

No. 125952

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 Carolyn Taft Grosboll  
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**IN THE  
 SUPREME COURT OF ILLINOIS**

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|-------------------------------|---|--|
| DARREN BAILEY,                | ) |  |
|                               | ) |  |
| Plaintiff-Respondent,         | ) | Motion for Direct Appeal Under         |
|                               | ) | Illinois Supreme Court Rule 302(b)     |
| and                           | ) | and/or Supervisory Order under         |
|                               | ) | Illinois Supreme Court Rule 383        |
|                               | ) |  |
| THE HONORABLE JUDGE           | ) | On Appeal from the Circuit Court       |
| MICHAEL D. MCHANEY,           | ) | for the Fourth Judicial Circuit        |
|                               | ) | Clay County, Illinois, No. 2020 CH 6,  |
| Respondent,                   | ) | to the Appellate Court of Illinois,    |
|                               | ) | Fifth Judicial District, No. 5-20-0148 |
| vs.                           | ) |  |
|                               | ) |  |
| GOVERNOR JAY ROBERT PRITZKER, | ) | The Honorable                          |
| in his official capacity,     | ) | MICHAEL D. McHANEY,                    |
|                               | ) | Judge Presiding.                       |
| Defendant-Petitioner.         | ) |  |

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**OBJECTION TO PETITIONER’S EMERGENCY MOTION FOR  
 SUPERVISORY ORDER UNDER ILLINOIS SUPREME COURT RULE 383**

DARREN BAILEY (“Plaintiff”), by and through his undersigned attorneys, states as follows in opposition to the request of Governor Jay Robert Pritzker (“Defendant”) for entry of a supervisory order pursuant to Illinois Supreme Court Rule 383:

**Introduction**

Other than his obvious frustration with Respondent’s interpretation of applicable statutes, Defendant has failed to articulate any cognizable basis for utilization of the extraordinary remedy provided for in Supreme Court Rule 383, and the instant motion must be denied. Most clearly, the appeal is moot since Plaintiff has agreed to a vacatur

of the temporary restraining order (the "TRO") which was the basis for Defendant's appeal. Since the TRO has been vacated by the appellate court, there is no further predicate for appellate jurisdiction in this Court.

Defendant is doing nothing more than asking this Court to intercede and issue an advisory opinion concerning Defendant's statutory authority to take the actions at issue in Plaintiff's complaint. Defendant's reference to other cases pending in Illinois concerning similar issues demonstrate Defendant is looking for nothing less than an Order from this Court truncating proceedings throughout the State on the basis of a vacated TRO. Rule 383 is simply not a vehicle for issuance of advisory opinions, and this Court should recognize Defendant's request as seeking just that.

Nothing in this Court's decisions supports use of Rule 383 to issue preemptory decisions concerning how statutes must be construed. Here, there is no hint Respondent exceeded his authority or abused his discretion: his only "offense" was construing a statute differently than Defendant would have liked. The Order based on that construction has been vacated.

Without question, COVID-19 is pernicious, and steps must be taken to contend with its effects on the people of the State of Illinois and the nation. Nonetheless, the existence of a pandemic does not give any state's executive overriding authority to exceed powers conferred by the legislature, nor does it absolve the legislature of its ability and obligation to act if it concludes the executive is unreasonably hamstrung by limitations in existing legislation. In any event, the existence of a pandemic does not justify departure from existing precedent.

For these reasons, as discussed more fully below, the Court should enter its Order denying Defendant's request for a supervisory order.

### Discussion

1. On March 9, 2020, Defendant declared that the COVID-19 pandemic constitutes a "disaster." SR10-13 Pursuant to that declaration, Defendant issued a series of Executive Orders, the relevant effect of which was to require individuals such as the Plaintiff to stay at home except for what Defendant decreed were "essential activities" (the "Stay At Home Directive"). *See, e.g.*, SR14-22; SR23-25.

2. On April 1, 2020, Defendant issued yet another Executive Order, the pertinent effect of which was to extend the Stay At Home Directive through April 30, 2020. On April 30, 2020, Defendant, yet again, extended the Stay At Home Directive for a further 30 days.

3. The Plaintiff filed an action against Defendant on April 23, 2020, seeking (a) a declaration that Defendant's authority to exercise his so-called emergency powers expired on April 8, 2020 and (b) an injunction preventing enforcement of the Stay At Home Directive against the Plaintiff. SR2-8

4. In tandem with his complaint, Plaintiff sought a temporary restraining order and preliminary injunction, both of which would have the effect of exempting Plaintiff from Defendant's Stay At Home Directive. SR37-40

5. In his complaint and request for a TRO, Plaintiff contended that Defendant lacked authority to issue the relevant executive orders to the extent they had a duration exceeding 30 days following the March 9, 2020, disaster declaration. The relevant statute,

which is part of the Illinois Emergency Management Agency Act (20 ILCS 3305/1 *et seq.*) provides that “[i]n the event of a disaster . . . the Governor may, by proclamation declare that a disaster exists. Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers . . .” 20 ILCS 3305(7). Since the Executive Orders were expressly and solely predicated on section 3305, Plaintiff sought a determination that Defendant exceeded his statutory authority by issuing Executive Orders that extended well beyond the statutory 30-day period.

