
43. These actions are taken against Plaintiff(s) and DeKalb County in an arbitrary and capricious way, because of Plaintiff(s) location are within the artificial lines drawn and re-drawn by the Defendants despite publicly available data being released showing the positivity rate in DeKalb County is below the actionable level.
44. Under Section 5 of the Illinois Constitution, the people have the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives and apply for redress of grievances. *Article I, Section 5 of the Illinois Constitution of 1970.*

COUNT I – DECLARATORY RELIEF

The Plaintiffs re-alleges and incorporates paragraphs 43 as if set forth fully herein.

45. Section 5/2-701(a) of the Code of Civil Procedure provides in part:

- a. The court may, in cases of actual controversy, make binding declaration of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract, or other written instrument, and a declaration of the rights of the parties interested.
46. There exists an actual controversy between Plaintiffs and Defendants.
47. Defendants' actions, as it applies to Plaintiffs in DeKalb County is unlawful and unconstitutional in that it defies the County's Emergency Management Act, violates Equal Protection of the Law under the State Constitution by lumping and punishing DeKalb County for a positivity rate it does not have relative to the remaining 93 State Counties.
48. Violates the State Constitutional Right to Assemble given its discriminate effect on DeKalb County, which is below the positivity threshold applicable for mitigation measures and being treated differently than other Counties with the same or similarly positivity rates.
49. Violates the State Constitutional Right to Due Process by depriving Plaintiffs from liberty and property without due process of law given that the positivity rate is known, available, and below the 8% threshold.
50. Their actions are arbitrary and capricious and clearly do not meet a strict scrutiny standard for suspending the Constitution given that DeKalb's positivity rate is known, decreasing, and available to it, but is being grouped.
51. Plaintiffs are not being treated the same as similarly situated in other Counties that have the same or similar positivity rate.

52. The Defendants actions could be narrowly tailored to the County level given that County specific health data that is kept and known.

WHEREFORE, the Plaintiff requests the following relief:

- A. Entry of a temporary order that maintains the status quo but restrains the Defendants from enacting resurgent mitigation measures that harm the Plaintiffs when the County's positivity rate is below 8% and otherwise fails to meet the threshold for regression that would move the County from Phase 4 to Phase 3;
- B. Entry of a permanent injunction precluding Defendants from lumping DeKalb County into any collective "Region" when applying resurgent mitigation measures that harm the Plaintiffs because such mitigation can be done at the County level by the County under the County Emergency Management Plan based on actual science and data that is already being collected them;
- C. A permanent injunction precluding Defendants from lumping DeKalb County into any collective "Region" when applying resurgent mitigation measures that harm the Plaintiffs because such mitigation can be done and applied by the Defendants on a County by County level that is based on actual science and data that is already being collected by them.
- D. Award Plaintiff's taxable costs and expenses of this action along with reasonable attorney's fees; and
- E. For such other relief as this Court deems equitable and just.

Respectfully Submitted,

Plaintiffs.

By: /s/Bradley D. Melzer
One of their attorneys

C. Nicholas Cronauer (#6305683)
Bradley D. Melzer (#6306592)
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EXHIBIT 11

November 5, 2020 Order of the Illinois Supreme Court in
Matter No. 126619



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CAROLYN TAFT GROSBOLL
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

November 05, 2020

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

Evan Gregg Safran Siegel
Office of the Illinois Attorney General
100 West Randolph Street, 12th Floor
Chicago, IL 60601

In re: Haymaker Enterprises, Inc. v. Pritzker
126619

Dear Evan Gregg Safran Siegel:

Enclosed is a certified order entered November 17, 2020 by the Illinois Supreme Court in the above-captioned cause.

Very truly yours,

A handwritten signature in cursive script that reads "Carolyn Taft Grosboll".

Clerk of the Supreme Court

cc: All Counsel of Record

State of Illinois Supreme Court

I, Carolyn Taft Grosboll, Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files and Seal thereof do hereby certify the following to be a true copy of an order entered November 05, 2020, in a certain cause entitled:

126619)	
)	
	)	Clinton County Circuit Court
	)	Cook County Circuit Court
	)	DeKalb County Circuit Court
Haymaker Enterprises, Inc., et al.,	)	DuPage County Circuit Court
	)	Kane County Circuit Court
Respondents	)	Marion County Circuit Court
	)	McHenry County Circuit Court
v.	)	Sangamon County Circuit Court
	)	2020MR589
Governor Jay Robert Pritzker, et al.,	)	20CH179
	)	20CH287
Movants	)	20CH348
	)	20CH353
	)	20CH596
	)	20CH65
	)	20CH6526
	)	20MR109
	)	20MR1121
	)	20MR140

Filed in this office on the 5th day of November A.D. 2020.



IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of said Supreme Court, in Springfield, in said State, this 5th day of November, 2020.

Carolyn Taft Grosboll Clerk,
Supreme Court of the State of Illinois

SUPREME COURT OF ILLINOIS

)	
)	
)	
Haymaker Enterprises, Inc., et al.,	)	Clinton County Circuit Court
	)	Cook County Circuit Court
Respondents	)	DeKalb County Circuit Court
	)	DuPage County Circuit Court
v.	)	Kane County Circuit Court
	)	Marion County Circuit Court
Governor Jay Robert Pritzker et al.,	)	McHenry County Circuit Court
	)	Sangamon County Circuit Court
Movants	)	2020MR589
	)	20CH179
	)	20CH287
	)	20CH348
	)	20CH353
	)	20CH596
	)	20CH65
	)	20CH6526
	)	20MR109
	)	20MR1121
	)	20MR140

ORDER

This cause coming to be heard on the motion of movants, Dr. Ngozi Ezike, Illinois Department of Public Health, and J.B. Pritzker, an objection having been filed by respondent, Haymaker Enterprises, Inc., and the Court being fully advised in the premises;

IT IS ORDERED that the motion to transfer and consolidate pursuant to Supreme Court Rule 384 and for certain other relief is allowed in part. Pursuant to Supreme Court Rule 384, Cook County case No. 20 CH 6526, Shakou, LLC et al. v. Governor Jay Robert Pritzker, etc., et al., Marion County case No. 20 MR 140, Orphan Smokehouse, LLC, etc. v. Governor Jay Robert Pritzker, etc., et al., Clinton County case No. 20 MR 1019, RAD Gaming, Inc., etc. v. Governor Jay Robert Pritzker, etc., et al., Kane County case Nos. 20 CH 348, Fox Fire Tavern, LLC, etc. v. Governor Jay Robert Pritzker, etc., et al., and 20 CH 353, NKG Pingree Grove LLC, etc. v. Governor Jay Robert Pritzker, etc., et al., DuPage County case No. 20 CH 596, SBBL, LLC, etc.

v. Governor Jay Robert Pritzker, etc., et al., McHenry County case Nos. 20 MR 1121, 251 Pub, Inc., etc. v. Governor Jay Robert Pritzker, etc., et al., and 20 CH 287, Niko's Red Mill, Inc., etc., et al. v. Governor Jay Robert Pritzker, etc., et al., DeKalb County case No. 20 CH 65, Haymaker Enterprises, Inc., etc., et al. v. Governor Jay Robert Pritzker, etc., et al., and Sangamon County case No. 20 CH 179, Millertime Partners, LLC, etc. v. Governor Jay Robert Pritzker, etc., et al., are transferred to Sangamon County and consolidated with Sangamon County case No. 20 MR 589, In re Covid-19 Litigation.

