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IN THE APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

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DARREN BAILEY, )  
 )  
 *Plaintiff-Appellee,* ) Appeal from the Fourth Judicial Circuit  
 ) Court, Clay County, Illinois  
 )  
 v. ) Case No. 2020 CH 6  
 )  
 GOVERNOR JAY ROBERT PRITZKER, ) Honorable Michael McHaney, presiding  
 in his official capacity, )  
 ) Notice of Appeal Filed: April 27, 2020  
 *Defendant-Appellant.* )

**APPEARANCE**

Saul Ewing Arnstein & Lehr LLP hereby enters its appearance on behalf of Illinois Health and Hospital Association, Illinois State Medical Society, American Nurses Association-Illinois, and Illinois Society for Advanced Practice Nursing.

By: /s/ Hal R. Morris  
One of their attorneys

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies pursuant to penalties of perjury as set forth in Section 1-109 of the Illinois Code of Civil Procedure that he caused to be served the attached **Appearance** via email to:

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on this 29th day of April, 2020.

/s/ Hal R. Morris

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<i>Defendant-Appellant.</i>	)	

**ILLINOIS HEALTH AND HOSPITAL ASSOCIATION, ILLINOIS STATE MEDICAL SOCIETY, AMERICAN NURSES ASSOCIATION-ILLINOIS, AND ILLINOIS SOCIETY FOR ADVANCED PRACTICE NURSING’S MOTION FOR LEAVE TO FILE JOINT *AMICI CURIAE* BRIEF IN SUPPORT OF GOVERNOR JAY ROBERT PRITZKER**

The Illinois Health and Hospital Association (the “Hospital Association”), the Illinois State Medical Society (“Medical Society”), the American Nurses Association-Illinois (“ANA-Illinois”), and the Illinois Society for Advanced Practice Nursing (“Nursing Society”) (collectively “*Amici*”), by their attorneys Saul Ewing Arnstein & Lehr LLP, pursuant to Illinois Supreme Court Rule 345(a), move for leave to file their proposed Joint Brief *Amici Curiae* in support of Governor Jay Robert Pritzker. In support of their motion, *Amici* state:

**Background**

1. On April 27, 2020, the Circuit Court for the Fourth Judicial Circuit in Clay County, Illinois (the “Circuit Court”) granted state representative Plaintiff Darren Bailey’s (“Plaintiff”) request for a temporary restraining order enjoining Defendant Governor Jay Robert

Pritzker in his official capacity (“Governor Pritzker”) from enforcing the “March 20 executive order” against Plaintiff, including the stay at home provisions of that order.

2. As this Court is well aware, the State of Illinois is facing a health crisis unseen in recent history. As a result of the COVID-19 pandemic, Governor Pritzker declared a state-wide disaster on March 9, 2020, and has entered several executive orders seeking to protect the health and safety of Illinois residents and frontline healthcare workers. Though seemingly limited only to Plaintiff and specifically to the March 20 executive order (Executive Order 2020-10 (COVID Executive Order No. 8)), the Circuit Court’s April 27, 2020 TRO has widespread and devastating consequences on the health of the people of Illinois.

3. As further discussed in the proposed *Amici Curiae* Brief, which has been separately filed, Governor Pritzker’s Executive Order 2020-10 (the “Executive Order”), among other things, required all Illinois residents to “stay at home” except as otherwise allowed by the Executive Order. The Executive Order’s notable exceptions included allowing residents to seek medical attention, go grocery shopping or shopping for other necessities, take care of others, or to simply take a walk, bike ride, or run outside. The Executive Order’s purpose, in part, was to “ensure that our healthcare delivery system is capable of serving those who are sick.”<sup>1</sup>

4. The Circuit Court’s TRO preventing enforcement of the Executive Order puts millions of Illinois residents, thousands of frontline healthcare workers, and Plaintiff’s own constituents at serious risk. On April 27, 2020, Governor Pritzker filed his notice of appeal to this Court. For the reasons stated below, *Amici* seek leave to file their Joint *Amici Curiae* Brief in order to assist this Court in deciding the serious public health issues raised in this appeal. First,

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<sup>1</sup> The Executive Order, therefore, is hardly a “quarantine” order as suggested by the Circuit Court in granting Plaintiff’s requested TRO.

*Amici*, as not-for-profit organizations assisting and representing members of the Illinois healthcare industry (hospitals, health systems, physicians, medical students, advanced practice registered nurses, and registered nurses), have a strong interest in ensuring the safety of their members and the patients they serve. Second, because of the expertise and unique perspective *Amici* have on the impact of the COVID-19 pandemic and the TRO, the proposed Brief can assist this Court in deciding this appeal.

**Amici Curiae's Interest in This Matter**

5. The Hospital Association represents over 200 hospitals and forty health systems in the State of Illinois. Member hospitals include community hospitals, safety net hospitals, rural and critical access hospitals, as well as teaching and academic medical centers, and specialty hospitals. The Hospital Association's purpose, *inter alia*, is "to support each person's quest for optimum health, all individuals and communities have access to high-quality healthcare at the right time and in the right setting."

6. The Medical Society is a non-profit, I.R.C. § 501(c)(6), professional organization that represents and unifies its physician members in their practice of medicine. The Medical Society represents the interests of its member physicians, fellows, residents, and medical students, as well as those of patients, and promotes the doctor-patient relationship, the ethical practice of medicine, and the betterment of public health. The Medical Society's membership represents approximately 9,000 physicians in the State of Illinois, across all specialties and practice types.

7. ANA-Illinois is a non-profit, I.R.C. § 501(c)(6), professional organization that represents thousands of registered nurses in Illinois. ANA-Illinois represents the interests of over 180,000 licensed registered nurses from all areas of practice and academia.

8. The Nursing Society is a non-profit, I.R.C. § 501(c)(6), professional organization dedicated to promoting and advocating for advanced practice registered nurses. The Nursing Society's membership encompasses all four specialty areas of practice: nurse midwives, nurse practitioners, clinical nurse specialists, and nurse anesthetists.

9. The Hospital Association, the Medical Society, ANA-Illinois, and the Nursing Society have a specific interest in this matter because Illinois hospitals and health systems, including their thousands of frontline healthcare workers (which includes physicians, advanced practice registered nurses, registered nurses, respiratory therapists, and other medical professionals and para-professionals) will bear a disproportionate burden of the Circuit Court's TRO while they are providing access to quality healthcare to Illinois residents during the COVID-19 pandemic.

10. Indeed, the TRO directly, negatively, and materially impacts Illinois hospitals and healthcare systems, including those represented by the Hospital Association, physicians represented by the Medical Society, and advanced practice registered nurses and registered nurses represented by ANA-Illinois and the Nursing Society. The TRO seriously restricts the availability of healthcare for Illinois residents and makes healthcare workers' jobs even more dangerous.

11. For example, the only hospital in Clay County, Illinois, the county in which Plaintiff resides, has twenty beds and *no* intensive care beds and would be heavily impacted by any surge of cases in Clay County resulting from the Circuit Court's TRO allowing Plaintiff to contravene the health and safety of other individuals. EMS Region 6, of which neighboring Jasper County is a part, has only fifty-five ICU beds and Jasper County alone has already seen forty-four positive COVID-19 cases. As demonstrated in the attached *Amici Curiae* Brief,

additional COVID-19 cases that *will* result from the entry of the TRO could quickly overwhelm the hospitals, physicians, advanced practice registered nurses, and registered nurses in this region, causing them to have to operate at a “Crisis” level of care. Further, because COVID-19 knows no boundaries, the TRO seriously and materially impacts the public, hospitals, physicians, and nurses throughout the entire State.

12. On behalf of those hospitals, as well as all hospitals in the State of Illinois, the Hospital Association has an interest in preserving and protecting the safety of all Illinois residents that are impacted by the Circuit Court’s ruling in this case. Likewise, the Medical Society has an interest in preserving and protecting the safety of all Illinois residents and the physicians who serve them, and ANA-Illinois and the Nursing Society have an interest in preserving and protecting the safety of registered nurses and advanced practice registered nurses who are further put in harm’s way as a result of the TRO.

