

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DARREN BAILEY,

Plaintiff,

v.

GOVERNOR JB PRITZKER, in his official  
capacity,

Defendant.

No. 3:20-cv-00474-GCS

Magistrate Judge Gilbert C. Sison

**GOVERNOR'S MEMORANDUM IN OPPOSITION TO REMAND**

Dated: June 5, 2020

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This Court has jurisdiction over this action under the plain language of 28 U.S.C. § 1343(a)(3) because plaintiff Darren Bailey commenced this case to seek redress for conduct of the defendant, Governor JB Pritzker, acting under color of state law, that allegedly deprived Bailey of rights secured by the United States Constitution.

### **Background**

#### **Bailey challenges the Governor’s COVID-19 response to preserve his “constitutionally protected freedoms.”**

On April 23, 2020, Bailey sued the Governor in the Circuit Court for the Fourth Judicial Circuit in Clay County, Illinois (the “State Court”), challenging the Governor’s authority to issue certain executive orders in the fight against the COVID-19 public health emergency. (ECF 1-1, Ex. E.) Bailey alleged that the Governor’s executive order issued on March 20, 2020 “limit[ed] Bailey’s constitutionally protected freedoms in that it ordered him to stay at home, or at his place of residence, as well as limited his ability to travel within the state.” (*Id.* ¶ 12.) Bailey further alleged that the Governor continued to deprive him of these “constitutionally protected freedoms” by issuing an additional executive order on April 1, 2020, that “acted to restrain Bailey within his residence, as well as limit his travel.” (*Id.* ¶ 19.) To redress these deprivations, Bailey sought a declaratory judgment finding, *inter alia*, “that any further emergency executive orders in response to the COVID-19 continuing disaster . . . ordering Bailey remain within the confines of his home, as well as limit his travel . . . are void ab initio.” (*Id.* ¶ 34(E).) Bailey also sought an injunction enforcing that declaratory judgment. (*Id.* ¶¶ 35–40.)

#### **The State Court grants Bailey a temporary restraining order to protect Bailey’s “constitutionally protected freedoms,” but Bailey vacates the TRO.**

On April 24, 2020, Bailey served on the Governor a motion for temporary restraining order and preliminary injunction seeking to enjoin the Governor from enforcing any COVID-19

executive orders against him. (ECF 1-1, Exs. C, F, G.) That motion was heard on April 27, 2020. (ECF 1-1, Ex. B.)

The State Court granted Bailey his requested TRO. Following the presentation of Bailey's argument, the State Court ruled that irreparable harm existed on federal constitutional grounds, noting that "every second this Executive Order is in existence . . . the Bill of Rights is being shredded. That is irreparable harm." (Ex. A, at 60:17–21, Apr. 27, 2020 Report of Proceedings ("Apr. 27, 2020 Tr.")). In addition, the State Court also found a likelihood of success on the merits for Bailey's claims on federal constitutional grounds:

The court is guided by, among other things, the following: There is no pandemic exception to the fundamental liberties the constitution safeguards. Indeed, individual rights secured by the constitution do not disappear during a public health crisis. That's *In Re: Abbott*, A-b-b-o-t-t, Federal 3d, 2020 West Law 1685929. That's a Fifth Circuit appellate opinion. These individual rights, including the protections in the Bill of Rights made applicable to the states through the Fourteenth Amendment, are always in force and restrain government action. At the same time, the constitution does not hobble government from taking necessary temporary measures to meet a genuine emergency. According to our United States Supreme Court, in every well-ordered society charged with the duty of preserving, conserving the safety its members, the rights of the individual in respect of his liberty may, at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand, and that is the *Jacobson* case which was also cited by the Attorney General. The settled rule from *Jacobson*, the Fifth Circuit recently explained, allows the state to restrict, for example, one's right to peaceably assemble, to publicly worship, to travel, and even to leave one's home. Courts owe substantial deference to government actions, particularly when exercised by states and localities under their police powers during a bona fide emergency. The Supreme Court also has instructed courts to intervene if a statute purporting to have been enacted to protect the public health or the public safety has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law. That is also a quote from *Jacobson* . . . .

The issue before me now is whether the Governor can ignore the Illinois and United States Constitutions for more than 30 days. This court rules that the answer to that question is a resounding no.

(*Id.* at 64:12–66:19.)<sup>1</sup> At no time did Bailey dispute the federal constitutional basis for Bailey’s TRO, or the State Court’s ruling. In fact, when the State Court asked Bailey to show why Bailey should not be required to post bond for the TRO, Bailey’s counsel replied “[w]hat showing would the court require for bond sufficient for my client to be able to continue with his constitutional rights . . . ?” (*Id.* at 68:5–7.) And the State Court TRO, which was drafted by Bailey and entered by the State Court without substantive revision, expressly stated “Plaintiff has shown he has a clearly ascertainable right in need of immediate protection, namely his liberty interest to be free from Pritzker’s executive order.” (ECF 1-1, Ex. B ¶ 5.) The Governor immediately appealed to the Illinois Appellate Court. Rather than defend the TRO on appeal, Bailey voluntarily vacated the TRO, and the case returned to the trial court. (ECF 1-1, Ex. I.)

**Bailey amends his complaint, but continues to seek redress for deprivations under color of state law of rights secured by the United States Constitution.**

On May 15, 2020, Bailey received leave to file an amended complaint. Although Bailey removed references to the Constitution, Bailey’s amended complaint remained predicated on his prior allegations that the Governor’s executive orders deprived him of rights, under color or state law, that are secured by the U.S. Constitution. *First*, Bailey reiterated his allegations that the Governor violated his “liberty interest.” (*Compare, e.g.*, ECF 1-1, Ex. A ¶¶ 105–107 (seeking redress for Governor’s alleged “utilization of the police powers of the State” to “[r]estrict a citizen’s movement or activities”) *with* ECF 1-1, Ex. E ¶ 12 (Governor allegedly “limit[ed] Bailey’s constitutionally protected freedoms in that it ordered him to stay at home, or at his place of residence.”).) *Second*, Bailey reiterated his allegation that the Governor violated his right to

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<sup>1</sup> The State Court’s ruling was fundamentally flawed, and entirely inconsistent with the authority the State Court cited. Given that this memorandum is focused on the Court’s jurisdiction and not the merits of Bailey’s claims, however, the Governor will not comment further here on the State Court’s erroneous ruling.

freedom of travel. (*Compare, e.g.*, ECF 1-1, Ex. A, ¶¶ 105–110 (seeking redress for Governor’s alleged actions “restrict[ing] . . . citizen’s [sic] movement”) *with* ECF 1-1, Ex. E ¶ 12 (Governor allegedly “limit[ed] Bailey’s constitutionally protected freedoms in that [he] . . . limited his ability to travel within the state”).

In addition, Bailey’s amended complaint included allegations of two additional deprivations under color of state law of rights or privileges secured by the U.S. Constitution. Bailey added allegations that the Governor is violating his right to free exercise of religion. (ECF 1-1, Ex. A, ¶ 71, seeking redress for Governor’s alleged actions “preventing Bailey from attending worship services.”) Bailey also added allegations that the Governor seized “unilateral control over the movement and livelihood of every citizen in the State. The legislative branch during this period of executive rule under the emergency powers has been rendered meaningless.” (*Id.* ¶¶ 84–85.) This alleges a violation of Article IV, § 4 of the U.S. Constitution, which provides that “[t]he United States shall guarantee to every State in this Union a Republican Form of Government.”

**The Governor removes this action to federal court, and Bailey seeks remand.**

On May 21, 2020, the Governor removed this action to this Court based on federal jurisdiction under 28 U.S.C. § 1343(a)(3). (ECF 1.) Bailey filed an “Emergency Motion To Remand” (ECF 7), “Memorandum In Support Of Emergency Motion To Remand” (ECF 8), and “Motion To Expedite Hearing On Emergency Motion To Remand” (ECF 9). On May 22, 2020, the Governor filed an opposition to Bailey’s request for the Court to remand the case *sua sponte* without granting the Governor the opportunity to respond. (ECF 11.) Separately, the United States Department of Justice (DOJ) filed a Statement of Interest (“DOJ Statement”). (ECF 15.)

Neither Bailey's filings nor the DOJ Statement substantively address the scope of federal jurisdiction under Section 1343(a)(3). (ECF 7, 8, 9, 15.)

Although Bailey asserts in his remand motion that his requested relief is not predicated on alleged deprivations of his constitutional rights (*e.g.*, ECF 8 at 3), Bailey separately continues to contend that the Governor "has issued orders which control Plaintiff's activities, travel, and association with others" (ECF 18 ¶ 10). As shown below, this Court has jurisdiction to redress these alleged deprivations of constitutional rights.<sup>2</sup>

### **Argument**

This Court has jurisdiction over this action under the plain language of 28 U.S.C. § 1343(a)(3) because Bailey seeks redress based on allegations that the Governor, acting under color of state law, has deprived him of rights secured by the U.S. Constitution.

#### **I. This Court has jurisdiction under 28 U.S.C. § 1343(a)(3).**

##### **A. The plain language of 28 U.S.C. § 1343(a)(3) provides district courts with jurisdiction over actions seeking redress for alleged deprivations under color of State law of rights secured by the United States Constitution.**

The Governor removed this action under 28 U.S.C. § 1441(a) based on the Court's original jurisdiction provided by 28 U.S.C. § 1343(a)(3) (ECF 1), which states:

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . . To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States . . . .

The Governor removed solely based on Section 1343(a)(3), and not based on "arising under" jurisdiction provided by 28 U.S.C. § 1331. Bailey's and the DOJ's arguments based on Section

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<sup>2</sup> Bailey could have submitted an amended complaint that deleted all references to, and expressly disavowed seeking redress for, alleged deprivations of rights secured by the U.S. Constitution, but he has not done so.

1331 are therefore misplaced. The plain language of 28 U.S.C. § 1343(a)(3) provides that Section 1343(a)(3) jurisdiction encompasses actions (such as that brought by Bailey) seeking redress for alleged deprivations of constitutional rights under color of state law.

In construing a statute, “a court’s proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself. Where . . . that examination yields a clear answer, judges must stop.” *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019) (internal citations omitted); *see also Moskal v. United States*, 498 U.S. 103, 108 (1990). The plain language of Section 1343(a)(3) provides that federal district courts have original jurisdiction over “*any civil action authorized by law*” commenced by any person: (a) “to redress the deprivation . . . of any right, privilege or immunity secured by the Constitution of the United States” that (b) occurs “under color of any State law, statute, ordinance, regulation, custom or usage.” 28 U.S.C. § 1343(a)(3) (emphasis added).

Interpreting this language, the First Circuit Court of Appeals observed that Section 1343(a)(3) is “a broadly worded jurisdictional grant.” *Rodriguez v. Comas*, 888 F.2d 899, 906 (1st Cir. 1989). More specifically, the First Circuit instructed that:

[T]he grant of jurisdiction is over ‘*any civil action authorized by law to be commenced by any person ...*’ (emphasis added). 28 U.S.C. § 1343(a). In contrast to [other jurisdictional grants], ***the jurisdictional statute here is open-ended—applying to any person and over any civil action.***

*Id.* (emphasis added, citations in the original). The First Circuit’s decision in *Rodriguez* confirmed what the Fifth Circuit previously observed: jurisdiction exists under Section 1343(a)(3) if a party brings a claim under either federal civil rights causes of action, “or other appropriate legal authority.” *Campbell v. Gadsden Cty. Dist. Sch. Bd.*, 534 F.2d 650, 655 n.3 (5th Cir. 1976); *see also Hagans v. Lavine*, 415 U.S. 528, 538 (1974) (Section 1343(a)(3) “unquestionably authorize[s] federal courts to entertain suits to redress the deprivation, under

color of state law, of constitutional rights. It is also plain that the complaint formally alleged such a deprivation.”); *Spaulding v. Mingo Cty. Bd. of Educ.*, 897 F. Supp. 284, 288 (S.D.W. Va. 1995) (finding Section 1343(a)(3) jurisdiction existed over state law claims removed to federal court because “the substance and essence of the Complaint . . . alleged a deprivation under color of state laws . . . of rights secured under the Constitution of the United States”).

By its terms, and as interpreted by at least two federal appellate courts and one federal district court, Section 1343(a)(3) allows a district court to exercise original jurisdiction over causes of action that assert non-federal claims, to the extent that those claims are predicated on and seek to “redress the deprivation . . . of any right, privilege or immunity secured by the Constitution of the United States” under color of state law. This is in contrast to actions brought (or removed) under Section 1331, which covers only claims that “arise under” federal law. Accordingly, and consistent with the plain language of Section 1343(a)(3), Bailey’s state law claims are subject to the original jurisdiction of the Court because they were “commenced” to “redress the deprivation of” at least four rights secured by the U.S. Constitution (Bailey’s liberty interest, right to travel, right to worship, and right to a republican form of government).

**B. Section 1343(a)(3), read in the context in which it was passed into law and together with related statutes, grants federal jurisdiction here.**

“[W]hen deciding whether the language is plain, we must read the words in their context and with a view to their place in the overall statutory scheme. [A court’s] duty, after all, is to construe statutes, not isolated provisions.” *King v. Burwell*, 135 S. Ct. 2480, 2489 (2015) (internal citations and quotation marks omitted); *see also Samantar v. Yousuf*, 560 U.S. 305, 319 (2010) (“we do not . . . construe statutory phrases in isolation; we read statutes as a whole.”).

The scope of Section 1343(a)(3) is apparent when read, as the Supreme Court has required, in the context of the statute in which it became law: Chapters 3 and 7 of Title XIII of



the Revised Statutes of the United States of 1874 (the “Revised Statutes”).<sup>3</sup> *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 608–09 (1979) (“In 1874, Congress enacted the Revised Statutes of the United States,” including the language “now found in [Section 1343(a)(3)].”). When the Revised Statutes became law, Congress had not yet authorized federal courts to exercise “federal question” jurisdiction—the language that is now codified at 28 U.S.C. § 1331 would not be passed until 1875. *See* Act of March 3, 1875, § 1, 18 Stat. 470. Instead, through the Revised Statutes, Congress authorized various federal courts to exercise original jurisdiction over claims in nearly twenty specific areas. *See* Revised Stat., Ex. B, at *passim*.

Congress drafted the jurisdictional grants in the Revised Statutes with care in response to the historical context of the recently concluded Civil War and the ongoing Reconstruction of former Confederate states, in which a federal forum could provide recognition and protection of the rights recently recognized in the Thirteenth, Fourteenth, and Fifteenth Amendments. Where Congress wished to limit federal court jurisdiction in some area to cases “arising under” or “under” federal law, it said so clearly and definitively. For example, Congress authorized federal courts to exercise jurisdiction over “all crimes and offenses cognizable under the authority of the United States,” “all cases arising under any act for the punishment of piracy,” “all suits for penalties and forfeitures incurred under any law of the United States,” “all suits for the recovery of any forfeiture or damages under section thirty-four hundred and ninety,” “all causes of action arising under the postal laws of the United States,” “all suits at law or in equity arising under the

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<sup>3</sup> The jurisdictional grants in the Revised Statutes, including those quoted here, were divided between the two intertwined systems of federal trial courts that existed in 1874: circuit courts and district courts. *See* Revised Stat., Ex. B, at 2, 5. The current system, in which circuit courts serve as courts of appeals and district courts serve as trial courts, did not come into existence until later. *See* Judicial Code of 1911, Pub. L. 61–475, 36 Stat. 1087 *et seq.*

patent or copyright laws of the United States, and “all suits and proceedings arising under section fifty-three hundred and forty-four.” *See* Revised Stat., Ex. B, at 2, 8, 9.

The jurisdictional provision now codified in Section 1343(a)(3), however, was different. *See* Revised Stat., Ex. B, at 3, 8. Unlike most other jurisdictional grants in the Revised Statutes, what is now Section 1343(a)(3) contained no limitation to suits “arising under” or “under” federal law. Instead, Congress provided that federal courts would have jurisdiction over “*all suits at law or in equity authorized by law . . . to redress the deprivation, under color of any law . . . of any State, of any right . . . secured by the Constitution.*”<sup>4</sup> *Id.* at 3 (emphasis added). Section 1343(a)(3) therefore fell into a small group of jurisdictional grants through which Congress created room for federal courts to exercise jurisdiction over state law claims. *See, e.g., id.* at 8 (authorizing federal jurisdiction over “all suits arising under any law relating to the slave trade”).

The pattern in the Revised Statutes is clear. Where Congress intended to limit a jurisdictional grant to claims “arising under” or “under” federal law—restricting a jurisdictional grant to federal claims—it knew how to do so, and did so clearly. Congress could have easily limited 1343(a)(3) jurisdiction to suits “arising under” the Constitution of the United States, just as it did in so many other jurisdictional grants included in the very same statute. It did not. The legal effect of this deliberate congressional decision is inescapable. Interpreted in “context and with a view to [its] place in the overall statutory scheme,” *King*, 135 S. Ct. at 2489; *Samantar*, 560 U.S. at 319, the jurisdiction conferred by Section 1343(a)(3) is not limited to exclusively claims arising under federal law.

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<sup>4</sup> The slight changes in wording seen in the modern codification of this statute did not change the meaning, and are related to the 1938 abolition of any formal distinction between courts of law and equity in the federal system. *See* Rex R. Perschbacher & Deborah Bassett, *The Revolution of 1938 and Its Discontents*, 61 OKLA. L. REV. 275, 282–83 (2008).

The scope of jurisdiction provided by Section 1343(a)(3) is equally apparent when evaluated in the context of the modern “statutory scheme” governing original jurisdiction. *King*, 135 S. Ct. at 2489. As in the Revised Statutes, modern laws conferring jurisdiction on district courts usually explicitly require that the causes of action for which they confer jurisdiction *arise under or relate directly to* the Constitution or a federal statute or rule. For example:

- 28 U.S.C. § 1331 provides that a federal court has jurisdiction over “all civil actions *arising under* the Constitution, laws, or treaties of the United States” (emphasis added).
- 28 USC § 1343(a)(1) provides that a federal court has jurisdiction over civil actions regarding “any act done in furtherance of any conspiracy *mentioned in section 1985 of Title 42*” (emphasis added).
- 28 USC § 1343(a)(2) provides that a federal court has jurisdiction over civil actions “[t]o recover damages from any person who fails to prevent or to aid in preventing any *wrongs mentioned in section 1985 of Title 42*” that the person knew of and could have prevented (emphasis added).
- 28 USC 1343(a)(4) provides that a federal court has jurisdiction over civil actions “[t]o recover damages or to secure equitable or other relief *under any Act of Congress* providing for the protection of civil rights, including the right to vote” (emphasis added).

Once again, the plain language of Section 1343(a)(3) contains no such limitation. In keeping with the basic principles of statutory construction, these differences must be treated as meaningful. *United States v. Heon Seok Lee*, 937 F.3d 797, 816 (7th Cir. 2019) (“A material variation in terms suggests a variation in meaning.”) (citations and quotation marks omitted) (*quoting* ANTONIN SCALIA AND BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 270 (2012)); *see also United States v. Menasche*, 348 U.S. 528, 538–39 (1955) (“It is our duty to give effect, if possible, to every clause and word of a statute.”). The words used by Congress mean that this Court has jurisdiction over the state-law claims at issue because Bailey uses those claims to seek redress for deprivations of rights secured by the U.S. Constitution.

**C. Section 1343(a)(3) jurisdiction over state law claims for deprivations of constitutional rights under color of state law is consistent with fundamental constitutional principles.**

Reading Section 1343(a)(3) to grant federal courts jurisdiction over state claims brought for the purpose of redressing violations of constitutional rights under color of state law does not transgress the bounds of the jurisdiction Congress may bestow under Article III. As the Supreme Court has ruled, “Article III ‘arising under’ jurisdiction is broader than federal question jurisdiction under § 1331.” *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 495 (1983); *Int’l Union Operating Eng’rs v. Ward*, 563 F.3d 276, 281 (7th Cir. 2009) (“Although the language of § 1331 is similar to that of Article III, courts have interpreted § 1331 much more narrowly than its constitutional counterpart.”); *Patrickson v. Dole Food Co.*, 251 F.3d 795, 799 (9th Cir. 2001) (“[A]ny federal ingredient may be sufficient to satisfy Article III”). A claim predicated on, and seeking redress for, the deprivation of a right guaranteed in the U.S. Constitution certainly has the necessary “federal ingredient.” *Patrickson*, 251 F.3d at 799. Section 1343(a)(3) is therefore constitutional under longstanding Article III jurisprudence. *Id.*

**D. The only federal court to squarely consider this issue determined that causes asserting non-federal claims and seeking to redress deprivations under color of State law of rights guaranteed by the U.S. Constitution are subject to federal jurisdiction under Section 1343(a)(3) and may be removed to federal court.**

Federal jurisdiction over this case is confirmed by the ruling in *Spaulding v. Mingo Cty. Bd. of Educ.*, 897 F. Supp. 284 (S.D.W. Va. 1995). The plaintiffs in *Spaulding* brought an action in state court asserting state-law claims for “tortious acts of assault and battery, infliction of severe emotional distress, negligent supervision and training, false imprisonment, misrepresentation and fraud, and retaliation” in violation of state common law, violations of the West Virginia Constitution, and violations of at least two West Virginia statutes. *Id.* at 286. The defendants removed to federal court based on 28 U.S.C. § 1343(a)(3), because the “factual

allegations apparent on the face of the Complaint allege, under color of state laws and regulations, deprivations of rights secured by the Constitution of the United States.” *Id.* Like Bailey here, the plaintiffs in *Spaulding* objected to removal, arguing that no federal jurisdiction existed because “no cause of action arising under the Constitution, treaties, or laws of the United States is contained in the Complaint.” *Id.*

The *Spaulding* court rejected plaintiffs’ argument that no federal jurisdiction existed. Acknowledging that a plaintiff is typically “master of his claim,” the court nevertheless determined that, in the context of removal pursuant to the court’s original jurisdiction under Section 1343(a)(3), “[a]n exception to this principle arises when the claim, although ostensibly asserted under state law, is in fact a federal law claim but by artful pleading is misrepresented in order to defeat defendant’s right to a federal forum.” *Id.* at 287–88 (internal quotation marks omitted). On that basis, the court reasoned:

the Court looks to the substance and essence of the Complaint and finds the Plaintiffs have purposely omitted reference to the Constitution of the United States, federal laws, and federal statutes through artful pleading. The Court concludes it has original jurisdiction pursuant to 28 U.S.C. 1343(a)(3) because Plaintiffs have alleged a deprivation under color of state laws, statutes, and regulations of rights secured under the Constitution of the United States . . . .

*Id.* at 288–89.<sup>5</sup> The court thus made clear that even where an asserted right or privilege may be concurrently protected by the U.S. Constitution *and* a state constitutional or statutory provision, the action is within the scope of the jurisdiction conferred by Section 1343(a)(3) where the

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<sup>5</sup> The *Spaulding* court ultimately remanded the case based on a version of 28 U.S.C. § 1441(c) that has since been revised. *Compare Spaulding*, 897 F. Supp. at 286 n.5 (quoting then-existing version of Section 1441(c)) *with* 28 U.S.C. § 1441(c). Under the current version of Section 1441(c), the court must sever claims that are not within the court’s original or supplemental jurisdiction, but as discussed above, this requirement does not apply here where the court has original federal jurisdiction over state-law claims commenced to seek redress for deprivations under color of state law for alleged violations of the U.S. Constitution.

“substance and essence” of a complaint is founded on allegations of a deprivation under color of state law of rights secured by the U.S. Constitution.<sup>6</sup> Precisely what Bailey did here.