FILED
November 17, 2020
SUPREME COURT
CLERK

Exhibit 3

**(Response to Motion to Transfer, *Moore v. Pritzker*,
No. 2020 MR 426)**

**IN THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT
LASALLE COUNTY, ILLINOIS**

**LISA MARA MOORE, MANDY WORKER
JILL PEARSON LAYNE, KATE BENTON
and CHRISTINE SIMMONS**

Plaintiff,

v.

**JAY ROBERT "J. B." PRITZKER,
GOVERNOR OF THE STATE OF ILLINOIS,
and the ILLINOIS HIGH SCHOOL
ASSOCIATION**

Defendants.

No. 2020 MR 000426

RESPONSE TO MOTION TO TRANSFER

NOW COMES, Plaintiffs, LISA MARA MOORE, MANDY WORKER, JILL PEARSON LAYNE, KATE BENTON and CHRISTINE SIMMONS by and through their attorney, Laura Grochocki, and in response to the motion of Defendant, JAY ROBERT "J.B." PRITZKER, GOVERNOR OF THE STATE OF ILLINOIS, to transfer this case state as follows:

I. Introduction

1. The motion of Defendant Governor Jay "J.B." Pritzker ("Governor"), is curious in that it purports to be a motion for transfer to another county pursuant to Supreme Court Rule 187, but spends the entire motion citing to orders entered under Supreme Court Rule 384. To be clear, Rule 384 provides for a proceeding exclusively in the Supreme Court. There is no provision for a motion under Rule 384 before a circuit court. Since Rule 384 has different considerations than Rule 187, and because a Rule 384 motion cannot be brought in a circuit court, practically all of the argument content of the Governor's motion is irrelevant, and should be disregarded. The only type

of motion for transfer than can be brought to this court is a motion under Rule 187, which governs motions *fourm non conveniens*.

2. The Plaintiffs will, therefore, structure this response in the reverse order of the Governor's motion. Plaintiff will first address the issues relevant to Rule 187 motions *forum non conveniens*, and show there is no basis for a transfer. The Plaintiff will then address the Governor's argument under the cases transferred by the Supreme Court under Rule 384, and will show how those cases are extremely distinguishable from the instant case.

II. Rule 187 Motions *Forum Non Conveniens*

3. It is important to keep in mind that the Plaintiffs are seeking relief on a very narrow issue. They are **not** challenging the Governor's authority to issue consecutive COVID-19 disaster declarations or executive orders, his authority to close restaurants, impose mitigation restrictions, or his restrictions under the "Restore Illinois" program. Neither are they asking the Court to decide any of the myriad of legitimate legal and constitutional questions raised by the unprecedented and extremely broad executive authority being exercised by the Governor and the executive branch of State of Illinois. All they are asking is for this court to examine a single restriction on high school sports to see if it passes the rational basis test of the equal protection clause of the Illinois Constitution.

4. It is equally important to keep in mind, as the Plaintiff's Motion for Summary Judgment filed on December 28, 2020 shows, all of the material facts necessary to resolve this case are established from the public documents issued by the State of Illinois Department of Commerce and Economic Opportunity (DCEO), the Illinois Department of Public Health (IDPH), and the Illinois State Board of Education (ISBE), as well as the Center for Disease Control (CDC) of the United States of America. They are incontrovertible because, as Defendant Governor Jay Robert

“JB” Pritzker (Governor) has stated in the preambles of his Disaster Declarations and Executive Orders, that he has issued these Declarations and Orders based on the declaration of the COVID-19 pandemic by the CDC and IDPH.

5. Regarding the motion *forum non conveniens* considerations, the Plaintiffs in this case reside in LaSalle County, Grundy County, Schuyler County, Fayette County and DuPage County. None of the Plaintiffs reside in Sangamon County. On the other hand the Governor does business in every County of Illinois, and his lawyers from the Attorney General’s office who work in every Illinois County.

6. As to the access to relevant government employee witnesses consideration, the fact that this case is in LaSalle County, does not inhibit the Governor’s access to relevant witnesses, who are located at the seat of Illinois government in Sangamon County and where it has major operations (and where the Governor resides), in Cook County. In order to prevail in this litigation in this case, the Governor has to show that there is a rational basis for his action in closing winter high school sports while not closing college and professional sports of the same type, even though the college and professional players are 9 times more likely to get infected with COVID-19. This does not require intensive litigation of factual issues, with multiple witnesses from different counties coming to testify. On the contrary, the Governor needs to present facts, (not justification, speculation, or belief) to show that there is a rational basis for his putting absolutely no restrictions on college and professional sports while closing high school sports. These facts will take the form of official data, perhaps one (1) witness, and a stated rational basis based on the data.

7. Remember that the governor has put no restrictions on college and professional sports. It is not as if he put requirements on college and professional sports that they could meet, but that high schools could not. High schools across Illinois were not even given a chance to comply with

some mediation requirements, while college and professional sports had no requirements.

8. The Plaintiffs have chosen LaSalle County as the venue and because two (2) Plaintiffs are in LaSalle County. None of the Plaintiffs are in Sangamon County. When a plaintiff chooses a venue that is also the plaintiffs' county of residence, that choice is given substantial consideration and is entitled to deference. Griffith v. Mitsubishi Aircraft, 136 Ill.2d 101 (1990)

9. Finally, the Governor's Motion *Forum Non Conveniens* smacks of forum shopping. Already knowing that he had received favorable rulings in Sangamon County, he is bringing this motion under Rule 137 to move the case to that county. The Governor has purposely downplayed the fact that the other cases were transferred to Sangamon under Rule 384, and yet he fails to bring a Rule 384 petition to the Supreme Court in this case. Forum shopping is contrary to the purposes of Rule 187 and the doctrine of *forum non conveniens*. Dawdy v. Union Pacific R.R. Co., 207 Ill. 2d 167, 173 (2003).

III. The Cases Referred to by Defendant

10. The cases referred to by the Governor are all transfers under Rule 384, over which the Supreme Court has exclusive jurisdiction, significantly differ from this case. Perhaps this is why the Governor has not brought a Rule 384 motion in this matter. Speculation aside the vast differences distinguishing the cases is easy to see.

