

No. 4-22-0090

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

ROBERT GRAVES and KIM GRAVES)	Interlocutory Appeal from the
As Parents and Guardian of K.G.,)	Circuit Court from the Seventh
Et al.,)	Judicial Circuit, Sangamon County
Plaintiffs-Respondents,)	Illinois.
)	
vs.)	
)	No. 2021-CH-500003
JAY ROBERT PRITZKER, in his capacity)	
As Governor of Illinois,)	
Et al.,)	
Defendants-Petitioners)	
)	The Honorable
PLAINFIELD COMMUNITY)	RAYLENE D. GRISCHOW
CONSOLIDATED DISTRICT #202,)	Judge Presiding
Et al.,)	

**EMERGENCY MOTION TO STRIKE STATE’S MEMORANDUM IN SUPPORT OF
RULE 307(d) AND STRIKE STATE-PARTIES RECORD FILED HEREIN**

INTRODUCTION

On February 4th, 2022, the Honorable Judge Raylene D. Grischow entered a Temporary Restraining Order following arguments that were heard on January 3rd, 5th, 19th, and 20th, 2022. The State-Defendant’s subsequently filed a Petition for Review of Temporary Restraining Order (TRO) under Illinois Supreme Court Rule 307(d) on February 7th, 2022. The State-Defendant’s also filed a Memorandum in Support of their Rule 307(d) Petition for this Court’s consideration.

DISCUSSION

**A. THIS COURT SHOULD STRIKE AND VACATE THE STATE-
DEFENDANT’S MEMORANDUM IN SUPPORT OF THEIR 307(D) PETITION
IN IT’S ENTIRETY AS IT VIOLATES ILLINOIS SUPREME COURT RULE
307(D).**

Illinois Supreme Court Rule 307(d) specifically states “a Petitioner may file a memorandum supporting the petition which shall not exceed 15 pages or, alternatively, 4,500 words.” The Petitioner’s Petition exceeds both the page limit, as well as the word count¹, as set forth in the in Rule 307(d). Illinois Supreme Court rules must be obeyed and enforced as written; they are not merely suggestions or aspiration. *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 494, 270 Ill.Dec. 18, 782 N.E.2d 212 (2002). In instances in which Supreme Court Rules are violated, this Court is authorized to strike a memorandum as it deems appropriate.

Because the State-Defendant’s violated Rule 307(d), this Court should strike the supporting memorandum filed herein.

**B. THE COURT SHOULD STRIKE FACTS AND DOCUMENTS
REFERENCED BY THE STATE- DEFENDANT’S NOT MEMORIALIZED IN
THE RECORD OF PROCEEDINGS.**

Throughout the Memorandum filed by the Petitioners, they reference facts that are not memorialized in the record of proceedings of the TRO hearing. Further, the Petitioners attached improper documentation to the record of proceedings that were not a part of the circuit court record. “Without adequate support in the record, an allegation included in the statement of facts contained in an appellate brief lies outside the record and such unsupported factual references should be stricken and not considered” *Coleman v. Windy City Balloon Port, Ltd.*, 160 Ill. App. 3d 408, 419, 112 Ill. Dec. 92, 513 N.E. 2d. 506 (1987). Any controversy as to whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by that court and the record made to conform to the truth. See Ill. Sup. Ct. R. 329. In review of the Memorandum, the following facts and documents were referenced that are not memorialized nor contained in the record or proceedings:

¹ The word count of Petitioner’s Petition is shown to exceed 4,600 words.

1. Emergency Motion to Stay Temporary Restraining Order. *See* SR1888 – SR1894. Said Motion is not file-stamped and was not made a part of this proceeding, nor was it presented to the circuit court for hearing in this matter. As such, said documents should be stricken associated with this matter.
2. Emails between Thomas Verticchio and Judge Raylene Grischow dated February 4th, 2022 and February 7th, 2022. *See* SR1977 – SR1979. Such documents are not file-stamped and were not associated with the TRO proceedings and should be stricken herein.
3. See Footnote 1 and 2 on page 3 of State Defendant’s Memorandum. No reference was made to mainstream media sources in the State’s Answer to TRO, nor were such provided to the Court. No CDC statistics were provided to the Court relative to transmission rates of children within schools supporting the State’s position.
4. The statement “Covid-19 was not an emergency when the rule was adopted in September 2021 ignores that cases and hospitalizations were rising as the new school year was beginning.” *See* page 12, paragraph 2, Sentence 1 of Petitioner’s Memorandum. It is specifically noted that cases were declining in Illinois as of September, 2021 when the emergency rules were adopted. *See* paragraph 17 of SR269. Such allegations made by the State Defendants are in contradiction to the supporting record and should be stricken.
5. “(C)hildren are currently vaccinated at lower rates than adults, *meaning they are more susceptible to contracting and spreading Covid-19, not only among themselves, but also to their teachers, parents, and community members.*” *Emphasis Added.* *See* page 16, paragraph 1, sentence 2, of Petitioner’s Memorandum. Nothing in the record in any fashion references a child’s susceptibility of contracting and/or spreading Covid-19 in any fashion. These are merely conclusory statements made by the Petitioners not supported by facts therein and should be stricken.

6. See Footnote 6 on page 16 of State Defendant's Memorandum. No reference was made to the status of hospital utilizations in Illinois and the strain of hospitalizations and such is not memorialized in the record and should be stricken herein.

The Petitioners are clearly in violation of Supreme Court Rule trying to attach documents and insert facts for this Court's review, which are not a part of the record in the trial court. At a minimum, the Petitioners should have asked this Court to supplement the record pursuant to IL. Sup. Ct. R. 329. Because the foregoing, the facts, allegations, and documents not supported by should be disregarded by this Court.

