
v.)
))
JAY ROBERT PRITZKER, in his)
capacity as Governor of Illinois,)
et al.,)
))
Defendants-Petitioners,)
))
and)
))
PLAINFIELD COMMUNITY)
SCHOOL DISTRICT #202, et al.,)
))
Defendants.)
))

))
MARK AND EMILY HUGHES as the)
parents and guardians of students)
G.H. and L.H., as well as on behalf of)
all parents and guardians of students)
similar situated.,)
))
Plaintiffs-Respondents,)
))
v.)
))
HILLSBORO COMMUNITY)
SCHOOL DISTRICT #3, a body)
politic and corporate, DAVID)
POWELL as Superintendent of)
HILLSBORO COMMUNITY)
SCHOOL #3,)
))
Defendants.)
))
and)
))
ILLINOIS DEPARTMENT OF)
PUBLIC HEALTH and DR. NGOZI)
EZIKE, in her official capacity as)
Director of the Illinois Department of)
Public Health, ILLINOIS STATE)

BOARD OF EDUCATION, DR.)
CARMEN I. AYALA in her official)
capacity as Director of the Illinois)
State Board of Education,)
GOVERNOR JAY ROBERT)
PRITZKER, in his official capacity,)
)
Defendants-Petitioners)

MATTHEW ALLEN, as well as)
on behalf of all other educators)
similarly situated, *et al.*,)
)
Plaintiffs-Respondents,)

v.)

ILLINOIS DEPARTMENT OF)
PUBLIC HEALTH, *et al.*,)
)
Defendants-Petitioners,)

and)

THE BOARD OF EDUCATION OF)
NORTH MAC COMMUNITY UNIT)
SCHOOL DISTRICT #34, a body)
politic and corporate, *et al.*,)
)
Defendants.)

**STATE DEFENDANTS-PETITIONERS' COMBINED RESPONSE TO
EMERGENCY MOTIONS TO STRIKE MEMORANDA, OR CERTAIN
FACTS AND DOCUMENTS REFERENCED THEREIN, AND PARTS OF
THE SUPPORTING RECORDS IN SUPPORT OF RULE 307(D)
PETITIONS**

Defendants-Petitioners Governor JB Pritzker, Illinois State Board of
Education (“ISBE”), Illinois Department of Public Health (“IDPH”), Dr. Ngozi

Ezike, in her official capacity as IDPH Director, and Dr. Carmen I. Ayala, in her official capacity as ISBE Superintendent (collectively, “State defendants”) respond to plaintiffs-respondents’ motions to strike State defendants’ memoranda, or certain facts and documents referenced therein, and parts of the supporting records filed in support of their Illinois Supreme Court Rule 307(d) petitions for review of the temporary restraining order (TRO) entered on February 4, 2022. The attached verifications support this response. Plaintiffs ask this court to strike State defendants’ memoranda, or strike or disregard certain facts and documents referenced in those memoranda, and strike portions of the supporting records, for two reasons. This court should deny their requests.

First, plaintiffs wrongly assert that State defendants’ memoranda exceeded the word limit in Rule 307(d)(2), which permits up to 4,500 words. Plaintiffs assert that the memoranda are in excess of this word court, yet they do not explain how they arrived at the word counts they attribute to the memoranda. *See Graves v. Pritzker*, No. 4-22-0090, Plaintiffs-Respondents’ Emergency Mot. to Strike, at 2 n.1; *Austin v. Pritzker*, No. 4-22-0092, Plaintiffs-Respondents’ Emergency Mot. to Strike Memorandum at 1; *Hughes v. Pritzker*, No. 4-22-0093, Plaintiffs-Respondents’ Emergency Mot. to Strike Memorandum, at 2; *Allen v. Pritzker*, No. 4-22-0094, Plaintiffs-Respondents’ Emergency Motion To Strike State’s Memorandum, at 2 n.1.

On the contrary, State defendants represented to this court at the time of filing that the word count in the memoranda were 4,494 words (*Graves*), 4,497 words (*Austin*), 4,495 words (*Hughes*), and 4,429 words (*Allen*). Verification of Jonathan J.

Sheffield at 1; Verification of Carson R. Griffis at 1; Verification of Leigh J. Jahnig at 1. They arrived at these numbers by counting all words below the captions and above the signature blocks in the memoranda, *id.*, as Illinois Supreme Court Rule 341 contemplates for briefs. *See also* Ill. Sup. Ct. 330(a)(6) (“caption” includes document’s title). However, unlike Rule 341, Rule 307 does not set forth the method for counting and a certificate of compliance with the word or page limit is not required. Based on instructions from this court’s clerk, State defendants reported the word count through the Odyssey e-filing system’s “Comments to Court” function. Verification of Jonathan J. Sheffield at 1; Verification of Carson R. Griffis at 1; Verification of Leigh J. Jahnig at 1.