11. First, there are the cases of Bailey v. Pritzker 2020 CH 6, from Clay County, Pritzker v. Hutsonville 2020 MR 557, from Sangamon County, (for a Declaratory Judgment), and Mainer v. IDPSH 2020 CH 13 from Clay County. None of these cases deal with the equal protection clause of the Illinois or Federal Constitutions. These cases dealt with the Governor's power in general to issue successive disaster declarations, and do not concern the closing of high school sports when college and professional sports can remain open. The instant case does not question the Governor's

authority to issue successive disaster declarations and is based solely on the equal protection clause as it relates to high school vs. college and professional sports in Illinois.

12. The Governor then refers to the six (6) “County Disaster” cases. However, not one of these cases argue an equal protection violation, nor do they concern high school sports in Illinois. These six (6) cases simply argue that there is no “disaster” in their counties.

13. The next case the Governor refers to, that he had not previously mentioned, are the so-called restaurant “indoor dining” cases. One of the cases the Governor refers to is the Fox Fire Tavern v. Pritzker, 2020 CH 348 case. However, in this case, whether there was a rational or reasonable basis for the purposes of equal protection was not the issue as the court clearly stated:

While courts may interfere with regulations that prove to be arbitrary or unreasonable, the question of EO61’s reasonableness is not before us. Id. Instead, we are tasked to review the trial court’s conclusion that Fox Fire established a probability of success on the merits based on the governor’s inability to issue successive disaster proclamations in response to the ongoing pandemic. Firefox v. Pritzker, 2020 IL App (2d) 200623-U (emphasis added)

14. In fact, with one minor exception, none of the restaurant “indoor dining” cases motioned by Defendant made an equal protection argument. The only exception is the case of RAD Gaming v. Pritzker, 2020 MR 109 from Clinton County. In Count IV of that case, the last count, combined a due process argument with an equal protection argument. However, that case, and the other “indoor dining” cases cited by Defendant, did not plead an equal protection claim for a good reason. Concerning indoor dining restrictions, there was no other group of restaurants that was allowed to have indoor dining, a *sine que non* for an equal protection claim, as such claims require a similar group that is treated differently under the law of Illinois. All restaurants suffered the same indoor dining restrictions. In the instant case, there are different groups of athletes playing the same sports, who are treated differently, thereby invoking the protections and concerns of the equal protection clause in Illinois.

III. The Governor's Argument is Flawed

14. The Governor's argument is seriously flawed in several ways. First, it relies on consolidations made by the Supreme Court under Rule 384 as a justification for a transfer under *forum non conveniens* (Rule 187), when these rules have different standards and different purposes. The fact is that the orders of the Supreme Court that the Governor refers to do not given any reasoning or analysis for their entry. The Governor and this Court can only speculate as to why the Supreme Court did what it did, and speculation is not a reason to change venue under a Rule 187 *forum non conveniens* motion. If the Governor thought that Rule 384 applied, he should have presented a petition to the Supreme Court under that rule.

15. Secondly, the Governor ignores the fact that this case is completely different from every other lawsuit it refers to in its motion. Just because one case was transferred, does not mean that every case must or should be. Under the Governor's theory, every case filed challenging his actions under his COVID-19 disaster declarations should be transferred to Sangamon County, no matter what the issues, theories, or circumstances. If that was the case, there would be a special court to hear cases in Sangamon County. However, no such court exists, and every court of every county in Illinois is competent to hear any case where venue is appropriate under the venue rules.

16. Lastly, there is no risk of inconsistent rulings between courts of different counties because there is no other lawsuit pending in the entire State of Illinois that is challenging the actions of the Governor is closing high school sports on equal protection grounds. Even if there were, a risk of different rulings always exists in our legal system, and those are worked out by the appellate courts. The Governor has not provided any justification for abandoning the legal system that has been in place since the State of Illinois was incorporated.

WHEREFORE the Plaintiffs pray that this Court an Order denying the Defendant Governor Jay “JB” Prtizker’s Motion to Transfer, and grant such other relief as the Court deems fit.

Respectfully Submitted,

By: /s/ Laura Grochocki

Laura Grochocki
Attorney for Plaintiffs
200 East Illinois Street, 3211
Chicago, Illinois 60611
312-620-0671
lauraglaw@aol.com
Attorney No. ARDC# 6239444

CERTIFICATE OF SERVICE

I, Laura Grochocki, certifies under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure that on January 7, 2021, I caused a copy of the foregoing Response to Motion to Transfer to be served via the GreenFiling.com e-filing system and by e-mail to the persons to whom it is directed at the e-mail addresses indicated below :

Darren Kinhead
Office of the Illinois Attorney
General 100 W Randolph Street
11th Floor Chicago, IL 60601
dkinhead@atg.state.il.us

David Bressler
Attorney at Law
Clingen Callow & McLean
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By: /s/ Laura Grochocki

Laura Grochocki
Attorney for Plaintiffs
200 East Illinois Street, 3211
Chicago, Illinois 60611
312-620-0671
lauraglaw@aol.com
Attorney No. ARDC# 6239444

Exhibit 4

**(Reply in Support of Motion to Transfer, *Moore v.*
Pritzker, No. 2020 MR 426)**

FILED13TH JUDICIAL CIRCUIT
1/11/2021 11:20 AM
KQ**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT
LASALLE COUNTY, ILLINOIS**Gina Vaccaro
CLERK OF THE CIRCUIT COURT
LASALLE COUNTY, ILLINOIS

Lisa Marie Moore, <i>et al.</i> ,)	
)	
Plaintiffs,)	
	)	No. 2020 MR 426
vs.)	
	)	Judge Troy D. Holland
Governor JB Pritzker, <i>et al.</i> ,)	
)	
Defendants.)	

**THE GOVERNOR’S REPLY IN FURTHER
SUPPORT OF HIS MOTION TO TRANSFER**

Plaintiffs’ response to the Governor’s Motion to Transfer serves only to highlight why transfer of this action to Sangamon County on grounds of *forum non conveniens* is appropriate. Both the private and public factors relevant to the motion weigh heavily in favor of transferring this matter to the seat of Illinois Government so it can be consolidated into *In re Covid-19 Litigation*, No. 2020-MR-589 (Sangamon County).

1. The Private Factors Favor Transfer.

As noted in the Governor’s motion to transfer, when considering transfer of an action pursuant to the doctrine of *forum non conveniens* under Illinois Supreme Court Rule 187, a court weighs the “private factors” affecting transfer, including (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial evidence such as witnesses; and (3) all other practical problems making trial of a case easy, expeditious, and inexpensive. *See Gridley v. State Farm Mut. Auto. Ins. Co.*, 217 Ill. 2d 158, 169–70 (2005). Here, those factors favor transfer, and plaintiffs all but concede the point.