**II. This Court has jurisdiction because Bailey seeks to redress alleged deprivations under color of state law of rights secured by the United States Constitution.**

Bailey’s pleadings and the proceedings before the State Court demonstrate that Bailey seeks redress for claims that the Governor, under color of state law, is depriving Bailey of rights secured by the U.S. Constitution, making his state-law claims subject to federal jurisdiction under Section 1343(a)(3) and properly removed pursuant to Section 1441(a).<sup>7</sup>

Bailey cannot dispute that he is a “person” for the purposes of Section 1343(a)(3), and that his complaint and amended complaint both allege the Governor took unlawful actions under color of state law. (*See, e.g.*, ECF 1-1, Ex. A ¶ 72(E), alleging “Bailey has a right to insist Pritzker not engage in activities designed to circumvent limitations on his authority imposed by the legislature” by issuing various executive orders). The only question before the Court is whether Bailey “commenced” this action “[t]o redress the deprivation, under color of any State law . . . of any right . . . secured by the Constitution of the United States,” irrespective of whether

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<sup>6</sup> For it to be true that a right secured by Illinois law is automatically outside the jurisdictional reach of Section 1343(a)(3), the Court would have to conclude that the Illinois Constitution of 1970 had the effect of modifying the scope of jurisdiction conferred by a federal statute passed in 1874. But any such conclusion would violate a bedrock principle of American federalism: “the act of [a state] . . . cannot be permitted to prejudice the question” of the “jurisdiction of the courts of the union.” *United States v. Peters*, 9 U.S. 115, 136 (1809) (Marshall, CJ, writing for the majority). Moreover, it would mean that Section 1343(a)(3) jurisdiction would vary from district court to district court, depending on the state in which each district court sits, and whether the state constitution of that state protects all the rights also secured by the U.S. Constitution. Such a result is absurd, and must be rejected.

<sup>7</sup> Under the general removal statute codified at 28 U.S.C. § 1441(a), removal is proper if the district court has original jurisdiction over an action, as it does here.

he did so by pleading federal or state law claims. *Rodriguez*, 888 F.2d at 906; *Spaulding*, 897 F. Supp. at 288; 28 U.S.C. § 1343(a)(3). The answer to that question is yes.<sup>8</sup>

**A. Bailey’s pleadings show he commenced and continued this action to redress deprivation of rights secured by the federal constitution.**

Bailey’s complaint alleged that the executive order issued by the Governor on March 20, 2020 “limit[ed] Bailey’s constitutionally protected freedoms in that it ordered him to stay at home, or at his place of residence, as well as limited his ability to travel within the state.” (ECF 1-1, Ex. E ¶ 12.) Bailey further alleged that the Governor continued to deprive him of these “constitutionally protected freedoms” by issuing an additional executive order on April 1, 2020, that “acted to restrain Bailey within his residence, as well as limit his travel.” (*Id.* ¶ 19.) These allegations of a purported deprivation of rights secured by the federal constitution formed the predicate of Bailey’s claims, and Bailey’s action was unquestionably “commenced” to redress those alleged deprivations. *Id.*

As discussed in the Governor’s Notice of Removal (ECF 1), Bailey’s amended complaint never abandoned these alleged violations of his constitutional rights. Indeed, it expanded on them. In his amended complaint, Bailey continued to seek redress for alleged violations of his liberty interest.<sup>9</sup> (ECF 1-1, Ex. A, ¶¶ 105–107, seeking redress for Governor’s alleged “utilization of the police powers of the State” to “restrict a citizen’s . . . activities or seizing

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<sup>8</sup> Bailey has on numerous occasions publicly confirmed that he commenced this suit to redress alleged constitutional violations. *See, e.g.,* Rebecca Anzel, *AG to appeal judge’s ruling halting stay-at-home order against lawmaker*, PEORIA JOURNAL STAR, Apr. 28, 2020, [www.pjstar.com/news/20200428/ag-to-appeal-judges-ruling-halting-stay-at-home-order-against-lawmaker](http://www.pjstar.com/news/20200428/ag-to-appeal-judges-ruling-halting-stay-at-home-order-against-lawmaker) (last visited June 5, 2020).

<sup>9</sup> This “liberty interest” is secured by the U.S. Constitution. *See, e.g.,* *Youngberg v. Romeo*, 457 U.S. 307, 315 (1982); *Parham v. J.R.*, 442 U.S. 584, 600 (1979). The Fourteenth Amendment to the U.S. Constitution prohibits a “state” from “depriv[ing] any person of life, *liberty*, or property, without due process of law[.]” U.S. Const. amend. XIV, § 1 (emphasis added).

control of . . . business premises”; ¶¶ 32–49, discussing quarantine procedures). Bailey also repeated his allegation that the Governor has violated his right to freedom of travel. (*Id.* ¶¶ 105–07, seeking redress for Governor’s alleged actions “restrict[ing] a citizen’s movement”).

Bailey’s amended complaint adds alleged deprivations of two additional rights or privileges secured by the U.S. Constitution: Bailey’s allegation that the Governor is violating his right to free exercise of religion (*id.* ¶ 71, seeking redress for the Governor’s alleged actions “preventing Bailey from attending worship services”), and Bailey’s allegation that the Governor has somehow seized “unilateral control over the movement and livelihood of every citizen in the State,” rendering the legislature “meaningless” (*id.* ¶¶ 84–85). These new allegations seek redress for an alleged violation of the First Amendment and also Article IV, Section 4 of the U.S. Constitution, which provides that “[t]he United States shall guarantee to every State in this Union a Republican Form of Government.”

In sum, although Bailey assiduously removed the word “constitution” from his amended complaint, the “substance and essence” of Bailey’s action continues to be that the Governor is acting under color of state law to deprive him of the same constitutional rights (and more) addressed in his initial complaint. (ECF 1-1, Ex. A.) The DOJ itself recognizes the federal constitutional predicates and implications of Bailey’s amended complaint, writing:

If Bailey is correct that these executive orders are wholly without authorization under Illinois law, then the Orders’ imposition of broad and intrusive restrictions on the people of Illinois would raise real questions about whether the people of Illinois have been deprived of their liberties without constitutionally adequate process.

(ECF 15 at p. 15–19.) Because “the substance and essence” of Bailey’s complaint, like the complaint in *Spaulding*, alleges deprivations under color of state laws “of rights secured under the Constitution of the United States,” this Court has original jurisdiction under Section 1343(a)(3). *Spaulding*, 897 F. Supp. at 288–89.



**B. Proceedings in the State Court show that Bailey is seeking to redress alleged deprivations of rights secured by the United States Constitution.**

The State Court itself acknowledged and confirmed that Bailey commenced this action to redress deprivations of rights secured by the U.S. Constitution. On April 27, 2020, when the State Court granted Bailey’s motion for a TRO (that Bailey then moved to vacate to avoid defending it on appeal), the court based its ruling on irreparable harm on *federal constitutional grounds*, ruling that “every second this Executive Order is in existence . . . the Bill of Rights is being shredded. That is irreparable harm.” Ex. A, Apr. 27, 2020 Tr. at 60:17–21. In addition, the State Court found a likelihood of success on the merits for Bailey’s claims on federal constitutional grounds, stating: “there is no pandemic exception to the fundamental liberties the constitution safeguards . . . . individual rights secured by the constitution do not disappear during a public health crisis . . . . These individual rights, including the protections in the Bill of Rights made applicable to the states through the Fourteenth Amendment, are always in force and restrain government action . . . . the rights of the individual in respect of his liberty may, at times, under the pressure of great dangers, be subjected to such restraint . . . as the safety of the general public may demand . . . The Supreme Court also has instructed courts to intervene if a statute purporting to have been enacted to protect the public health or the public safety has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law.” *Id.* at 64:12–66:19.

The State Court justified its ruling by noting “[t]here is a vast difference between being allowed to ask the federal government for disaster loans for farmers in a flood and an executive order that shuts down my right, my constitutional right to work, to travel, to exist . . . . [D]oes the Governor have the right to shred the constitution for longer than 30 days? That’s the issue, isn’t

it?” *Id.* at 39:25-40:14. The judge further stated that “there’s that pesky little thing called the constitution that’s going to have to be dealt with.” *Id.* at 47:17–18.

Bailey plainly concurred in the State Court’s assessment of the constitutional nature of his action. During argument over bond, Bailey’s counsel asked “[w]hat showing would the court require for bond sufficient for my client to be able to continue with his constitutional rights . . . ?” (*Id.* at 68:5–7.) And Bailey submitted a draft TRO order, which the State Court entered without substantive revision. (ECF 1-1, Ex. B.) That order provided that Bailey had “shown he has a clearly ascertainable right in need of immediate protection, namely his liberty interest to be free from Pritzker’s executive order.” (*Id.* ¶ 5.)

### **III. Bailey and the DOJ’s arguments for remand are irrelevant to the issue at hand because they address federal jurisdiction under Section 1331, not Section 1343(a)(3).**

The DOJ acknowledges that “[i]f Bailey is correct that these executive orders are wholly without authorization under Illinois law, then the Orders’ imposition of broad and intrusive restrictions on the people of Illinois would raise real questions about whether the people of Illinois have been deprived of their liberties without constitutionally adequate process.” (ECF 15 at 15–19.) Despite this acknowledgment, the DOJ (and Bailey) argue the Court lacks jurisdiction over this case because Bailey’s claims do not allege a federal claim and do not come within the “slim category” of state law cases that nonetheless give rise to original jurisdiction under Section 1331 in the federal courts because they arise under federal law. (ECF 15 at 5–6, *quoting Gunn v. Minton*, 568 U.S. 251, 258 (2013); ECF 8 at 5.) This is a strawman. The question here is not whether Bailey overtly asserted a federal claim giving rise to “federal question” jurisdiction under 28 U.S.C. § 1331. He has not. The question is whether Bailey’s state law claims seek redress for violations under color of state law of rights protected by the U.S. Constitution. That he has plainly done in a manner that triggers federal jurisdiction under Section 1343(a)(3).

Bailey and the DOJ largely ignore that the Governor has invoked federal jurisdiction on the basis of 28 U.S.C. §1343(a)(3), not Section 1331. With the exception of a single footnote in the DOJ Statement (in which the DOJ misquotes and misstates the relevant law), not a single case cited by Bailey or the DOJ relates to Section 1343(a)(3) jurisdiction. Instead, Bailey and the DOJ have relied entirely on cases construing the requirements of Section 1331. (ECF 7, 8, 15, citing *Gunn v. Minton*, 568 U.S. 251 (2013) (addressing § 1331 with no mention of § 1343(a)(3)); *Grable & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005) (same); *Caterpillar Inc. v. Williams*, 482 U.S. 386 (1987) (same); *Merrell Dow Pharm. v. Thompson*, 478 U.S. 814 (1986) (same); *Webb v. Fin. Indus. Regulatory Auth., Inc.*, 889 F.3d 853 (7th Cir. 2018) (same); *Citadel Sec., LLC v. Chicago Bd. Options Exch., Inc.*, 808 F.3d 694 (7th Cir. 2015) (same); *Hartland Lakeside Joint No. 3 Sch. Dist. v. WEA Ins. Corp.*, 756 F.3d 1032 (7th Cir. 2014) (same); *Manning v. Merrill Lynch Pierce Fenner & Smith*, 772 F.3d 158 (3d Cir. 2014) (same); *Williams v. Aztar Indiana Gaming Corp.*, 351 F.3d 294 (7th Cir. 2003) (same); *Ctr. For Wildlife Ethics, Inc. v. Clark*, 325 F. Supp. 3d 911 (N.D. Ind. 2018) (same); *Krause v. Phila. Soul*, 2009 WL 1175625 (E.D. Pa. 2009).)<sup>10</sup>

Bailey's memorandum fails to meaningfully address the substance of Section 1343(a)(3), and the DOJ's sole reference to Section 1343(a)(3) appears in a footnote on page 6 of its filing. In that footnote, the DOJ attempts to limit the scope of Section 1343(a)(3) by claiming that it extends “only to rights that are granted in terms of equality and not to the whole gamut of

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<sup>10</sup> Bailey's discussion of *Compagnie Francaise de Navigation a Vapeur v. State Bd. Of Health*, 186 U.S. 380 (1902) also misses the mark (ECF 8 at 7), as it is based on the inaccurate claim that Bailey has not argued the Governor has violated the U.S. Constitution. See disc. *supra* at 1–4. And neither DOJ nor Bailey can fairly dispute that *Compagnie Francaise* stands for the proposition that federal courts have jurisdiction over actions challenging alleged *ultra vires* public health measures on the grounds that they transgress the U.S. Constitution.

constitutional rights.” (ECF 15 at 6, n.2, *quoting Chapman*, 441 U.S. at 622.) There are two problems with this assertion, both fatal to the DOJ’s argument.

First, the passage from *Chapman* that the DOJ quotes refers specifically to 28 U.S.C. § 1443, a removal statute with language different from Section 1343(a)(3).<sup>11</sup> Second, even if the *Chapman* Court intended that its holding should extend to similar language in Section 1343, the holding still would not reach this case. To be sure, one category of cases encompassed by Section 1343(a)(3) is civil actions to redress violations of rights “secured by . . . any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.” The Governor, however, has not removed on those grounds. Instead, he has removed on the basis that Section 1343(a)(3) gives this Court jurisdiction over civil actions to redress deprivations of rights “secured by the Constitution of the United States.” 28 U.S.C. § 1343(a)(3); *see also Roberge v. Philbrook*, 313 F. Supp. 608, 610 (D. Vt. 1970) (noting the “two separate jurisdictional grants” under Section 1343(a)(3), one for deprivation of rights secured by the constitution, and one for deprivation of rights secured by federal statutes providing for equal protection). *Chapman*’s holdings on that score are limited to the “statutory” prong of Section 1343(a)(3), and are not relevant to the current jurisdictional dispute.

The DOJ’s conclusory, unsupported assertion that Section 1343(a)(3) is “largely defunct” (EDF 15 at 6 n.2) is wishful thinking. DOJ does not and cannot seriously contend that the removal of the amount-in-controversy requirement from 28 U.S.C. § 1331 caused Section 1343(a)(3) to be repealed. Section 1343(a)(3) was, after all, a central element of Congress’s effort to provide federal forum for the recognition and protection of the rights recently

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<sup>11</sup> DOJ attempts to yoke Section 1343 to Section 1443 by describing the latter as Section 1343(a)(3)’s “parallel removal statute.” DOJ is flat wrong. Because Section 1343(a)(3) grants original jurisdiction to federal courts, Section 1441(a) is the appropriate removal statute.

recognized in the Thirteenth, Fourteenth, and Fifteenth Amendments following the Civil War and during Reconstruction. *See* Revised Stat., Ex. B, at *passim*. As the Supreme Court has held, “repeals by implication are not favored” and when “two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.” *Maine Cmty. Health Options v. United States*, 140 S. Ct. 1308, 1323 (2020) (internal quotation marks and citations omitted). That is particularly true here, where the jurisdictional statute in question is among the most historic Congress has ever enacted.

The DOJ also cites to dicta in *Myles v. United States*, 416 F.3d 551, 554 (7th Cir. 2005), in which the court criticized the design of a form designed for prisoner-plaintiffs in Indiana.<sup>12</sup> That dicta aside, courts across the country have continued to recognize Section 1343(a)(3) as good law, and a valid basis for federal jurisdiction. *See, e.g., Jhagroo v. Brown*, 2020 WL 419450, \*1 (S.D.N.Y. 2020) (citing § 1343(a)(3) as basis for court’s jurisdiction); *Willis v. Tejada*, 2019 WL 498952, \*1 (N.D. Ill. 2019) (same); *Correction Officers’ Benevolent Ass’n, Inc. v. City of New York*, 415 F. Supp. 3d 464, 466–67 (S.D.N.Y. 2019) (same). This Court should do the same and reject Bailey’s motion to remand this case to state court.

### CONCLUSION

For each of these reasons, the Governor requests that the Court deny Bailey’s Emergency Motion To Remand.

Dated: June 5, 2020

KWAME RAOUL  
Attorney General of Illinois

Respectfully Submitted,

/s/ Thomas J. Verticchio

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<sup>12</sup> The court criticized the form because it erroneously classified Section 1983 as a jurisdictional statute, and because the court thought Section 1331 jurisdiction was most appropriate in the context of prisoner litigation. In any event, immediately after its discussion of Section 1343, the court made clear that this criticism was dicta, writing “[n]one of this, however, affected *Myles*.” *Myles*, 416 F.3d at 554.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on June 5, 2020, he caused a true and correct copy of the foregoing to be served by electronic filing in the CM/ECF system on the following:

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By: /s/ Thomas J. Verticchio

# Exhibit A



1 IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT

2 CLAY COUNTY, ILLINOIS

3  
4 DARREN BAILEY, )  
 )  
5 Plaintiff, )  
 )  
6 vs. ) NO. 20-CH-6  
 )  
7 GOVERNOR J.B. PRITZKER, in )  
 his official capacity, )  
8 )  
 Defendant. )  
9

10  
11 REPORT OF PROCEEDINGS of the hearing held  
12 before the Honorable MICHAEL D. MCHANEY on the 27th day  
13 of April, 2020.

14 APPEARANCES: MR. THOMAS DEVORE  
15 MR. ERIK HYAM  
16 On behalf of the Plaintiff  
17 MR. THOMAS VERTICCHIO  
on behalf of the Defendant

18  
19 PREPARED BY: LORI SIMS  
20 Certified Shorthand Reporter  
21 No. 084-003424  
22 1431 Panther Creek Lane  
23 Louisville, Illinois 62858  
24  
25

1           THE COURT: All right. We've got some  
2 preliminary matters before we begin. First, obviously  
3 the public is in this courtroom. To the extent that  
4 that could be viewed as contravention of our  
5 Administrative Order governing the Fourth Circuit or a  
6 violation of the Governor's stay-at-home order, I and I  
7 alone take full responsibility for any ramifications for  
8 either of those.

9           The public has an absolute right to access to  
10 the courts and transparency. I cannot imagine anything  
11 more unjust than to deprive the citizens the right to  
12 view the process in which this court is asked to  
13 drastically potentially alter their lives. Therefore,  
14 you're here. However, you are here as directed by the  
15 sheriff of Clay County, who has done a phenomenal job  
16 preparing for this with respect to social distancing and  
17 our Fourth Circuit Administrative Order. Thank you,  
18 Sheriff.

19           In that vein, while you're here, there will be  
20 no public outbursts, no displays. Anybody disrupting  
21 this proceeding will be removed immediately, and, at the  
22 conclusion of this hearing, you will leave as directed  
23 by the Clay County Sheriff.

24           I'm now going to call 20-CH-6, Bailey versus  
25 Pritzker. Would the parties please identify themselves

1 for the court reporter and record.

2 MR. DeVORE: Your Honor, Plaintiff appears,  
3 Darren Bailey, by his counsel, Erik Hyam and Thomas  
4 DeVore of DeVore Law Office, sir.

5 MR. VERTICCHIO: Good afternoon, Your Honor.  
6 Tom Verticchio for Governor Pritzker.

7 THE COURT: Very well. Thank you. You may be  
8 seated.

9 MR. VERTICCHIO: Your Honor, may I?

10 THE COURT: Yes.

11 MR. VERTICCHIO: I know we had a preliminary  
12 matter that I became aware of this morning. There was a  
13 Motion for leave to file an Amicus. I know that counsel  
14 is in the courtroom, and I thought the court might want  
15 to address that.

16 THE COURT: Yeah. Let's do that. What have you  
17 got, the Hospital Association?

18 MR. WURL: Yes, Your Honor.

19 THE COURT: Would you please identify yourself  
20 for the record.

21 MR. WURL: My name is Dan Wurl of Heyl Royster  
22 Law Firm in Champaign, Illinois, and we are serving as  
23 local counsel for the Illinois Health and Hospital  
24 Association.

25 MR. OURTH: I'm Joe Ourth, Saul, Ewing, Arnstein

1       & Lehr, on behalf of the Illinois Health and Hospital  
2       Association and on behalf of the 200 members of the  
3       hospitals who are members of the Hospital Association.

4               THE COURT: And, for the record, you have filed  
5       an Amicus brief; is that correct?

6               MR. WURL: That's correct, Your Honor.

7               THE COURT: Both parties received a copy of  
8       that?

9               MR. VERTICCHIO: Yes, Judge.

10              MR. DeVORE: Yes, Judge. I got it on the way  
11       down here, sir.

12              THE COURT: Any objection?

13              MR. VERTICCHIO: None from the Governor, Your  
14       Honor.

15              MR. DeVORE: Judge, we would have an objection  
16       at this point, especially at the proceeding of a  
17       temporary restraining order. From what I understand of  
18       looking at their document, it appears to be, and, again,  
19       reading it as we were driving down here, me not driving,  
20       of course, sir, some kind of balancing of the equities  
21       or some, something of the nature that if the court would  
22       find that the Governor's Order is beyond his authority,  
23       that that would cause some undue harm within the  
24       hospitals.

25              To me, at this stage of the proceeding, that

1 issue is not in front of the court. I believe it will  
2 cloud what otherwise is a temporary restraining order  
3 hearing on the pleadings of the parties. I believe once  
4 the court gets into this and sees some of the  
5 documentation, that it will find, that even if this  
6 court would find that the Order exceeded his authority,  
7 that there are measures already in place.

8 So, to the extent that that would over-  
9 complicate what otherwise is a statutory construction  
10 and a constitutional issue, I don't believe that the  
11 Amicus brief provides any helpful insight at this time  
12 to the court. Thank you.

13 MR. VERTICCHIO: May I, Your Honor?

14 THE COURT: Yeah.

15 MR. VERTICCHIO: On behalf of the Governor,  
16 we're here on a TRO and, as you know from the briefing,  
17 Your Honor, one of the issues that the court will  
18 consider, provided that the plaintiff meets his original  
19 four requirements, is the balancing of the harms and the  
20 hardship due upon the public in the event that the Order  
21 is entered and relief granted. It appears to me that  
22 there could be no more relevant, sadly, there could be  
23 no more relevant viewpoint for the court to consider on  
24 the balancing of the harms and damage to the public than  
25 the view of the Amicus hospital, Health and Hospital

1 Association.

2 I briefly looked at the brief and declaration  
3 attached and it bears directly upon the issue of  
4 balancing the harms and the hardship upon the public.  
5 We respectfully request that the Motion be granted.

6 THE COURT: I will allow the filing of the  
7 Amicus brief, although you're not parties but you, of  
8 course, may observe.

9 MR. WURL: Thank you, Your Honor.

10 MR. VERTICCHIO: Thank you, Judge.

11 THE COURT: All right.

12 MR. VERTICCHIO: Then procedurally, Your Honor,  
13 I don't know how the court wants to proceed in terms of  
14 the order. We have filed a 2-615 Motion to Dismiss the  
15 Complaint. Granted it, by and large, goes to the  
16 likelihood of success on the merits.

17 THE COURT: It does. They're intertwined.

18 MR. VERTICCHIO: Maybe for that reason it makes  
19 sense for Mr. DeVore to present his Motion with the  
20 understanding that I will then present my 2-615 in  
21 response to the Motion for temporary restraining order  
22 if that makes sense for the court.

23 THE COURT: Makes sense to me.

24 MR. DeVORE: Your Honor, I would ask the  
25 court -- I agree with my colleague that the arguments

1 raised in the, you know, not as much the Motion to  
2 Dismiss but in their opposition brief I will call it, it  
3 does take on the issue of likelihood of success on the  
4 merits as it relates to the temporary restraining order.  
5 If they are successful in that argument, the TRO doesn't  
6 issue, but as to the issue of the Motion --

7 THE COURT: Anybody that's got a cell phone, if  
8 that goes off again, the sheriff is going to confiscate  
9 it and you're out of here. Go ahead.

10 MR. DeVORE: Thank you, Your Honor. Your Honor,  
11 the Motion to Dismiss was filed and the Notice of  
12 Hearing on that Motion to Dismiss was received by our  
13 office roughly an hour ago. Local Rule 501(d) says that  
14 Notice of Hearing has to be presented to the opposing  
15 party no later than the second court date preceding the  
16 hearing. So I would ask the court merely to entertain  
17 the likelihood of success on the merits issue as it  
18 relates to the TRO and then, regardless of whether the  
19 court grants or denies, I believe the governor's Motion  
20 to Dismiss could be taken up at a later date where we  
21 can address those issues fully.

22 MR. VERTICCHIO: Your Honor, this is an  
23 emergency proceeding. The Motion was -- the Complaint  
24 was filed on Friday. We were served with it on Friday,  
25 the Motion to Dismiss filed Monday morning. We are on

1 the fast track as we all know. As a matter of fact, I  
2 received a supplemental brief last night from  
3 plaintiff's counsel, don't hold me to the precise time,  
4 but I think it was 1:05 a.m. Monday morning. There's a  
5 lot going on.