6. The Circuit Court, Clay County, Illinois, with Respondent presiding, conducted a hearing on Plaintiff’s request for a TRO on April 27, 2020. At the conclusion of that hearing, the Circuit Court entered a TRO in favor of Plaintiff and against Defendant. SR243 Under the terms of that Order, the Defendant and his delegees were enjoined from enforcing the March 20, 2020 Executive Order and any further Executive Orders forcing Plaintiff to isolate and quarantine in his home.

7. Defendant immediately appealed the circuit court’s decision, and further sought a direct appeal to this Court as well as entry of a supervisory order under Rule 383.

8. Following submission of Defendant’s notice of appeal, Plaintiff agreed to entry of an Order vacating the TRO, and on May 1, 2020, the Fifth District Appellate Court granted that request, and the TRO is dissolved, vacated and of no further force or effect. The Defendant then withdrew his request for a direct appeal of the TRO and his Rule 383 request for summary reversal of the Order.

9. Even though there is no longer a circuit court order to which he can tether his appeal, Defendant persists in his request that “this Court exercise its supervisory authority to resolve the underlying legal question presented by this case . . .” *Petitioner’s Supplemental Emergency Motion for Supervisory Order Under Illinois Supreme Court Rule 383* at 5, ¶8.

10. As this Court recognizes,

[w]hile our supervisory authority may be expansive, it is invoked with restraint. That a lower court has declared a statute unconstitutional does not, by itself, furnish sufficient justification for us to review that decision in the exercise of our supervisory authority where, as here, jurisdiction is otherwise lacking . . . We exercise our supervisory authority only under exceptional circumstances . . . More specifically, we have held that supervisory orders will be used “only if the normal appellate process will not afford adequate relief and the dispute involves a matter important to the administration of justice, or where intervention is necessary to keep an inferior court or tribunal from acting beyond the scope of its authority.

*Vasquez Gonzales v. Union Health Seros, Inc.*, 2018 IL 123025, ¶17 (internal citations omitted). In that case, the Court concluded exercise of its supervisory authority was appropriate since the circuit court had deviated from procedures necessary essential to a declaration that a statute is unconstitutional:

[W]e have reached this conclusion not because the substantive constitutional principles underlying the circuit court’s ruling have particular significance . . . [W]e have elected to proceed because, in our view, the circuit court’s ruling has demonstrated a need for us to once again provide guidance on a matter of considerable importance to the administration of justice: the procedures that must be following and the standards that should be applied before a circuit court declares a statute unconstitutional.

*Id.* at ¶18.

11. In view of the limitations on its supervisory authority, this Court will not exercise its supervisory authority under Rule 383 to simply expedite the underlying litigation or to resolve a controlling issue of law, including the constitutionality of a statute. *The Carle Foundation v. Cunningham Twp.*, 2017 IL 120427, 89 N.E. 3d 341 (2017). In that case, this Court found that it lacked appellate jurisdiction under Rule 304(a), and further declined a request to exercise supervisory authority. In connection with the interlocutory appeal, this Court found that the circuit court's decision involved resolution of an issue of law, and not resolution of a claim, and, therefore, appellate jurisdiction was lacking under Rule 304(a): "Equally problematic is the fact that count II of the fourth amended complaint in no way seeks 'an immediate and definitive determination of the parties' right.' On the contrary, it seeks only a declaration as to what law the circuit court will apply in the course of determining those rights." *Id.* at ¶29. In addition, the Court refused to exercise its supervisory authority, notwithstanding the parties' assertions that "an authoritative resolution as to [the relevant statute's] constitutionality will provide guidance both to the Department of Revenue and other courts in proceedings involving similar exemption claims brought by Illinois hospitals." *Id.* at 32.

12. In the same vein, this Court has made it clear it will not intervene under Rule 383 simply because one party disagrees with a decision of the circuit court:

While the State may not agree with the decision the circuit court ultimately reached, this is not the type of situation where the exercise of our supervisory authority would be appropriate. Just as *mandamus* will not lie under ordinary circumstances to regulate discovery or even to correct abuses of discretion by trial courts in matters of discovery, supervisory relief is not available in such circumstances either. We will invoke our supervisory authority only under exceptional circumstances.

*People ex rel. Birkett v. Bakalis*, 196 Ill.2d 510, 752 N.E.2d 1107, 1110 (2001). See also *People ex rel. Partee v. Murphy*, 133 Ill.2d 402, 550 N.E.2d 998 (1990) (the Court will not exercise its supervisory powers to issue advisory opinions).

