

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

Darren Bailey)	
)	
Plaintiff,)	2020CH6
)	
vs.)	Case No. 2020-CH-_____
)	
Governor Jay Robert Pritzker,)	
in his official capacity.)	
)	
Defendant.)	

**LEGAL BRIEF IN SUPPORT OF DARREN BAILEY'S
VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

COMES NOW Plaintiff, Darren Bailey, by and through his attorneys, Thomas G. DeVore, Erik Hyam, and DeVore Law Offices, LLC, and provides this legal brief in support of his complaint for declaratory and injunctive relief, as well as a temporary restraining order and preliminary injunction.

LEGAL STANDARD

1. As Governor, Pritzker has the supreme executive power, and shall be responsible for the faithful execution of the laws. (See Ill. Const. 1970, art. V, § 8.)
2. The legislative power is vested in a General Assembly. (See Ill. Const. 1970, art. IV, § 1.)
3. The legislative and executive branches are separate. (See Ill. Const. 1970, art. II, § 1.)
4. The power to make laws belongs solely to the legislature, and the legislature cannot delegate its power to make law. *Chicagoland Chamber of Commerce v. Pappas*, 378 Ill.App.3d 334, 348, 317 Ill.Dec. 113, 880 N.E.2d 1105 (2007).
5. The legislature may delegate to others the authority to do those things which the legislature might properly do, but cannot do as understandingly or advantageously. (*Board of*

Education v. Page, 33 Ill.2d 372, 211 N.E.2d 361; *People ex rel. Daesch v. Mayor of Belleville*, 22 Ill.2d 226, 174 N.E.2d 678; *City of Evanston v. Wazau*, 364 Ill. 198, 4 N.E.2d 78, 106 A.L.R. 789.)

6. The Illinois Emergency Management Act intended by device to delegate certain enumerated powers upon the Office of Governor. (See 20 ILCS 3305/2(a)(2))
7. These certain enumerated powers with the Illinois Emergency Management Act included temporary emergency powers. (See 20 ILCS 3305/7)
8. Of those enumerated temporary emergency powers delegated to the Office of Governor was the power “to control ingress and egress to and from a disaster are, the movement of persons within the area, and the occupancy of the premises therein. (See 20 ILCS 3305/2(7)(8))
9. The express language of the Illinois Emergency Management Act established a 30-day limitation upon the emergency power provided for in 20 ILCS 3305/2(7)(8), which 30-days began on the date of the proclamation of the disaster. (See 20 ILCS 3305/7)
10. The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent. *Acme Markets, Inc. v. Callanan*, 236 Ill.2d 29, 37, 337 Ill.Dec. 867, 923 N.E.2d 718 (2009).
11. The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning. *Roselle Police Pension Board v. Village of Roselle*, 232 Ill.2d 546, 552, 328 Ill.Dec. 942, 905 N.E.2d 831 (2009); *Am. Fed'n of State v. State, Dep't of Cent. Mgmt. Servs.*, 33 N.E.3d 757 (Ill. App. 2015)

ARGUMENT

I) COVID-19 Pandemic is the disaster established on March 09, 2020

12. The emergency powers granted Pritzker sprung forward as a result of his proclamation of the existence of a disaster on March 09, 2020. (See 20 ILCS 3305/7)
13. The Illinois Emergency Management Act clearly defines a disaster:

"Disaster" means an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, public health emergencies, or acts of domestic terrorism. (See 20 ILCS 3305/4)
14. Pritzker's basis for the proclamation of March 09, 2020, is found in the last "whereas" clause wherein he finds the conditions enumerated therein regarding the COVID-19 pandemic provided him legal justification of proclaiming a disaster.
15. The Plaintiff does not contest Pritzker's having declared that COVID-19 was a qualifying disaster under the Illinois Emergency Management Act.
16. Parsing the language of the Illinois Emergency Management Act as to what constitutes a disaster under its definition in 20 ILCS 3305/4 clearly leads one to find COVID-19 was as of March 09, 2020 a disaster.
 - a) an occurrence or threat
 - b) of widespread or severe damage, injury or loss of life or property
 - c) resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination
 - d) requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, public health emergencies, or acts of domestic terrorism.