**The *Amici Curiae* Brief Will Assist the Court in Deciding this Matter**

13. This Court, in *Scheffel Financial Services, Inc. v. Heil*, 2014 IL App (5th) 130600, ¶ 10, stated that:

A preliminary injunction requires a showing by a preponderance of the evidence that the plaintiff (1) has a clearly ascertainable right needing protection, (2) will suffer irreparable harm without protection, (3) has no adequate remedy at law, and (4) is likely to succeed on the merits. The circuit court **must** also consider whether the benefits of granting the injunction exceed any injury to the defendant.

(Citations Omitted) (Emphasis Added). The elements for establishing entitlement to a TRO are identical. *County of Boone v. Plote Constr., Inc.*, 2017 IL App (2d) 160184, ¶ 28. “In balancing the equities, the court should also consider the effect of the injunction on the public.” *Kalbfleisch ex rel. Kalbfleisch v. Columbia Community Unit Sch. No. 4*, 396 Ill. App. 3d 1105, 1119 (5th

Dist. 2009). Here, *Amici* have special expertise and an understanding of the harm that the TRO could cause to the public.

14. The proposed *Amici Curiae* Brief will assist this Court's consideration of whether the benefits of granting the TRO exceeded the substantial, wide-spread, devastating, and irreversible injury that will be suffered by the people of the State of Illinois, who are represented by the Governor. The proposed Brief provides evidence of the very real and substantial impact from the perspective of healthcare workers on the frontlines of the COVID-19 healthcare emergency. Accordingly, *Amici*'s proposed Brief will assist the Court in deciding this matter and should be considered.

WHEREFORE, the Illinois Health and Hospital Association, the Illinois State Medical Society, the American Nurses Association-Illinois, and the Illinois Society for Advanced Practice Nursing respectfully request that this Court grant leave pursuant to Illinois Supreme Court Rule 345(a), to file their Joint *Amici Curiae* Brief, which has been separately filed, and for such other and further relief as this Court deems just and equitable.

Respectfully submitted,

Illinois Health and Hospital Association, Illinois  
State Medical Society, American Nurses  
Association-Illinois, and Illinois Society for  
Advanced Practice Nursing

By: /s/ Hal R. Morris  
One of their attorneys

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies pursuant to penalties of perjury as set forth in Section 1-109 of the Illinois Code of Civil Procedure that he caused to be served the attached **Illinois Health and Hospital Association, Illinois State Medical Society, American Nurses Association-Illinois and Illinois Society for Advanced Practice Nursing's Motion for Leave to File Joint *Amicus Curiae* Brief in Support of Governor Jay Robert Pritzker** via email to:

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on this 29th day of April, 2020.

/s/ Hal R. Morris

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**BRIEF OF *AMICI CURIAE* THE ILLINOIS HEALTH AND  
HOSPITAL ASSOCIATION, ILLINOIS STATE MEDICAL SOCIETY,  
AMERICAN NURSES ASSOCIATION-ILLINOIS, AND ILLINOIS  
SOCIETY FOR ADVANCED PRACTICE NURSING IN SUPPORT OF  
GOVERNOR JAY ROBERT PRITZKER**

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### **INTEREST OF THE *AMICI CURIAE***

The Illinois Health and Hospital Association (the “Hospital Association”) is a state-wide not-for-profit, I.R.C. § 501(c)(6), organization dedicated to representing Illinois hospitals and health systems to foster professional healthcare, effective leadership, and responsible citizenship in communities across the State. The Hospital Association represents over 200 Illinois hospitals and nearly forty Illinois health systems. These hospitals and health systems include community hospitals, safety net hospitals, rural and critical access hospitals, as well as teaching and academic medical centers and specialty hospitals. The Hospital Association’s mission is to advance “optimal health and healthcare” throughout Illinois by “support[ing] each person’s quest for optimum health, [and that] all individuals and communities have access to high-quality healthcare at the right time and in the right setting.”

The Illinois State Medical Society (the “Medical Society”) is a state-wide organization dedicated to maintaining and increasing the professionalism of physicians engaged in the science and art of medicine, in all of its disciplines. The Medical Society is a non-profit, I.R.C. § 501(c)(6), professional society comprised of approximately 9,000 practicing physicians, medical residents and fellows, and medical students in Illinois. Membership encompasses practicing physicians from a broad range of specialties, geographic locations, and types of practice. The Medical Society, by virtue of being the most broadly-based professional association representing Illinois physicians, has a vital interest in the resolution of this case. Physicians, who are leading the State’s frontline healthcare workers in their response to the COVID-19 pandemic, would bear a disproportionate burden if Governor Jay Robert Pritzker’s (“Governor Pritzker”)

Executive Order 2020-10 is enjoined while they treat those Illinois residents who have COVID-19, not to mention those suffering from other medical conditions.

The American Nurses Association-Illinois (“ANA-Illinois”) is a non-profit, I.R.C. § 501(c)(6), professional association of registered nurses in Illinois. ANA-Illinois represents the interests of over 180,000 licensed registered nurses from all areas of practice and academia. ANA-Illinois, as the representative membership organization of Illinois nurses, maintains a vital interest in this case as a negative outcome will detrimentally impact the ability of its members to practice in this State.

The Illinois Society for Advanced Practice Nursing (“Nursing Society”) is a non-profit, I.R.C. § 501(c)(6), professional association that represents the interests of advanced practice registered nurses in Illinois. The Nursing Society’s membership encompasses all four specialty areas of practice: nurse midwives, nurse practitioners, clinical nurse specialists, and nurse anesthetists. As the representative of advanced practice registered nurses throughout Illinois, the Nursing Society, like the Hospital Association, the Medical Society, and ANA-Illinois, has a profound interest in this case.

The Fourth Judicial Circuit Court’s (the “Circuit Court”) temporary restraining order entered in this case directly, negatively, and materially impacts Illinois hospitals, healthcare systems, physicians, registered nurses, and advanced practice registered nurses, including those represented by the Hospital Association, the Medical Society, ANA-Illinois, and the Nursing Society. For example, the *only* hospital in Clay County, Illinois, the county in which Plaintiff Darren Bailey (“Plaintiff”) resides, has just twenty total beds and *no* intensive care beds and would, therefore, be heavily impacted by any surge of cases in Clay County resulting from the Circuit Court’s TRO allowing Plaintiff

to contravene the health and safety of other individuals. EMS Region 6, which includes neighboring Jasper County, has only fifty-five ICU beds and Jasper County alone has already seen forty-four positive COVID-19 cases. Additional COVID-19 cases that *will* result from the entry of the TRO could quickly overwhelm the hospitals, and the physicians, registered nurses, and advanced practice registered nurses working within them, in this region, causing them to have to operate at a “Crisis” level of care. Further, because COVID-19 knows no boundaries, the TRO seriously and materially impacts the public, hospitals, physicians, registered nurses, and advanced practice registered nurses throughout the entire State. On behalf of all hospitals, physicians, registered nurses, and advanced practice registered nurses in the State of Illinois, the Hospital Association, the Medical Society, ANA-Illinois, and the Nursing Society have an interest in preserving and protecting the safety of all Illinois residents that are impacted by the Circuit Court’s ruling in this case.

The Hospital Association’s members, the Medical Society’s physicians, ANA-Illinois registered nurses, and the Nursing Society’s members (collectively, “*Amici*”) treating those afflicted with COVID-19 and related conditions all have a specific interest in this matter because any erosion of the Governor’s Executive Orders concerning COVID-19, especially those relating to requirements for Illinois residents to stay at home, place a disproportionate and potentially life-threatening burden on them, as well as the citizens of Illinois. The injunctive relief that was granted to Plaintiff, who is urging others to seek similar exemptions from the Governor’s COVID-19 Executive Orders, will directly and negatively impact Illinois hospitals, healthcare systems, physicians, registered nurses, and advanced practice registered nurses, including those represented by

*Amici* in this case. The very real and tangible effect of the relief granted by the Circuit Court is to negatively and materially impact the availability of healthcare for Illinois residents. Thus, this *Amici* Brief will assist the Court by providing a fuller context to the serious and negative implications created by the Circuit Court’s decision to enjoin enforcement of Governor Pritzker’s Executive Order as against Plaintiff Darren Bailey.