Plaintiffs claim there are no disputed facts relating to their claims, and that this case raises only legal issues. Response ¶ 4. They backed their position by filing a motion for summary judgment without any discovery. Indeed, in violation of the Illinois Code of Civil Procedure they

moved for summary judgment even before any adverse party, including the Governor, either appeared or was required to appear. 735 ILCS 5/2-1005(a) (plaintiffs may seek summary judgment only “*after* the opposite party has appeared or *after* the time within which...to appear has expired”)(emphasis added). Having declared that purely legal issues drive this case, they cannot now turn around and persuasively argue that LaSalle County is a more convenient or practical forum for plaintiffs than is Sangamon County when the entire litigation, in their view, comes down to the single motion they already filed. As a result, the best plaintiffs could have possibly argued is that the “private factors” are neutral with respect to transfer. But they don’t even do that. Instead, turning Illinois equal protection law on its head, they double down, unwittingly asserting that in order to defend the action the Governor will be required to present “facts” via “relevant witnesses *who are located at the seat of Illinois government in Sangamon County and . . . Cook County.*” Response ¶ 6 (emphasis added).¹ No matter, by revealing their view that “relevant witnesses” would be “located at the seat of Illinois government in Sangamon County,” plaintiffs effectively concede that Sangamon County is a more convenient venue when considering the “private factors” guiding the Court’s decision on transfer. A conclusion even more apparent when recognizing that plaintiffs reside in counties as far north as DuPage, as far west as Schuyler, and as far south as Fayette. Response ¶ 5.

¹ Plaintiffs assert “the **Governor** needs to present facts...to show that there is a rational basis” for the distinction between high school athletes and college and professional athletes. Response ¶ 6 (emphasis added). But Illinois equal protection law is the *opposite*. The Governor is *not* required to “produce evidence to sustain the rationality of the classification. Instead, there is a weighty burden on the **challenger**, who must negative every basis which might support the law because it should be upheld if there is any reasonably conceivable set of facts supporting the classification.” *AFSCME, Council 31 v. State*, 2015 IL App (1st) 133454 ¶ 32 (cleaned up and emphasis added). A “court may [even] hypothesize reasons for the” regulation. *Jones v. City of Calumet City*, 2017 IL App (1st) 170236 ¶ 29. Ultimately, “plaintiff bears the burden of demonstrating that [a challenged classification] furthers no legitimate public interest.” *Miller v. Dept. of Prof’l Regulation*, 276 Ill. App. 3d 133, 145 (2d Dist. 1995).

Beyond plaintiffs’ “private factors” concession, the actions already taken by the Illinois Supreme Court in transferring to Sangamon County fifteen cases filed across Illinois which challenge the legality of the Governor’s response to the Covid-19 crisis, several of which theorize that the Governor’s Executive Orders violate the equal protection clause of the Illinois Constitution, also support transfer. Yet, plaintiffs spend a great deal of their response insisting the Illinois Supreme Court’s Rule 384 transfer of cases to *In re Covid-19 Litigation*, No. 2020-MR-589 (Sangamon County) are not relevant to the Court’s inquiry. Response ¶¶ 10–13. In doing so they fail to recognize that transferring actions pursuant to Rule 384 requires the Supreme Court to conclude transfer “would serve the convenience of the parties and witnesses and . . . would promote the just and efficient conduct of such actions.” Ill. Sup. Ct. R. 384(a)(1)-(2). These considerations, of course, parallel the very “private factors” assessment Rule 187 demands when trial courts consider transferring an action pursuant to the doctrine of *forum non conveniens*. *Gridley*, 217 Ill. 2d. at 169–70. Thus, the Illinois Supreme Court’s Orders transferring fifteen Covid-19 Executive Order challenges like this one to Sangamon County not only are “relevant” to resolution of the Governor’s transfer request, they guide the Court’s determination.²

² Perhaps sensing the weakness of their “relevance” argument (and realizing their predicament) plaintiffs insist the Court “can only speculate” as to why the Supreme Court transferred cases to Sangamon County. Response ¶ 14(b) [Plaintiffs’ response contains two paragraphs numbered 14. This reference is to the second paragraph 14. The first paragraph 14 is referred to as 14(a)]. But the plain language of Rule 384 makes clear that in each of the fifteen transfers the Supreme Court was required to “determine” that the convenience of parties and witnesses favored transfer to Sangamon and that transfer would promote the just and efficient conduct of such actions. Ill. Sup. Ct. R. 384(a)(1)-(2). Plaintiffs’ counter that “[j]ust because one case was transferred [] does not mean that every case must or should be” (Response ¶ 15) overlooks that *every time* the Illinois Supreme Court was asked to transfer an action challenging the Governor’s Covid-19 protection measures to Sangamon County it did so. Motion to Transfer at 3–5 and Exs. 3, 5–7, 11 thereto. Indeed, the Supreme Court transferred one such case without even being asked to do so. *See id.*, Ex. 6 thereto.

Finally, in attempting to highlight differences between the cases already transferred by the Illinois Supreme Court and this case, plaintiffs miss not only the forest, but also the trees. As for the trees, this case has issues in common with three (not one, as plaintiffs erroneously assert, Response ¶ 14(a)) equal protection cases transferred to Sangamon County, although such similarity is not required by Rule 187. Motion to Transfer at 4–5. Even more significant is the forest—the Supreme Court has transferred and consolidated a wide variety of cases, determining time after time that the seat of Government, Sangamon County, is the appropriate venue for actions challenging the Governor’s Covid-19 protection measures. Motion to Transfer at 3–5. The variety of cases highlights the weight the Supreme Court gives to the common element of the actions—each involves a challenge to the Governor’s Covid-19 response.³

2. The Public Factors Favor Transfer

Rule 187 requires a court to consider as a “public factor” whether a case involves a “localized controversy” that should be decided locally or instead “touch[es] the affairs of many persons” not parties to the action. *McClain v. Illinois Cent. Gulf R. Co.*, 121 Ill. 2d 278, 289 (1988).⁴ Here, there is no doubt: the issues raised, and the decision made, will reverberate across the state affecting high school athletes, along with their schools, families, and communities in every Illinois County.

³ Plaintiffs accuse the Governor of forum shopping through his motion to transfer. Response ¶ 9. The Illinois Supreme Court first transferred and consolidated Covid-19-related litigation in Sangamon County before Judge Raylene Grischow on August 5, 2020. *See* Motion to Transfer, Ex. 3 thereto. Since that time Judge Grischow has issued multiple rulings in *In re Covid-19 Litigation*, No. 2020-MR-589 (Sangamon County), some favorable to the Governor, some unfavorable, and none relating to equal protection claims. There is no basis for plaintiffs’ forum shopping accusation.