17. The COVID-19 pandemic as of March 09, 2020 was certainly a (threat) of (widespread or severe loss of life) (resulting from a natural cause) and (requiring emergency action to avert an epidemic or public health emergency).

II. COVID-19 Pandemic is still the disaster which existed on April 01, 2020

18. On April 01, 2020, Pritzker issued a second disaster proclamation.

19. Pritzker acknowledges in the April 01, 2020 proclamation the basis for which he had declared a disaster on March 09, 2020 was COVID-19.

20. In the April 01, 2020 proclamation, declares a “continuing disaster” exists within the State of Illinois.

21. Pritzker’s basis for the proclamation of April 01, 2020, is found in the last “whereas” clause wherein he finds the conditions enumerated therein regarding the COVID-19 pandemic provided him legal justification of proclaiming a disaster.

III) Pritzker’s legislative delegation of emergency power regarding the disaster which arose as a result of the COVID-19 pandemic must have ceased on or before April 08, 2020.

24) The Plaintiff does not contest Pritzker was delegated certain emergency powers as a result of the COVID-19 disaster proclamation.

25) The COVID-19 disaster proclamation occurred on March 09, 2020.

26) For 30-days subsequent to the disaster proclamation, Pritzker was authorized to exercise his delegated authority to protect the health, safety and welfare of the people.

27) The March 20, 2020 executive order restraining Bailey’s rights of free movement within the State of Illinois, regardless of substantive rights violations which may have existed, had to lapse on or before April 08, 2020 pursuant to the clear mandate of the legislature in the Illinois Emergency Management Act.

- 28) The April 01, 2020 Proclamation declares a “continuing disaster” as a result of the same COVID-19 pandemic.
- 29) Pritzker seemingly believes he can issue continuing proclamations recognizing the same COVID-19 pandemic as a “continuing disaster” every thirty (30) days whereby he can continually invoke the emergency powers of the Illinois Emergency Management Act into perpetuity.
- 30) As of April 23, 2020, at his 2:30 daily briefing to the public, Pritzker announced his intention to extend his emergency executive orders yet again.
- 31) If the legislature intended to delegate to the Office of Governor the emergency powers for the complete duration of a continuing disaster they would have written as much into the Illinois Emergency Management Act.
- 32) The legislature intended to limit the use of the emergency powers by the Governor in the event of disaster for a 30-day period as provided in the clear and unambiguous language of the Illinois Emergency Management Act.
- 33) The emergency powers granted to Office of Governor ensured a quick response to a disaster event until such time as the legislature had ample time to convene and address whether any laws need to be codified to further protect the health, safety and welfare of the people of the State of Illinois.
- 34) In fact, the legislature contemplated lapse of the emergency powers as provisions for such lapse are provided in 20 ILCS 3305/7.
- 35) Relative to this cause, there has only been one disaster facing Pritzker and that is the COVID-19 pandemic.
- 36) Until such time as the legislature delegates continuing emergency powers to the Office of

Governor during a disaster, Bailey has a right to insist the emergency powers being utilized by Pritzker are limited to the 30-days from the initial declaration of the COVID-19 pandemic.

37) Any other interpretation of the relevant provision of the Illinois Emergency Management Act would render the 30-day limitation meaningless.

38) Given the legislature has not acted to broaden the powers of the Office of Government pursuant to the Illinois Emergency Management Act, Pritzker's powers provided therein have long since lapsed.

39) If additional legal safeguards are required to protect the good people of the State of Illinois from the COVID-19 pandemic, it is far past time for the legislative branch to act.

Respectfully submitted,

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