### **NATURE OF THE CASE**

The Circuit Court’s decision to grant a temporary restraining order in favor of state representative Plaintiff Darren Bailey, allowing him to contravene Governor Pritzker’s Executive Order 2020-10 (COVID Executive Order No. 8) (the “Executive Order”), opens the door to actions that will substantially and negatively impact Illinois residents’ access to healthcare and endanger millions of lives.<sup>1</sup> The Executive Order, among other things, required all Illinois residents to “stay at home” except as otherwise allowed therein. The Executive Order’s notable exceptions included allowing residents to seek medical attention, go grocery shopping or shopping for other necessities, take care of others, or to simply take a walk, bike ride, or run outside. The Executive Order’s purpose, in part, was to “ensure that our healthcare delivery system is capable of serving those who are sick.” The Circuit Court’s TRO entirely exempts Plaintiff from these restrictions.

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<sup>1</sup> Indeed, counsel for the Plaintiff and now also counsel to State Representative John Cabello (R – 68th District) already filed a separate lawsuit seeking exemption from the Executive Order. *See Cabello, in his individual capacity and on behalf of all citizens of the State of Illinois similarly situated v. Jay Robert Pritzker*, 2020 CH 610 (pending in the Seventeenth Judicial Circuit Court for Winnebago County). This time, however, unlike Plaintiff in this case, Rep. Cabello seeks an injunction prohibiting enforcement of the Executive Order against *all* Illinois residents. The damage that such an injunction would cause should be manifestly evident.



As this Court is well aware, the state, country, and world are in the midst of a global COVID-19 pandemic. As of April 27, 2020, COVID-19 has affected over three million individuals worldwide with deaths surpassing 200,000 from the virus. As of April 29, 2020, the Illinois Department of Public Health reported 48,102 cases and a death toll of 2,125 from the pandemic in our State alone. These numbers are understated and continue to rise. Wu, McCann, Katz, Peltier, *40,000 Missing Deaths: Tracking the True Toll of the Coronavirus Outbreak*, available at <https://www.nytimes.com/interactive/2020/04/21/world/coronavirus-missing-deaths.html> (last accessed April 28, 2020). Such numbers have not been seen since the 1918 Spanish Flu pandemic.

Because of the seriousness of COVID-19 and the lack of vaccine or recognized therapeutic cure, the COVID-19 pandemic is placing undue strain on Illinois hospitals, health systems, physicians, registered nurses, and advanced practice registered nurses. The Executive Order, which is consistent with recommendations from the Centers for Disease Control and Prevention (the “CDC”), has helped to “flatten the curve.” However, the Circuit Court’s TRO preventing enforcement of that Executive Order increases the stress on already burdened Illinois hospitals, physicians, registered nurses, and advanced practice registered nurses. If the TRO remains in place, healthcare workers and healthcare generally in Illinois will be substantially and negatively impacted and many more healthcare workers will be infected. Thus, the real impact of the TRO is to embolden others to seek exemption from the Governor’s many executive orders and have free reign – like Plaintiff – to infect countless others; thereby not only affecting the availability of healthcare, but also increasing the stress on hospitals, physicians,

registered nurses, and advanced practice registered nurses leading to an increased loss of life. For the reasons discussed below, the Circuit Court’s TRO should be reversed.

### **ISSUES PRESENTED**

1. Whether the Circuit Court properly balanced the equities by weighing the unspecified benefits alleged by Plaintiff against the evidentiary supported harm to Illinoisans’ health and, more specifically, to frontline healthcare workers and the public during this worldwide COVID-19 pandemic.

2. Whether the Circuit Court’s TRO improperly changed the status quo, which had been put in place and was to continue in place to stem the tide of infection and sickness in Illinois from COVID-19.

### **ARGUMENT**

Our courts have repeatedly emphasized that a request for a temporary restraining order is one for a “drastic, emergency remedy which may issue only in exceptional circumstances and for a brief duration.” *Jurco v. Stuart*, 110 Ill. App. 3d 405, 408 (1st Dist. 1982); *see also American Federation of State, County, & Mun. Employees v. Ryan*, 332 Ill. App. 3d 965, 966 (1st Dist. 2002). Therefore, to be entitled to a temporary restraining order, a plaintiff must clearly demonstrate: (1) a certain and clearly ascertainable right in need of protection, (2) irreparable harm without the protection of an injunction, (3) no adequate remedy at law, (4) a substantial likelihood of success on the merits in the underlying action, and (5) a balance of the equities favors issuing the TRO. *Vasquez v. City of Woodstock*, 242 Ill. App. 3d 766, 771 (2d Dist. 1993).

In considering whether to grant a temporary restraining order, a court must balance the equities to determine the relative inconvenience to the parties and whether the burden upon the defendant, should the injunction issue, outweighs the burden to the plaintiff by denying it. *Shodeen v. Chicago Title & Tr. Co.*, 162 Ill. App. 3d 667, 673 (2d Dist. 1987). “In balancing the equities, the court should also consider the effect of the

injunction on the public.” *Kalbfleisch ex rel. Kalbfleisch v. Columbia Community Unit Sch. No. 4*, 396 Ill. App. 3d 1105, 1119 (5th Dist. 2009). As an initial matter, this Court should reverse the Circuit Court’s TRO because that court wholly failed to balance the equities and give consideration to the myriad serious implications its ruling would have on public health.

Second, the purpose of a temporary restraining order is to maintain, not change, the status quo. The status quo is defined by Illinois courts as the last actual, peaceable, uncontested status proceeding the action. *Nw. Steel & Wire Co. v. Indus. Comm’n*, 254 Ill. App. 3d 472, 476 (1st Dist. 1993). Here, the last actual, peaceable, uncontested status was significant social distancing protections that were already in effect. Although these requirements had a markedly positive impact on the spread of the invidious COVID-19 virus, the TRO entered by the Circuit Court changed the landscape and opened the door to additional infections with possible deadly consequences. This Court should reverse.

#### **I. The Temporary Restraining Order Ignored Balancing the Equities.**

The Circuit Court’s decision to grant Plaintiff’s requested TRO failed to adequately account for the balancing of the equities. There can be no serious question that both the State and the country (and in fact, the world) are in the grips of a medical disaster caused by COVID-19. *See, e.g., Doe v. Barr*, No. 20-cv-02141, 2020 WL 1820667, \*1-2 (N.D. Cal. Apr. 12, 2020) (noting “[t]hese are extraordinary times.”); *In re Abbott*, 954 F.3d 772, 779 (5th Cir. 2020) (“[E]ven with mitigation efforts, between 100,000 and 240,000 people in the United States could die.”). Indeed, Plaintiff does not question the Governor’s declaration that the COVID-19 pandemic constitutes a disaster, but rather challenges the Governor’s ability to recognize that the pandemic did not end within a thirty-day period. However, as the affidavit of Dr. Michael Wahl, which was

presented to the Circuit Court in conjunction with the *Amicus Curiae* Brief of the Hospital Association filed in that court, attests, the impact on Illinois residents from the Circuit Court's TRO will be devastating. (A copy of the *Amicus Curiae* Brief and Dr. Wahl's Affidavit are set forth in the appendix to this Joint *Amici* Brief.)

Dr. Wahl, an emergency room physician in the State of Illinois for over twenty-five years and Medical Director for the Hospital Association, demonstrated that the burden and costs to the public, in terms of availability of healthcare and disease prevention, and to Illinois hospitals, physicians, registered nurses, and advanced practice registered nurses, had no stay at home order been entered, would be catastrophic. Without the requirement that Illinois residents stay at home, Illinois hospitals and healthcare resources, physicians, registered nurses, and advanced practice registered nurses would have been quickly overwhelmed. (Appendix: Dr. Wahl Aff. ¶ 9.) These healthcare workers would have faced the same devastating challenges with the same catastrophic outcomes seen in New York City, Europe, and in other locations confronted with fighting COVID-19. (*Id.*) However, because of the mitigating efforts taken by Governor Pritzker through his various executive orders, Illinois has not, as of yet, seen these effects and has been able to better cope with the spread of COVID-19. (*Id.*) But in order to continue to prevent these effects, persistent and uninterrupted vigilance by all Illinoisans to Governor Pritzker's executive orders is absolutely necessary.