CONCLUSION

The Plaintiffs-Respondents seek an Order from this Court striking Petitioner's memorandum in its entirety, or in the alternative, striking that part of the Petitioner's Memorandum not supported by the record as shown in paragraph 3-6 of subparagraph B, as well as that part of the record filed as SR1888 – SR 1894 and SR1977 - SR-1979, and for such other relief as this Court finds equitable and just.

Respectfully Submitted,

Dated: 2/8/2022

/s/ William J. Gerber
By: _____
William J. Gerber, their attorney

Prepared By:
William J. Gerber
Attorney at Law
Law Office of William J. Gerber, LLC
210 West Oak Street
Fairbury IL 61739
Telephone: 815.692.2224
Facsimile: 815.692.8227
Email: will@gerberlaw.net
ARDC #: 6303375

CERTIFICATE SERVICE

I certify that on February 9th, 2022, I electronically filed the foregoing Emergency Motion with the Circuit Court of the Illinois Appellate Court, Fourth Judicial District, and further certify that the following counsel in this matter were served by transmitting a copy from my e-mail address to the primary and secondary e-mail addresses designated by those participants.

Thomas J. Verticchio
Isaac F. Jones
Jeffrey J. Vandam
Jonathaan J. Sheffield
Assistant Attorney Generals
100 W. Randolph St.
12th Floor
Chicago, IL 60601
thomas.verticchio@ilag.gov
Isaac.freilichjones@ilag.gov
Jeffrey.vandam@ilag.gov
jonathan.sheffield@ilag.gov
Counsel for State Defendants

Thomas DeVore
tom@silverlakelaw.com
*Counsel for: Jeremy Pate; Mary and Emily Hughes; and
Plaintiffs in Julieanne Austin et al.*

Shelli L. Anderson
sla@franczek.com
Caroline K. Kane
ckk@franczek.com
*Counsel for Plainfield Community Consolidated District #202 and Lane Abrell, as
Superintendent of District #202*

Jason Manning
jmanning@hlerk.com
Counsel for Yorkville Community Unit School District #115

By: /s/ William J. Gerber
Attorney for Plaintiffs-Respondents

William J. Gerber
Law Office of William J. Gerber, LLC
210 W. Oak Street
Fairbury IL 61739
Telephone: 815.692.2224
Facsimile: 815.692.4223
Email: will@gerberlaw.net
ARDC: 6303375

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CONSOLIDATED DISTRICT #202,)	Judge Presiding
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ORDER

THIS CAUSE COMING TO BE HEARD on motion of Plaintiffs-Respondents, for an emergency motion to strike the state's 307(d) memorandum and the record filed herein; due notice having been given and the court being fully advise;

IT IS HEREBY ORDERED that the State-Defendant's Memorandum in Support of their 307(d) Petition is stricken in its entirety as it is in violation of Supreme Court Rule 307(d).

IT IS HEREBY ORDERED that the following items are stricken from the State's Record and Memorandum as they are not substantiated by the circuit court file herein:

- A. Emergency Motion to Stay Temporary Restraining Order. SR1888 – SR1894;
- B. Emails between Thomas Verticchio and Judge Raylene Grischow dated February 4th, 2022 and February 7th, 2022. *See* SR1977 – SR1979;
- C. Footnote 1 and 2 on page 3 of State Defendant's Memorandum;
- D. The statement "Covid-19 was not an emergency when the rule was adopted in September 2021 ignores that cases and hospitalizations

were rising as the new school year was beginning.” See page 12, paragraph 2, Sentence 1 of Petitioner’s Memorandum.

- E. The statement that “(C)hildren are currently vaccinated at lower rates than adults, *meaning they are more susceptible to contracting and spreading Covid-19, not only among themselves, but also to their teachers, parents, and community members.*” *Emphasis Added.* See page 16, paragraph 1, sentence 2, of Petitioner’s Memorandum.

Dated: _____

JUSTICE

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I certify that on February 9th, 2022, I electronically filed the foregoing Order with the Circuit Court of the Illinois Appellate Court, Fourth Judicial District, and further certify that the following counsel in this matter were served by transmitting a copy from my e-mail address to the primary and secondary e-mail addresses designated by those participants.

Thomas J. Verticchio
Isaac F. Jones
Jeffrey J. Vandam
Jonathaan J. Sheffield
Assistant Attorney Generals
100 W. Randolph St.
12th Floor
Chicago, IL 60601
thomas.verticchio@ilag.gov
Isaac.freilichjones@ilag.gov
Jeffrey.vandam@ilag.gov
jonathan.sheffield@ilag.gov
Counsel for State Defendants

Thomas DeVore
tom@silverlakelaw.com
*Counsel for: Jeremy Pate; Mary and Emily Hughes; and
Plaintiffs in Julieanne Austin et al.*

Shelli L. Anderson
sla@franczek.com
Caroline K. Kane
ckk@franczek.com
*Counsel for Plainfield Community Consolidated District #202 and Lane Abrell, as
Superintendent of District #202*

Jason Manning
jmanning@hlerk.com
Counsel for Yorkville Community Unit School District #115

By: /s/ William J. Gerber
Attorney for Plaintiffs-Respondents

William J. Gerber
Law Office of William J. Gerber, LLC
210 W. Oak Street
Fairbury IL 61739
Telephone: 815.692.2224
Facsimile: 815.692.4223
Email: will@gerberlaw.net
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