⁴ The other public factors are “the unfairness of imposing the expense of a trial and the burden of jury duty on residents of a county with little connection to the litigation; and . . . the administrative difficulties presented by adding further litigation to court dockets in already congested fora.” *Gridley*, 217 Ill. 2d at 170. These factors are of no moment here given plaintiffs’ view that there are no issues to be tried, as well as the efficiencies already recognized by the Illinois Supreme Court in consolidating in one forum other Covid-19-related litigation against the Governor.

Plaintiffs claim they are “are seeking relief on a very narrow issue.” Response ¶ 3. But they ask the Court to enter “a permanent injunction barring Governor Pritzker and his officers, agents, servants, employees and all of those acting in concert with them, from enforcing the cancellation of the interscholastic high school sports of football, basketball and hockey for the winter 2020-2021 season.” Complaint, Prayer for Relief ¶ C. They do not simply ask for an injunction against enforcement as to themselves (which is as much as the law allows), or their schools, or their counties; they seek a blanket injunction against enforcement. And while any judgment this Court might enter can provide relief only to the named plaintiffs, their goal is clearly for their children to play on teams that compete with other high school athletes across Illinois. There is nothing “narrow” about this case.

Recognizing this very issue, in May 2020, Judge Derek Asbury of the Tenth Judicial Circuit Court in Peoria County granted a Rule 187 motion to transfer a Covid-19-related business closure case to Sangamon County pursuant to the doctrine of *forum non conveniens*. See May 12, 2020 Order, *Running Central, Inc., v. Pritzker*, No. 2020 CH 128 (originally filed in Peoria County), attached as Exhibit 1. Judge Asbury reasoned as follows:

The Plaintiff’s verified complaint strictly deals with the executive order promulgated and issued from Sangamon County. The only requested relief by the Plaintiff is that this Peoria County Trial Court declare the statewide executive emergency order unconstitutional on its face as a violation of his emergency powers. Although it is accompanied with a TRO as it pertains to the Plaintiff, the majority of the verified complaint addresses a requested declaration that effects the entire State. While the Plaintiff requests that this Court only consider it in the context of his case, the pleadings seem to suggest otherwise. The Court cannot ignore the public interest factor of this being a localized verses statewide controversy, touching every corner of the State. . . .

[T]ransferring venue on a statewide issue for the purpose of uniformity is in the public’s greater interest. The Court finds it is as important to have consistency in rulings on a statewide issue during this pandemic Therefore, this Court grants the Defendant’s motion and transfers venue to Sangamon County, where the executive order originated as to all of the State’s citizens and businesses.

Id. at 3–4.

Judge Asbury’s reasoning on *forum non conveniens* applies with even greater force here, where plaintiffs from multiple counties across Illinois raise arguments that apply to high school athletes all over the state. And because the private interest factors also weigh in favor of transfer of this action, “it is logical that transferring venue [to the seat of Illinois government] on a statewide issue for the purpose of uniformity is in the public’s greater interest.” *Id.* at 4.

For this same reason, plaintiffs’ blithe assertion that appellate courts can “work[] out” any inconsistent rulings must be rejected. Response ¶ 16. The outcome here could affect the Governor’s ability to respond to a public health crisis that has already resulted in the deaths of more than 17,500 people in this State.⁵ Consistency in rulings is essential, and favors transfer.

3. The Public Factors Outweigh the Limited Deference Owed to Plaintiffs’ Choice of Forum.

Any deference owed to plaintiffs’ choice of forum is more than outweighed by the factors discussed above, especially given the absence of a localized controversy and the effect of this case on “the affairs of many persons” not parties to the action. *McClain*, 121 Ill. 2d at 289. Moreover, “[w]hen the plaintiff is foreign to the chosen forum and when the action giving rise to the litigation did not occur in the chosen forum, the plaintiff’s choice of forum is accorded less deference.” *Gridley*, 217 Ill. 2d at 170. While two of the plaintiffs in this matter are residents of LaSalle County, three others are foreign to the forum, residing in Schuyler, DuPage, and Fayette Counties. Response ¶ 5. In addition, the action giving rise to the litigation—the issuance of the Tier 3 mitigation restrictions—occurred at the seat of Government in Sangamon County, not in

⁵ See Illinois Department of Public Health, COVID-19 Statistics, <https://www.dph.illinois.gov/covid19/covid19-statistics>. Last visited January 11, 2021.

LaSalle County. Deference is limited here, and in light of the statewide and public importance of the issues raised, transfer is warranted.

CONCLUSION

For the foregoing reasons, the Governor respectfully requests that the Court grant his motion, and transfer this case to Sangamon County under the doctrine of *forum non conveniens* so that it may be consolidated with *In re Covid-19 Litigation*, No. 2020-MR-589 (Sangamon County).

Dated: January 11, 2021

Respectfully Submitted,

KWAME RAOUL
Attorney General of Illinois

/s/ Gretchen E. Helfrich

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**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT
LASALLE COUNTY, ILLINOIS**

Lisa Marie Moore, <i>et al.</i> ,)	
)	
Plaintiff,)	
	)	No. 2020 MR 426
vs.)	
	)	Judge Troy D. Holland
Governor JB Pritzker, <i>et al.</i> ,)	
)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned hereby certifies the statements set forth in this certificate of service are true and correct and that she has caused a copy of the foregoing to be served upon:

Laura Grochocki
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David J. Bressler
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via email at the address noted above on January 11, 2021.

By: /s/ Gretchen Helfrich
Gretchen Helfrich
Assistant Attorney General

EXHIBIT 1

May 12, 2020 Order, *Running Central, Inc., v. Pritzker*,
No. 2020 CH 128 (Ill. 10th Jud. Cir. Ct.)

by act or omission targeting specific groups or an individual. Further, the opinions in those cases went to great lengths discussing the nature of the parties' legal relationships to each other and when it may have changed. A reasonable inference would be that the effects test alone is not dispositive, which explains why the Court went into a lengthy analysis regarding the parties' legal relationships. Certainly this is the Defendant's position and the argued effect of adopting Peoria County as a proper venue for this statewide executive order would eviscerate the venue statute and make it simply where the Plaintiff resides or operates. Unlike the cited cases, the Plaintiff offered no argument, evidence or pleadings that suggested any other basis for venue in Peoria other than its local enforcement and effect.