Additionally, because the virus remains active and, of yet, neither widespread testing nor a vaccine is available, the Circuit Court's TRO enjoining enforcement of the Executive Order presents an imminent risk to the health, safety, and lives of millions of Illinois residents. (*Id.* ¶ 10.) Indeed, without the Governor's stay at home order in place,

COVID-19 will rapidly spread, the State's supply of personal protective equipment will quickly be exhausted, needed hospital beds and equipment will be unavailable for the critically-ill, and hospitals will be short-staffed as healthcare workers, including physicians, registered nurses, and advanced practice registered nurses fall ill or are unable to obtain temporary licensure. (*Id.*) The impact cannot be overstated: there will be a resurgence of the virus that will have devastating, wide-spread, and long-lasting effects on the people of the State of Illinois, as Illinois hospitals, physicians, registered nurses, and advanced practice registered nurses become unable to provide access to important healthcare to those that become afflicted by COVID-19 and others requiring hospitalization and medical intervention. (*Id.*)

Other courts around the country considering similar pleas to that of Plaintiff in this case have likewise noted the serious consequences of the unmitigated spread of COVID-19. For example, the Northern District of California, in granting the release of an immigrant held in detention, stated:

COVID-19 spreads “easily and sustainably” from person to person, infected people can spread it (even if they are asymptomatic), and COVID-19 can survive on surfaces for days....

There is no approved vaccine to prevent infection. Instead, to control the virus, the CDC (the Centers for Disease Control and Prevention) recommends that people stay at least six feet away from each other (a practice called “social distancing”), *stay at home*, wash their hands often, disinfect surfaces, and cover their mouths and nose with a cloth face cover when around others.

*Doe*, 2020 WL 1820667, at \*2 (emphasis added). Similarly, in reversing a trial court's entry of a TRO barring enforcement of the Texas Governor's emergency response to the pandemic, the Fifth Circuit stated:

As all are painfully aware, our nation faces a public health emergency caused by the exponential spread of COVID-19, the respiratory disease

caused by the novel coronavirus SARS-CoV-2. As of April 6, 2020, over 330,000 cases have been confirmed across the United States, with over 8,900 dead. The virus is “spreading very easily and sustainably” through the country, with cases confirmed in all fifty states, the District of Columbia, and several territories. Over the past two weeks, confirmed cases in the United States have increased by over 2,000%.

*In re Abbott*, 954 F.3d at 779. Under such circumstances, the Fifth Circuit held that states are allowed to “restrict, for example, one’s right to peaceably assemble, to publicly worship, to travel, and *even to leave one’s home.*” *Id.* at 778 (emphasis added).

COVID-19 knows no boundaries and the pandemic it has created is not subject to a thirty-day schedule as urged by Plaintiff. Without the Governor’s requirement in the Executive Order that Illinois residents stay at home, the spread of COVID-19 will be both much more rapid and reach a far greater number of people, including individuals in previously relatively unaffected communities, such as Clay County. (Appendix: Dr. Wahl Aff. ¶ 12.) Hospitals, physicians, registered nurses, and advanced practice registered nurses throughout the State will be quickly overtaxed and the ability to provide patient care will be seriously compromised. Indeed, Clay County, where Plaintiff lives, has only one hospital and it does not have any intensive care beds and EMS Region 6, of which neighboring Jasper County is a part, has only fifty-five such beds, but Jasper County alone has already seen forty-four positive cases and two deaths. Additionally, the only hospital in Clay County has only one ventilator, and such equipment plays an enormously important role in the treatment of COVID-19. Some COVID-19 patients will become seriously ill as the virus causes critical lung damage making it exceedingly difficult to breathe, thereby requiring the use of a ventilator.<sup>2</sup> It is not just COVID-19

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<sup>2</sup> *Coronavirus: What are Ventilators and Why are They Important?*, BBC (Apr. 16, 2020), available at <https://www.bbc.com/news/health-52036948> (last visited Apr. 29, 2020).

patients who need ventilators, however. They are necessary for the performance of certain surgeries, be they planned or emergent, and their absence has an immediate trickle-down effect: other ill patients will not be able to receive the healthcare services they need. An increase in cases in either county, as a result of Plaintiff's contravention of well-recognized public health measures, could be devastating to hospitals in these communities, not to mention the people seeking care therefrom.

Furthermore, the supply chain for personal protective equipment ("PPE") has not fully stabilized. (Appendix: Dr. Wahl Aff. ¶ 15.) As has been seen throughout our country, physicians, registered nurses, and advanced practice registered nurses require PPE to adequately protect themselves against the virus while providing a range of healthcare services. (*Id.*) In particular, as COVID-19 is transmitted by droplet and aerosol transmissions, physicians, registered nurses, and advanced practice registered nurses who are responsible for life-saving intubation are at high-risk for exposure.<sup>3</sup> Preventing enforcement of the Executive Order would result in a further depletion of PPE resources at a time when the ability to rapidly replenish such supplies is unavailable, leaving our already-stressed medical system at a further disadvantage and endangering physicians, registered nurses, and advanced practice registered nurses. (*Id.*) The end result is that critically-ill Illinoisans' access to medical care will be decreased and physicians, registered nurses, and advanced practice registered nurses will be at great risk as they treat the sick.

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<sup>3</sup> *Measuring the Risk Among Clinicians Who Intubate Patients with COVID-19*, Penn Medicine News (Apr. 14, 2020), available at <https://www.pennmedicine.org/news/news-releases/2020/april/measuring-the-risk-among-clinicians-who-intubate-patients-with-covid19> (last accessed Apr. 28, 2020).

For example, a surge in COVID-19 cases will endanger physicians and nurses by putting them at a greater risk of contracting the virus, thereby thinning the frontlines of professionals at hospitals and in health systems available to care for both COVID-19 patients and “regular” emergent medical situations. (Appendix: Dr. Wahl Aff. ¶ 25.) Replacing such physicians, registered nurses, and advanced practice registered nurses is difficult in the best of times, but is even more challenging in the current situation. (*Id.*) If, as a result of the Circuit Court’s TRO, the Governor’s executive orders allowing retired and out-of-state professionals to quickly become licensed (or re-licensed) in Illinois are overturned, hospitals will lose additional clinical staff. (*Id.* ¶ 26.)

These serious implications that will burden the health of Illinoisans and Illinois hospitals, physicians, registered nurses, and advanced practice registered nurses were presented to the Circuit Court. However, at the urging of Plaintiff, they were trivialized as issues that do not impact him personally. This decision to not properly balance the equities has staggering consequences here. The Circuit Court abused its discretion in granting the temporary restraining order in light of the uncontested burdens on the public health of Illinoisans and Illinois frontline warriors – hospitals, physicians, registered nurses, and advanced practice registered nurses – in the fight against COVID-19.<sup>4</sup> No reasonable person could take the view asserted by Plaintiff and adopted by the Circuit Court that Plaintiff’s unspecified inconvenience during a health disaster outweighs the burdens on each and every Illinoisan. *See Smith v. Pavlovich*, 94 Ill. App. 3d 458, 468 (5th Dist. 2009).

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<sup>4</sup> The consequences of the Circuit Court’s TRO will be even more far reaching and will impact first responders, care givers, neighbors, and family members.



As recognized by other courts around our country, the balancing of equities in cases such as this weigh *heavily* in favor of the public. For example, in *Legacy Church, Inc. v. Kunkel*, No. CIV 20-0327 JB/SCY, 2020 WL 1905586 (D. N.M. Apr. 17, 2020), the New Mexico District Court considered a challenge to similar orders in New Mexico prohibiting the gathering of more than five people at, among other spaces, places of worship, in order to slow the spread of COVID-19. In denying the injunctive relief sought by the church to find the orders unenforceable, that court carefully considered the public’s “strong” interest in denying the injunctive relief. *Id.* at \*43. It stated:

New Mexico argues in response that the state is “in the midst of a public health crisis of a scale and severity unprecedented in modern times,” and that “the most potent weapon the State and local communities can wield against this significant health threat is through individuals choosing to stay in their homes as much as possible and avoiding physical proximity to other people and public spaces....

The public’s interest in limiting the COVID-19 outbreak in the state, a compelling interest, outweighs the right to gather.