If a different method of arriving at the word count should have been used, State defendants request that this court nonetheless accept the memoranda as filed, since the proper word-count method is not clear from the plain language of Rule 307(d) and has not been addressed by the appellate courts. And this court should reject plaintiffs’ requests to strike the memoranda entirely, as they seek to impose “too harsh a sanction to redress” a violation of Rule 307(d)(2), “especially where the violation does not hinder or preclude [judicial] review.” *Fox Fire Tavern, LLC v. Pritzker*, 2020 IL App (2d) 200623, ¶ 16; *see also Harper v. Missouri Pac. R.R. Co.*, 264 Ill. App. 3d 238, 246-47 (5th Dist. 1994) (page-limitation provision of Rule 307(d) not jurisdictional).

Second, plaintiffs request that this court strike and/or disregard certain facts and documents referenced in State defendants’ memoranda and included in their

supporting records because they were not in the record before the circuit court. *See Graves* Plaintiffs-Respondents’ Emergency Mot. to Strike, ¶¶ 2-4; *Austin* Emergency Mot. to Strike Part of the Record (filed Feb. 8, 2022, 10:36 a.m.), ¶¶ 5-10; *Austin* Emergency Mot. to Strike Part of the Record (filed Feb. 8, 2022, 3:33 p.m.), ¶¶ 5-10; *Hughes* Emergency Mot. to Strike Part of the Record (filed Feb. 8, 2022, 10:53 a.m.), ¶¶ 1-10; *Hughes* Emergency Mot. to Strike Part of the Record (filed Feb. 8, 2022, 3:34 p.m.), ¶¶ 1-10; *Allen* First Emergency Mot. to Strike Part of the Record (filed Feb. 8, 2022, 11:17 a.m.), ¶¶ 1-10; *Allen* Second Emergency Mot. to Strike Part of the Record (filed Feb. 8, 2022, 4:11 p.m.), ¶¶ 1-9. However, as explained in State defendants’ memoranda, the facts targeted by plaintiffs were subject to judicial notice. *See Graves* State Defendants’ Memoranda at 3 n.1 (stating that courts “may take judicial notice of the information on government websites cited in this memorandum, as well as from mainstream internet sources,” and citing *People v. Johnson*, 2021 IL 125738, ¶ 54, and *Kopnick v. JL Woode Mgmt. Co.*, 2017 IL App (1st) 152054, ¶ 26); *accord Austin* State Defendants’ Memoranda, at 3 n.1 (same); *Hughes* State Defendants’ Memoranda, at 3 n.1 (same); *Allen* State Defendants’ Memorandum, at 3 n.1 (same). And a reviewing court may take judicial notice of readily verifiable facts “if taking judicial notice will aid in the efficient disposition of a case,” “even if judicial notice was not sought in the trial court.” *Illinois Dep’t of Hum. Servs. v. Porter*, 396 Ill. App. 3d 701, 725 (4th Dist. 2009) (internal quotations omitted). Nor are supporting records restricted to documents filed in the circuit court. *See* Ill. Sup. Ct. R. 328

(supporting record may include parts of the “trial court record” and “any other matter necessary to the application made”).

Also as part of the supporting record, State defendants properly submitted emergency motions to stay the TROs that they filed in the circuit court on Friday, February 4, 2022, shortly after the TROs were issued at around 5:00 p.m. that same day. SR1888-94.¹ Plaintiffs assert that these documents should be stricken from the supporting record because they not file stamped, “made part of this proceeding,” and “presented to the circuit court for hearing.” Plaintiffs-Respondents’ Emergency Mot. to Strike, ¶ 1; *see also Austin* Emergency Mot. to Strike Part of the Record (filed Feb. 8, 2022, 3:33 p.m.), ¶¶ 5-7; *Hughes* Emergency Mot. to Strike Part of the Record (filed Feb. 8, 2022, 3:34 p.m.), ¶¶ 5-7; *Allen* Second Emergency Motion to Strike Part of the Record (filed Feb. 8, 2022, 4:11 p.m.), ¶¶ 5-7. But these motions were filed using Odyssey eFileIL and a courtesy copy was provided to the circuit court via e-mail. *Graves* SR1978; *Austin* SR5734; *Hughes* SR2240; *Allen* SR3346. The circuit court responded to the motion by e-mail on Monday, February 7, at around 8:30 a.m., stating that it was declining to rule on the stay motions because, in the court’s mistaken view, it lacked jurisdiction. *Graves* SR1977-79; *Austin* SR5733; *Hughes* SR2239; *Allen* SR3345. State defendants properly included this correspondence in the supporting records to support their requests for a stay from this court because it