6 It seems to me that the Motion to Dismiss is  
7 directly tied to the likelihood of success. It's the  
8 same arguments on the legal issues --

9 THE COURT: Yeah. Basically the same argument.  
10 All right. I'm going to find I can walk and chew gum at  
11 the same time. I'm going to consider them both and the  
12 whole giant argument and we'll sort it out later. You  
13 may proceed, Petitioner.

14 MR. DeVORE: Understood, sir. Your Honor, my  
15 client brought this cause of action under declaratory  
16 judgment and request for preliminary injunction and  
17 temporary restraining order. The temporary restraining  
18 order request is verified and it was filed in this  
19 court.

20 As the court is aware and my colleague is aware,  
21 there's four elements that are required in order for a  
22 temporary restraining order to issue. They are a right  
23 in need of protection, they are irreparable injury, they  
24 are no adequate remedy at law, and likelihood of success  
25 on the merits. I would like to address each one of



1 those individually for the court. I'm going to leave  
2 likelihood of success on the merits for last because, as  
3 the court is aware, that is one of the most complicated  
4 ones.

5 As to the issue of right in need of protection,  
6 as was brought up briefly on, which is now in the record  
7 of the court on their request for a continuance, the  
8 right in need of protection is a liberty interest. It  
9 is a liberty interest as pled in this case of my client  
10 but it's also the same liberty interest of every citizen  
11 of this state. But as to Mr. Bailey, the liberty  
12 interest of him being ordered by the executive branch of  
13 this state to stay in his home unless he is engaged in  
14 an essential activity that the Governor's office has  
15 also defined what's essential with someone, we don't  
16 know who, and, if he does that, if he doesn't follow  
17 that order, he could be subject to some prosecution,  
18 persecution, whatever we want to call it, we don't  
19 really know, we haven't seen that yet, but ultimately  
20 some mechanism by which my client could be sanctioned  
21 for not staying at home unless it's an essential task or  
22 work or food, it's been defined by the same executive  
23 branch. That is a right in need of protection, one of  
24 which I'm not sure there could be a greater right in  
25 need of protection for this court to consider.

1           Now, there's been some -- I want to throw this  
2     in just briefly. There's been some response by the  
3     Governor's office that says, well, Mr. Bailey hasn't  
4     adhered to that so he's really not subject to this stay-  
5     at-home order. If my client has chosen to leave his  
6     home not for an essential task, he has, at least as we  
7     sit right now in the state of the executive order,  
8     potentially subjecting himself to punishment. That's  
9     the right in need of protection here, Judge, not whether  
10    you choose to peacefully disobey, which I would call  
11    that, the fact that the order has been issued that says  
12    if you do this, you could be subject to violation of  
13    this order. That's the right, Judge, and we would ask  
14    the court to find that that, there's really no contest  
15    that my client has raised a right in need of protection.

16           The issue of irreparable injury is next, which  
17    is kind of coupled with that, is what injury, should  
18    this court not enter a temporary restraining order, would  
19    Mr. Bailey suffer? Again, briefly argued to this court  
20    in the motion to continue by the state, by the  
21    Governor's office was that there is no prejudice. Every  
22    day that goes by that this Executive Order has been in  
23    effect is irreparable to my client. To be told by the  
24    executive branch of this state that if he does not stay  
25    in his house, unless you leave it for a reason I say you

1 can leave, every day that goes by, that is an  
2 irreplaceable violation of his liberty interest. You  
3 can't get that back.

4 Maybe my client chose to want to go peacefully  
5 go to his neighbor's house and see how his friend's  
6 doing. I don't know what he does for a living, or what  
7 he does for entertainment, but that's a violation,  
8 Judge, and it's irreparable. You cannot get that back.  
9 So I would ask the court to find that there's really no  
10 contest as to that one.

11 Adequate remedy at law. That's where we're at  
12 right now. The executive branch has said, and I think  
13 they've said in their response that they filed with this  
14 court, that the Governor has the constitutional power to  
15 use the police power any way he sees fit. And as we sit  
16 here today, and I'm saddened on behalf of my client and  
17 the rest of the people of this state, that the  
18 legislature has not done a thing. They haven't met  
19 since May (sic) 5th.

20 The first proclamation of disaster was entered  
21 on March 9th. Four days before that was the last day  
22 they convened. They have not convened since. I've  
23 asked my representatives, Mr. Bailey should probably ask  
24 his, why are you not convening? We don't know. But is  
25 there a remedy in the legislature? I don't think we

1 need to look to it for that, but I would just point out  
2 to the court that if, in fact, my client's case is found  
3 to have merit by this court, part of that merit is the  
4 fact that the legislature has sat by idly and watched  
5 the executive branch usurp its authority and has not  
6 done anything.

7 So my client's only adequate remedy at law is to  
8 come to the third branch of government, which is this  
9 court, and ask them for redress. That's the only choice  
10 he has.

11 THE COURT: But the attorney general is going to  
12 argue he does have an adequate remedy of law. It's  
13 already passed. The Governor can pass these continuing  
14 disaster proclamations every 30 days or beyond.

15 MR. DeVORE: That's what he's going to argue.  
16 Yeah.

17 THE COURT: You've got an adequate remedy right  
18 there.

19 MR. DeVORE: The remedy being the executive  
20 branch?

21 THE COURT: Yeah. That's what he's going to do.

22 MR. DeVORE: He's going to try, I'm sure. So as  
23 to the adequate remedy at law, my client's position is  
24 for a court to find that the Governor's orders that he  
25 is issuing exceed his authority.

1 THE COURT: Let's just get down to it.

2 MR. DeVORE: Yes.

3 THE COURT: What's your arguing is the Governor  
4 can do what he did for 30 days and that's it absent  
5 further legislative approval. Isn't that what you're  
6 saying?

7 MR. DeVORE: Under the Illinois Emergency  
8 Management Act, yes. Under the Department of Public  
9 Health Act, I would say it's different.

10 THE COURT: Yeah. It's vastly different there  
11 because there, Attorney General, you get a lawyer. You  
12 get judicial review. You can't do this stuff longer  
13 than 48 hours until you go to court.

14 MR. DeVORE: That's what we're getting to. Yes,  
15 sir.

16 THE COURT: Anyway.

17 MR. DEVORE: Yes, sir. I agree with the court.  
18 So, again, after the adequate remedy at law, again,  
19 there is a law that we're getting to on the likelihood  
20 of success on the merits. My client has to prove to  
21 this court today, not that he can succeed on the merits,  
22 which is why I would ask the court, at least for the  
23 record, to find I still have an objection to hearing the  
24 Motion to Dismiss because my burden on the TRO today is  
25 merely likelihood of success, which is different than

1 the Motion to Dismiss for stated claim, but I just want  
2 that noted, Judge.

3 Likelihood of success on the merit, has my  
4 client put forth enough information in front of this  
5 court to say, yes, there is a chance here of some merit  
6 that he is going succeed, at what? Succeed that the  
7 Governor exceeded his authority to force him, through an  
8 Executive Order, to stay in his house.

9 Now, what I think is interesting about this,  
10 Judge, is, in their response, the Governor takes the  
11 position that -- because we cite the Illinois Department  
12 of Public Health rules and regulations and the act that  
13 talks about isolation and quarantine. The Governor  
14 takes the position in this court that, well, telling  
15 someone to stay at home but they can leave for these  
16 reasons I said they can leave is not tantamount to a  
17 quarantine. That's some interesting mental gymnastics,  
18 Judge, and I would ask the court not to entertain that.  
19 Telling someone that they can't leave their house except  
20 for these reasons is tantamount to a quarantine. I'll  
21 get to that.

22 Illinois Emergency Management Agency Act, 20  
23 ILCS 3305/2, the court has it, the court has read it.  
24 The language of it is not ambiguous. As my colleague on  
25 behalf of the Governor would say, he believes there's

1     ambiguity so I would like to go to the statute, and I  
2     have it in front of me, and the statute, by our  
3     legislature, in Section 2, subsection (a)(2), it does  
4     intend to confer upon the Governor and upon the  
5     principal executive officer the powers provided herein.  
6     So something herein the legislature intended to grant  
7     that power to the Governor. It was a delegation of some  
8     legislative authority to the executive branch, and we  
9     have to look at see what those are.

10           Before -- I'm going to go through the statute as  
11     it reads, Judge. The first thing before certain powers  
12     are triggered, as the court has read and the attorneys  
13     here know, we have to have a disaster. What is a  
14     disaster? The statute helps us with that. A disaster,  
15     and I'm going to parse the language because, as we all  
16     know, it's written by lawyers and there's a lot of  
17     words, but I've parsed it out, a disaster means an  
18     occurrence.

19           THE COURT: Aren't you conceding there's a  
20     disaster?

21           MR. DeVORE: Yes, but there's a point to make,  
22     Judge. Yes. A disaster means an occurrence, which it  
23     could include loss of life from any natural cause  
24     requiring emergency action to avert is what the language  
25     says, a public health emergency. So if the Governor

1 chooses to issue a disaster proclamation under COVID-19,  
2 that's what he would look at, and he did that on  
3 March 9th. It's not been contested that I'm aware of.  
4 My client is not contesting that in this court today.  
5 That was issued on March 9th, Your Honor.

6 If I flip to Section 6, it talks about certain  
7 powers that the Governor has about preparing plans and  
8 doing things to help keep people, you know, with other  
9 agencies, and that's not really in front of the court  
10 today, but Section 7 is where we get to, Your Honor.

11 THE COURT: That's 30 days.

12 MR. DeVORE: Emergency powers of the governor,  
13 and I want to parse this really close if I may, sir.  
14 And just for the court's clarification, the government  
15 has taken the position that this language is ambiguous  
16 somehow. In the event --

17 THE COURT: Are you?

18 MR. VERTICCHIO: Not at all, Your Honor.

19 THE COURT: I didn't think he was either. I  
20 thought he said -- he's saying it's clear that the  
21 Governor can just issue these 30-day proclamations as  
22 long as he wants.

23 MR. DeVORE: True, which would be an  
24 interpretation. I'm sorry, sir. Go ahead.

25 MR. VERTICCHIO: As long as it's declared a



1 disaster.

2 THE COURT: All right.

3 MR. DeVORE: Fair enough. Let's talk about  
4 that, Judge. In the event of a disaster as defined in  
5 Section 4, which we just went through, and I think -- I  
6 don't believe there's a dispute in this court, and I'm  
7 asking the court not to find there's a dispute, that  
8 that disaster proclamation on March 9th was COVID-19.  
9 Okay.

10 So, in the event that disaster was proclaimed,  
11 the Governor declared a disaster exists. Upon such  
12 proclamation is the language, the Governor shall have  
13 and may exercise for a period not to exceed 30 days the  
14 following emergency powers. I'm going to go on in a  
15 lower part of the statute before I come back to the 30,  
16 Judge, because when we're talking about whether they can  
17 be, and I use the language on behalf of my client, re-  
18 energized with a new proclamation, et cetera, provided,  
19 however, that the lapse of the emergency powers shall  
20 not, as regard to any act committed within the 30 days,  
21 deprive any person of any rights they may have.

22 So what that was saying and what the legislature  
23 is saying is, upon lapse, you still have certain rights  
24 as people. So I would ask the court to consider that  
25 the legislature obviously recognized that after 30 days

1     there would be a lapse in the power at least as it  
2     relates to the disaster that was promulgated at the  
3     onset.

4             The Governor, when he -- and, again, going  
5     through these powers, Judge, we have the power that, it  
6     seems fair to say, the Governor is trying to invoke  
7     here, to control ingress and egress to and from a  
8     disaster area, the movement of persons within the area,  
9     and the occupancy of premises therein. The Governor,  
10    again, has interpreted that language, that that means he  
11    can tell every person within the whole state to stay at  
12    home, not arguing -- I'm asking the court just to  
13    consider that in its totality. We're certainly not here  
14    today arguing that that Executive Order exceeded that  
15    language. We're arguing that it exceeded the 30 days,  
16    because I wanted to point that out to the court that  
17    there has been an interpretation that that language says  
18    you can make people stay at home.

19            Now here's the clever part, Judge, of the  
20    March 19th order that I would ask the court to look at.  
21    The disaster proclamation of March 9th said that  
22    COVID-19, and I have it here in front of me,  
23    proclamation, the proclamation of March 9th, Your Honor,  
24    I just had to go to it, where it has all of the  
25    whereases that the court can see, based on the

1       foregoing, the circumstances surrounding COVID-19  
2       constitute a public health emergency under Section 4.

3               Then you flip to the -- he does the Executive  
4       Order, and the Executive Order refers to, and I want to  
5       point this out because my colleague, I believe from his  
6       brief, is going to come to a constitutional argument,  
7       therefore, under the Executive Order of March 20th that  
8       we're arguing about, by the powers vested in me as  
9       Governor of the State of Illinois, and pursuant to  
10      Sections 7(1), 7(2), 7(8), 7(10) and 7(12) of the  
11      Illinois Emergency Management Agency Act, 20 ILCS 3305,  
12      so that's where he cites the Emergency Management Act,  
13      and -- this is going to get a little bit interesting  
14      later, Your Honor -- and consistent with the powers in  
15      public health laws.

16             So the Governor, in this Executive Order  
17      restraining my client in his home, says I'm doing that  
18      under the Emergency Management Act and within the powers  
19      of public health laws. And then he goes on to issue the  
20      stay-at-home order in that March 20th Executive Order.  
21      That March 20th Executive Order, Your Honor, was by, on  
22      its face, I'm going to flip back to it, on its face I  
23      believe was set to expire on the 7th of April. I want  
24      to make sure that I provide that paragraph to the court.  
25      Here it is, Judge, under first page, March 21st at 5:00

1 for the remainder of the duration of the Gubernatorial  
2 Disaster Proclamation, which currently and through  
3 April 7, 2020. So this order was set to expire on  
4 April 7th.

5 Now the Governor, when he issued the first  
6 proclamation of a disaster --

7 MR. VERTICCHIO: Your Honor, I'm sorry, but if  
8 the record is going to reflect that counsel is quoting  
9 from the order, it doesn't say and, it says extend.

10 MR. DeVORE: Could you clarify that, counsel?  
11 Where at?

12 MR. VERTICCHIO: You just read it, counsel.  
13 Which currently extends through April 7th.

14 MR. DeVORE: Okay. Currently extends through  
15 April 7th.

16 MR. VERTICCHIO: Thank you.

17 MR. DeVORE: Now the proclamation that was  
18 entered on March 9th, interestingly enough, Your Honor,  
19 had a 30-day time frame in the disaster proclamation.  
20 There's nothing in the statute that says disaster  
21 proclamations have a 30-day limitation. It just says  
22 you can issue a disaster proclamation. Nonetheless, the  
23 Governor put in a 30-day limitation on that  
24 proclamation. And, again, this order of March 20th that  
25 he entered ordering stay in place of my client through

1 the Emergency Management Act, and presumably consistent  
2 with the powers in the public health laws, extended  
3 through April 7th.

4 Absent some argument that this order, before  
5 April 1st when we have the new proclamation ordering my  
6 client to stay at home, would not be through the  
7 Emergency Management Act as we're here today but it  
8 could be through the public health laws because the  
9 Governor cites that as authority.

10 Now, getting to the April 1st proclamation,  
11 Judge, is where the power being exerted by the Governor  
12 through the Emergency Management Act becomes a lot more  
13 precarious and I believe can no way be reconciled with  
14 the plain language of the statute.

15 The Governor, in this he calls the proclamation  
16 of the COVID-19 virus a continuing disaster. He doesn't  
17 call it a new disaster. He doesn't say the disaster has  
18 migrated in one way or another. He calls it a  
19 continuing disaster, which I believe this court can say  
20 and I believe makes sense with just interpreting of  
21 language, it was the same disaster, it just was still  
22 ongoing at that point in time. Why the Governor chose  
23 to, again, put 30 days on the first disaster and have it  
24 and that proclamation and then have a new proclamation  
25 that just says, oh, yeah, it's continuing, I don't know

1       why he added the temporary restraining order change.

2               THE COURT:   How about because he knew he only  
3       had a 30-day limit?

4               MR. DeVORE:   I'm going to present that to the  
5       court as probably why but, again, I'm not going to  
6       speculate on the good intentions of the Governor.

7               So when this new proclamation gets entered on  
8       April 1st, Your Honor, saying we have a continuing  
9       disaster, a new one, we all know it's the same disaster,  
10      the Governor obviously contemporaneously with that  
11      issues another Executive Order pushing his emergency  
12      powers down another 30 days to the end of April.

13              Now, statutory construction, I would ask the  
14      court to consider this:   If the legislature of the state  
15      of Illinois intended to let the Governor have some sort  
16      of emergency power, whether that power includes making  
17      you stay at home or not, let's set that aside for a  
18      second, if you were going to let the Governor have  
19      emergency powers that extended for the duration of a  
20      disaster, they could have written that.   They could have  
21      written in there that these emergency powers will last  
22      so long as the COVID-19 disaster is still a public  
23      health emergency.   That would have been pretty easy.  
24      Now whether or not that exceeded their delegation of  
25      authority from a constitutional perspective, we're not

1 at that today.

2 All we're saying is they clearly, when they  
3 wrote this statute, didn't intend in any way to allow a  
4 Governor, the office of Governor, I'm not even using our  
5 current Governor's name, an office of Governor to  
6 exercise these emergency powers into perpetuity by  
7 merely bootstrapping new proclamations every 30 days for  
8 the same disaster. I mean the disaster is the disaster,  
9 and that's what the Governor, in his Emergency Manage-  
10 ment Act proclamations, is doing.

11 THE COURT: While we're on that subject,  
12 Attorney General, the speaker of the house, Illinois  
13 house, could propose an amendment to this Emergency  
14 Management Act and grant the authority the Governor  
15 seeks in perpetuity or as long as the Governor deems  
16 there to be a disaster and he could pass that in a New  
17 York minute, couldn't he?

18 MR. VERTICCHIO: Well, I think the speaker of  
19 the house could bring that to the floor and --

20 THE COURT: Exactly, for which then there could  
21 be debate and an up or down vote and transparency so the  
22 citizens could see who was voting for this and who  
23 isn't. That could be done.

24 MR. VERTICCHIO: Sure. And, Your Honor, we're  
25 here today to talk about what was done. What did the

1 legislature do.

2 THE COURT: I get that.

3 MR. VERTICCHIO: Not what they might do.

4 THE COURT: I'm just saying that in response to  
5 something in your brief that says if I dissolve this, or  
6 if I grant this TRO, we're going to kill millions of  
7 people. Okay. Go ahead.

8 MR. DeVORE: Thank you very much, Your Honor.  
9 What the court just suggested -- and I understand my  
10 colleague's response that what we're here for today is  
11 what happened and not what could happen, but what could  
12 happen -- I still think the court can use that analysis  
13 of its significant time of experience to say I know what  
14 was meant by this statute and those were the things that  
15 can happen.

16 Now, granted, if the legislature would do what  
17 the court is talking about and grant that authority in  
18 public on the floor, people see how they vote, citizens  
19 still could seek reprieve in a court saying that was an  
20 excessive delegation of legislative authority.

21 THE COURT: That argument is for another day.

22 MR. DeVORE: Absolutely, sir. So as it relates  
23 to the Illinois Emergency Management Act, again, Your  
24 Honor, once the order of April 1st, the Executive Order  
25 which then re-energized the 30 days of power under the



1 Emergency Management Act according to the Governor by  
2 his actions, I would ask the Court to find there's a  
3 likelihood of success on the merits that there's no  
4 language in the act as it's written that supports that  
5 proposition and, as a matter of fact, as the court's  
6 aware from statutory construction, if we, as jurists in  
7 courts, interpret language of the statute that vitiates  
8 completely one of its provisions, that's not something  
9 we should do.

10 So if the court chose and decides to say, yes,  
11 there is a proper -- again, I'm calling them serial  
12 proclamations -- they could arguably give the Governor  
13 the authority to use these emergency powers until COVID  
14 is over. I'm not even here suggesting to the court  
15 that's a good or bad idea, whether or not that best  
16 serves the people. That's all a different issue. The  
17 act can't be read to suggest that because, if it does,  
18 the words of lapse and the words that they shall not,  
19 you know, exceed 30 days, those are rendered meaning-  
20 less. They don't mean anything anymore and the  
21 emergency powers could continue forever.

22 So as to the Emergency Management Act, that is  
23 where we believe we have presented a likelihood of  
24 success on the merits that the Governor exceeded the  
25 delegated authority granted him under the Illinois

1 Emergency Management Act.

2           The supplemental brief that we provided to the  
3 court tells, and some of the cases my colleague provided  
4 the court in response gives some history and some  
5 authority to this court that, when I read it -- I'm a  
6 50-year-old person, Judge, and I thought, man, this is a  
7 new issue. I've got to figure this out. This almost  
8 identical issue existed in the halls of our courts  
9 100 years ago as to people being ordered to stay at home  
10 and whether or not that was a proper exercise of  
11 authority. The law now has -- what I have in front of  
12 me is the Department of Public Health Act. Let me grab,  
13 Your Honor, and this is a significant issue that I hope  
14 I do service, Your Honor. This act, Your Honor, is in  
15 some of the case law, again, that my colleague cited on  
16 behalf of the Governor.

17           This Department of Public Health Act must go  
18 back, again, at least as early as 1922 when our Supreme  
19 Court rendered an opinion that is significant. So I  
20 have the, and I've provided it to the court, 20 ILCS  
21 2305, Department of Public Health Act, and it has some  
22 language within it that I think the court should  
23 consider and it also has the Pandemic Influenza  
24 Preparedness and Response Plan. Those pieces of  
25 information, along with the cites that have been given

1 in these cases, I believe the court will find, when this  
2 is over today and I'm done presenting it, that not only  
3 did the Governor exceed his authority under the Illinois  
4 Emergency Management Act, regardless of that and  
5 independent of that, he never had any authority in the  
6 first place as it relates to quarantine and isolation.  
7 He didn't have any. I would like to -- again, let me go  
8 through and get my documents here and I'm going to  
9 provide that to the court. 20 ILCS 2305, Powers. The  
10 State Department of Public Health has general  
11 supervision of the interests of the health and lives of  
12 the people of the State. Next sentence, Judge. It, the  
13 Department of Public Health, has supreme authority in  
14 matters of quarantine and isolation, and may declare and  
15 enforce quarantine and isolation when none exists.

16 The legislature, the police making the laws, you  
17 know, police laws that they made gave that authority,  
18 not to the Governor. I mean we have two statutes here  
19 the court is considering. One I've argued he exceeded  
20 in the Emergency Management Act. There is no specific  
21 delegation of quarantine in the Emergency Management  
22 Act. It talks about how he can control the movement of  
23 people within a disaster area. I would suggest to the  
24 court that's probably not quarantine.

25 Our legislature, exercising its police powers,

1 which they have, gave that to a completely independent  
2 body. Now they're under the Governor's office, but when  
3 I get done presenting this to the court, I'm interested  
4 to see how this gets responded to by the Governor.

5 Attached to the document that we've given you,  
6 Judge, with the statute is a copy of, and it's required  
7 by the statute, and I want to provide this to the court  
8 and pray I do it justice, to the concerns of the people  
9 of the state, maybe people in this room, that if this  
10 court finds this order to be excess of his authority  
11 that people's lives are at risk. They're not, Judge,  
12 and I would tell the court they're not because this  
13 issue has been reduced to a 120-page plan by the State  
14 Department of Public Health Pandemic Influenza  
15 Preparedness and Response Plan. It's right here for the  
16 court to see. I've got some pages of it that I want to  
17 cite. It refers to the statute and it's promulgated  
18 under the statute, and what I think the court will find  
19 interesting is that seven days before our Governor  
20 issued his first proclamation of disaster, they made  
21 some ministerial changes to this document, nothing  
22 significant. They added our new director, Miss Ezike,  
23 to it. This document was being circulated through when  
24 the COVID-19 was an issue for our country and right  
25 before the proclamation.