*Id.* at \*44; *see also Castillo v. Barr*, No. CV 20-00605 TJH (AFMx), 2020 WL 1502864, \*6 (C.D. Cal. Mar. 27, 2020) (“The public has a critical interest in preventing the further spread of the coronavirus.”); *Bent v. Barr*, No. 19-cv-06123-DMR, 2020 WL 1812850, \*7 (N.D. Cal. Apr. 9, 2020) (“Given that additional burdens on the health system in this crisis may lead to a greater number of deaths among the public, public health considerations cannot be ignored....”).

In this case, the Circuit Court largely ignored the substantial public interest in denying the Plaintiff’s requested relief. Its refusal to consider the significant harm that would result from its entry of a TRO was an abuse of discretion and this Court should reverse.

## **II. The Temporary Restraining Order Changed the Status Quo in a Substantially Negative Manner.**

COVID-19 is a virus that is spread from person to person. The CDC has made clear that:

- You can become infected by coming into close contact (about 6 feet or two arm lengths) with a person who has COVID-19. COVID-19 is primarily spread from person to person.
- You can become infected from respiratory droplets when an infected person coughs, sneezes, or talks.
- You may also be able to get it by touching a surface or object that has the virus on it, and then by touching your mouth, nose, or eyes.

CDC, COVID-19 Fact Sheet, available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf> (last accessed April 28, 2020). The CDC went further and stated that the very prohibitions in place through the Governor's Executive Order requiring Illinois residents to stay at home are the most effective and instrumental actions that can be taken to stem the tide of COVID-19:

### Protect yourself and others from COVID-19

- There is currently no vaccine to protect against COVID-19. The best way to protect yourself is to avoid being exposed to the virus that causes COVID-19.
- Stay home as much as possible and avoid close contact with others.
- Wear a cloth face covering that covers your nose and mouth in public settings.

*Id.* The status quo in place prior to the filing of the Motion for Temporary Restraining Order included these important safety guidelines. Furthermore, on March 9, 2020, Governor Pritzker declared a state-wide disaster as a result of the COVID-19 pandemic. On March 13, 2020, President Donald Trump declared a national emergency and

encouraged social distancing as a measure to prevent the further spread of COVID-19. On March 13, 2020, Governor Pritzker barred large gatherings in the State of Illinois (Executive Order 2020-04) and closed all public and private schools in the State (Executive Order 2020-05). On March 16, 2020, Governor Pritzker closed all bars and restaurants in the State (Executive Order 2020-07).

These peaceable and well-reasoned responses to the virus were changed by the Circuit Court's entry of a TRO allowing Plaintiff to contravene weeks of government response to the healthcare crisis. Standing alone, that change was legally improper and the TRO should be reversed. *See Baal v. McDonald's Corp.*, 97 Ill. App. 3d 495, 502 (1st Dist. 1982) (The issuance of injunctive relief is "not proper where it tends to change the status quo of the parties rather than preserve it.").

*Legacy Church*, 2020 WL 1905586, is instructive here. There, the court considered a church's request for a TRO to enjoin enforcement of New Mexico's orders prohibiting large gatherings in places of worship. Although the court ultimately held that the requested relief did not change the status quo (but ultimately denied the TRO), it set forth the applicable principles to be considered:

The second disfavored category is "preliminary injunctions that alter the status quo." The status quo is "the last uncontested status between the parties which preceded the controversy until the outcome of the final hearing." When evaluating whether the issuance of a requested injunction would alter the status quo between the parties, the court should look at "the reality of the existing status and relationship between the parties, regardless of whether the existing status and relationships may ultimately be found to be in accord or not in accord with the parties' legal rights."

*Id.* at \*29 (citations omitted); *see also In re Abbott*, 954 F.3d at 791 ("The *status quo* Texas faces, along with the rest of the nation, is a public health crisis that is making once-in-a-lifetime demands on citizens, government, industry, and the medical profession.").

Here, the Circuit Court changed the status quo by removing the many protections afforded by the Executive Order already in place as a result of the CDC's guidelines, the President's emergency proclamation, Governor Pritzker's disaster declaration, and the many other executive orders previously entered. For this reason, as well, reversal of the Circuit Court's TRO is warranted.

### **CONCLUSION**

The Executive Order provided and continues to provide greatly needed protections from a real and negative healthcare crisis in Illinois. The Circuit Court's TRO creates a dangerous situation regarding the availability of medical care for Illinois residents at a time of serious need and saddles Illinois hospitals, physicians, registered nurses, and advanced practice registered nurses with additional irreversible burdens. The Circuit Court ignored the very serious and negative implications from the temporary restraining order and failed to engage in the requisite balancing of equities. These material deleterious impacts outweigh any claimed benefit to Plaintiff. Further, the temporary restraining order changed the status quo by lifting, for Plaintiff personally, the very public health protections that have been put in place and are successfully stemming the tide of COVID-19.

Dr. Emily Landon, Associate Professor at University of Chicago Medicine and an infectious disease specialist and epidemiologist, perhaps best summed up the threat caused by the TRO and why staying at home, as provided for in the Executive Order, is crucial:

We all acknowledge that this is the only way forward. This virus is unforgiving. It spreads before you even know you've caught it. And it tricks you into believing that it's nothing more than a little influenza. For many of us, it may not be much more than the flu. All we have to slow

the spread is social distance. And if we let every single patient with this infection infect three more people and then each of them infect two or three more people, there won't be a hospital bed when my mother can't breathe very well or when yours is coughing too much.

See <https://news.uchicago.edu/story/uchicago-doctor-covid-19-virus-unforgiving>.

WHEREFORE, the Illinois Health and Hospital Association, the Illinois State Medical Society, the American Nurses Association-Illinois, and the Illinois Society for Advanced Practice Nursing respectfully request that this Court reverse the grant of a temporary restraining order; thereby protecting the health of Illinois residents and the ability of Illinois hospitals, physicians, registered nurses, and advanced practice registered nurses to provide available health care, and for such other and further relief as the Court deems just and equitable.

Respectfully submitted,

Illinois Health and Hospital Association,  
Illinois State Medical Society, American  
Nurses Association-Illinois, and Illinois  
Society for Advanced Practice Nursing

By: /s/ Hal R. Morris

One of their attorneys

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**SUPREME COURT RULE 341(c) CERTIFICATION OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is 17 pages.

By:     /s/ Hal R. Morris

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies pursuant to penalties of perjury as set forth in Section 1-109 of the Illinois Code of Civil Procedure that he caused to be served the attached **Brief of Amici Curiae the Illinois Health and Hospital Association, Illinois State Medical Society, American Nurses Association-Illinois, and Illinois Society for Advanced Practice Nursing in Support of Governor Jay Robert Pritzker** via email to:

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Laura K. Bautista (lbautista@atg.state.il.us)  
Office of the Illinois Attorney General  
500 South Second Street  
Springfield, Illinois 62701

on this 29th day of April, 2020.

/s/ Hal R. Morris

# APPENDIX



**INDEX TO THE APPENDIX**

MOTION FOR LEAVE TO FILE AND ILLINOIS HEALTH AND HOSPITAL  
ASSOCIATION'S BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION  
FOR TEMPORARY RESTRAINING ORDER AND OTHER RELIEF,  
and accompanying Affidavit of Dr. Michael Wahl  
(filed with leave of court on April 27, 2020)

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

DARREN BAILEY, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 2020 CH 6  
 )  
 GOVERNOR JAY ROBERT PRITZKER, )  
 in his official capacity, )  
 )  
 Defendant. )

**ILLINOIS HEALTH AND HOSPITAL ASSOCIATION’S  
EMERGENCY MOTION FOR LEAVE TO FILE, *INSTANTER*, BRIEF  
IN SUPPORT OF GOVERNOR JAY ROBERT PRITZKER**

The Illinois Health and Hospital Association (the “Hospital Association”), by its attorneys Saul Ewing Arnstein & Lehr LLP, pursuant to this Court’s inherent power to control its docket and the course of litigation, moves for leave to file, *instanter*, its brief in support of Governor Jay Robert Pritzker. In support of its motion, the Hospital Association states:

1. The proposed *Amicus Curiae* Brief (attached as Exhibit A) is in response to the Motion and normal notice cannot be accommodated so as to allow the Court to consider the submission of the Hospital Association. Therefore, this motion is filed as an emergency because Plaintiff’s Motion for Temporary Restraining Order is scheduled for hearing today, at 1:30 p.m.