The Court finds the Defendant's view of transactional venue is as equally narrow as the Plaintiff's was broad. The Defendant argued that the cause of action from which the transaction occurred was the County where the executive order was created. This limited statutory reading appears in contrast to the common-law and has the effect of "eviscerating" the venue statute, and becomes only where the Government body resides and makes its rules, orders and regulations, completely ignoring the effects of where they are implemented and felt. In support, the Defendant argued that the Lake County Riverboat decision was controlling on the venue issue, *Lake County Riverboat v. Illinois Gaming Board* 313 Ill. App. 3d 943 (2nd Dist. 2000). The Court in that case similarly addressed a request for a declaratory judgment of the actions of a governmental body. The Court found that venue was improper in the Plaintiff's choice of venue and transferred the case to the County where the Gaming Board operates. I agree with the Defendant that this case is more contemporary and has similarities to the case before the Court, but there are also significant distinctions. The *Lake County Riverboat* Court found that although the effect may have been found in the County where the Plaintiff intended to operate its casino, the actual enforcement would occur in Cook County where the Board would approve or deny the application. In the instant case, the enforcement would occur in Peoria County where the business operates, unlike the argued case.

The Court, although troubled by the limited to no interaction or relationship between the Governor and the Plaintiff as found in the cited cases, finds that the effects of the executive order would occur in Peoria County, where it would be enforced against the Plaintiff. Therefore the Court finds Peoria County to be a proper venue, in addition to Sangamon County.

The second issue to address is the Defendant's motion for transfer to Sangamon County under the Doctrine of *Forum Non Conveniens*. The Doctrine of *Forum Non Conveniens* presupposes multiple jurisdictions that have proper venue. Under the Doctrine the Court may transfer venue to another jurisdiction.

Unlike improper venue, which mandates transfer, it is at the Judge's discretion. The Court is to give great deference to the Plaintiff's choice of venue and it is Defendant's burden to overcome. The Court is to consider the private and public interest factors in determining whether to transfer. The public and private interest factors are not weighed against each other but in their aggregate totality. The private and public interest factors are as follows:

Public:

- (1) The convenience of the parties, (2) the relative ease of access to sources of testimonial, documentary, and real evidence, and (3) all other practical problems that make trial of a case easy, expeditious, and inexpensive*

Private:

- (1) The interest in deciding localized controversies locally, (2) the unfairness of imposing the expense of a trial and burden of jury duty on residents of a county with little connection to the litigation; and (3) the administrative difficulties presented by adding further litigation to the Court dockets already congested for....*

The Plaintiff argues that common-law favors the Plaintiff's choice of venue and the balance of the public and private factors would not warrant transfer. The Defendant concedes that all the public and private interest factors are neutrally balanced except the public's interest in deciding localized controversies. The Court turns to the Plaintiff's pleadings and relief requested to assist in its venue analysis.

The Plaintiff's verified complaint strictly deals with the executive order promulgated and issued from Sangamon County. The only requested relief by the Plaintiff is that this Peoria County Trial Court declare the statewide executive emergency order unconstitutional on its face as a violation of his emergency powers. Although it is accompanied with a TRO as it pertains to the Plaintiff, the majority of the verified complaint addresses a requested declaration that effects the entire State. While the Plaintiff requests that this Court only consider it in the context of his case, the pleadings seem to suggest otherwise. The Court cannot ignore the public interest factor of this being a localized verses statewide controversy, touching every corner of the State. Further, the Plaintiff's complaint offers very little substance regarding the application of the executive order to his business that is unique to him or localized. The Court struggled with finding case law for venue issues for statewide proclamations during pandemics or State emergencies. The Court did review the recent Federal District opinion that addressed and challenged the constitutionality of the executive order as it relates to infringing on freedom of religion, United States District Court for the Northern District of Illinois *Cassell v. Snyders*, No. 20-C-50153. Although that case did not challenge the executive order on its authority to issue

by statute, it did address the ability to effect constitutional fundamental rights during pandemics and state of emergencies. The opinion addressed a body of case law that temporarily changed the scrutiny standard on constitutional violation claims for the sake of public interest during times of crisis.

The Court also considered the recent Supreme Court M.R. COVID-19 orders regarding the pandemic. Specifically, the Illinois Supreme Court has temporarily suspended Defendants' speedy trial rights in criminal cases due to the public health emergency. Certainly, if the most fundamental rights and due process axioms must to some extent yield to greater public interest, it is logical that transferring venue on a statewide issue for the purpose of uniformity is in the public's greater interest. The Court finds it is as important to have consistency in rulings on a statewide issue during this pandemic (parties stipulated to existence of disaster), perhaps even more so than what the constitutionality actually is. Therefore, this Court grants the Defendant's motion and transfers venue to Sangamon County, where the executive order originated as to all of the State's citizens and businesses.

Entered: 5-12-20

Signed: _____

Hon. Judge Derek Asbury

Exhibit 5

**(Order of LaSalle County circuit court,
Moore v. Pritzker, No. 2020 MR 426)**

The Governor filed this Motion to Transfer noting that multiple lawsuits raising challenges to the Governor’s legal authority to address the ongoing Covid-19 pandemic were pending in various circuit courts throughout Illinois. The Governor further notes that most of said cases have been transferred and/or permanently assigned to a single judge in Sangamon County by the Illinois Supreme Court because “consolidation [of those cases] would serve the convenience of the parties and witnesses and would promote the just and efficient conduct of such actions.” *Ill.S.Ct.R. 384(a) (Rule 384)*. The Governor acknowledges that they have not filed a motion to transfer with the Illinois Supreme Court pursuant to *Rule 384*, but argue that under *Ill.S.Ct.R. 187 (Rule 187)* this Court should consider many of the same reasons that the Illinois Supreme Court has considered in consolidating the Covid-19 actions in Sangamon County. The Governor further argues that the private and public interest factors courts must use in making *Rule 187* decisions support a transfer to Sangamon County.

Plaintiffs argue that there is no basis for this Court to transfer the case to Sangamon County pursuant to *Rule 187*. Plaintiffs argue that they are asking the Court to decide the narrow issue of whether placing restrictions on Illinois high school sports and not on college and professional sports passes the rational basis test of the equal protection clause of the Illinois Constitution.

RULING

The Governor’s Motion to Transfer this action is brought under *Rule 187—Motion on Grounds of Forum Non Conveniens*. The doctrine of *forum non conveniens* assumes there is more than one forum with the power to hear the case. *Gridley v. State Farm Mutual Automobile Insurance Co.*, 217 Ill.2d 158, 169 (2005). The doctrine is based on “considerations of fundamental fairness and sensible, effective judicial administration.” *Gridley at 169. Forum*

non conveniens is a flexible doctrine in which a court evaluates the total circumstances rather than any single factor. *Id.* To make such a determination, courts are directed to evaluate several factors which include private interest factors and public interest factors. The Court notes it found very little case law guidance on circumstances regarding the appropriate forum for challenges brought to statewide regulations other than the traditional *forum non conveniens* analysis.