1           The court has it there. I'm going to start  
2       where the issues that I think are relevant to the court  
3       start on about page 66. In these rules, again, Judge,  
4       which are grounded in the authority granted the  
5       Department of Public Health by our legislature who holds  
6       the police powers of this state, Restriction of Movement  
7       or Activities to Control Disease Spread. There's a  
8       whole section in here about that that the Department of  
9       Public Health has, and it talks about quarantines and it  
10      talks about the different types of quarantines.  
11      Quarantine is not effective in controlling multiple  
12      influenza outbreaks in large, and it goes on to talk  
13      about, even if quarantine on a grand scale might be  
14      effective in controlling influenza in large populations,  
15      it would damage the economy by reducing the work force.  
16      That's in their own plan.

17           The issue of how do they enforce this.

18           THE COURT: Are you arguing that we don't need  
19      the Executive Order to save millions of lives? If we  
20      just follow that, we're all going to be just fine. Is  
21      that what you're saying?

22           MR. DeVORE: I'm saying that that's what this  
23      document was prepared for this issue, and I have two  
24      Supreme Court cases that took this issue on 60 and a  
25      hundred years ago that said the legislative branch and

1 the Department of Public Health controls isolation and  
2 quarantine and they are better served -- I want to read  
3 some of this on the record if I could -- they are better  
4 served as a board to legislate through the delegation by  
5 the legislature to do that than one person. Our Supreme  
6 Court a hundred years ago, Judge, and I want to get to  
7 that, says that one person making these decisions is not  
8 what this country is all about and I will get to that,  
9 but what I'm saying is, yes, sir, I'm saying this 120-  
10 page document -- and you know what it says, Your Honor?  
11 It says in here that these decisions, and I called on  
12 county health departments, but the decisions of  
13 quarantine and isolation, and you know what else,  
14 closure of businesses is controlled through the  
15 legislature through the Illinois Department of Public  
16 Health down to every county health department within the  
17 102 counties that we have.

18 That's what the law says, and it's in here and  
19 they've had it and they were inside of it making  
20 ministerial changes seven days before the proclamation  
21 was entered.

22 THE COURT: That document, that provides right  
23 to counsel, judicial review and all of that, correct?

24 MR. DeVORE: The plan cites the statute and the  
25 statute says, here's what it says, it says if the, and I

1 can tell you, I had to go ask, communicable, that's a  
2 big word, disease nurse, Bond County is where I live,  
3 sir. There's a communicable disease nurse, and I don't  
4 want to say her name, if you were believed to have any  
5 contagious disease ever, not just COVID-19, she has the  
6 ability to go to our administrator and our administrator  
7 will then send a letter to that person, the notice. You  
8 know what, the statute requires a notice to that person  
9 that says we have determined you have this disease and  
10 we need you to either voluntarily quarantine or not and,  
11 if you don't, the board can go to our state's attorney,  
12 whose name is Dora Mann, and it says they can get an  
13 order from the judge saying you have to quarantine and  
14 giving them 48 hours to appear with counsel to be heard.  
15 That's in place, Judge. That's always been in place.

16 THE COURT: I get that. What if, instead of  
17 COVID-19, what if this was a mutation of Ebola with a  
18 hundred percent kill rate? Isn't that what this  
19 Emergency Management Act is designed to prevent and what  
20 these Executive Orders are designed? There's no time  
21 under that act to do what you're saying. There's no  
22 time. You've got to socially isolate and shut this  
23 place down or everybody is going to die.

24 MR. DeVORE: I agree with you 100 percent, and  
25 you know what this plan says, Judge? It says that

1 decision, the legislative branch of our state has  
2 delegated that decision making to the Illinois  
3 Department of Public Health, not to the executive branch  
4 of Governor.

5 THE COURT: But they did in the Emergency  
6 Manage- ment Act.

7 MR. DeVORE: They're trying to say that they  
8 did. Correct. Yeah.

9 THE COURT: All right.

10 MR. DeVORE: And -- well, I'm going to point  
11 that out, too, Judge, because I'm interested to hear  
12 what my colleague says, is that they have now in their  
13 response said that their authority was grounded in not  
14 only the Illinois Emergency Management Act but it's  
15 grounded in the constitution. Now, I went back and  
16 looked to make sure I didn't miss anything, and in the  
17 proclamations and orders that were entered, it  
18 specifically says we have issued these orders pursuant  
19 to these sections of the Illinois Emergency Management  
20 Act and it's consistent with public health laws. It's  
21 not consistent with this public health law, Judge.

22 It completely contradicts it. Not only does it  
23 contradict it and usurp it, it strips the fundamental  
24 due process rights away from every citizen, including  
25 Mr. Bailey. For those reasons, Judge, we believe that



1 the mechanisms that are in place, they've been in place,  
2 and I want to end this -- I have one case that my  
3 colleague cited, Judge, that I would like to hand the  
4 court and I would like the record to reflect -- I want  
5 the court to appreciate -- may I, sir?

6 THE COURT: Yeah.

7 MR. DeVORE: That this issue -- this was a  
8 typhoid issue of 1922 I believe is when the case was  
9 issued, Judge, but this was a writ of habeas corpus to  
10 where a citizen of our state said that they were being  
11 held against their will for all intents and purposes.  
12 This was, and I'm on page 4 of 13, this lady's name was  
13 Jennie Barmore, and she filed in the court an  
14 application for writ of habeas corpus, in English that  
15 means I'm being held against my will, stating that she  
16 was unlawfully restrained of her liberty at her home in  
17 Chicago by the commissioner of health. It goes on and  
18 talks about the health of the people is unquestionably  
19 an economic asset and social blessing and the science of  
20 public health is of great importance.

21 Now here when I get to page 6 is where this case  
22 law that I would ask the court to consider, the  
23 preservation of the public health is one of the duties  
24 devolving upon a state as a sovereign power will not be  
25 questioned. It is. The health of the people in our

1 state is, it is important. Among the objects sought to  
2 be secured by governmental laws, none is more important  
3 than the preservation of the public health. The duty to  
4 preserve the public health finds ample support in the  
5 police power, which this is the part of the case I  
6 believe my, the Governor cites, which is inherent in the  
7 state, and which the state cannot surrender. That's  
8 true, too. Every state has acknowledged power to pass  
9 and enforce quarantine, health and inspection laws,  
10 quarantine, health and inspection laws to prevent the  
11 introduction of disease, et cetera, and such laws must  
12 be submitted to by individuals.

13 So what that says, Your Honor, is that under  
14 these circumstances through the powers given to certain  
15 departments by the legislature, is that we, as citizens,  
16 sometimes may have to yield. We understand that and I  
17 think my client understands that. Generally speaking,  
18 what laws or regulations are necessary to protect public  
19 health and secure public comfort is a legislative  
20 question, and appropriate measures intended and  
21 calculated to accomplish these ends are not subject to  
22 judicial review, and what that goes on to say is that  
23 when someone eventually makes it to your court saying  
24 that they've been held in violation of their rights,  
25 this court would apply an arbitrary and capricious

1 standard of whether or not they have been restrained.

2           Next paragraph, Judge. The legislature may, in  
3 the exercise of the police power of the state, create  
4 ministerial boards, Illinois Department of Public  
5 Health, with power to prescribe rules and impose  
6 penalties for their violation and provide for the  
7 collection of such penalties.

8           So there's been a lot of conversation that the  
9 court may have heard, well, how does a governor enforce  
10 this? That's a good question. Here's how the Illinois  
11 Department of Public Health enforces it and it's right  
12 here, the exercise of the police power is a matter  
13 resting in the discretion of the legislature or the  
14 board or tribunal to which the power is delegated and  
15 the courts will not interfere with this exercise unless  
16 it's arbitrary or capricious. This is a 1922 case,  
17 Judge, and I'm going to come to the end of something  
18 that this case says, that this court said. The  
19 legislature has granted the power to appoint a board of  
20 health and to prescribe its duties and powers. A board  
21 of health must necessarily consist of more than one  
22 person and powers. Many authorities contend that the  
23 administration of public health should be vested in an  
24 individual, and that that individual may be trained in  
25 the science of public health. This contention is based

1 on the ground that this form of administration of the  
2 health laws is productive and efficient.

3 Please bear with me, Judge. This is so  
4 important. The same argument might have been made in  
5 favor of an absolute monarchy, but the experience of the  
6 world has been that other forms of government, perhaps  
7 more cumbersome and less efficient, insure to the people  
8 a more reasonable and less arbitrary administration of  
9 the laws. Whatever may be best, legislature of Illinois  
10 has said that the public health shall be regulated and  
11 guarded by the board of health. Until the legislature  
12 grants to cities, this was a city case, the power, they  
13 must contend with the board of health. That's what this  
14 case said, Judge, a hundred years ago, and that's what  
15 I'm asking this court to say today.

16 We have an Emergency Management Act. Does it or  
17 does it not give the Governor the power at all to  
18 quarantine people? I would say it's in -- I think the  
19 act for the Department of Public Health is clear. It  
20 says we are the supreme power. I don't know how many  
21 times I may have seen you have the supreme power. If  
22 the court is looking at these two statutes, I think it's  
23 clear to say the Department of Public Health statute is  
24 more specific.

25 Coming back to the Illinois Emergency Manage-

1     ment Act, did it grant the Governor the power to  
2     quarantine, not just save people from going into a  
3     disaster area? If we had a nuclear disaster, the  
4     Governor saying who can go in there and who can't go in  
5     there, that's important movement of people, but to take  
6     it to the point of moving a people, being quarantining  
7     the whole state, I think if the court looks at the plan  
8     that we have here, it actually says that those aren't  
9     really good ideas because it's hard to enforce and would  
10    damage the economy. Their own plan, Judge, vitiates the  
11    actions of the Governor.

12             So I'm asking the court to say Illinois  
13    Department of Public Health Act, the legislature who  
14    holds the ultimate police power, has given that to the  
15    Board of Health. We have a mechanism in place through a  
16    120-page Pandemic Influenza Response. Every county in  
17    our state has something in place right now. That's the  
18    protection that our legislature has set up to handle  
19    these matters. The Illinois Emergency Management Act  
20    clearly gave the Governor the ability to enter some kind  
21    of orders within 30 days. He has now used a serial  
22    proclamation to try to do that. That doesn't appear to  
23    be required, or allowed by the statute itself, and, even  
24    if the court might get that far, which I'm asking it not  
25    to, that interpretation should not exceed the express

1 and clear legislative mandate of the Illinois Department  
2 of Public Health. Thank you very much, sir.

3 THE COURT: What say you, Mr. Attorney General?

4 MR. VERTICCHIO: Thank you, Your Honor. Your  
5 Honor, the Illinois General Assembly passed the  
6 Emergency Management Agency Act and, when it did, in the  
7 introduction, here's what it said as to why the act was  
8 passed, quote, to insure the state will be prepared to  
9 and will adequately deal with any disasters, preserve  
10 the lives and property of the people of this state and  
11 protect the public peace, health and safety in the event  
12 of a disaster.

13 Section (2)(a), the Act also grants the Governor  
14 the authority to declare by proclamation that a disaster  
15 exists and to exercise emergency powers pursuant to that  
16 disaster proclamation.

17 THE COURT: That preamble there just said to  
18 protect property, is that right?

19 MR. VERTICCHIO: That's one of the things.  
20 Lives, property, peace, health.

21 THE COURT: This Executive Order is absolutely  
22 destroying people's property. It's killing them. It is  
23 keeping them from working, making a living. How is that  
24 preserving property?

25 MR. VERTICCHIO: Well, it's a judgment to be

1     made, Your Honor, and it's a judgment that's being made  
2     not only in Illinois but across the country, indeed, the  
3     world and lives --

4             THE COURT: Well, with respect to that, how  
5     about the couple of states who never shut down in the  
6     first place? How about the states right now who are  
7     opening?

8             MR. VERTICCHIO: And that's the judgment that  
9     the governors of those states made within their  
10    executive power. In Illinois, Governor Pritzker made a  
11    different judgment. He made a judgment that he had the  
12    right to make under the act, and what's interesting  
13    about the act and the proclamation and, in fact, the  
14    30-day successive, multiple orders is that since the  
15    decades that the act was passed, Governors Rauner,  
16    Quinn, Pritzker, have passed successive and multiple,  
17    made successive and multiple proclamations and then, on  
18    that proclamation, issued executive orders regarding the  
19    declaration of a disaster.

20            THE COURT: Aren't you talking about flooding?

21            MR. VERTICCHIO: Several of them were flooding,  
22    Your Honor.

23            THE COURT: There is --

24            MR. VERTICCHIO: One of them was H1N1.

25            THE COURT: There is a vast difference between

1 being allowed to ask the federal government for disaster  
2 loans for farmers in a flood and an executive order that  
3 shuts down my right, my constitutional right to work, to  
4 travel, to exist, isn't there?

5 MR. VERTICCHIO: Well, excepting, Your Honor,  
6 the issue that the plaintiff brings is under this  
7 statute, does the Governor have the right to make  
8 multiple or successive declarations of a disaster and,  
9 therefore, upon that proclamation, trigger emergency  
10 powers for a period of 30 days, and the history of this  
11 act with multiple governors is yes, and now --

12 THE COURT: Does the Governor -- does the  
13 Governor have the right to shred the constitution for  
14 longer than 30 days? That's the issue, isn't it?

15 MR. VERTICCHIO: Well, the legislature  
16 promulgated the act and gave the Governor vast powers.

17 THE COURT: They certainly are vast.

18 MR. VERTICCHIO: They are. They are, and I  
19 think the key section is the one that counsel pointed  
20 out. It's Section 7. That's what we're here about  
21 today.

22 THE COURT: I'm glad you brought that up.  
23 Section 7 says, and I'm reading it here, let me find  
24 this here, the Governor shall have and may exercise for  
25 a period not to exceed 30 days. It doesn't say you can



1 do multiple declarations. It says you got 30 days to do  
2 whatever you want, even if it shreds the constitution  
3 but, after that, party over.

4 MR. VERTICCHIO: Respectfully, Your Honor,  
5 that's not what it says.

6 THE COURT: Please tell me what it does say.

7 MR. VERTICCHIO: I'm going to read Section 7.  
8 Quote, Emergency Powers of the Governor. In the event  
9 of a disaster, as defined in Section 4, and we have no  
10 dispute that there is a disaster here, the Governor may,  
11 by proclamation declare that a disaster exists.  
12 Continuing, upon such proclamation, what proclamation?  
13 The proclamation that a disaster exists, upon such  
14 proclamation, the Governor shall have and may exercise  
15 for a period not to exceed 30 days the following  
16 emergency powers.

17 So what triggers the 30 days? The proclamation.  
18 Upon such proclamation. When the Governor, under the  
19 clear reading of the act, it's the language they use,  
20 when the Governor, present tense, declares a disaster  
21 through proclamation, which he did in this case on  
22 March 9th and then again on April 1st, that declaration,  
23 through proclamation, triggers the next clause or  
24 sentence. Upon such proclamation, the Governor shall  
25 have and may exercise for a period not to exceed 30 days

1 the following emergency powers. It's a clear sentence.

2 So the triggering event is the proclamation and  
3 then the 30 days. If there's another proclamation, then  
4 there's another trigger, and, if there's another  
5 proclamation, then there's another trigger. What's the  
6 guardrail? What's the guardrail because this can't go  
7 on forever? Well, the guardrail is that the Governor is  
8 required under the act to declare a disaster.

9 THE COURT: What's to stop him from keeping on  
10 declaring a disaster for the next five years?

11 MR. VERTICCHIO: Cases like this, Your Honor.  
12 Cases like this. Mr. Bailey could bring a case and say  
13 his declaration of disaster was not taken in good faith,  
14 and that's the standard.

15 THE COURT: I'm sure we'll get to that in the  
16 next lawsuit.

17 MR. VERTICCHIO: Well, we may, but what we've  
18 heard today is we're not disputing there's a disaster  
19 and how could we? How could we dispute that? My notes  
20 for today, Your Honor, said that there's been almost  
21 42,000 cases of COVID-19 in Illinois and 1,843 deaths.  
22 I realized coming down here this morning my notes were  
23 wrong because I heard on the radio that there were 59  
24 deaths yesterday. There's a disaster.

25 THE COURT: And zero in Clay County and zero in

1 numerous other downstate counties.

2 MR. VERTICCHIO: That's an interesting point,  
3 Your Honor, because in Jasper County right next door  
4 there's 42 cases.

5 THE COURT: In a nursing home.

6 MR. VERTICCHIO: In a nursing home. In Marion  
7 County, I looked last night, I think there were  
8 26 cases. So this is not -- this is not a Northern  
9 Illinois only problem because in southern counties, too,  
10 the issue exists. Jasper County, 42 cases, less than  
11 10,000 residents in the county. As a result, it suffers  
12 one of the highest per capita infection rates in  
13 Illinois. Its rates are doubling every three days.

14 Jefferson County is one of the few to exceed  
15 Jasper. Its rates double every two and a half days.  
16 Randolph County, one of the fastest doubling rates in  
17 the state. The point is we can't really dispute it was  
18 a disaster. It is a disaster.

19 THE COURT: With respect to these statistics  
20 you're throwing out here and all of that, isn't it true  
21 that if I die in a car wreck and I happen to test  
22 positive for COVID-19, my cause of death for purposes of  
23 what this Governor is doing is COVID-19?

24 MR. VERTICCHIO: I don't know. I don't know how  
25 that particular method is, Your Honor.

1 THE COURT: All right.

2 MR. VERTICCHIO: So, under the act, that  
3 sentence is clear, and it's interesting to note that  
4 counsel goes on in Section 7 to read that, well, wait a  
5 minute, provided, however, that the lapse of emergency  
6 powers shall not and, therefore, the conclusion is,  
7 well, it must contemplate a lapse, but you have to read  
8 the rest of the section. The rest of the sentence makes  
9 it very clear that that clause concerns payment,  
10 reimbursement and compensation of people who contracted  
11 to provide services during the 30-day period. It simply  
12 has nothing to do with whether the Governor has the  
13 ability to then proclaim a disaster again and then, upon  
14 such proclamation, another 30 days triggers.

15 In our case, March 9th came and Governor  
16 Pritzker declared a disaster existed. March 20 the  
17 first Executive Order exercised the emergency powers  
18 that were to extend through April 7th as we learned,  
19 30 days from the original. Then on April 1st, present  
20 tense, declared a disaster existed thereby, upon that  
21 proclamation, was able to exercise his emergency powers  
22 through the same day Executive Order on April the 1st  
23 through April the 30th.

24 There are no limitations in the act with regard  
25 to his ability or any governor's ability to declare

1 multiple and successive proclamations, and that's what  
2 he did on March 9 and that's what he did on April 1.  
3 The act is clear and unambiguous on that issue.

4 THE COURT: There's also nothing in the act that  
5 says you get to keep doing this every 30 days whenever  
6 you want. That ain't in there either, is it?

7 MR. VERTICCHIO: Well, what the legislature  
8 said, the general assembly said is that, if you declare  
9 a disaster, then upon that proclamation, you've got  
10 30 days, and the guardrails again are was it a good  
11 faith exercise of the declaration of a disaster, and  
12 maybe some day there will be that case, but for today's  
13 purposes, I don't think anybody can dispute that we have  
14 a disaster and, more importantly, nobody is disputing  
15 it.

16 Where Mr. Bailey, the plaintiff's construction  
17 gets confused is that he triggers and links the 30-day  
18 period of emergency powers to a particular disaster, but  
19 the 30-day limitation isn't linked to a particular  
20 disaster. Under the clear language of the legislature,  
21 it's linked to the proclamation of a present tense  
22 disaster.

23 So it's pretty clear, Your Honor, that given the  
24 sequence of events, Governor Pritzker conducted the  
25 proclamation and the executive orders specifically

1 within the language of the statute. Declare, then upon  
2 the declaration, 30 days emergency power. And when the  
3 statute's looked at as a whole, it's apparent that that  
4 plain language means exactly what it was intended to  
5 mean, because when you look at the limitations section  
6 of the statute, Section 3, it has no limitations on the  
7 Governor on this issue. In fact, the only mention of  
8 the Governor in Section 3 is that the act shall not be  
9 construed to constrain the Governor's ability to, quote,  
10 proclaim martial law or exercise any other powers vested  
11 in the Governor under the constitution, statutes, or  
12 common law of this state. There are no limitations on  
13 this 30-day issue.

14 So you look further in the statute. Well, did  
15 the legislature, the general assembly put limitations on  
16 somebody else regarding this issue, this timing issue  
17 about declaring a disaster? And the answer is yes. In  
18 Section 11, the general assembly dealt with the issue of  
19 a local disaster, local disaster, and it gave local  
20 political bodies the ability and, in particular, the  
21 executive of a local subdivision, the ability to declare  
22 a disaster, but here's what it said in that regard.  
23 That the local disaster declaration, quote, this is  
24 Section 11, quote, shall not be continued or renewed for  
25 a period in excess of seven days except by or with the

1 consent of the governing board of the political  
2 subdivision.

3 In that instance, same statute, same issue, the  
4 general assembly determined we're going to confine the  
5 local subdivision to seven days unless it gets consent  
6 of the governing body of the subdivision. The precise  
7 same issue with regard to the Governor, that limitation  
8 is not there. In other words, when the legislature  
9 wanted to put a limitation on this ability to declare a  
10 disaster in terms of timing, it did. Fair inference, it  
11 didn't place that restriction on the Governor. None  
12 exists.

13 THE COURT: Well, I get that, and for 30 days --  
14 the legislature, aren't they saying, look, we get it.  
15 You can't spend all of this time -- you've got 30 days  
16 to make this state safe and do what you've got to do,  
17 but, after that, there's that pesky little thing called  
18 the constitution that's going to have to be dealt with.

19 MR. VERTICCHIO: Well, Your Honor, there's a  
20 couple things on that. That construction, and that's  
21 certainly Mr. Bailey's construction, that construction  
22 presumes that every disaster will either be over in  
23 30 days or the legislature is going to do something, but  
24 when passing the act, the general assembly determined  
25 that that's not the guardrail we're going to put on the

1 Governor. We're not saying in this act you can only do  
2 it for 30 days and then we're going to do something.  
3 That's not what the ACT says. The general assembly,  
4 when passing the ACT, said, Governor, if you declare a  
5 disaster, the law says he has to do it in good faith,  
6 but if you declare a disaster by proclamation, upon that  
7 proclamation, you have emergency powers for 30 days.  
8 That's all it said. It could have gone on to say and,  
9 thereafter, the legislature will convene. It doesn't  
10 say that. It doesn't say that at all, but under Mr.  
11 Bailey's construction of the statute, the 30 days  
12 triggers a stop. Stop. If you do something past  
13 30 days, it's void, it's invalid, it's illegal he'll  
14 tell you.

15 But then what? What if the general assembly  
16 isn't in a position to convene? Sometimes that could be  
17 the case. Some would argue it's the case now. The  
18 determination of the general assembly was the guard-  
19 rails would be the declaration of a disaster. In that  
20 event, if there is a present-tense disaster, the  
21 Governor declares, proclaims 30 days and, yes, it was  
22 floods, although Governor Rauner's I believe was also  
23 H1N1, multiple successive orders under the act.

24 THE COURT: H1N1 is the flu, also, right?

25 MR. VERTICCHIO: Certainly a virus.



1 THE COURT: And that governor certainly didn't  
2 shut down the state and destroy people's lives and  
3 property for H1N1.

4 MR. VERTICCHIO: No question about it. H1N1 is  
5 nothing -- I can't say it's nothing. It clearly was  
6 significant, but, compared to COVID-19, it's not, it's a  
7 different world.

8 MR. DeVORE: Judge, I just want to put on the  
9 record for clarification that counsel is not giving  
10 medical professional advice.

11 THE COURT: I get that.

12 MR. DeVORE: Thank you.

13 MR. VERTICCHIO: I will stipulate to that, Your  
14 Honor.

15 MR. DeVORE: Thank you, sir.

16 MR. VERTICCHIO: But there's legal consequence  
17 to the history of three different governors, successive,  
18 multiple executive orders, proclamations of disaster,  
19 30 days continued, another 30, another 30, and there's  
20 legal consequence of the legislature not coming in and  
21 saying, time out, you can't do that. You can't do that.  
22 Why do I say there's legal consequence?