2. The Hospital Association represents over 200 hospitals and forty health systems in the State of Illinois. Member hospitals include community hospitals, safety net hospitals, rural and critical access hospitals, as well as teaching and academic medical centers and specialty hospitals. The Hospital Association’s purpose, *inter alia*, is “to support each person’s quest for optimum health, all individuals and communities have access to high-quality healthcare at the

right time and in the right setting.” (Hospital Association website, Vision for Illinois Healthcare, <https://www.team-iha.org/our-association>.)

3. The Hospital Association has a specific interest in this matter because Illinois hospitals and health systems, including their thousands of frontline health care workers (which includes doctors, nurses, respiratory therapists, and other medical professionals and para-professionals) would bear a disproportionate burden if the Governor’s Executive Orders are enjoined while they are endeavoring to provide access to quality health care to Illinois residents during the COVID-19 pandemic.

4. Here, the requested injunctive and declaratory relief would directly impact Illinois hospitals and health care systems, including those represented by the Hospital Association. The very real and tangible effect of the requested relief would be to negatively and materially impact the availability of healthcare for Illinois residents.

5. The Illinois Appellate Court, Fifth District, in *Scheffel Financial Services, Inc. v. Heil*, 2014 IL App (5th) 130600, ¶ 10, stated that:

A preliminary injunction requires a showing by a preponderance of the evidence that the plaintiff (1) has a clearly ascertainable right needing protection, (2) will suffer irreparable harm without protection, (3) has no adequate remedy at law, and (4) is likely to succeed on the merits. The circuit court must also consider whether the benefits of granting the injunction exceed any injury to the defendant. (citations omitted.)

5. The proposed *Amicus Curiae* Brief will assist this Court’s consideration of whether the benefits, if any, of granting of the request for a Temporary Restraining Order will exceed the substantial injury to the people of the State of Illinois, who are represented by the Governor. The proposed Brief provides evidence of the very real and substantial impact a Temporary Restraining Order enjoining the Executive Orders will have during the COVID-19 pandemic on Illinois hospitals and health systems and the Illinois residents they serve.

6. Although *amicus curiae* briefs are typically seen in the Appellate and Supreme Courts (Ill. S. Ct. Rule 345), they are not without example in the Circuit Courts. See *Roanoke Agency, Inc. v. Edgar*, 101 Ill.2d 315, 317 (1984) (noting that “[t]he Attorney General of Illinois, as *amicus curiae*, participated in the circuit court proceedings in support of Roanoke’s position.”); *Illinois Manufacturers Assn. and Illinois Retail Merchants Assn. v. Illinois Workers Compensation Commission*, Case No. 2020 CH 000098 (Circuit Court of Sangamon County, Illinois, April 24, 2020 (Order granting leave to file amici curiae brief). Here, the Hospital Association’s proposed brief will assist the Court in deciding this matter and should be considered.

WHEREFORE, the Illinois Health and Hospitals Association requests that this Court exercise its discretion and inherent power and grant its motion for leave to file, *instanter*, its proposed *Amicus Curiae* Brief, a copy of which is attached as Exhibit A, and for such other and further relief as the Court deems just and equitable.

Respectfully submitted,

Illinois Health and Hospital Association

By: /s/ Hal R. Morris  
One of its attorneys

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Elizabeth A. Thompson (ARDC # 6304148) (elizabeth.thompson@saul.com)

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies pursuant to penalties of perjury as set forth in Section 1-109 of the Illinois Code of Civil Procedure that he caused to be served the attached **Illinois Health and Hospital Association's Emergency Motion for Leave to File, *Instante*, Brief in Support of Governor Jay Robert Pritzker** via email to:

Thomas G. DeVore (tom@silverlakelaw.com)  
Erik Hyam (erik@silverlakelaw.com)  
DeVore Law Offices, LLC  
118 N. Second Street  
Greenville, Illinois 62246

on this 27th day of April, 2020.

/s/ Hal R. Morris

# EXHIBIT A

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

DARREN BAILEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2020 CH 6
	)	
GOVERNOR JAY ROBERT PRITZKER,	)	
in his official capacity,	)	
	)	
Defendant.	)	

**ILLINOIS HEALTH AND HOSPITAL ASSOCIATION’S  
BRIEF IN OPPOSITION TO PLAINTIFF’S MOTION FOR TEMPORARY  
RESTRAINING ORDER AND OTHER RELIEF**

The Illinois Health and Hospital Association (the “Hospital Association”), by its attorneys Saul Ewing Arnstein & Lehr LLP, for its brief in support of Governor Jay Robert Pritzker and in Opposition to Plaintiff’s Motion for Temporary Restraining Order states:

**INTRODUCTION**

This matter presents a request that, if granted, will substantially and negatively impact Illinois residents’ access to healthcare. As the Court is well aware, the state, country, and world are in the midst of a global COVID-19 pandemic. As of April 26, 2020, the Illinois Department of Public Health reported 43,903 cases and a death toll of 1,933 from the pandemic in our State alone. These numbers have not been seen since the 1918 Spanish Flu pandemic. Because of the seriousness of COVID-19 and the lack of vaccine or recognized therapeutic cure, the COVID-19 pandemic is placing undue strain on Illinois hospitals and health systems. Governor Pritzker’s Executive Orders, which are consistent with recommendations from the Centers for Disease Control and Prevention, have helped to “flatten the curve.” However, the request by Plaintiff seeks to undo those orders and increase the stress on already burdened Illinois hospitals and

medical professionals. In a word, if the request to enjoin Governor Pritzker's Executive Orders is granted, healthcare in Illinois will be substantially and negatively impacted. Not only will the availability of healthcare be impacted, but the stress on hospitals will likely result in increased loss of life. Plaintiff's requested relief should be denied.

**ARGUMENT IN OPPOSITION TO PLAINTIFF'S  
REQUEST FOR A TEMPORARY RESTRAINING ORDER**

A temporary restraining order is a "drastic, emergency remedy which may issue only in exceptional circumstances and for a brief duration." *Jurco v. Stuart*, 110 Ill. App. 3d 405, 408 (1st Dist. 1982); see also *American Federation of State, County, & Mun. Employees v. Ryan*, 332 Ill. App. 3d 965, 966 (1st Dist. 2002). In determining whether to grant a temporary restraining order, this Court must balance the equities to determine the relative inconvenience to the parties and whether the burden upon the defendant, should the injunction issue, outweighs the burden to the plaintiff by denying it. *Shodeen v. Chicago Title & Tr. Co.*, 162 Ill. App. 3d 667, 673 (2d Dist. 1987). "In balancing the equities, the court should also consider the effect of the injunction on the public." *Kalbfleisch ex rel. Kalbfleisch v. Columbia Community Unit Sch. No. 4*, 396 Ill. App. 3d 1105, 1119 (5th Dist. 2009). Here, the issuance of a temporary restraining order would have drastic and devastating effects on the public.

There can be no serious question that both the State and country (and in fact, the world) are in the grips of a medical disaster caused by COVID-19. Indeed, Plaintiff does not question the Governor's declaration that the COVID-19 pandemic constitutes a disaster, but rather challenges the Governor's ability to recognize that the pandemic did not end within an arbitrary thirty day period. As the affidavit of Dr. Michael Wahl, attached as Exhibit 1, attests, the costs to Illinois residents in terms of healthcare and to Illinois hospitals and health systems would be



staggering and irreversible should the Executive Orders, as urged by Plaintiff, be extinguished while the pandemic continues to rage.