The relevant private interest factors include: (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical considerations that make the trial easy, expeditious, and inexpensive. *Id. at 170.* The relevant public interest factors include: (1) the interest in deciding localized controversies locally; (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a county that has little connection to the litigation; and (3) the administrative difficulties caused when litigation is added to already congested court dockets. *Id.* A trial court should not weigh the private interest factors against the public interest factors, but rather evaluate the total circumstances of the case in determining whether the balance of factors strongly favors a transfer. *Id.* When considering the more appropriate forum, no “single factor is given conclusive effect or central emphasis.” *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 158, 180 (2003).

The Court also must consider the amount of deference to give to Plaintiffs’ chosen forum. However, a plaintiff’s right to choose a forum “cannot be permitted to override the public interest in, and need for, an orderly, efficiently operated judicial system.” *Espinosa v. Norfolk and Western RY. Co.*, 86 Ill.2d 111, 124 (1981). Plaintiffs’ pleadings in one instance states only one of the five Plaintiffs resides in LaSalle County stating the others are from Grundy, DuPage, Schuyler and Fayette County. In another instance, the Plaintiff states two of the Plaintiffs reside

in LaSalle County. When the plaintiff choses a forum other than where he or she resides or somewhere other than where the cause of action arose, plaintiff's choice of forum is entitled to less deference. *First American Bank v. Guerine*, 198 Ill.2d 511, 520-21 (2002). In this instance, the Court does give deference to Plaintiffs' chosen forum, but for the reasons that follow finds that the private and public interest factors strongly favor transfer to Sangamon County.

In regard to the private interest factors, the Court finds they favor transfer. In this case, three (or potentially four) of the five Plaintiffs do not reside in LaSalle County. LaSalle County is the alleged residence of one or two Plaintiffs (one potentially in Grundy), one plaintiff resides in DuPage County, one in Schuyler County and one in Fayette County. Schuyler and Fayette Counties are closer to Sangamon County than LaSalle County. The Governor and his representatives are located in Springfield, Sangamon County and Cook County. According to Plaintiff, the evidence relates to the single legal issue of whether the restrictions placed on certain high school sports and not on college or professional sports passes the rational basis test of the equal protection clause of the Illinois Constitution. Plaintiffs' Response to the Motion to Transfer states "This [case] does not require intensive litigation of factual issues, with multiple witnesses from different counties coming to testify. On the contrary, the Governor needs to present facts, (not speculation, or belief) to show that there is a rational basis for his putting absolutely no restrictions on college and professional sports while closing high school sports. These facts will take the form of official data, perhaps one (1) witness, and a stated rational basis based on the data." Plaintiff seems to indicate that none of her clients will even be necessary to testify, while the Governor's witnesses will need to present facts as to the basis of the regulation. The Governor's witnesses and the agencies the Governor relies on are presumably located in Sangamon County, which is the seat of Illinois government. The cost and inconvenience of the

attendance of the Governor's witnesses would be presumably higher in LaSalle County than in Sangamon County. Therefore, the convenience of the necessary witnesses and the costs of their attendance favor Sangamon County over LaSalle County.

Likewise, the Court finds that the relative ease of access to sources of testimonial, documentary and real evidence favors Defendant's Motion to Transfer. Again Sangamon County (Springfield) is the seat of Illinois government and the challenged regulations were created and adopted in Sangamon County. Government offices such as the Illinois Department of Public Health, which the Governor apparently relied on in adopting the challenged regulations, are located in Sangamon County. Likewise, all other practical considerations that make trial easy, expeditious and inexpensive favor Defendant as most of the challenges to the Governor's Covid-19 Orders and regulations, including equal protection challenges, have been transferred to Sangamon County in front of one judge. The Court finds the private interest factors favor Defendant's Motion to Transfer.

In regard to the public interest factors, the Court finds the interest in deciding localized controversies locally favors a transfer to Sangamon County. Plaintiffs allege a constitutional violation that arose from the adoption of Governor's Executive Order and related regulations in Sangamon County. Said Order and regulations are applicable statewide. The crux of the constitutional issue pled involves more than a localized concern in LaSalle County; it has ramifications for every high school and high school student throughout the State of Illinois. There is a great interest to Illinois citizens statewide and of all the high schools involved. The Court finds that uniformity and consistency of a court ruling on this issue is of a larger public interest than the interests of the one or two LaSalle County residents that are Plaintiffs in this

action. Thus, the interest in deciding controversies locally strongly favors transfer from LaSalle County to Sangamon County.

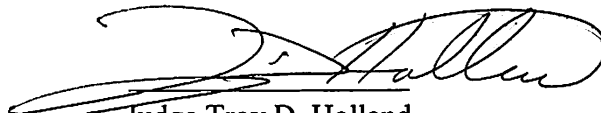
In regard to the other public interest factors of the unfairness of imposing jury duty or the costs of trial upon a community with no connection to the litigation and the administrative difficulties caused when litigation is added to already congested court docket, the Court finds little evidence or argument was presented on these factors. Again, any trial necessary in the LaSalle County forum, which would be a bench trial rather than a jury trial, would be for a statewide controversy and not a local one. As stated, this case involves many citizens and all high schools throughout the state and there is reason to hold the trial in their view rather than a more remote county. *See McClain v. Illinois Cent. Gulf R. Co*, 121 Ill.2d 278, 289 (1988). Therefore, transfer to Sangamon County is favored. With no evidence or argument, the Court finds the factor of congested dockets is neutral. Based on the statewide interests at stake and in the interest of consistency and uniformity of legal decisions related to the Governor's adoption of regulations in response to the Covid-19 pandemic, the Court finds the public interest factors weigh in favor of transfer of this action to Sangamon County.

After careful consideration of the parties' arguments and review of relevant authority, the Court finds that, while giving deference to the Plaintiffs' choice of forum, based on the totality of the circumstances, the balance of the relevant private and public interest factors strongly weigh in favor of transfer to Sangamon County.

IT IS HEREBY ORDERED THAT:

Defendant, Governor J.B. Pritzker's intrastate *forum non conveniens* motion to transfer this action to Sangamon County pursuant to *Illinois Supreme Court Rule 187* is granted.

ENTER: January 19, 2021



Judge Troy D. Holland

Exhibit 6

(Order of Sangamon County circuit court)

Verticchio, Thomas

From: Raylene Grischow [REDACTED]
Sent: Monday, January 25, 2021 12:40 PM
To: Kinkead, Darren [REDACTED] Verticchio, Thomas; Bautista, Laura; Helfrich, Gretchen
Cc: Laura
Subject: FW: Case transfer from LaSalle County - refusal to accept jurisdiction

Counsel:

Sangamon County is refusing to accept jurisdiction of this matter. Below is an Order from the Chief Judge of Sangamon County. He asked that I forward his message to the parties.