23 Well, we cited the case, Your Honor. It was the  
24 Piolet Brothers case. Here's what the court said: A  
25 reasonable interpretation of a statute by an agency

1 charged with enforcement of that statute is entitled to  
2 great weight. Such a construction is even more  
3 persuasive if consistent, long-continued, and in  
4 conjunction with legislative acquiescence on the  
5 subject. Such acquiescence appears where the  
6 legislature, presumably aware of the administrative  
7 interpretation in question, has amended other sections  
8 of the act since that interpretation but left untouched  
9 the sections subject to the administrative  
10 interpretation, and that is precisely the situation we  
11 have here.

12 We have multiple governors under Section 7 of  
13 the ACT making multiple or successive proclamations and,  
14 upon such proclamation, exercising emergency powers for  
15 the 30-day period. We have the legislature, the general  
16 assembly, during these several decades, on 11 separate  
17 occasions amended the act and not once did anyone in the  
18 general assembly even suggest, wait a minute, those  
19 successive and multiple declarations and proclamations,  
20 he can't do that. We need to amend the act to make this  
21 clear.

22 The Piolet court tells us that's very persuasive  
23 evidence of acquiescence and validates the  
24 interpretation given by the Governor in this case. All  
25 of that the plaintiff ignores, disregards the plain

1 language, the plain language of Section 7, adds  
2 restrictions where none exists. There are -- there's no  
3 restriction there. The one place where there is a  
4 restriction on this issue is in Section 11, and the  
5 general assembly was very clear there, and ignores those  
6 clear limitations that were placed upon the  
7 subdivisions.

8 Mr. Bailey says, well, by permitting successive  
9 and multiple disaster proclamations, you rendered the  
10 30-day limitation meaningless. Not true. The 30-day  
11 limitation triggers upon the declaration of the disaster  
12 and then a subsequent proclamation. It has meaning  
13 because the Governor has to, at the end of the 30 days  
14 or before the 30 days, if he is under the judgment that  
15 another proclamation is in order and another declaration  
16 is required, he's under the good faith obligation to  
17 make a declaration of disaster and renew the emergency  
18 powers and that's exactly what happened here.

19 THE COURT: Hold on. Who governs whether it's  
20 good faith? Where does the petitioner get to go to  
21 judge that?

22 MR. VERTICCHIO: Right here, and that's a  
23 situation, Your Honor, better left in the hands of  
24 people like you. Not to suggest that it's an easy  
25 determination, but that's where it's left.

1           THE COURT: For the record, I'm bound to follow  
2     the law and the law requires me to give deference to the  
3     executive branch and the legislative branch and I so do.  
4     Go ahead.

5           MR. VERTICCHIO: Thank you, Your Honor.  
6     Finally, Your Honor, on the issue of the statutory  
7     interpretation, the interpretation pressed by the  
8     plaintiff would lead to absurd and, frankly, in this  
9     case, dangerous results because, as a result of a  
10    finding that the Governor, despite the clear language of  
11    the act, does not have the authority under the act to  
12    issue successive and multiple proclamations triggering  
13    the emergency powers, the requested relief says,  
14    therefore, after April 7th, everything that the Governor  
15    implemented through the Executive Order of April 1st is  
16    void. There's the -- and we've -- most of the executive  
17    orders are cited in the exhibits to the plaintiff's  
18    complaint. Procurement of medical supplies, personal  
19    protective equipment. There's executive orders  
20    protecting state government operations, home evictions,  
21    Department of Corrections regulations, health workers,  
22    county jails, Illinois schools, repossession of  
23    vehicles, regulation of bars and restaurants,  
24    unemployment insurance, open meetings act issues,  
25    federal funds, social distancing, protection of health,

1 all of those executive orders, every one of them,  
2 according to Mr. Bailey, are void and invalid as of  
3 April 7th.

4 THE COURT: They already happened. I mean that  
5 horse left the barn, didn't it?

6 MR. VERTICCHIO: But what happens to the work  
7 that's being done pursuant to all of those? Everyone is  
8 now free to do what they want. Health care workers are  
9 no longer protected. The Amicus brief comes to mind,  
10 Your Honor. They're all void, and they were all taken  
11 by the Governor under the specific authority of the act  
12 to protect the health and safety of citizens, of the  
13 citizens of Illinois.

14 MR. DeVORE: Judge, could counsel clarify  
15 whether he's referring to Section 6 or 7 as to these  
16 measures?

17 MR. VERTICCHIO: Section 7 is the trigger. As I  
18 said, Your Honor, these restrictions have been in place  
19 now, first on March 20 then renewed based upon a new  
20 declaration on April 1st and, even with the  
21 restrictions, 42,000 cases, now almost 1900 deaths.

22 If they are removed, if the court determines  
23 they're invalid, they're removed, things are going to  
24 get worse, things are going to get worse, and the  
25 general assembly's determination that this act was to

1 protect the health and safety of the people of the state  
2 of Illinois will be frustrated.

3 THE COURT: All they've got to do is convene and  
4 make a motion to amend this Emergency Management Act to  
5 give the Governor, not 30 days, 60, 90, 120.

6 MR. VERTICCHIO: There's no question, Your  
7 Honor, but we're here to determine what did they already  
8 do? The legislature has already made that  
9 determination.

10 THE COURT: I get you.

11 MR. VERTICCHIO: So for all of those reasons,  
12 the clear construction of the act, the statutory  
13 construction rules, they all clearly land on 30 days as  
14 triggered by the proclamation, the declaration of the  
15 disaster. There was nothing, nothing about either of  
16 the proclamations, and specifically the April 1  
17 proclamation, that went afoul of the specific language  
18 of the legislature.

19 And, beyond that, there's the constitutional  
20 issue. Counsel said to the court, well, there's no  
21 evidence in the orders that they were done pursuant to  
22 some constitutional authority in addition to the act,  
23 but I'm looking, for example, at, it's Exhibit 2 to the  
24 plaintiff's complaint, the therefore clause that counsel  
25 read part of. Therefore, quote, by the power vested in

1 me as Governor of the State of Illinois and, now I'm  
2 paraphrasing, pursuant to the act and health laws, I'm  
3 invoking these emergency powers. So it's pretty clear  
4 that it was pursuant to the act and pursuant to the  
5 powers as Governor of the State of Illinois. Well,  
6 those are his constitutional powers.

7 When you consider that he has the constitutional  
8 powers in the situation at hand, it's clear that he, he  
9 being Governor Pritzker, properly exercised those powers  
10 here for three very simple reasons. We've heard about  
11 the state's police powers. They exist under the  
12 constitution to protect public health and safety.  
13 That's a truism. Secondly, the general assembly has  
14 done nothing, nothing to restrict the Governor in the  
15 exercise of his constitutional authority to protect  
16 health and safety. As a matter of fact, we now actually  
17 in the Emergency Management Act, the general assembly  
18 specifically said the constitutional authority of the  
19 Governor is preserved. We don't seek to limit that in  
20 any way and, finally, three, also undeniable, COVID-19  
21 presents a situation of urgent circumstances that  
22 requires prompt action, and that gets to the point that  
23 you made.

24 You said it a couple of times. There's no time.  
25 There's no time. There's no time to go to the health

1 department. There's no time for everyone in this room,  
2 everyone in this county, everyone in this state to get  
3 right to counsel, have a hearing, determine whether some  
4 kind of stay at home is required. There's no time.

5 And I know Your Honor commented upon the line in  
6 the brief about millions dying, and I think, I think I  
7 heard a snicker from the back, but it's no joke. Again,  
8 I'm driving down this morning from my home, 59 people in  
9 Illinois died yesterday. This is no joke.

10 The constitutional --

11 THE COURT: Counsel, I couldn't agree with you  
12 more that it's no joke and, while we're on that subject  
13 since you brought it up, at a recent press conference,  
14 this Governor was asked by a reporter what about easing  
15 restrictions in counties in Illinois that don't have  
16 COVID or don't need it, and his response was, wait for  
17 it, laughter. I agree. It ain't funny. Go ahead.

18 MR. VERTICCHIO: Couldn't agree more, Your  
19 Honor. So the constitutional authority is also clear,  
20 and counsel read the probative language, the relevant  
21 language from the Barmore court case, among all, quote,  
22 among all of the objects sought to be secured by  
23 governmental laws, none is more important than the  
24 preservation of public health. The duty to preserve the  
25 public health finds ample support in the police power,



1 which is inherent in the state. The power can't be  
2 denied and the circumstances could not be more grave and  
3 the circumstances require prompt action. As you said,  
4 Your Honor, there's no time.

5 The Governor issued the executive orders.  
6 They're tailored to the situation, and there's nothing  
7 inconsistent in them under the statute and they are  
8 within his constitutional power.

9 THE COURT: Hold on. When you say tailored to  
10 the situation, that's a whole different argument and a  
11 whole different standard, is it not?

12 MR. VERTICCHIO: Well, the executive orders are  
13 certainly broad in terms of coverage.

14 THE COURT: Broad? You could drive a Mack truck  
15 through this thing.

16 MR. VERTICCHIO: They're broad. They're broad  
17 given the situation.

18 THE COURT: Tailored to the situation? How in  
19 the world does me not being allowed to fish at Forbes  
20 Lake promote COVID-19 but panic buying at Walmart  
21 doesn't? That ain't tailored to nothing.

22 MR. VERTICCHIO: If, by the question, Your  
23 Honor, you're wondering out loud whether someone will  
24 bring that lawsuit to question whether it was a good  
25 faith exercise in the finding of a disaster, I don't

1 know. I don't know, but under the law and under the  
2 facts that are alleged in the Complaint, the statutory  
3 action was proper, legal within the terms of the  
4 statute. The constitutional action was proper within  
5 the constitutional authority of the Governor.

6 For that reason, and, again, this goes to the  
7 likelihood of success requirement, but it also goes to  
8 the 2-615 Motion. There's no way, given the facts as we  
9 know them, given the facts that are already pled, that  
10 Mr. Bailey can amend the Complaint in any way to cure  
11 the situation. The statute says what it says. The  
12 Complaint should be dismissed with prejudice on the  
13 2-615 Motion, and the Motion for Temporary Restraining  
14 Order, in any event, should be denied because there's  
15 virtually no likelihood of success. There is no  
16 likelihood of success. Given the burden undertaken by  
17 the defendant in a 2-615 Motion, everything he says is  
18 accepted as true and he simply doesn't state a claim,  
19 and the TRO Motion fails for other reasons, too.

20 Mr. Bailey was obligated, in the TRO Motion, to  
21 make a showing of irreparable harm and the showing had  
22 to be supported by facts. Here's what the Capstone case  
23 said, Your Honor, as quoted in our brief, quote, a TRO  
24 is an extraordinary remedy and the party seeking it must  
25 meet the high burden of demonstrating, through well-pled

1 facts, that he is entitled to the relief sought.  
2 Continuing quote, to be considered well-pleaded, a  
3 party's factual allegations must be supported by  
4 allegations of specific facts.

5 On the injury, not only injury, but the  
6 irreparable injury, what do we know? Not much. We  
7 don't know -- we don't know where Mr. Bailey wants to go  
8 that he's not allowed to go. Counsel made a statement,  
9 well, we haven't seen it yet. Well, respectfully,  
10 plaintiff has an obligation to plead the facts. We  
11 haven't seen it yet doesn't cut it. We know virtually  
12 nothing about an injury to Mr. Bailey because all we  
13 have in the pleading, and that's all we can have on a  
14 TRO Motion, is his conclusion.

15 THE COURT: Are you seriously trying to argue  
16 that this Executive Order has not caused serious injury?

17 MR. VERTICCHIO: I'm seriously trying to argue  
18 that, with regard to Darren Bailey, who, as a result of  
19 him being an elected public official, is specifically  
20 exempt from the Executive Order.

21 THE COURT: He didn't sue as a public official.  
22 He sued as a private citizen. For all I know, he's  
23 running a non-essential business, which also, for all I  
24 know, is now bankrupt because of this Executive Order.

25 MR. VERTICCHIO: That's the point, Your Honor.

1 You said it. For all I know. We don't know. You don't  
2 know. I don't know. No one looking at this record  
3 knows. Why not? Because it's not in the Complaint.  
4 It's not in the Motion. It's not in this record  
5 anywhere. Maybe he was irreparably harmed. I don't  
6 know. You don't know. It's not in the pleadings, and  
7 the question on a Motion for Temporary Restraining Order  
8 on the harm issue is, we cited you the cases, why does  
9 this order need to issue today? What is your  
10 irreparable harm now? And the flip side, why can't this  
11 case just proceed at a pace that every other case?  
12 Pursuant to the rules of civil procedure, the case will  
13 go on. If not, what about it requires the order be  
14 issued today that so irreparably harms the plaintiff?  
15 And you said it. We don't know. That's a requirement  
16 that it was his burden to carry. He didn't carry it.

17 THE COURT: What we do know is that every second  
18 this Executive Order is in existence, the Illinois  
19 Constitution, numerous sections of it are being violated  
20 and the Bill of Rights is being shredded. That is  
21 irreparable harm.

22 MR. VERTICCHIO: We're here, Your Honor, not on  
23 political questions. We're here on --

24 THE COURT: That's got nothing to do with  
25 politics.

1 MR. VERTICCHIO: I mean political question in  
2 the legal sense, Your Honor, not politics. We are here  
3 on whether Mr. Bailey has carried his burden and he  
4 hasn't and, even if he did somehow convince the court  
5 that there was irreparable harm, the court then must  
6 look at the balancing of hardships and, when you look at  
7 the balancing of hardships, what damage to the public,  
8 it's laid out in our brief, Your Honor.

9 The Executive Orders with the safeguards, the  
10 situation hopefully is getting under control, you take  
11 them all off and things are going to get worse. The  
12 public is going to be damaged.

13 The Amicus brief, I looked at the declaration of  
14 Dr. Michael Wahl, W-a-h-l. He lays out in great detail  
15 the damage to public health care workers, hospital  
16 workers if the regulations are deemed to be void, to use  
17 the plaintiff's terminology. And so the balance of  
18 harms isn't even close. On one side of the ledger, you  
19 have what Dr. Wahl talks about and everything that's in  
20 our brief. On the other side of the ledger, you have  
21 the damage to Mr. Bailey. And as to that damage, we  
22 don't know.

23 Finally, Your Honor, just a word about the  
24 supplemental brief and the health care issue, the  
25 Department of Public Health and the Public Health Act.

1 The supplemental brief raises not only a legal theory  
2 that is not in the temporary restraining order papers, a  
3 legal theory that was raised at one o'clock this  
4 morning, but, more importantly, I think, it raises facts  
5 that are no where in the Complaint or, for that matter,  
6 anywhere in this record. There's simply no evidence,  
7 because I think there can't be, that Mr. Bailey is  
8 subject to a quarantine, a quarantine.

9 So for that reason alone, the shifting of gears,  
10 let's talk about the health act now. It doesn't work  
11 because the pleading means something, the allegations  
12 mean something. They are not so nimble, particularly  
13 when you're asking a court to issue emergency injunctive  
14 relief, the pleadings mean something. Beyond that, the  
15 quarantine authority to the Department of Public Health  
16 is, as the act itself says, it's in our response to the  
17 supplement, Your Honor, supplements the Governor's  
18 authority under the Emergency Management Act. It's in  
19 Section 2. It doesn't limit it and, as you said,  
20 there's simply no time. Even if we had facts that were  
21 alleged that kind of at least put him within the scope  
22 of the act, there's no time to deal with every person,  
23 every case in the event of a COVID-19 pandemic. The way  
24 to deal with it is the Emergency Management Act. That's  
25 what the Governor did.

1           And, finally, on this point, and it's also in  
2     the supplemental response, Your Honor, the construction  
3     Mr. Bailey wants to put upon the act trounces again upon  
4     the Governor's constitutional authority. So this  
5     supplemental argument raised early this morning, wrong  
6     on the facts and wrong on the law.

7           Your Honor, I was talking with one of the  
8     sheriff's deputies before the hearing downstairs and I  
9     mentioned, we were just chatting, and I mentioned that  
10    these are strange times. I was right. They're strange  
11    but they're also sad. There's just a lot going on in  
12    this world and this state that's sad as a result of  
13    COVID-19. Is it sad that people have to be subject to  
14    an Executive Order like the Governor issued? Yes. Is  
15    it sad that people are getting the virus? Yes. Is it  
16    sad that people are dying? Yes. But the action taken  
17    by the Governor, consistent with the statutory  
18    authority, consistent with the constitution, and at the  
19    end of the day, Mr. Bailey didn't carry his burden on  
20    the TRO.

21           The Governor respectfully requests, Your Honor,  
22    that the Complaint be dismissed with prejudice under  
23    2-615 and, in any event, the Motion for Temporary  
24    Restraining Order be denied. Thank you.

25           THE COURT: Thank you for your excellent

1 argument. All right. Petitioner, do you have anything  
2 else to add other than your argument that this is too  
3 much power in an individual, it's tyrannical, and the  
4 last time this happened a bunch of guys got on a boat  
5 and threw tea in the Boston Harbor?

6 MR. DeVORE: That's exactly what I'm saying,  
7 Your Honor.

8 THE COURT: All right. This court has  
9 considered all of the pleadings that have been filed,  
10 and I read everything that's been filed, including the  
11 Amicus brief.

12 The court is guided by, among other things, the  
13 following: There is no pandemic exception to the  
14 fundamental liberties the constitution safeguards.  
15 Indeed, individual rights secured by the constitution do  
16 not disappear during a public health crisis. That's In  
17 Re: Abbott, A-b-b-o-t-t, Federal 3d, 2020 West Law  
18 1685929. That's a Fifth Circuit appellate opinion.

19 These individual rights, including the  
20 protections in the Bill of Rights made applicable to the  
21 states through the Fourteenth Amendment, are always in  
22 force and restrain government action. At the same time,  
23 the constitution does not hobble government from taking  
24 necessary temporary measures to meet a genuine  
25 emergency. According to our United States Supreme



1 Court, in every well-ordered society charged with the  
2 duty of preserving, conserving the safety its members,  
3 the rights of the individual in respect of his liberty  
4 may, at times, under the pressure of great dangers, be  
5 subjected to such restraint, to be enforced by  
6 reasonable regulations, as the safety of the general  
7 public may demand, and that is the Jacobson case which  
8 was also cited by the Attorney General.

9 The settled rule from Jacobson, the Fifth  
10 Circuit recently explained, allows the state to  
11 restrict, for example, one's right to peaceably  
12 assemble, to publicly worship, to travel, and even to  
13 leave one's home. Courts owe substantial deference to  
14 government actions, particularly when exercised by  
15 states and localities under their police powers during a  
16 bona fide emergency.

17 The Supreme Court also has instructed courts to  
18 intervene if a statute purporting to have been enacted  
19 to protect the public health or the public safety has no  
20 real or substantial relation to those objects, or is,  
21 beyond all question, a plain, palpable invasion of  
22 rights secured by the fundamental law. That is also a  
23 quote from Jacobson.

24 Courts reviewing a challenge to a measure  
25 responding to the society-threatening epidemic of

1 COVID-19 should be vigilant to protect against clear  
2 invasions of constitutional rights while ensuring they  
3 do not second-guess the wisdom or efficacy of the  
4 measures enacted by the democratic branches of  
5 government, on the advice of public health experts.

6 Fifth Amendment of the United States  
7 Constitution states no person shall be deprived of life,  
8 liberty or property without due process of law. Our  
9 Illinois Constitution states in Section 2 no person  
10 shall be deprived of life, liberty or property without  
11 due process of law.

12 The issue before me now, in essence, is not  
13 whether the legislature can authorize the Governor to  
14 ignore the Illinois and United States Constitutions.  
15 They did it in the Emergency Management Act. The issue  
16 before me now is whether the Governor can ignore the  
17 Illinois and United States Constitutions for more than  
18 30 days. This court rules that the answer to that  
19 question is a resounding no. Accordingly, the  
20 petitioner's request for a TRO is granted. The Motion  
21 to Dismiss under Section 2-615 is denied.

22 Now, Petitioner, you submitted a proposed order.  
23 In that proposed order you state TRO extends for ten  
24 days. That's the part about your argument I disagree.  
25 You asked for this. You issued this. You did this with

1 notice, not without notice. Therefore, the ten-day rule  
2 doesn't apply. However, that said, this TRO that  
3 extends for a lengthy period of time, in essence becomes  
4 a preliminary injunction and this ain't no preliminary  
5 injunction yet. Therefore, I'll let you go beyond ten  
6 days but not beyond 30, otherwise, I'm entering a  
7 preliminary injunction without procedural process rights  
8 required for a preliminary injunction. So pick a date  
9 while we're here with Madam Clerk for a hearing on a  
10 preliminary injunction.

11 MR. VERTICCHIO: Can I address the court?

12 THE COURT: Yes.

13 MR. VERTICCHIO: Your Honor, given your ruling,  
14 this dovetails into the preliminary injunction issue,  
15 the Governor requests that the ruling be stayed.

16 THE COURT: I will absolutely deny that request.  
17 This ruling takes effect right this second.

18 MR. VERTICCHIO: Can I raise the issue of bond,  
19 Your Honor?

20 THE COURT: There is no requirement for bond.  
21 Statute doesn't mandate it. There's no reason for one.  
22 There's no money that's going to be required to be  
23 refunded or returned. I don't see any reason for bond  
24 whatsoever.

25 MR. VERTICCHIO: Well, the case law provides

1 that the plaintiff is obligated to make a showing as to  
2 why the court properly exercises its discretion in  
3 issuing no bond.

4 THE COURT: Want to make that showing?

5 MR. DeVORE: What showing would the court  
6 require for bond sufficient for my client to be able to  
7 continue with his constitutional rights, Your Honor?

8 THE COURT: Well, I'm not sure either. I'm not  
9 going to require bond. Anything else, AG?

10 MR. VERTICCHIO: No, Your Honor. In terms of  
11 scheduling, can Tom and I just talk a little bit off the  
12 record and let you know?

13 THE COURT: Absolutely. Yes.

14 MR. VERTICCHIO: Can I suggest maybe a status  
15 hearing for a week from today?

16 THE COURT: Whatever -- however you want to  
17 proceed is fine with me.

18 MR. VERTICCHIO: Why don't we confer with one  
19 another, then we'll let you know within a matter of  
20 minutes.

21 THE COURT: Would you rather do it that way?  
22 You two can get, discuss the matter between yourselves  
23 and you with the clerk can come up with a new date. Is  
24 that agreeable?

25 MR. VERTICCHIO: That's agreeable.

1 MR. DeVORE: Yes, sir.

2 MR. VERTICCHIO: Your Honor, am I to understand  
3 that the order being entered, save for the ten-day  
4 issue, is the one that was submitted?

5 THE COURT: It is. Have you got that? I've got  
6 it, but I want you to cross out that ten-day deal.

7 MR. DeVORE: Yes, sir.

8 MR. VERTICCHIO: I would like to take the order  
9 if the court is going to enter it today if that's  
10 possible.

11 THE COURT: Yes. I think you should. Take out  
12 that ten-day deal and put for the future date to be  
13 determined by counsel after consultation with the  
14 circuit clerk.

15 MR. DeVORE: Not to exceed 30 days?

16 THE COURT: Yes.

17 MR. DeVORE: Got it. Thank you, sir.

18 THE COURT: I will enter that right now after  
19 you make that amendment.

20 MR. DeVORE: Yes, sir.

21 MR. VERTICCHIO: I'm sure we'll be able to work  
22 a date out, but, if not, we'll get your guidance.

23 THE COURT: Yeah. If you can't, let me know.

24 MR. DeVORE: Yes, sir. May I approach, Judge?

25 MR. VERTICCHIO: Can I see it, Tom? Your Honor,

1 I mentioned the other day on the phone the plaintiff's  
2 Motion was captioned as both TRO and preliminary  
3 injunction. Is it fair to assume, counsel, that we'll  
4 be proceeding on that Motion?

5 MR. DeVORE: On the prelim? Yes, sir.

6 MR. VERTICCHIO: In other words, there's not  
7 going to be another filing.

8 MR. DeVORE: Correct.

9 THE COURT: Anything further on behalf of either  
10 party?

11 MR. DeVORE: No, sir. Thank you, Judge.

12 THE COURT: All right. Ladies and gentlemen, I  
13 would direct you to exit the courtroom and/or building  
14 as directed by the sheriff. We're adjourned.