Dr. Wahl's affidavit demonstrates that had no stay at home order been entered, Illinois hospitals and healthcare resources would have been quickly overwhelmed. (Exhibit 1: Wahl Aff. ¶ 9.) Illinois hospitals would have faced the same devastating challenges with the same catastrophic outcomes seen in New York City, Europe, and in other locations confronted with fighting COVID-19. (*Id.*) However, because of the mitigating efforts taken by Governor Pritzker through the Executive Orders, Illinois has not, as of yet, seen these effects and has been able to cope with the spread of COVID-19. (*Id.*)

Additionally, because the virus remains active and, of yet, neither widespread testing nor a vaccine is available, a decision to overturn the Governor's existing Executive Orders will pose an imminent risk to the health, safety, and lives of millions of Illinois residents. (*Id.* ¶ 10.) Indeed, without the Governor's orders in place, COVID-19 will rapidly spread, the State's supply of personal protective equipment will quickly be exhausted, needed hospital beds and equipment will be unavailable for the critically-ill, and hospitals will be short-staffed as healthcare workers fall ill or are unable to obtain temporary licensure. (*Id.*) The impact of the Plaintiff's requested relief in this case cannot be overstated: there will be a resurgence of the virus that will have devastating, wide-spread, and long-lasting effects on the people of the State of Illinois as Illinois hospitals become unable to provide adequate health care to those that become afflicted by COVID-19 and others requiring hospitalization and medical intervention. (*Id.*)

**I. Absent the Executive Orders, COVID-19 Will Spread More Rapidly and Overtax Illinois Hospitals (including those in Clay and Jasper Counties and throughout State Representative District 109) and the Supply of Personal Protective Equipment.**

Without the Governor's requirement in Executive Order Number 2020-10, that Illinois residents stay at home, the spread of COVID-19 will be both much more rapid and reach a far greater number of people, including individuals in heretofore relatively unaffected communities, such as Clay County. (Exhibit 1: Wahl Aff. ¶ 12.) Hospitals in the Clay and neighboring Jasper County would be quickly overtaxed and the ability to provide patient care would be seriously compromised. Indeed, Clay County has only one hospital, Clay County Hospital, and it does not have any intensive care beds and Jasper County Hospital has only seven such beds.

Furthermore, the supply chain for personal protective equipment ("PPE") has not fully stabilized. (*Id.* ¶ 15.) As has been seen throughout our country, medical professionals require PPE to adequately protect themselves against the virus. (*Id.*) Lifting the Governor's Executive Orders would result in a further depletion of PPE resources at a time when the ability to rapidly replenish such supplies is unavailable, leaving our already-stressed medical system at a further disadvantage and endangering healthcare workers. (*Id.*) The end result is that critically ill Illinoisans' access to medical care will be decreased.

**II. Absent the Executive Orders, Greater Numbers of Frontline Healthcare Workers Will Get Sick and Hospitals Will Be Under-Staffed.**

A surge in COVID-19 cases will endanger healthcare workers by putting them at a greater risk of contracting the virus, thereby thinning the frontlines of professionals at hospitals and in health systems to be able to care for both COVID-19 patients and "regular" emergent medical situations. (Exhibit 1: Wahl Aff. ¶ 25.) Replacing such professionals is difficult in the best of times, but is even more challenging in the current situation. (*Id.*) If the Governor's

Executive Orders allowing retired and out-of-state workers to quickly become licensed (or re-licensed) in Illinois are overturned, hospitals will lose additional clinical staff. (*Id.* ¶ 26.)

Similarly, the Governor's Executive Orders have provided healthcare workers and volunteers liability protections that would not otherwise exist. (*Id.* ¶ 27.) If these protections are stripped as a result of the Executive Orders being overturned, many such volunteers and workers will cease providing needed care for fear that their efforts may give rise to personal liability. (*Id.*)

## CONCLUSION

The Executive Orders provide greatly needed protections to avert a real and negative health care crisis in Illinois hospitals, which would create a dangerous situation for Illinois residents seeking medical care at a time of serious need. These material impacts are deleterious and outweigh any perceived benefit to Plaintiff if the request to enjoin the Executive Orders is granted. Plaintiff's requested relief should be denied.

WHEREFORE, the Illinois Health and Hospital Association respectfully requests that this Court deny the request for a temporary restraining order; thereby protecting the health of Illinois residents and the ability of Illinois hospitals and healthcare systems to provide available health care, and for such other and further relief as the Court deems just and equitable.

Respectfully submitted,

Illinois Health and Hospital Association

By: \_\_\_\_\_  
One of its attorneys

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# EXHIBIT 1

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

DARREN BAILEY,	)	
	)	
Plaintiff,	)	No. 20 CH 6
	)	
v.	)	
	)	
GOVERNOR JAY ROBERT	)	
PRITZKER, in his Official Capacity,	)	
	)	
Defendant.	)	

**DECLARATION OF DR. MICHAEL WAHL, M.D. IN SUPPORT OF GOVERNOR  
PRITZKER’S EXECUTIVE ORDERS CONCERNING THE COVID-19 PANDEMIC**

Dr. Michael Wahl, M.D., being first duly sworn on oath, deposes and states:

1. I am over the age of twenty-one, am under no legal disability, and if called to testify to the matters set forth in this Declaration, could do so based upon my personal knowledge.
2. Since 1998 through the present, I have been and am the Medical Director of the Illinois Poison Center, a subsidiary of the Illinois Health and Hospital Association (the “IHA”). In my role working for the IHA, I am also currently responsible for operating the Illinois COVID-19 hotline on behalf of the State of Illinois.
3. I am authorized to make this Declaration on behalf of the IHA and do so in my role as Medical Director and as a licensed physician. The IHA represents over 200 hospitals and forty health systems in the State of Illinois. Member hospitals include community hospitals, safety net hospitals, rural and critical access hospitals, as well as teaching and academic medical centers and specialty hospitals.
4. I am also a Senior Clinician Educator with NorthShore University Health System and an emergency medicine physician responsible for emergent patient care. I am affiliated with

Evanston Hospital, Glenbrook Hospital, Highland Park Hospital, and NorthShore Skokie Hospital. I have been affiliated with NorthShore University Health System since 2004. From 1994-2008, I also worked as an emergency physician at Advocate Illinois Masonic Medical Center.

5. I received by bachelor's degree in biology from the University of California, Santa Barbara in 1984, a master's degree in clinical chemistry from San Francisco State University in 1987, and my medical degree from Case Western Reserve University School of Medicine in 1991. I participated in the University of Illinois' Emergency Medicine Residency Program from 1991 through 1994. I completed a fellowship at Toxikon Consortium in Emergency Medicine from 1994 through 1996. A copy of my curriculum vitae is attached as Exhibit A.

6. I became licensed by the State of Illinois as a medical doctor in 1993 and have kept my license current and without discipline through the present. In addition, I am a member of the American Board of Emergency Medicine for both Emergency Medicine and Medical Toxicology.

7. As a result of my education, training, and work history, I have over twenty-five years' experience in the provision of emergency medical care in a hospital setting and am qualified to render the opinions contained herein.

8. In my role as Medical Director of the Illinois Poison Center and based upon my years of experience, I am confident that without the actions taken by Governor Jay Robert Pritzker that are at issue in this case, the ramifications from the COVID-19 pandemic would be far greater and more tragic than they are with the Executive Orders in place.

9. As demonstrated below, had no shelter at home order been entered, Illinois hospitals and healthcare resources would have been quickly overwhelmed. Illinois hospitals would have faced the same devastating challenges with the same catastrophic outcomes seen in New York City, Europe, and in other locations faced with fighting COVID-19. Illinois has not seen these effects as of yet and has been able to cope with the spread of COVID-19 **because of** the mitigating efforts taken by Governor Pritzker. *See, e.g.,* <https://www.chicagotribune.com/coronavirus/ct-cb-coronavirus-when-will-illinois-peak-20200401-3c56ftr64ngqridwnuervngrma-story.html> (citing models).

10. Additionally, because the virus remains active and there is not, as of the date of this Declaration, widespread testing available nor is there a vaccine or therapeutic cure, a decision to overturn the Governor's existing Executive Orders will pose an imminent risk to the health, safety, and lives of millions of Illinois residents. Indeed, without the Governor's orders in place, COVID-19 will rapidly spread, the State's supply of personal protective equipment will quickly be exhausted, needed hospital beds and equipment will be unavailable for the critically-ill, and hospitals will be short-staffed as healthcare workers fall ill or are no longer able to provide adequate staffing due to inability to obtain temporary licensure or removal of liability protections. The impact of the Plaintiff's requested relief in this case cannot be overstated: there will be a resurgence of the virus that will have devastating, wide-spread, and long-lasting effects on the people of the State of Illinois as Illinois hospitals will be unable to provide adequate health care to those that become afflicted by COVID-19 and others requiring hospitalization and medical intervention.