Regards,

Raylene D. Grischow
 Sangamon County Circuit Court Judge
 The Sangamon County Building
 200 South Ninth Street, Room 524
 Springfield, IL 62701
 [REDACTED]
 [REDACTED]

From: John Madonia [REDACTED]
Sent: Monday, January 25, 2021 12:05 PM
To: Raylene Grischow [REDACTED] Ande Kirkland [REDACTED]
Subject: Case transfer from LaSalle County - refusal to accept jurisdiction

Thank you for your patience as I have been to working to review the status of the LaSalle County controversy that has been designated for transfer to Sangamon County. I am aware that Judge Grischow has been in contact with counsel for the parties as she would likely be the judge assigned to hear the LaSalle County case if it were permitted to be docketed in our jurisdiction. However, for multiple reasons, including that fact that our judicial circuit is situated significantly differently than the county that is most impacted by the lawsuit and the resolution that would follow the litigation of the issues, Sangamon County will be declining jurisdiction of this case and referring it back to LaSalle county for further proceedings. Of particular concern to this court, as Chief Judge for the Seventh Judicial Circuit, is the potential for forum and judge shopping that results from the transfer of this case. While Sangamon County has been selected to preside over several COVID-related disputes over the last several months, the cases were almost exclusively consolidated and assigned under the authority of the Supreme Court and ordered by the Court to be heard in Sangamon County, and have resulted in favorable rulings for the State of Illinois in a majority, if not the entirety of the rulings. Because Sangamon County courts have consistently made rulings that are favorable to the State of Illinois, in previous litigation challenging governmental restrictions imposed to control the spread of COVID-19, concern has been sufficiently established for this court to believe that Defendant's motion to change venue to Sangamon County is a not-so-veiled disguise to shop for a friendly forum to decide another COVID dispute involving State of Illinois activity restrictions that have been implemented in response to the continued spread of the coronavirus. Had Defendant's in the instant LaSalle County case sought for the case to be transferred through the Supreme Court, then this court would not be in a position to make this determination. However, Defendant circumvented the Supreme Court authority to consolidate the lawsuit into established Sangamon County proceedings, and opted to establish jurisdiction through *forum non conveniens*,

pursuant to Illinois Supreme Court Rule 187, which permits this court to refuse to accept jurisdiction. If this court were to accept jurisdiction as requested, Sangamon County would be deciding a controversy for residents of another county who are not closely related or similarly situated under the specific circumstances of this ruling, especially when Sangamon County is located in a totally different Region involving totally different restrictions. Additionally, the method for establishing jurisdiction in Sangamon County, and the consequences of establishing jurisdiction as Defendant has done, invites cause for concern that the transfer is largely designed to provide a strategical advantage to the moving party based upon prior rulings of the court.

Pursuant to Supreme Court 187, Madam clerk is directed to refuse to accept jurisdiction of the case transferred from LaSalle County. The parties shall consider this correspondence as an "order" refusing to accept jurisdiction within the meaning of Supreme Court Rule 187 and the clerk of LaSalle County and counsel for all case participants shall be provided a copy of this order upon its receipt.

Judge Grischow, in addition to notice provided by the clerk, please relay this decision to the parties impacted by it so that they may plan the next stage of their litigation as timely as possible as I am aware that you have had some preliminary conversations with them in advance of this order.

Judge John M. Madonia
Chief Circuit Judge
Seventh Judicial Circuit for the State of Illinois

CERTIFICATE OF FILING AND SERVICE

I certify that on January 29, 2021, I electronically filed the foregoing Original Complaint for *Mandamus* Relief with the Clerk of the Illinois Supreme Court by using the Odyssey eFileIL system.

I further certify that the following participants in this matter, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served with a courtesy copy via the Odyssey eFileIL system.

Laura Grochocki
lauraglaw@aol.com

David Bressler
bressler@ccmlawyer.com

I also certify that the other participant in this matter, named below, is not a registered service contact on Odyssey eFileIL system, and thus was served by placing a copy of said complaint in an envelope bearing proper prepaid postage and directed to the address indicated below, and depositing the envelope in the United States mail at 100 W. Randolph, Chicago, Illinois 60601, before 5:00 p.m. on January 29, 2021.

The Honorable John M. Madonia
Chief Judge of the Sangamon County Circuit Court
Sangamon County Complex
200 South 9th Street
Springfield, IL 62701

Under penalties, as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Carson R. Griffis
CARSON R. GRIFFIS
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 814-2575
Primary e-service:
CivilAppeals@atg.state.il.us
Secondary e-service:
cgriffis@atg.state.il.us

No. _____

IN THE
SUPREME COURT OF ILLINOIS

GOVERNOR JB PRITZKER,	)	Original Action for Mandamus Under
	)	Illinois Supreme Court Rule 381 or
Movant-Plaintiff,	)	Supervisory Relief Under Illinois
	)	Supreme Court Rule 383
v.)	
)	
)	
HON. JOHN M. MADONIA, Chief)	
Circuit Judge of Circuit Court of)	
Sangamon County,)	
)	
Respondent-Defendant.)	
)	
)	
LISA MOORE, MANDY WORKER, JILL)	
PEARSON LAYNE, KATE BENTON,)	
CHRISTINE SIMMONS, and THE)	
ILLINOIS HIGH SCHOOL)	
ASSOCIATION,)	
)	
Nominal Parties.)	

ORDER

THIS CAUSE COMING TO BE HEARD on Movant-Plaintiff Governor JB Pritzker's motion for leave to file *mandamus* complaint or for supervisory order, due notice having been given, and the Court being fully advised;

IT IS HEREBY ORDERED that the motion for leave to file a *mandamus* complaint is GRANTED / DENIED.

IT IS HEREBY ORDERED that the motion for a supervisory order is GRANTED/DENIED.

ENTER:

JUSTICE

DATED: _____
Carson R. Griffis
Assistant Attorney General
Civil Appeals Division

CERTIFICATE OF FILING AND SERVICE

I certify that on January 29, 2021, I electronically filed the foregoing Motion for Leave to File *Mandamus* Complaint or for Supervisory Order with the Clerk of the Illinois Supreme Court by using the Odyssey eFileIL system.

I further certify that the following participants in this matter, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

Laura Grochocki
lauraglaw@aol.com

David Bressler
bressler@ccmlawyer.com

I further certify that the other participant in this matter, named below, is not a registered service contact on Odyssey eFileIL system, and thus was served by placing a copy of said motion in an envelope bearing proper prepaid postage and directed to the address indicated below, and depositing the envelope in the United States mail at 100 W. Randolph, Chicago, Illinois 60601, before 5:00 p.m. on January 29, 2021.

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/s/Carson R. Griffis
CARSON R. GRIFFIS
Assistant Attorney General
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