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CERTIFIED SHORTHAND REPORTER'S CERTIFICATION

I, LORI SIMS, Certified Shorthand Reporter for the Circuit Court of Clay County, Fourth Judicial Circuit of Illinois, do hereby certify that I reported in machine shorthand the proceedings had on the hearing in the above entitled cause; that I thereafter caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript of the proceedings had before the Honorable MICHAEL D. McHANEY, Judge of said Court.

Dated this th day of April, 2020.

\_\_\_\_\_  
Lori Sims  
Official Court Reporter  
CSR #084-003424

# Exhibit B



# REVISED STATUTES

*United States.*  
*[Laws, etc. (Revised Statutes : 1875)]* OF

# THE UNITED STATES,

PASSED AT THE

FIRST SESSION OF THE FORTY-THIRD CONGRESS,

1873-'74;

EMBRACING THE STATUTES OF THE UNITED STATES, GENERAL AND PERMANENT  
IN THEIR NATURE, IN FORCE ON THE FIRST DAY OF DECEMBER, ONE  
THOUSAND EIGHT HUNDRED AND SEVENTY-THREE, AS REVISED  
AND CONSOLIDATED BY COMMISSIONERS APPOINTED  
UNDER AN ACT OF CONGRESS;

WITH

## AN APPENDIX

CONTAINING

"AN ACT TO CORRECT ERRORS AND SUPPLY OMISSIONS."

Contents Pages 1-712

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EDITED, PRINTED, AND PUBLISHED UNDER THE AUTHORITY OF  
AN ACT OF CONGRESS, AND UNDER THE DIRECTION  
OF THE SECRETARY OF STATE.

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## CHAPTER THREE.

## DISTRICT COURTS—JURISDICTION.

Jurisdiction.	Sec. 563. Jurisdiction. 564. Certain seizures cognizable in any district into which the property is taken. 565. May proceed in prize causes after appeal. 566. Trial of issues of fact. 567. Transfer of records to district courts when a Territory becomes a State.	Sec. 568. District judge shall demand and compel delivery of records of territorial court. 569. Jurisdiction of district courts in cases transferred from territorial courts. 570. Commissioners to administer oaths to appraisers. 571. Certain district courts to have circuit court jurisdiction.
Crimes and offenses.  24 Sept., 1789, c. 20, s. 9, v. 1, p. 76. 3 March, 1815, c. 101, s. 4, v. 3, p. 245. 23 Aug., 1842, c. 188, s. 3, v. 5, p. 517. 28 Feb., 1871, c. 100, s. 57, v. 16, p. 456.— <i>Ex parte Bollman</i> , 4 Cr., 75; <i>U. S. vs. Hudson</i> , 7 Cr., 32; <i>U. S. vs. Coolidge</i> , 1 Wh., 415; <i>U. S. vs. Bevans</i> , 3 Wh., 336.	SEC. 563. The district courts shall have jurisdiction as follows: First. Of all crimes and offenses cognizable under the authority of the United States, committed within their respective districts, or upon the high seas, the punishment of which is not capital, except in the cases mentioned in section fifty-four hundred and twelve, Title "CRIMES." [See §§ 4300-4303.]	
Of piracy, when.  3 March, 1823, c. 72, v. 3, p. 789. 15 May, 1820, c. 113, v. 3, p. 600. 30 Jan., 1823, c. 7, v. 3, p. 721.— <i>The Palmyra</i> , 12 Wh., 1.	Second. Of all cases arising under any act for the punishment of piracy, when no circuit court is held in the district of such court.	
Penalties and forfeitures.  24 Sept., 1789, c. 20, s. 9, v. 1, p. 76.— <i>Ketland vs. The Cassius</i> , 2 Dall., 365; <i>Hall vs. Warren</i> , 2 McLean, 332.	Third. Of all suits for penalties and forfeitures incurred under any law of the United States.	
Suits at common law by United States or officers.  24 Sept., 1789, c. 20, s. 9, v. 1, p. 76. 3 March, 1815, c. 101, s. 4, v. 3, p. 245.— <i>Parsons vs. Bedford</i> , 3 Pet., 433; <i>Duncan vs. U. S.</i> , 7 Pet., 435.	Fourth. Of all suits at common law brought by the United States, or by any officer thereof, authorized by law to sue.	
Suits in equity to enforce internal-revenue taxes.  20 July, 1868, c. 186, s. 106, v. 15, p. 167.	Fifth. Of all suits in equity to enforce the lien of the United States upon any real estate for any internal-revenue tax, or to subject to the payment of any such tax any real estate owned by the delinquent, or in which he has any right, title, or interest. [See § 2207.]	
Suits for penalties and damages for frauds against United States.  2 March, 1863, c. 67, s. 4, v. 12, p. 698.	Sixth. Of all suits for the recovery of any forfeiture or damages under section thirty-four hundred and ninety, Title "DEBTS DUE BY OR TO THE UNITED STATES;" and such suits may be tried and determined by any district court within whose jurisdictional limits the defendant may be found. [See §§ 2490-2494.]	
Suits under postal laws.  3 March, 1845, c. 43, s. 20, v. 5, p. 739.	Seventh. Of all causes of action arising under the postal laws of the United States.	
Admiralty causes and seizures on land.  24 Sept., 1789, c. 20, s. 9, v. 1, p. 76. 22 March, 1794, c. 11, s. 1, v. 1, p. 347. 10 May, 1800, c. 51, ss. 1, 5, v. 2, pp. 70, 71. 2 March, 1807, c. 22, ss. 2, 7, v. 2, pp. 426, 428. 6 Aug., 1861, c. 60, s. 2, v. 12, p. 319. 13 July, 1866, c. 184, ss. 9, 19, v. 14, pp. 111, 145, 152. 2 March, 1867, c. 169, ss. 10, 25, v. 14, pp. 475, 483. 20 July, 1868, c. 186, s. 106, v. 15, p. 167. 30 June, 1864, c. 173, ss. 41, 179, v. 13, pp. 239, 240, 305. 3 March, 1865, c. 78, s. 1, v. 13, p. 483. Glass <i>vs.</i> Sloop Betsey, 3 Dall., 6; <i>Bingham vs. Cabbo</i> , 3 Dall., 19; <i>U. S. vs. Schooner Sallie</i> , 2 Cr., 406; <i>Rose vs. Himely</i> , 4 Cr., 241; <i>U. S. vs. Betsey and Charlotte</i> , 4 Cr., 443; <i>Keene vs. U. S.</i> , 5 Cr., 304; <i>The Samuel</i> , 1 Wh., 9; <i>L'Invincible</i> , 1 Wh., 238;	Eighth. Of all civil causes of admiralty and maritime jurisdiction; saving to suitors in all cases the right of a common-law remedy, where the common law is competent to give it; and of all seizures on land and on waters not within admiralty and maritime jurisdiction. And such jurisdiction shall be exclusive, except in the particular cases where jurisdiction of such causes and seizures is given to the circuit courts.	

## TITLE XIII.—THE JUDICIARY.—CH. 3.

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U. S. *vs.* Coolidge, 1 Wh., 415; *Slocum vs. Mayberry*, 2 Wh., 1; *The Estrella*, 4 Wh., 298; *L'Amistad de Ruez*, 5 Wh., 385; *The Sarah*, 8 Wh., 391; *The Margaret*, 9 Wh., 119; *The Merino*, 9 Wh., 391; *Ramsay vs. Allegre*, 12 Wh., 611; *Hobart vs. Drogan*, 10 Pet., 106; *The Orleans vs. Phœbus*, 11 Pet., 175; *Smith vs. Condry*, 1 How., 28; *Waring vs. Clarke*, 5 How., 441; *New Jersey Steam Nav. Co. vs. Merchants' Bank*, 6 How., 344; *The Genesee Chief*, 12 How., 443; *Fretz vs. Bull*, 12 How., 466; *Walsh vs. Rogers*, 13 How., 283; *Steamboat New World vs. King*, 16 How., 469; *Bogart vs. Steamboat John Jay*, 17 How., 309; *Ward vs. Peck*, 18 How., 267; *Ure vs. Coffmann*, 19 How., 56; *Jackson vs. Steamboat Magnolia*, 20 How., 206; *People's Ferry Com. vs. Beers*, 20 How., 393; *Taylor vs. Carryl*, 20 How., 598; *Allen vs. Newberry*, 21 How., 244; *Nelson vs. Leland*, 22 How., 48; *Roach vs. Chapman*, 22 How., 129; *Ward vs. Thompson*, 22 How., 330; *Railroad vs. Steam Tow-boat Com.*, 23 How., 209; *Moorewood vs. Enequist*, 23 How., 491; *The Steamer St. Lawrence*, 1 Bl., 522; *The Propeller Commerce*, 1 Bl., 574; *The Plymouth*, 3 Wall., 20; *The Moses Taylor*, 4 Wall., 411; *Hine vs. Trevor*, 4 Wall., 555; *The Eddy*, 5 Wall., 481; *The Siren*, 7 Wall., 152; *The Belfast*, 7 Wall., 624; *The Eagle*, 8 Wall., 15; *The Maggie Hammond*, 9 Wall., 435; *Norwich Com. vs. Wright*, 13 Wall., 104; *Steamboat Com. vs. Chase*, 16 Wall., 522; *Atkins vs. The Disintegrating Com.*, 18 Wall., 272; *Corfield vs. Coryell*, 4 Wash. C. C., 371; *Clark vs. U. S.*, 2 Wash. C. C., 519; *The Abby*, 1 Mas., 360; *The Washington*, 4 Blatch., 101; *Jennings vs. Carson's Exs.*, 1 Pet. Ad., 1; *The Jerusalem*, 2 Gallis., 345; *De Lovio vs. Boit*, 2 Gallis., 398.

Ninth. Of all proceedings for the condemnation of property taken as prize, in pursuance of section fifty-three hundred and seventy-six, Title "INSURRECTION." Condemnation of property taken as prize.

6 Aug., 1861, c. 60, s. 2, v. 12, p. 319.

Tenth. Of all suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of duties, against the person to whom such debenture was originally granted, or against any indorser thereof, to recover the amount of such debenture. [See § 2099.] Suits on debentures.

2 March, 1799, c. 22, s. 80, v. 1, p. 697.

Eleventh. Of all suits authorized by law to be brought by any person for the recovery of damages on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty-five, Title, "CIVIL RIGHTS." [See § 1999.] Suits on account of injuries by conspirators in certain cases.

20 April, 1871, c. 22, s. 2, v. 17, p. 13.

Twelfth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity secured by the Constitution of the United States, or of any right secured by any law of the United States to persons within the jurisdiction thereof. [See §§ 1977, 1979.] Suits to redress deprivation of rights secured by the Constitution and laws to persons within jurisdiction of United States.

20 April, 1871, c. 22, s. 1, v. 17, p. 13. 31 May, 1870, c. 114, ss. 16, 18, v. 16, p. 144. 9 April, 1866, c. 31, s. 3, v. 14, p. 27.

Thirteenth. Of all suits to recover possession of any office, except that of elector of President or Vice-President, Representative or Delegate in Congress, or member of a State legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude: *Provided*, That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of the United States, and secured by any law, to enforce the right of citizens of the United States to vote in all the States. [See § 2010.] Suits to recover offices.

31 May, 1870, c. 114, s. 23, v. 16, p. 146.

Fourteenth. Of all proceeding by the writ of quo warranto, prosecuted by any district attorney, for the removal from office of any person holding office, except as a member of Congress, or of a State legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the Constitution of the United States. [See § 1786.] Suits for removal of officers holding contrary to fourteenth amendment.

31 May, 1870, c. 114, s. 14, v. 16, p. 143.

Fifteenth. Of all suits by or against any association established under any law providing for national banking associations within the district for which the court is held. Suits against national banks.

3 June, 1864, c. 106, s. 57, v. 13, p. 116.—*Kennedy vs. Gibson*, 8 Wall., 606.

Suits by aliens for torts in violation of the law of nations.

Suits against consuls and vice-consuls.

24 Sept., 1789, c. 20, s. 9, v. 1, p. 76. 23 Aug., 1842, c. 188, v. 5, p. 517.—*Laury vs. Leasada*, 1 Am. L. Rev., 92.

In bankruptcy.

2 March, 1867, c. 176, s. 1, v. 14, p. 517.

Certain seizures cognizable in any district into which the property is taken.

13 July, 1861, c. 3, s. 4, 5, 9, v. 12, pp. 256, 257, 258.

May proceed in prize causes after appeal.

30 June, 1864, c. 174, s. 13, v. 13, p. 310.

[See § 4637.]

Trial of issues of fact.

24 Sept., 1789, c. 20, s. 9, v. 1, p. 76.

26 Feb., 1845, c. 20, v. 5, p. 726.

*The Eagle*, 8 Wall., 25.

*Henderson's Distilled Spirits*, 14 Wall., 44.

Transfer of records to district courts when a Territory becomes a State.

22 Feb., 1847, c. 17, s. 1, v. 9, p. 128.

22 Feb., 1848, c. 12, s. 2, v. 9, p. 212.

*Bennetts vs. Porter*, 9 How., 235.

*Forsyth vs. U. S.*,

District judge shall demand and compel delivery of records of territorial court.

22 Feb., 1847, c. 17, s. 1, v. 9, p. 128.

22 Feb., 1848, c. 12, s. 2, v. 9, p. 212.

Jurisdiction of district courts in cases transferred from territorial courts.

22 Feb., 1847, c. 17, s. 1, v. 9, p. 128.

Sixteenth. Of all suits brought by any alien for a tort only in violation of the law of nations, or of a treaty of the United States.

24 Sept., 1789, c. 20, s. 9, v. 1, p. 76.

Seventeenth. Of all suits against consuls or vice-consuls, except for offenses above the description aforesaid.

Eighteenth. The district courts are constituted courts of bankruptcy, and shall have in their respective districts original jurisdiction in all matters and proceedings in bankruptcy.

SEC. 564. Proceedings on seizures for forfeiture of any vessel or cargo entering any port of entry which has been closed by the President in pursuance of law, or of goods and chattels coming from a State or section declared by proclamation of the President to be in insurrection into other parts of the United States, or of any vessel or vehicle conveying such property, or conveying persons to or from such State or section, or of any vessel belonging, in whole or in part, to any inhabitant of such State or section, may be prosecuted in any district court into which the property so seized may be taken, and proceedings instituted; and the district court thereof shall have as full jurisdiction over such proceedings as if the seizure was made in that district. [See §§ 5301, 5317.]

SEC. 565. Any district court may, notwithstanding an appeal to the Supreme Court, in any prize cause, make and execute all necessary orders for the custody and disposal of the prize property, and, in case of an appeal from a decree of condemnation, may proceed to make a decree of distribution, so far as to determine what share of the prize shall go to the captors, and what vessels are entitled to participate therein.

SEC. 566. The trial of issues of fact in the district courts, in all causes except cases in equity and cases of admiralty and maritime jurisdiction, and except as otherwise provided in proceeding in bankruptcy, shall be by jury. In causes of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons burden or upward, enrolled and licensed for the coasting trade, and at the time employed in the business of commerce and navigation between places in different States and Territories upon the lakes and navigable waters connecting the lakes, the trial of issues of fact shall be by jury when either party requires it.

SEC. 567. When any Territory is admitted as a State, and a district court is established therein, all the records of the proceedings in the several cases pending in the court of appeals of said Territory at the time of such admission, and all records of the proceedings in the several cases in which judgments or decrees had been rendered in said territorial court before that time, and from which writs of error could have been sued out or appeals could have been taken, or from which writs of error had been sued out or appeals had been taken and prosecuted to the Supreme Court, shall be transferred to and deposited in the district court for the said State. [See § 704.]

9 How., 571. *McNulty vs. Batty*, 10 How., 72.

SEC. 568. It shall be the duty of the district judge, in the case provided in the preceding section, to demand of the clerk, or other person having possession or custody of the records therein mentioned, the delivery thereof, to be deposited in said district court; and, in case of the refusal of such clerk or person to comply with such demand, the said district judge shall compel the delivery of said records by attachment or otherwise, according to law.

SEC. 569. When any Territory is admitted as a State, and a district court is established therein, the said district court shall take cognizance of all cases which were pending and undetermined in the superior court of such Territory, from the judgments or decrees to be rendered in which

writs of error could have been sued out or appeals taken to the Supreme Court, and shall proceed to hear and determine the same. [See § 704.]

22 Feb., 1848, c. 12, s. 2, v. 9, p. 212.

SEC. 570. Any district judge may appoint commissioners, before whom appraisers of vessels or goods and merchandise seized for breaches of any law of the United States may be sworn; and such oaths, so taken, shall be as effectual as if taken before the judge in open court. [See § 938.]

Commissioners to administer oaths to appraisers.

9 June, 1794, c. 64, s. 1, v. 1, p. 395.

SEC. 571. The district courts for the western district of Arkansas, the northern district of Mississippi, the western district of South Carolina, and the district of West Virginia, shall have, in addition to the ordinary jurisdiction of district courts, jurisdiction of all causes, except appeals and writs of error, which are cognizable in a circuit court; and shall proceed therein in the same manner as a circuit court.

Certain district courts to have circuit-court jurisdiction.

Ark., 3 Mar., 1851, c. 24, s. 3, v. 9, p. 595.

Ga., 11 August,

S. C., 21 Feb.,

W. Va., 4 Feb., 1819, c.

46, s. 1, v. 5, p.

218.

1848, c. 151, s. 8, v. 9, p. 281. Miss., 16 Feb., 1839, c. 27, s. 1, v. 5, p. 317. 1823, c. 11, v. 3, p. 726; 16 Aug., 1856, c. 119, ss. 1, 3, v. 11, p. 43. 12, s. 2, v. 3, p. 479; 3 March, 1837, c. 34, s. 3, v. 5, p. 177; 26 March, 1838, c. 215; 11 June, 1864, c. 190, s. 1, v. 13, p. 124; 4 June, 1872, c. 284, s. 1, v. 17, p. 218.

CHAPTER FOUR.

DISTRICT COURTS—SESSIONS.

- See.
- 572. Terms of district courts.
  - 573. Effect of altering terms of district courts.
  - 574. Court always open as court of admiralty, for certain purposes.
  - 575. District court in southern district of Florida.
  - 576. District courts in Wisconsin.
  - 577. Kentucky and Indiana; how terms may be held.
  - 578. Monthly adjournments for trial of criminal causes.
  - 579. Adjourned terms.
  - 580. Adjourned terms in Kentucky and Indiana.
  - 581. Special terms.
  - 582. Tennessee; when circuit judges may act as district judges.
  - 583. Adjournment in case of non-attendance of the judge.
  - 584. Adjournment in case of non-attendance of the judge, in certain districts.
  - 585. Adjournment in Kentucky and Indiana, by written order, within first three days of terms.
  - 586. Intermediate terms in California, Iowa, and Tennessee.
  - 587. Business certified to circuit court in case of disability of district judge.
  - 588. Suits brought in district court after order to certify to circuit court.

- See.
- 589. Powers of district judge vested, during disability, in circuit judge.
  - 590. Preparatory examinations and orders in admiralty cases, by district clerk.
  - 591. District judge designated to perform duties of disabled judge.
  - 592. Designation of another judge in case of accumulation of business.
  - 593. When designation of another judge to be by Chief Justice United States.
  - 594. Revocation and new appointment.
  - 595. Duty of district judge to comply with designation and appointment.
  - 596. Designation of district judge when public interest requires.
  - 597. Expenses of a district judge designated to southern district of New York.
  - 598. Disability of district judges in Florida.
  - 599. Disability of judge of northern and southern districts of New York.
  - 600. When district judge of eastern district of New York may act in southern district.
  - 601. When district judge is interested in suit pending before him.
  - 602. Continuances by vacancy in office of district judge.
  - 603. Vacancy in office of district judge.

SEC. 572. The regular terms of the district courts shall be held at the times and places following, but when any of said dates shall fall on Sunday, the term shall commence on the following day:

In the southern district of Alabama, at Mobile, on the fourth Monday in April, and the second Monday after the fourth Monday in November.

In the middle district of Alabama, at Montgomery, on the fourth Monday in May and November.

In the northern district of Alabama, at Huntsville, on the third Monday in May and November.

In the eastern district of Arkansas, at Little Rock, on the first Monday in April and October.

In the western district of Arkansas, at Fort Smith, on the second Monday in May and November, and at Helena on the second Monday in March and September.

Terms of district courts.

Alabama.

7 Aug., 1848, c. 143,

ss. 1, 2, v. 9, p. 274.

4 May, 1852, c.

25, s. 1, v. 10, p. 5.

2 March, 1827, c.

41, s. 1, v. 4, p. 226.

9 June, 1860, c.

85, s. 1, v. 12, p. 22.

Arkansas.

15 June, 1836, c.

100, s. 4, v. 5, p. 51.

3 March, 1839, c.

81, s. 5, v. 5, p. 337.

3 March, 1851, c. 24, s. 2, v. 9, p. 594. 3 March, 1871, c. 106, ss. 1, 5, v. 16, pp. 471, 472.



said court that is or may be given to the clerks of other circuit courts in like cases.

SEC. 626. The compensations of deputies of clerks of the circuit courts shall be paid by the clerks, respectively, and allowed, in the same manner that other expenses of the clerks' offices are paid and allowed.

SEC. 627. Each circuit court may appoint, in different parts of the district for which it is held, so many discreet persons as it may deem necessary, who shall be called "commissioners of the circuit courts," and shall exercise the powers which are or may be expressly conferred by law upon commissioners of circuit courts. [See §§ 2025, 2026.]

SEC. 628. No marshal, or deputy marshal, of any of the courts of the United States shall hold or exercise the duties of commissioner of any of the said courts.

Compensation of deputy clerks.

8 June, 1872, c. 336, v. 17, p. 330.

Commissioners.

2 Mar., 1793, c. 22, s. 4, v. 1, p. 334.

20 Feb., 1812, c. 25, s. 1, v. 2, p. 679.

1 Mar., 1817, c. 30, v. 3, p. 350.

Marshals not to be commissioners.

16 Aug., 1856, c. 124, s. 13, v. 11, p. 50.

CHAPTER SEVEN  
CIRCUIT COURT—JURISDICTION.

- Sec.  
629. Jurisdiction.  
630. In bankruptcy.  
631. Appeals in admiralty causes.  
632. Copies of proofs and entries certified to appellate court.  
633. Writ of error to judgment of district courts.  
634. Circuit court in and for the three districts of Alabama.  
635. Writs of error and appeals within one year.  
636. Judgment or decree on review.  
637. Jurisdiction of cases transferred from district courts on account of disability, &c.  
638. Courts always open for certain purposes.  
639. Removal of suits against aliens, &c., where amount of \$500 in dispute.  
640. Removal of suits against corporations organized under a law of the United States.  
641. Removal of causes against persons denied any civil right, &c.  
642. When petitioner is in actual custody of State court.  
643. Removal of suits and prosecutions against revenue officers and officers acting under registration laws.

- Sec.  
644. Removal of suits by aliens in a particular case.  
645. When copies of records are refused by clerk of State court.  
646. Attachments, injunctions, and indemnity bonds to remain in force after removal.  
647. Removal of suits where parties claim land under titles from different States.  
648. Issues of fact; when to be tried by jury.  
649. Issues of fact tried by the court.  
650. Division of opinion in civil causes; decision by presiding judge.  
651. Division of opinion in criminal causes; certificate.  
652. Division of opinion in civil causes; certificate.  
653. Business of the circuit court for the two districts of Missouri transferred, how.  
654. Process issued out of former circuit court for Missouri.  
655. Transfer of cases between eastern and western districts.  
656. Custody of books, papers, &c., of circuit court of Missouri.  
657. Circuit court for southern district of New York, how limited.

SEC. 629. The circuit courts shall have original jurisdiction as follows:

First. Of all suits of a civil nature at common law or in equity, where the matter in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars, and an alien is a party, or the suit is between a citizen of the State where it is brought and a citizen of another State: *Provided*, That no circuit court shall have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange.

Jurisdiction.

Aliens, citizens of different States.