11. Furthermore, the Governor's Executive Orders have not been limited to a stay at home order. These Orders address issues such as rapidly licensing out-of-state providers,



acquiring personal protection equipment, authorizing emergency hospitals, providing for telehealth services, and suspending hospital licensing requirements so that hospitals can increase bed capacity. A ruling that the Governor could not renew his emergency declaration and associated orders would appear to invalidate many other orders which the health care community needs to provide adequate health services.

**Absent the Executive Orders, COVID-19 Will Spread  
More Rapidly and Overtax Illinois Hospitals**

12. Without the Governor's requirement in Executive Order Number 2020-10, requiring Illinois residents to stay at home, the spread of COVID-19 will be both much more rapid and reach a far greater number of people, including individuals in heretofore relatively unaffected communities, such as Clay County.

13. For example, while Clay County, Illinois currently only had two positive COVID-19 cases as of April 23, 2020, neighboring Jasper County, Illinois had forty-two positive cases, one of the highest levels in the downstate area. *See* <https://www.dph.illinois.gov/covid19/covid19-statistics>. Lifting the Governor's shelter at home order would facilitate the rapid spread of COVID-19 from Jasper to Clay County, as well as other surrounding areas.

14. Hospitals in the Clay and Jasper County areas would be quickly overtaxed and the ability to provide patient care would be seriously compromised.

**Absent the Executive Orders, the Supply of Personal Protective  
Equipment Will Quickly Be Exhausted With No Avenue for Replacement**

15. The supply chain for personal protective equipment ("PPE") has not fully stabilized. As has been seen throughout our country, medical professionals are already not able to adequately protect themselves with using PPE. Lifting the Governor's Executive Orders

would result in a further depletion of PPE resources at a time when the ability to rapidly replenish such supplies is unavailable, leaving our already-stressed medical system at a further disadvantage. Without PPE, hospital staff such as physicians, nurses, respiratory technologists and others will be at a higher risk of infection and be unable to render care when needed.

16. Through the Governor's Executive Orders and the declaration of an emergency, the Governor's office has been able to procure PPE and testing equipment to assist hospital and healthcare workers. If these Orders are overturned as a result of this lawsuit, these PPE and testing resources would not be available, at a severe detriment to our healthcare workers on the frontlines.

17. A lack of PPE has a demonstrable and negative impact on the ability of a hospital to provide emergency and in-patient care, especially to COVID-19 patients.

**Absent the Executive Orders, Hospital Beds and Medical Equipment Will Not be Available Leaving the Critically-Ill Without Needed Medical Care**

18. Hospitals in the downstate area typically have fewer hospital beds, including medical/surgical and intensive care unit beds. For example, Clay County has only one ICU bed and Jasper County has eight. *See* Department of Public Health Bed Inventory.

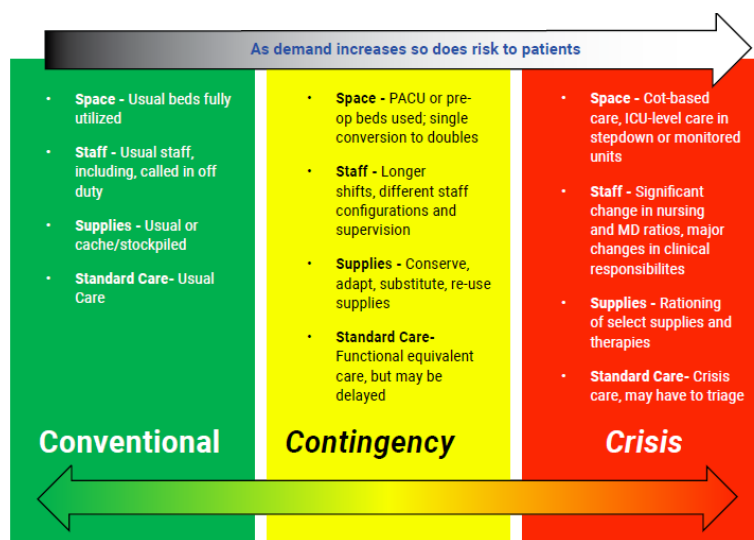
19. Absent the Executive Order, it is likely that all areas of the State will see a rapid surge in COVID-19, which will quickly overwhelm these remaining resources in downstate hospitals.

20. While hospitals are currently able to manage without exceeding their capacity, the Governor's Executive Orders have also allowed the Governor to authorize alternative care sites, such as McCormick Place, WestLake, MetroSouth, the old Sherman Medical Office Building in Elgin, and Vibra in Springfield, as a back-up plan in the event capacity is reached or exceeded. *See* Executive Order 2020-26. These facilities bring additional bed capacity online in the event

that the state’s hospitals become overwhelmed by an increase in COVID-19 cases. If these facilities are taken away, the available beds and ventilators noted above will become even more scarce.

21. The Governor’s Executive Orders have also allowed patients to receive needed services, including mental health services, through telehealth communications with their physicians and other care providers, where it could have been unsafe for the patient or the caregiver to meet in person.

22. The below graphic illustrates the dire results that will occur if there is a drastic increase in COVID-19 cases, as will happen if the Governor’s Executive Orders are lifted at this time. As can be seen from the Illinois Department of Public Health’s (“IDPH”) illustration, as demand for healthcare increases, so does the risk to the patient. On April 16, 2020, the IDPH notified the State Emergency Operations Center that hospitals may need to institute crisis standards of care pursuant to their disaster response plans. Hospitals are already operating within the “Contingency” category below. Any further surge in cases will push the healthcare system into the “Crisis” category.



*Image Source: State of Illinois, Illinois Department of Public Health, "Guidelines on Emergency Preparedness for Hospitals During COVID19"*

23. The above chart illustrates many of very important and negative implications for all Illinois hospitals if the Executive Orders do not remain in place: available beds will be overwhelmed, staffing will be negatively impacted as will patient decision-making, supplies, which are already in short supply will be rationed, and the standard of care will be compromised.

24. On March 17, 2020, IDPH provided guidance that hospitals should cancel non-emergent surgeries to prepare for the COVID-19 surge. Because of the success of the Governor's Executive Orders thus far, the IDPH has, as of April 23, 2020, issued new guidance that would allow hospitals to resume providing non-emergent surgeries and procedures, which had previously been stayed. *See* <https://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/health-care-providers/elective-procedures-guidance>. Because those surgeries had been stayed and a period of time has now elapsed, those surgeries are even more important to ensure that those patients do not decline further. If a surge in COVID-19 cases occurs while hospitals and healthcare workers are also addressing these pent-up patient needs, the strain on our healthcare system will be even more severe.

**Absent the Executive Orders, Greater Numbers of Frontline  
Healthcare Workers Will Get Sick and Hospitals Will Be Under-Staffed**

25. A surge in COVID-19 cases will further put healthcare workers at risk of contracting the virus, thereby thinning the frontlines of professionals able to care for both COVID-19 patients and “regular” emergent medical situations. Replacing such professionals is difficult in the best of times, but is even more challenging in the current situation.

26. If the Governor's Executive Orders allowing retired and out-of-state workers to quickly become licensed (or re-licensed) in Illinois are overturned (*see* Executive Order 2020-09 and Executive Order 2020-12, and resulting variances issued by the Illinois Department of Financial and Professional Regulation (*see, e.g.,*

<https://www.idfpr.com/Forms/COVID19/VariANCES.pdf>), this under-staffing will become even more problematic, as the pool of available labor will be even smaller. In other words, the Governor's Executive Orders allowing these healthcare workers to return to active duty in a quick and efficient manner has direct, tangible positive effects on hospitals in the State of Illinois to provide needed and crucial care. Absent the Governor's Executive Orders, there would be a material adverse effect on the provision of care in our state's hospitals because of the spread of COVID-19 and its impact on healthcare workers.

27. Similarly, the Governor's Executive Orders have provided healthcare workers and volunteers liability protections that would not otherwise exist. *See* Executive Order 2020-19. If these protections are stripped as a result of the Executive Orders being overturned, many such volunteers and workers will cease providing needed care for fear that their efforts may give rise to personal liability.

28. Based on the foregoing, the Executive Orders provide very needed protections to avert a real and negative health care crisis in Illinois hospitals, which would create a dangerous situation for Illinois residents seeking medical care at a time of serious need.

Under penalties of perjury as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct, except 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.

FURTHER AFFIANT SAYETH NAUGHT.

Dated: April 26, 2020



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Dr. Michael Wahl, M.D.