13. Thus, this Court has invoked its supervisory authority in contexts involving manifest errors in process employed in the lower courts and where the lower courts have abused their discretion. See *In re Estate of Funk*, 221 Ill.2d 30 (2006) (reversing a judgment based, in part, on an accounting submitted by an entity not authorized under the Probate Act to act for an estate); *Vasquez Gonzalez, supra* (the circuit court employed an inappropriate process for evaluating the constitutionality of a statute); *City of Urbana v. Andrew N.B.*, 211 Ill.2d 456, 813 N.E.2d 132 (2004) (trial courts employed incorrect procedure).

14. In the instant case, there is no hint Respondent abused his discretion or employed a procedure inimical to or in violation of applicable statutes or precedents. The only articulated basis for the instant motion is Defendant's strenuous disagreement with the circuit court's construction of applicable provisions of the Illinois Emergency Management Act. There is absolutely nothing in this Court's decisions so much as hinting that an allegedly erroneous construction of a statute is a basis for the extraordinary relief contemplated in Rule 383.

15. Defendant's discussion of the exceptions of the mootness doctrine are of no moment here, and the authority he relies upon is inapposite. As noted above, Plaintiff agreed to vacatur of the TRO on April 30, 2020, and the appellate court, in fact, vacated the TRO on May 1, 2020. Thus, there is no question this appeal is moot. Nonetheless,

Defendant contends that the exceptions to the mootness doctrine apply here and support exercise of this Court's authority under Rule 383. However, the authorities Defendant relies upon concerning exception to the mootness doctrine all relate to appellate review of decisions and have nothing to do with Rule 383. *See, e.g., In re James W.*, 2014 IL 114483 (concerning mootness in the context of appellate review); *In re Benny M.*, 2017 IL 120133 (mootness in the context of appellate review); *In re Alfred H.H.*, 233 Ill.2d 345 (2009) (concerning appellate review).

16. In this case, Defendant withdrew his request for direct appeal to this Court upon entry of the appellate court's order vacating the TRO. Having abandoned his request for appellate review, Defendant cannot now rely on the exceptions to the mootness doctrine to support his request for supervisory review.

17. Nothing in this Court's Rule 383 jurisprudence, indicates the Rule should be used to provide guidance throughout the State concerning the construction of a statute. To the contrary, the Court has demonstrated the purpose of the Rule is to "matter[s] important to the administration of justice, or where intervention is necessary to keep an inferior court or tribunal from acting beyond the scope of its authority." Neither of those predicates exist here: the administration of justice is certainly not implicated here, and there is no suggestion Respondent exceeded his authority, and in the event the issue arises in other proceedings, Defendant is certainly able to argue in favor of a construction of the Illinois Emergency Management Act that diverges from that adopted by the Respondent.



18. Defendant makes much of the fact that Plaintiff did not dismiss his complaint with prejudice, but, instead, agreed only to vacatur of the TRO. Defendant then posits that the same issues surrounding the TRO may arise once again. First, there is no certainty that will be the case. In addition, if, in fact, Plaintiff seeks similar relief in the future, the Defendant can pursue his defenses and appellate remedies in that context. And, other than Defendant's conclusory statements, there is no basis for concluding appellate remedies at that time will be ineffective.

19. In short, Defendant has not provided this Court with a basis for exercise of its supervisory authority under Rule 383, and the instant motion should be denied.

20. Without question, COVID-19 is pernicious and has wrought hardship throughout Illinois and the world. Scores of people have fallen ill and many have died. Economies have been devastated. Millions of individuals have lost their livelihoods. Businesses have been told to shutter their doors and now face the prospect of bankruptcy. It is undeniable this situation is unique and presents challenges to governments, businesses and individuals, the likes of which they have never seen. Nonetheless, those situations, horrific and daunting as they may be, do not justify a departure from established principles and precedent.

WHEREFORE, DARREN BAILY respectfully requests and prays that this Court enter its Order denying Defendant's request for a stay of proceedings in the circuit court and further decline to reverse the circuit court's decision holding that Plaintiff is entitled to a TRO.

Respectfully submitted:

SILVER LAKE GROUP, LTD.

/s/ Steven M. Wallace

By:

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Counsel to Darren Bailey

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on May 8, 2020, I electronically filed the foregoing Objection to Petitioner's Emergency Motion for Supervisory Order Under Illinois Supreme Court Rule 383 with the Clerk of the Illinois Supreme Court by using the Odyssey EfileIL system.

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

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I further certify that another participant in this appeal, named below, is not a registered service contact on Odyssey EfileIL system, and thus I have caused the foregoing document to be mailed First Class Mail, postage prepaid, by having it placed in the U.S. Mail at 132 N. Kansas Street, Edwardsville, Illinois 62025 on May 8, 2020 and addressed to:

The Honorable Michael D. McHaney  
Clay County Courthouse  
111 Chestnut  
Louisville, IL 62858

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

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