24 Sept., 1879, c. 20, s. 11, v. 1, p. 78.

Emory vs. Greenough, 3 Dall., 369; Bingham vs. Cabot, 3 Dall., 382; Turner vs. Enrille, 4

Dall., 7; Turner vs. Bank of North America, 4 Dall., 8; Mossman vs. Higginson, 4 D<sup>o</sup> 12; Abercrombie vs. Dupuis, 1 Cr., 343; Hepburn vs. Ellzey, 2 Cr., 445; Strawbridge

Curtiss, 3 Cr., 267; Mantalet vs. Murray, 4 Cr., 46; Chappel DeLaine vs. Dechenaux, 4 Cr., 306; Pollard vs. Dwight, 4 Cr., 421; Brown vs. Strode, 5 Cr., 303; Sere vs. Pitto, 6 Cr., 339; New Orleans vs. Winter, 1 Wh., 91; Morgan's Heirs vs. Morgan, 2 Wh., 290; Cameron vs. McRoberts, 3 Wh., 593; Young vs. Bryan, 6 Wh., 146; Wormley vs. Wormley, 8 Wh., 422; Childress vs. Emery, 8 Wh., 642; Gracie vs. Palmer, 8 Wh., 699; Mollan vs. Torrance, 9 Wh., 537; McDonald vs. Smally, 1 Pet., 620; Jackson vs. Twentyman, 2 Pet., 136; Bank of Kentucky vs. Wister, 2 Pet., 318; Connolly vs. Taylor, 2 Pet., 556; Buckner vs. Finley, 2 Pet., 586; Battier vs. Hine, 7 Pet., 252; Breedlove vs. Nicolet, 7 Pet., 413; Dunn vs. Clark, 8 Pet., 1; Boyce's Executors vs. Grundy, 9 Pet., 275; Livingston vs. Story, 11 Pet., 351; Clarke vs. Matthewson, 12 Pet., 164; Toland vs. Sprague, 13 Pet., 300, 327; Bank of Augusta vs. Earle, 13 Pet., 519; Bank of Vicksburgh vs. Slocumb, 14 Pet., 60; Irvine vs. Lowry, 14 Pet., 293; Levy vs. Fitzpatrick, 15 Pet., 171; Gordon vs. Longest, 16 Pet., 97; McNutt vs. Bland, 2 How., 9; Gwyn vs. Breedlove, 2 How., 19; Louisville Railroad Company vs. Letson, 2 How., 497; Gwyn vs. Barton, 6 How., 7; Bank of United States vs. Moss, 6 How., 31; Shelton vs. Tiffin, 6 How., 163; Smith vs. Kernochen, 7 How., 198; Sheldon vs. Sill, 8 How., 441; Shelby vs. Bacon, 10 How., 56; Chaffee vs. Hayward, 12 How., 208; Coffee vs. Planters' Bank, 13 How., 183; Haff vs. Hutchinson, 14 How., 586; Marshall vs. Baltimore and Ohio Railroad Company, 16 How., 314; Herndon vs. Ridgway, 17 How., 424; Jones vs. League, 18 How., 76; Lafayette Insurance Company vs. French, 18 How., 404; Union Bank vs. Valden, 18 How., 503; Jones vs. Mcmasters, 20 How., 8; Hyde vs. Stone, 20 How., 175; Chaffee vs. Hayward, 20 How., 208; Covington Drawbridge Company vs. Shepherd, 20 How., 227; Whyte vs. Gibbs, 20 How., 541; Irvine vs. Marshall, 20 How., 565; Covington Drawbridge Company vs. Shepherd, 21 How., 122; White vs. Railroad, 21 How., 575; Barber vs. Barber, 21 How., 582; Green's Administratrix vs. Creighton, 23 How., 90; Eberly vs. Moore, 24 How., 147; Fitch vs. Creighton, 24 How., 159; Freeman vs. Howe, 24 How., 460; Railroad vs. Wheeler, 1 Bl., 286; Minnesota Com. vs. Saint Paul Com., 2 Wall., 609; De Sobry vs. Nicholson, 3 Wall., 420; Barney vs. Baltimore City, 6 Wall., 267; Cowles vs. Mercer County, 7 Wall., 118; Payne vs. Hook, 7 Wall., 425; Brady vs. Rhine's Admnr., 8 Wall., 393; Bushnell vs. Kennedy, 9 Wall., 387; Hornthall vs. Collector, 9 Wall., 566; Reilly vs. Golding, 10 Wall., 56; Jones vs. Andrews, 10 Wall., 327; Pennsylvania vs. Quicksilver Com., 10 Wall., 556; Coal Company vs. Blatchford, 11 Wall., 172; Insurance Company vs. Francia, 11 Wall., 210; Rice vs. Houston, 13 Wall., 66; Railway Company vs. Whitton, 13 Wall., 270; Christmas vs. Russell, 14 Wall., 69; City of Lexington vs. Butler, 14 Wall., 222; Horn vs. Lockhart, 17 Wall., 570; Martin vs. Taylor, 1 Wash. C. C., 1; Gale vs. Babcock, 4 Wash. C. C., 199, 344; Bobbyshall vs. Oppenheimer, 4 Wash. C. C., 422; United States vs. Ravara, 2 Dall., 227; Saint Luke's Hospital vs. Barclay, 3 Blatch., 269; Graham vs. Stucken, 4 Blatch., 50; Barr vs. Simpson, Bald., 543; Hatch vs. Dorr, 4 McLean, 112; Thaxter vs. Hatch, 6 McLean, 68; Bradford vs. Jenks, 2 McLean, 130; Wilkenson vs. Wilkenson, 2 Cur. C. C., 582; Dundas vs. Bowler, 3 McLean, 204; United States vs. Green, 4 Mas., 427.

#### Suits in equity by the United States.

24 Sept., 1789, c. 20, s. 11, v. 1, p. 78.

#### Suits at common law by United States or officers.

24 Sept., 1789, c. 20, ss. 9, 11, v. 1, pp. 76, 78. 3 March, 1815, c. 101, s. 4, v. 3, p. 245.—Dugan vs. U. S., 3 Wh., 172; Postmaster-General vs. Early, 12 Wh., 136; Parsons vs. Bedford, 3 Pet., 433; U. S. vs. Barker, 1 Paine, 156; Lorman vs. Clarke, 2 McLean, 572.

#### Suits under import, internal-revenue, and postal laws.

Imports, 2 March 1833, c. 57, s. 2, v. 4, p. 632.

24 Sept., 1789, c. 20, s. 9, v. 1, p. 76. Internal revenue, 13 July, 1866, c. 184, ss. 9, 19, v. 14, pp. 111, 145, 152. 2 March, 1867, c. 169, ss. 10, 25, v. 14, pp. 475, 483. 20 July, 1868, c. 186, s. 106, v. 15, p. 167. 30 June, 1864, c. 173, ss. 41, 179, v. 13, pp. 239, 240, 305. 3 March, 1865, c. 78, s. 1, v. 13, p. 423. Postal laws, 3 March, 1845, c. 43, s. 20, v. 5, p. 739.

#### Suits for the enforcement of penalties.

3 March, 1855, c. 213, s. 15, v. 10, p. 720.

#### Condemnation of property used for insurrectionary purposes.

6 Aug., 1861, c. 60, s. 2, v. 12, p. 319.—Union Insurance Co. vs. U. S., 6 Wall., 759.

Second. Of all suits in equity, where the matter in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars, and the United States are petitioners.

Third. Of all suits at common law where the United States, or any officer thereof suing under the authority of any act of Congress, are plaintiffs.

Fourth. Of all suits at law or in equity, arising under any act providing for revenue from imports or tonnage, except civil causes of admiralty and maritime jurisdiction, and seizures on land or on waters not within admiralty and maritime jurisdiction, and except suits for penalties and forfeitures; of all causes arising under any law providing internal revenue, and of all causes arising under the postal laws.

Fifth. Of all suits and proceedings for the enforcement of any penalties provided by laws regulating the carriage of passengers in merchant vessels. [See § 4270.]

Sixth. Of all proceedings for the condemnation of property taken as prize, in pursuance of section fifty-three hundred and eight, Title "INSURRECTION." [See §§ 5308, 5309.]

Seventh. Of all suits arising under any law relating to the slave-trade. Suits under slave-trade laws.

22 March, 1794, c. 11, s. 1, v. 1, p. 347. 10 May, 1800, c. 51, ss. 1, 5, v. 2, pp. 70, 71. 2 March, 1807, c. 22, s. 7, v. 2, p. 28. 20 April, 1818, c. 91, ss. 1, 2, 4, 7, v. 3, pp. 450, 451, 452. 3 March, 1819, c. 101, s. 1, v. 3, p. 532.—U. S. *vs.* La Vengeance, 3 Dall., 297; U. S. *vs.* Schooner Sally, 2 Cr., 406; U. S. *vs.* Schooner Betsey and Charlotte, 4 Cr., 443; The Sarah, 8 Wh., 391.

Eighth. Of all suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of duties against the person to whom such debenture was originally granted, or against any indorser thereof, to recover the amount of such debenture. Suits on debentures. [See § 3039.]

2 March, 1799, c. 22, s. 80, v. 1, p. 687. (688.)

Ninth. Of all suits at law or in equity arising under the patent or copyright laws of the United States. Patent and copyright suits.

8 July, 1870, c. 230, ss. 55, 106, v. 16, pp. 206 215.—Allen *vs.* Blunt, 1 Blatch., 480; Good-year *vs.* Day, 1 Blatch., 565; Goodyear *vs.* Union India Rubber Co., 4 Blatch., 63; Burr *vs.* Gregory, 2 Paine, 426; Brooks *vs.* Stolly, 3 McLean, 523; Pulte *vs.* Derby, 5 McLean, 328.

Tenth. Of all suits by or against any banking association established in the district for which the court is held, under any law providing for national banking associations. Suits against national banks.

3 June, 1864, c. 106, s. 57, v. 13, p. 116.—Kennedy *vs.* Gibson, 8 Wall., 506.

Eleventh. Of all suits brought by or against any banking association established in the district for which the court is held, under the provisions of Title "THE NATIONAL BANKS," to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. Suits to enjoin the Comptroller of the Currency. [See § 5237.]

3 June, 1864, c. 106, ss. 50, 57, v. 13, pp. 115, 116.

Twelfth. Of all suits brought by any person to recover damages for any injury to his person or property on account of any act done by him, under any law of the United States for the protection or collection of any of the revenues thereof, or to enforce the right of citizens of the United States to vote in the several States. Suits for injuries on account of acts done under laws of the United States.

13 July, 1866, c. 184, s. 67, v. 14, p. 171. 28 Feb., 1871, c. 99, s. 15, v. 16, p. 438. 31 May, 1870, c. 114, v. 16, p. 140.

Thirteenth. Of all suits to recover possession of any office, except that of elector of President or Vice-President, Representative or Delegate in Congress, or member of a State legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude: *Provided*, That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of the United States, and secured by any law to enforce the right of citizens of the United States to vote in all the States. Suits to recover offices. [See § 3010.]

31 May, 1870, c. 114, s. 23, v. 16, p. 146.

Fourteenth. Of all proceedings by the writ of quo warranto, prosecuted by any district attorney, for the removal from office of any person holding office, except as a member of Congress or of a State legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the Constitution of the United States. Suits for removal of officers holding contrary to 14th amendment. [See § 1734.]

114, s. 14, v. 16, p. 143. 28 Feb., 1871, c. 99, s. 15, v. 16, p. 438.

Fifteenth. Of all suits to recover pecuniary forfeitures under any act to enforce the right of citizens of the United States to vote in the several States. Suits for penalties under laws to enforce elective franchise.

31 May, 1870, c. 114, ss. 2, 3, 4, 8, v. 16, pp. 140, 141, 142. 28 Feb., 1871, c. 99, s. 15, v. 16, p. 438.

Sixteenth. Of all suits authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States. Suits to redress deprivation of rights secured by the Constitution and laws to persons within jurisdiction of United States. [See §§ 1977, 1979.]

20 April, 1871, c. 22, s. 1, v. 17, p. 13. 31 May, 1870, c. 114, ss. 16, 18, v. 16, p. 114. 9 April, 1866, c. 31, s. 3, v. 14, p. 27.



Suits on account of injuries by conspirators in certain cases.

20 April, 1871, c. 22, s. 2, v. 17, p. 13.

Suits against persons having knowledge of conspiracy, &c.

20 April, 1871, c. 22, s. 6, v. 17, p. 15.

Suits against officers and owners of vessels.

28 Feb., 1871, c. 100, s. 57, v. 16, p. 456.

Crimes and offenses.

24 Sept., 1789, c. 20, s. 11, v. 1, p. 78.

*U. S. vs. Hudson and Goodwin*, 7 Cr., 32; *U. S. vs. Cooledge*, 1 Wh., 415; *U. S. vs. Bevans*, 3 Wh., 336; *U. S. vs. Coombs*, 12 Pet., 72; *State of Pennsylvania vs. Wheeling Bridge*, 13 How., 563; *U. S. vs. Jackalow*, 1 Bl., 484; *U. S. vs. Holliday*, 3 Wall., 407; *U. S. vs. Wood*, 2 Wh., Cr. Cas., 325; *U. S. vs. Ta-wan-ga-ca*, Hemp., 304; *U. S. vs. Terrell*, Hemp., 411, 422; *U. S. vs. Alberty*, Hemp., 444.

In bankruptcy.

2 March, 1867, c. 176, ss. 2, 8, v. 14, pp. 518, 520.

Appeals in admiralty causes.

24 Sept., 1789, c. 20, s. 21, v. 1, p. 83.

3 March, 1803, c. 40, s. 2, v. 2, p. 244.

30 June, 1864, c. 170, s. 13, v. 13, p. 310.

1 June, 1872, c. 255, s. 2, v. 17, p. 196.—*Mordecai vs. Lindsay*, 19 How., 199; *Montgomery vs. Anderson*, 21 How., 386; *U. S. vs. Woonson*, 1 Gallis., 4; *McLellan vs. U. S.*, 1 Gallis., 226; *Hollen and Cargo*, 1 Mas., 431.

Copies of proofs and entries certified to appellate court.

26 Feb., 1863, c. 80, s. 1, v. 10, p. 163.

Writ of error to judgments of district courts.

24 Sept., 1789, c. 20, s. 22, v. 1, p. 84.

*Patterson vs. U. S.*, 2 Wh., 221; *Smith vs. Allyn*, 1 Paine, 453; *Postmaster-General vs. Cross*, 4 Wash. C. C., 326.

Circuit court in and for the three districts of Alabama.

3 March, 1873, c. 223, s. 4, v. 17, p. 485.

Writs of error and appeals within one year.

1 June, 1872, c. 255, s. 2, v. 17, p. 196.

Seventeenth. Of all suits authorized by law to be brought by any person on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty, Title "CIVIL RIGHTS."

*Blyew vs. U. S.*, 13 Wall., 581.

Eighteenth. Of all suits authorized by law to be brought against any person who, having knowledge that any of the wrongs mentioned in section nineteen hundred and eighty, are about to be done, and, having power to prevent or aid in preventing the same, neglects or refuses so to do, to recover damages for any such wrongful act. [See § 1961.]

Nineteenth. Of all suits and proceedings arising under section fifty-three hundred and forty-four, Title "CRIMES," for the punishment of officers and owners of vessels, through whose negligence or misconduct the life of any person is destroyed.

Twentieth. Exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except where it is or may be otherwise provided by law, and concurrent jurisdiction with the district courts of crimes and offenses cognizable therein.

SEC. 630. The circuit courts shall have jurisdiction in matters in bankruptcy, to be exercised within the limits and in the manner provided by law.

SEC. 631. From all final decrees of a district court in causes of equity or of admiralty and maritime jurisdiction, except prize causes, where the matter in dispute exceeds the sum or value of fifty dollars, exclusive of costs, an appeal shall be allowed to the circuit court next to be held in such district, and such circuit court is required to receive, hear, and determine such appeal.

SEC. 632. In case of an appeal, as provided by the preceding section, copies of the proofs, and of such entries and papers on file as may be necessary on hearing of the appeal, may be certified up to the appellate court.

SEC. 633. Final judgments of a district court in civil actions, where the matter in dispute exceeds the sum or value of fifty dollars, exclusive of costs, may be re-examined and reversed or affirmed in a circuit court, holden in the same district, upon a writ of error.

SEC. 634. The circuit court in and for the three districts of Alabama shall exercise appellate and revisory jurisdiction of the decrees and judgments of the district courts for the said districts, under the laws conferring and regulating the jurisdiction, powers, and practice of circuit courts in cases removed into such courts by appeal or writ of error.

SEC. 635. No judgment, decree, or order of a district court shall be reviewed by a circuit court, on writ of error or appeal, unless the writ of error is sued out, or the appeal is taken, within one year after the entry of such judgment, decree, or order: *Provided*, That where a party entitled to prosecute a writ of error or to take an appeal is an infant, or non compos mentis, or imprisoned, such writ of error may be prosecuted, or such appeal may be taken, within one year after the entry of the judgment, decree, or order, exclusive of the term of such disability. [See § 1006.]

SEC. 636. A circuit court may affirm, modify, or reverse any judgment, decree, or order of a district court brought before it for review, or may direct such judgment, decree, or order to be rendered, or such further proceedings to be had by the district court, as the justice of the case may require.

SEC. 637. When any cause, civil or criminal, of whatever nature, is removed into a circuit court, as provided by law, from a district court wherein the same is cognizable, on account of the disability of the judge of such district court, or by reason of his being concerned in interest therein, or having been of counsel for either party, or being so related to or connected with either party to such cause as to render it improper, in his opinion, for him to sit on the trial thereof, such circuit court shall have the same cognizance of such cause, and in like manner, as the said district court might have, or as said circuit (\*) might have if the same had been originally and lawfully commenced therein; and shall proceed to hear and determine the same accordingly. [See §§ 587, 601.]

SEC. 638. The circuit courts, as courts of equity, shall be deemed always open for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing, upon their merits, of all causes pending therein. And any judge of a circuit court may, upon reasonable notice to the parties, make, and direct and award, at chambers or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable, of course, according to the rules and practice of the court.

SEC. 639. Any suit commenced in any State court, wherein the amount in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars, to be made to appear to the satisfaction of said court, may be removed, for trial, into the circuit court, for the district where such suit is pending, next to be held after the filing of the petition for such removal hereinafter mentioned, in the cases and in the manner stated in this section.

First. When the suit is against an alien, or is by a citizen of the State wherein it is brought, and against a citizen of another State, it may be removed on the petition of such defendant, filed in said State court at the time of entering his appearance in said State court.

Second. When the suit is against an alien and a citizen of the State wherein it is brought, or is by a citizen of such State against a citizen of the same, and a citizen of another State, it may be so removed, as against said alien or citizen of another State, upon the petition of such defendant, filed at any time before the trial or final hearing of the cause, if, so far as it relates to him, it is brought for the purpose of restraining or enjoining him, or is a suit in which there can be a final determination of the controversy, so far as concerns him, without the presence of the other defendants as parties in the cause. But such removal shall not take away or prejudice the right of the plaintiff to proceed at the same time with the suit in the State court, as against the other defendants.

Third. When a suit is between a citizen of the State in which it is brought and a citizen of another State, it may be so removed on the petition of the latter, whether he be plaintiff or defendant, filed at any time before the trial or final hearing of the suit, if, before or at the time of filing said petition, he makes and files in said State court an affidavit, stating that he has reason to believe and does believe that, from prejudice or local influence, he will not be able to obtain justice in such State court.

In order to such removal, the petitioner in the cases aforesaid must, at the time of filing his petition therefor, offer in said State court good and sufficient surety for his entering in such circuit court, on the first day of its session, copies of said process against him, and of all pleadings, depositions, testimony, and other proceedings in the cause,

Judgment or decree on review.

1 June, 1872, c. 255, s. 2, v. 17, p. 196.

Jurisdiction of cases transferred from district courts on account of disability, &c.

2 March, 1809, c. 27, s. 1, v. 2, p. 534.  
3 March, 1821, c. 51, v. 3, p. 643.

Courts always open for certain purposes.

23 Aug., 1842, c. 188, s. 5, v. 5, p. 517.

Removal of suits against aliens, &c., where amount of \$500 in dispute.

24 Sept., 1789, c. 20, s. 12, v. 1, p. 79.

27 July, 1806, c. 288, v. 14, p. 306.

2 March, 1867, c. 196, v. 14, p. 558.

*Eurtetiqui vs. D'Arey*, 9 Pet., 692; *Gordon vs. Lougest*, 16 Pet., 97; *Kanouse vs. Martin*, 15 How., 198; *Parker vs. Overman*, 18 How., 137; *Wood vs. Davis*, 18 How., 467; *Green vs. Cuslar*, 23 How., 484; *West vs. Aurora City*, 6 Wall., 139; *Bushnell vs. Kennedy*, 9 Wall., 387; *Insurance Co. vs. Weide*, 9 Wall., 677; *Railway Com. vs. Whitton*, 13 Wall., 270; *City of Lexington vs. Butler*, 14 Wall., 282; *Case of the Sewing Machine Com's*, 18 Wall., 553; *Muns vs. Dupont*, 2 Wash. C. C., 463; *Beardsley vs. Torrey*, 4 Wash. C. C., 286; *Wright vs. Wells*, 1 Pet. C. C., 220; *Ladd vs. Tudor*, 3 Wood & M. C. C., 325; *Matthews vs.*

(\*) The word *court* omitted in the Roll.

Lvall, 6 McLean, 13; Brownell vs. Gordon, 1 McAll. C. C., 207; Gier vs. Gregg, 4 McLean, 202; Wilson vs. Blodgett, 4 McLean, 363; McLeod vs. Duncan, 5 McLean, 342; Hubbard vs. Northern R. R., 3 Blatch., 84; Bliven vs. New England Screw Co., 3 Blatch. C. C., 111; Barney vs. Globe Bank, 5 Blatch. C. C., 107; Screw Co. vs. Bliven, 3 Blatch. C. C., 240; Snyder vs. Ewing, 2 Blatch. C. C., 359; Sayles vs. Northwestern Ins. Co., 2 Curt. C. C., 212; Bristol vs. Chapman, 34 How. Pr., 140; Shelby vs. Hoffman, 7 Ohio St., 450; In re Turner, 3 Wall., Jr., 258; In re Girard, 3 Wall., Jr., 263; Ward vs. Arredund, 1 Paine, 410; McVaught vs. Cassily, 4 McLean, 351; Spraggins vs. County Court, Cooke, 160; Gibson vs. Johnson, Peters C. C., 44; Jersey vs. Babcock, 4 Wash. C. C., 344; Charter Oak Ins. Co. vs. Star Ins. Co., 6 Blatch. C. C., 208; Roberts vs. Nelson, 8 Blatch. C. C., 74; Beecher vs. Gillett, 1 Dill. C. C., 308; Hatch vs. Railroad, 6 Blatch. C. C., 105; Bixby vs. Couser, 8 Blatch. C. C., 73; Field vs. Larmsdale, 1 Denny, 288; Dart vs. McKinney, 9 Blatch., 359; Akerly vs. Vilas, 1 Abb. C. C., 284; Fields vs. Lamb, 1 Deady, 430; Sands vs. Smith, 1 Dillon, 290; Johnson vs. Monell, 1 Wool. C. C., 390; Case vs. Douglass, 1 Dillon, 299; Boggess vs. Willard, 16 Int. Rev. Rec., 22.

Removal of suits against corporations organized under a law of United States.

27 July, 1868, c. 255, s. 2, v. 15, p. 227.

27 July, 1866, c. 288, s. 1, v. 14, p. 306.

Flak vs. Union P. R. R., 8 Blatch., 343.

Removal of causes against persons denied any civil right, &c.

31 May, 1870, c. 114, ss. 16, 18, v. 16, p. 144.

9 April, 1866, c. 31, s. 3, v. 14, p. 27.

3 March, 1863, c. 81, s. 5, v. 12, p. 756.

11 May, 1866, c. 50, ss. 3, 5, v. 14, p. 46.

Commonwealth vs. Artman, 3 Grant, 436.

Hodgson vs. Milward, 3 Grant, 418.

or, in said cases where a citizen of the State in which the suit is brought is a defendant, copies of all process, pleadings, depositions, testimony, and other proceedings in the cause concerning or affecting the petitioner, and also for his there appearing and entering special bail in the cause, if special bail was originally requisite therein. It shall thereupon be the duty of the State court to accept the surety and to proceed no further in the cause against the petitioner, and any bail that may have been originally taken shall be discharged.

When the said copies are entered as aforesaid in the circuit court, the cause shall there proceed in the same manner as if it had been brought there by original process, and the copies of pleadings shall have the same force and effect, in every respect and for every purpose, as the original pleadings would have had by the laws and practice of the courts of such State if the cause had remained in the State court.

SEC. 640. Any suit commenced in any court other than a circuit or district court of the United States against any corporation other than a banking corporation, organized under a law of the United States, or against any member thereof as such member for any alleged liability of such corporation, or of such member as a member thereof, may be removed, upon the petition of such defendant, verified by oath, stating that such defendant has a defense arising under or by virtue of the Constitution or of any treaty or law of the United States. Such removal, in all other respects, shall be governed by the provisions of the preceding section.

SEC. 641. When any civil suit or criminal prosecution is commenced in any State court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States, or against any officer, civil or military, or other person, for any arrest or imprisonment or other trespasses or wrongs, made or committed by virtue of or under color of authority derived from any law providing for equal rights as aforesaid, or for refusing to do any act on the ground that it would be inconsistent with such law, such suit or prosecution may, upon the petition of such defendant, filed in said State court, at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed, for trial, into the next circuit court to be held in the district where it is pending. Upon the filing of such petition all further proceedings in the State courts shall cease, and shall not be resumed except as hereinafter provided. But all bail and other security given in such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. It shall be the duty of the clerk of the State court to furnish such defendant, petitioning for a removal, copies of said process against him, and of all pleadings, depositions, testimony, and other proceedings in the case. If such copies are filed by said petitioner in the circuit court on the first day of its session, the cause shall proceed therein in the same manner as if it had been brought there by original process; and if the said clerk refuses or neglects to furnish such copies, the petitioner may thereupon docket

the case in the circuit court, and the said court shall then have jurisdiction therein, and may, upon proof of such refusal or neglect of said clerk, and upon reasonable notice to the plaintiff, require the plaintiff to file a declaration, petition, or complaint in the cause; and, in case of his default, may order a nonsuit and dismiss the case at the costs of the plaintiff, and such dismissal shall be a bar to any further suit touching the matter in controversy. But if, without such refusal or neglect of said clerk to furnish such copies and proof thereof, the petitioner for removal fails to file copies in the circuit court as herein provided, a certificate, under the seal of the circuit court, stating such failure, shall be given, and upon the production thereof in said State court, the cause shall proceed therein as if no petition for a removal had been filed. (See § 1977.)

SEC. 642. When all the acts necessary for the removal of any suit or prosecution, as provided in the preceding section, have been performed, and the defendant petitioning for such removal is in actual custody on process issued by said State court, it shall be the duty of the clerk of said circuit court to issue a writ of habeas corpus cum causa, and of the marshal, by virtue of said writ, to take the body of the defendant into his custody, to be dealt with in said circuit court according to law and the orders of said court, or, in vacation, of any judge thereof; and the marshal shall file with or deliver to the clerk of said State court a duplicate copy of said writ.

SEC. 643. When any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law; or is commenced against any person holding property or estate by title derived from any such officer, and affects the validity of any such revenue law; or is commenced against any officer of the United States, or other person, on account of any act done under the provisions of Title XXVI, "THE ELECTIVE FRANCHISE," or on account of any right, title or authority claimed by such officer or other person under any of the said provisions, the said suit or prosecution may, at any time before the trial or final hearing thereof, be removed for trial into the circuit court next to be holden in the district where the same is pending, upon the petition of such defendant to said circuit court, and in the following manner: Said petition shall set forth the nature of the suit or prosecution, and be verified by affidavit; and, together with a certificate signed by an attorney or counselor at law of some court of record of the State where such suit or prosecution is commenced, or of the United States, stating that, as counsel for the petitioner, he has examined the proceedings against him, and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said circuit court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall thereupon be entered on the docket of the circuit court, and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. When the suit is commenced in the State court by summons, subpoena, petition, or another process except capias, the clerk of the circuit court shall issue a writ of certiorari to the State court, requiring it to send to the circuit court the record and proceedings in the cause. When it is commenced by capias, or by any other similar form of proceeding by which a personal arrest is ordered, he shall issue a writ of habeas corpus cum causa, a duplicate of which shall be delivered to the clerk of the State court, or left at his office, by the marshal of the district, or his deputy, or by some person duly authorized thereto; and thereupon it shall be the duty of the State court to stay all further

When petitioner is in actual custody of State court.

5 Feb., 1867, c. 27, v. 14, p. 385.  
3 March, 1863, c. 81, s. 5, v. 12, p. 754.  
11 May, 1866, c. 80, ss. 3, 5, v. 14, p. 46.

9 April, 1866, c. 31, s. 3, v. 14, p. 27.

Removal of suits and prosecutions against revenue officers and officers acting under registration laws.

2 March, 1833, c. 57, s. 3, v. 4, p. 633.  
13 July, 1868, c. 184, s. 67, v. 14, p. 171.

28 Feb., 1871, c. 99, s. 16, v. 16, p. 438.

Coggins vs. Lawrence, 2 Blatch. C. C., 304; Wood vs. Matthews, 2 Blatch. C. C., 370; Van Zandt vs. Maxwell, 2 Blatch. C. C., 421; Abranches vs. Schell, 4 Blatch. C. C., 256; Warner vs. Fowler, 4 Blatch. C. C., 311; Victor vs. Cisco, 5 Blatch. C. C., 128; Benchley vs. Gilbert, 8 Blatch., 147; Salem and Lowell R. R. vs. Boston and Lowell R. R., 21 Law Rep., 210; Peyton vs. Bliss, 1 Wool. C. C., 170.



proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the circuit court, and any further proceedings, trial, or judgment therein in the State court shall be void. And if the defendant in the suit or prosecution be in actual custody on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of habeas corpus cum causa, to take the body of the defendant into his custody, to be dealt with in the cause according to law and the order of the circuit court, or, in vacation, of any judge thereof; and if, upon the removal of such suit or prosecution, it is made to appear to the circuit court that no copy of the record and proceedings therein in the State court can be obtained, the circuit court may allow and require the plaintiff to proceed de novo, and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said circuit court. On failure of the plaintiff so to proceed, judgment of non prosecutur may be rendered against him, with costs for the defendant.

**Removal of suits  
by aliens in a particular case.**

30 March, 1872,  
c. 72, v. 17, p. 44.

**When copies of  
records are refused  
by clerk of State  
court.**

2 March, 1833, c.  
57, s. 4, v. 4, p. 634.  
28 Feb. 1871, c.  
99, s. 17, v. 16, p.  
439.

**Attachments, in-  
junctions, and in-  
demnity bonds to  
remain in force af-  
ter removal.**

24 Sept., 1789, c.  
20, s. 12, v. 1, p. 79.  
27 July, 1866, c.  
288, v. 14, p. 306.  
2 March, 1867, c.  
196, v. 14, p. 558.  
27 July, 1868, c.  
255, s. 2, v. 15, p.  
227.  
9 April, 1866, c.  
31, s. 3, v. 14, p. 27.  
3 March, 1863, c.  
81, s. 5, v. 12, p. 756.  
11 May, 1866, c.  
80, ss. 3, 5, v. 14, p.  
46.  
5 Feb., 1867, c. 27,  
v. 14, p. 365. 2 March, 1833, c. 57, s. 3, v. 4, p. 633. 13 July, 1866, c. 184, s. 67, v. 14,  
p. 171. 28 Feb., 1871, c. 99, s. 16, v. 16, pp. 438, 439.

SEC. 644. Whenever a personal action has been or shall be brought in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States, being a non-resident of that State wherein jurisdiction is obtained by the State court, by personal service of process, such action may be removed into the circuit court of the United States in and for the district in which the defendant shall have been served with the process, in the same manner as now provided for the removal of an action brought in a State court by the provisions of the preceding section.

SEC. 645. In any case where a party is entitled to copies of the record and proceedings in any suit or prosecution in a State court, to be used in any court of the United States, if the clerk of said State court, upon demand, and the payment or tender of the legal fees, refuses or neglects to deliver to him certified copies of such records and proceedings, the court of the United States in which such record and proceedings are needed may, on proof by affidavit that the clerk of said State court has refused or neglected to deliver copies thereof, on demand as aforesaid, direct such record to be supplied by affidavit, or otherwise, as the circumstances of the case may require and allow; and, thereupon, such proceeding, trial, and judgment may be had in the said court of the United States, and all such processes awarded, as if certified copies of such records and proceedings had been regularly before the said court.

SEC. 646. When a suit is removed for trial from a State court to a circuit court, as provided in the foregoing sections, any attachment of the goods or estate of the defendant by the original process shall hold the same to answer the final judgment, in the same manner as by the laws of such State they would have been held to answer final judgment had it been rendered by the court in which the suit was commenced; and any injunction granted before the removal of the cause against the defendant applying for its removal shall continue in force until modified or dissolved by the United States court into which the cause is removed; and any bond of indemnity or other obligation, given by the plaintiff upon the issuing or granting of any attachment, writ of injunction, or other restraining process, against the defendant petitioning for the removal of the cause, shall also continue in full force and may be prosecuted by the defendant and made available for his indemnity in case the attachment, injunction, or other restraining process be set aside or dissolved, or judgment be rendered in his favor, in the same manner, and with the same effect as if such attachment, injunction, or other restraining process had been granted, and such bond had been originally filed or given in such State court.

SEC. 647. If, in any action commenced in a State court, where the title of land is concerned, and the parties are citizens of the same State, and the matter in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars, the sum or value being made to appear to the satisfaction of the court, either party, before the trial, states to the court, and makes affidavit, if they require it, that he claims and shall rely upon a right or title to the land under a grant from a State other than that in which the suit is pending, and produces the original grant, or an exemplification of it, except where the loss of public records shall put it out of his power, and moves that the adverse party inform the court whether he claims a right or title to the land under a grant from the State in which the suit is pending, the said adverse party shall give such information, or otherwise not be allowed to plead such grant, or give it in evidence upon the trial; and if he gives information that he does claim under such grant, the party claiming under the grant first mentioned may, on motion, remove the cause for trial into the next circuit court to be holden in the district where such suit is pending. If the party so removing the cause is defendant, the removal shall be made under the regulations governing removals of a cause into such court by an alien; and neither party removing the cause shall be allowed to plead or give evidence of any other title than that stated by him as aforesaid as the ground of his claim.

Removal of suits where parties claim land under titles from different States.

24 Sept., 1789, c. 20, s. 12, v. 1, p. 79.

Town of Pawlet vs. Clark, 9 Cr., 292.

SEC. 648. The trial of issues of fact in the circuit courts shall be by jury, except in cases of equity and of admiralty and maritime jurisdiction, and except as otherwise provided in proceedings in bankruptcy, and by the next section.

Issues of fact, when to be tried by jury.

24 Sept., 1789, c. 20, s. 12, v. 1, p. 79. 3 March, 1865, c. 86, s. 4, v. 13, p. 501.—*Elmore vs. Grymes*, 1 Pet., 471; *De Wolf vs. Rabaud*, 1 Pet., 497; *Crane vs. Morris's Lessee*, 6 Pet., 609; *Silsby vs. Foote*, 14 How., 222; *Castle vs. Ballard*, 23 How., 183.

SEC. 649. Issues of fact in civil cases in any circuit court may be tried and determined by the court, without the intervention of a jury, whenever the parties, or their attorneys of record, file with the clerk a stipulation in writing waiving a jury. The finding of the court upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury. [See § 700.]

Issues of fact tried by the court.

3 March, 1865, c. 86, s. 4, v. 13, p. 501.

*Grayham vs. Bayne*, 18 How., 60; *Suydam vs. Williamson*, 20 How., 432; *Kelsey vs. Forsyth*, 21 How., 85; *Campbell vs. Boyrean*, 21 How., 223; *Burr vs. Des Moines Co.*, 1 Wall., 99; *Sanlet vs. Shepherd*, 4 Wall., 502; *Insurance Co. vs. Tweed*, 7 Wall., 44; *Genereux vs. Bonnemere*, 7 Wall., 564; *Bassett vs. U. S.*, 9 Wall., 38; *Norris vs. Jackson*, 9 Wall., 125; *Flanders vs. Tweed*, 9 Wall., 425; *Copeland vs. Insurance Co.*, 9 Wall., 467; *Coddington vs. Richardson*, 10 Wall., 516; *Beitel vs. Mathews*, 13 Wall., 1; *Dirst vs. Morris*, 14 Wall., 484; *Insurance Co. vs. Folsum*, 18 Wall., 237.

SEC. 650. Whenever, in any civil suit or proceeding in a circuit court held by a circuit justice and a circuit judge or a district judge, or by a circuit judge and a district judge, there occurs any difference of opinion between the judges as to any matter or thing to be decided, ruled, or ordered by the court, the opinion of the presiding justice or judge shall prevail, and be considered the opinion of the court for the time being.

Division of opinion in civil causes; decision by presiding judge.

1 June, 1872, c. 255, s. 1, v. 17, p. 196.

SEC. 651. Whenever any question occurs on the trial or hearing of any criminal proceeding before a circuit court upon which the judges are divided in opinion, the point upon which they disagree shall, during the same term, upon the request of either party, or of their counsel, be stated under the direction of the judges, and certified, under the seal of the court, to the Supreme Court at their next session; but nothing herein contained shall prevent the cause from proceeding if, in the opinion of the court, further proceedings can be had without prejudice to the merits. Imprisonment shall not be allowed nor punishment inflicted in any case where the judges of such court are divided in opinion upon the question touching the said imprisonment or punishment. [See § 697.]

Division of opinion in criminal causes; certificate.

29 April, 1802, c. 31, s. 6, v. 2, p. 159.

1 June, 1872, c. 255, s. 1, v. 17, p. 196.

*Ogle vs. Lee*, 9 Cr., 33; *Hepburn vs. Ellzey*, 2 Cr., 445; *U. S. vs. Tyler*, 445; *U. S. vs. Daniel*, 6 Wh., 542; *Wayman vs. Southard*, 10 Wh., 1; *Devereaux vs. Marr*, 12 Wh., 212; *Do Wolf vs. Usher*, 3 Pet., 269; *Saunders vs. Gould*, 4 Pet., 392; *Grant vs. Raymond*, 6 Pet., 218;

U. S. *vs.* Bailey, 9 Pet., 267; Davis *vs.* Braden, 10 Pet., 286; Smith *vs.* Vaughan, 10 Pet., 366; Packer *vs.* Nixon, 10 Pet., 408; Adams *vs.* Jones, 12 Pet., 213; White *vs.* Turk, 12 Pet., 238; U. S. *vs.* Briggs, 5 How., 208; NeSmith *vs.* Sholdon, 6 How., 41; Luther *vs.* Borden, 7 How., 1; U. S. *vs.* Chicago, 7 How., 185; Sadler *vs.* Hoover, 7 How., 646; Wilson *vs.* Barnum, 8 How., 258; Webster *vs.* Cooper, 10 How., 54; Dennistoun *vs.* Stewart, 18 How., 565; U. S. *vs.* City Bank of Columbus, 19 How., 385; Silliman *vs.* Hudson River Bridge, 1 Bl., 532; Daniels *vs.* R. R. Com., 3 Wall., 250; Havemeyer *vs.* Iowa County, 3 Wall., 294; Brobst *vs.* Brobst, 4 Wall., 2; U. S. *vs.* Rosenburgh, 7 Wall., 580.

Division of opinion in civil causes, certificate.

1 June, 1872, c. 255, s. 1, v. 17, p. 196.

29 April, 1802, c. 31, s. 6, v. 2, p. 159.

SEC. 652. When a final judgment or decree is entered in any civil suit or proceeding before any circuit court held by a circuit justice and a circuit judge or a district judge, or by a circuit judge and a district judge, in the trial or hearing whereof any question has occurred upon which the opinions of the judges were opposed, the point upon which they so disagreed shall, during the same term, be stated under the direction of the judges, and certified, and such certificate shall be entered of record. [See § 603.]

Ogle *vs.* Lee, 2 Cr., 33; Hepburn *vs.* Ellzey, 2 Cr., 445; U. S. *vs.* Tyler, 7 Cr., 285; Ross *vs.* Triplett, 3 Wh., 600; U. S. *vs.* Lancaster, 5 Wh., 434; U. S. *vs.* Daniel, 6 Wh., 542; Wayman *vs.* Southard, 10 Wh., 1; Devereaux *vs.* Marr, 12 Wh., 212; De Wolf *vs.* Usher, 3 Pet., 269; Saunders *vs.* Gould, 4 Pet., 392; Bank U. S. *vs.* Green, 6 Pet., 26; Grant *vs.* Raymond, 6 Pet., 218; U. S. *vs.* Bailey, 9 Pet., 267; Davis *vs.* Braden, 10 Pet., 286; Smith *vs.* Vaughan, 10 Pet., 366; Packer *vs.* Nixon, 10 Pet., 408; Adams *vs.* Jones, 12 Pet., 207; White *vs.* Turk, 12 Pet., 238; U. S. *vs.* Briggs, 5 How., 208; NeSmith *vs.* Sheldon, 6 How., 41; Luther *vs.* Borden, 7 How., 1; U. S. *vs.* Chicago, 7 How., 185; Sadler *vs.* Hoover, 7 How., 646; Wilson *vs.* Barnum, 8 How., 258; Dennistoun *vs.* Stewart, 18 How., 565; U. S. *vs.* City Bank of Columbus, 19 How., 385; Silliman *vs.* Hudson River Bridge, 1 Bl., 532; *Ex parte* Gordon, 1 Bl., 503; Ward *vs.* Chamberlain, 2 Bl., 430; Daniels *vs.* R. R. Com., 3 Wall., 250; Havemeyer *vs.* Iowa County, 3 Wall., 294; Brobst *vs.* Brobst, 4 Wall., 2; U. S. *vs.* Rosenburgh, 7 Wall., 580; Hannauer *vs.* Woodruff, 10 Wall., 482.

Business of the circuit court for the two districts of Missouri transferred, how.

25 Feb., 1873, c. 200, s. 1, v. 17, p. 476.

SEC. 653. The circuit court for the eastern district of Missouri, is vested with full and complete jurisdiction to hear, determine, and dispose of, according to the usual course of judicial proceedings, all suits, causes, motions, and other matters which were pending in the circuit court of the United States in and for the districts of Missouri at the time the said circuit court for the eastern district of Missouri was created, on the eighth day of June, eighteen hundred and seventy-two, and also all other matters which have since arisen that pertain to said suits or causes, and also to make all orders and issue of (\*) all processes which said circuit court of the United States in and for the districts of Missouri might have done if it had not ceased to exist; and said circuit court for said eastern district of Missouri is vested with jurisdiction and authority to do all and singular that may in the due course of judicial proceedings pertain to any of said suits, causes, or unfinished business as fully as the said circuit court in and for the districts of Missouri might have done if said circuit court had not ceased to exist.

Process issued out of former circuit court for Missouri.

25 Feb., 1873, c. 200, s. 2, v. 17, p. 476.

SEC. 654. The service of process, mesne or final, issued out of said circuit court of the United States in and for the districts of Missouri, which service was had after the eighth day of June, eighteen hundred and seventy-two, and all levies, seizures, and sales made thereunder, also all service, seizures, levies, and sales made under any process which issued as out of said court after the said eighth day of June, eighteen hundred and seventy-two, are made valid, and all said processes are to be deemed returnable to said circuit court of the United States in and for the eastern district of Missouri as of the return day thereof.

Transfer of cases between eastern and western districts.

25 Feb., 1873, c. 200, s. 3, v. 17, p. 476.

SEC. 655. Either of the circuit courts for the eastern and for the western district of Missouri may order any suit, cause, or other matter pending therein, and commenced prior to the creation of said new court, to be transferred for trial or determination to the other of said circuit courts when, in the opinion of the court, said transfer ought to be made; and the court to which said transfer is made shall have as full authority and jurisdiction over the same from the date the certified transcript of the record thereof is filed as if the same had been originally pending therein.

(\*) The word *of* in the Roll redundant.

SEC. 656. That the clerk of the circuit court for the eastern district of Missouri, and his successors in office, shall have the custody of all records, books, papers, and property belonging or in any wise appertaining to said circuit court of the United States in and for the districts of Missouri, and, as such custodians and the successors of the clerk of said last-named court, they are hereby invested with the same powers and authority with respect thereto as the clerk thereof had during the existence of said last-named circuit court. Said circuit court for the eastern district of Missouri is hereby made the successor of said circuit court of the United States in and for the districts of Missouri as to all suits, causes, and unfinished business therein or in any wise pertaining thereto, except as hereinbefore provided.

Custody of books, papers, &c., of circuit court of Missouri.

25 Feb., 1873, c. 200, s. 4, v. 17, p. 476.

SEC. 657. The original jurisdiction of the circuit court for the southern district of New York shall not be construed to extend to causes of action arising within the northern district of said State.

Circuit court for southern district of New York, how limited.

3 April, 1818, c. 32, s. 6, v. 3, p. 415. Wheeler vs. McCormick, 8 Blatch. C. C., 267.

## CHAPTER EIGHT.

### CIRCUIT COURTS—SESSIONS

Sec.

658. Terms.

659. Recognizances to a certain term in southern district of New York.

660. Effect of altering terms of circuit courts.

661. Special sessions for trial of criminal cases.

662. Special sessions for criminal trials near the place of the offense.

663. Adjourned terms, Missouri.

Sec.

664. California, Oregon, and Nevada, special sessions.

665. Kentucky and Indiana, special terms.

666. Tennessee, special terms.

667. North Carolina, special terms.

668. Virginia, Wisconsin, special terms.

669. Special terms, general rule.

670. Special terms, business transacted at.

671. Adjournment in absence of the judges.

672. Adjournment in absence of the judges, by written order.

SEC. 658. The regular terms of the circuit courts shall be held in each year, at the times and places following; but when any of said dates shall fall on Sunday, the term shall commence on the following day:

Terms.

In and for the southern district of Alabama, at Mobile, on the second Monday in April and the fourth Monday in December.

Alabama, S. D.

34, s. 2, v. 5, p. 177. 22 February, 1838, c. 12, s. 1, v. 5, p. 210. 6 August, 1842, c. 180, s. 1, v. 5, p. 507. 12 April, 1844, c. 12, s. 3, v. 5, p. 655. 1 March, 1845, c. 39, s. 1, v. 5, p. 731. 15 July, 1862, c. 178, s. 1, v. 12, p. 576.

3 March, 1837, c.

In and for the eastern district of Arkansas, at Little Rock, on the second Monday in April and the fourth Monday in October.

Arkansas.

3 March, 1837, c. 34, s. 2, v. 5, p. 177. 21 May, 1872, c. 176, s. 1, v. 17, p. 135.

In the district of California, at San Francisco, on the first Monday in February, the second Monday in June, and the first Monday in October.

California.

19 Feb., 1864, c. 11, s. 1, v. 13, p. 4. 27 July, 1866, c. 280, s. 1, v. 14, p. 300.

In the district of Connecticut, at New Haven, on the fourth Tuesday in April; and at Hartford, on the third Tuesday in September.

Connecticut.

13 April, 1792, c. 21, s. 2, v. 1, p. 253. 24 February, 1843, c. 44, s. 1, v. 5, p. 601.

In the district of Delaware, at Wilmington, on the third Tuesdays in June and October.

Delaware.

10 May, 1852, c. 33, s. 1, v. 10, p. 5. 14 June, 1856, c. 45, s. 1, v. 11, p. 22.

In the southern district of Florida, at Key West, on the first Mondays in May and November.

Florida.

In the northern district of Florida, at Tallahassee, on the first Monday in February; at Pensacola, on the first Monday in March; and at Jacksonville, on the first Monday in December.

23 Feb., 1847, c. 20, s. 2, v. 9, p. 131. 15 July, 1862, c. 178, s. 1, v. 12, p.

576. 27 July, 1868, c. 270, s. 1, v. 15, p. 239.