¹ The motion was filed this day according to the Sangamon County circuit court’s online docket in *Graves*, *Austin*, *Hughes*, and *Allen*, available at: <http://records.sangamoncountycircuitclerk.org/sccc/DisplayDocket.sc>. And this court may take judicial notice of that online docket. *Bd. of Educ. of Richland Sch. Dist. No. 88A v. City of Crest Hill*, 2021 IL 126444, ¶ 5.

demonstrated that the circuit court “has failed to afford the relief [they] requested.” Ill. Sup. Ct. R. 305(d); *see also* Ill. Sup. Ct. R. 328 (supporting record may include documents filed in circuit court and “any other matter necessary to the application made”).

And the circuit court’s e-mail was properly included in the record for the additional reason that it was the functional equivalent of an order with respect to the stay motions. *See Marsh v. Ill. Racing Bd.*, 179 Ill. 2d 488, 491 (1997) (determining what constitutes an order under Rule 307(a)(1) by “look[ing] to the substance of the action, not its form”) (quoting *In re A Minor*, 127 Ill.2d 247 (1989)); *see also* Ill. Sup. Ct. R. 321 (record on appeal includes any “order entered,” without reference to form of entry).

Accordingly, State defendants request that this court deny the emergency motions to strike their memoranda, or certain facts and documents referenced therein, filed in support of their Rule 307(d) petitions for review of the temporary restraining order entered by the circuit court on February 4, 2022.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

By: /s/ Jonathan J. Sheffield
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VERIFICATION BY CERTIFICATION

I, JONATHAN J. SHEFFIELD, state the following:

1. I am a citizen of the United States over the age of 18. My current business address is 100 West Randolph Street, 12th Floor, Chicago, Illinois 60601. I have personal knowledge of the facts stated in this verification by certification. If called upon, I could testify competently to these facts.

2. I am an Assistant Attorney General in the Civil Appeals Division of the Office of the Attorney General of the State of Illinois and have been assigned to represent State Defendants-Petitioners Illinois Department of Public Health (“IDPH”); Dr. Ngozi Ezike, in her official capacity as IDPH Director; Illinois State Board of Education (“ISBE”); Dr. Carmen Ayala, in her official capacity as Superintendent of ISBE; and Governor JB Pritzker, in his official capacity as Governor of the State of Illinois, in the interlocutory appeal under Illinois Supreme Court Rule 307(d) in *Graves v. Pritzker*, No. 4-22-0090, which has been consolidated with *Austin v. Pritzker*, No. 4-22-0092, *Hughes v. Pritzker*, No. 4-22-0093, and *Allen v. Pritzker*, No. 4-22-0094, all of which are pending before this court.

3. I was the attorney responsible for drafting and filing the memorandum in support of the petition for review filed in *Graves* on February 7, 2022.

4. Before filing the memorandum in *Graves*, I confirmed that it complied with the 4,500-word limit in Illinois Supreme Court Rule 307(d) using Microsoft Word 2016. Counting all words in memoranda below the caption and above the signature block, including headings and footnotes, the memorandum contained 4,494 words.

5. Based on instructions attorneys from our Division have previously received from this court’s clerk, I informed the clerk of the word count for the *Graves* memoranda by using the Odyssey e-filing system’s “Comments to Court” function.

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.

Executed on February 10, 2022.

/s/ Jonathan J. Sheffield
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VERIFICATION BY CERTIFICATION

I, CARSON R. GRIFFIS, state the following:

1. I am a citizen of the United States over the age of 18. My current business address is 100 West Randolph Street, 12th Floor, Chicago, Illinois 60601. I have personal knowledge of the facts stated in this verification by certification. If called upon, I could testify competently to these facts.
2. I am an Assistant Attorney General in the Civil Appeals Division of the Office of the Attorney General of the State of Illinois and have been assigned to represent State Defendants-Petitioners Illinois Department of Public Health (“IDPH”); Dr. Ngozi Ezike, in her official capacity as IDPH Director; Illinois State Board of Education (“ISBE”); Dr. Carmen Ayala, in her official capacity as Superintendent of ISBE; and Governor JB Pritzker, in his official capacity as Governor of the State of Illinois; in the interlocutory appeals under Illinois Supreme Court Rule 307(d) in *Austin v. Pritzker*, No. 4-22-0092, and *Hughes v. Pritzker*, No. 4-22-0093, which have been consolidated with *Graves v. Pritzker*, No. 4-22-0090, and *Allen v. Pritzker*, No. 4-22-0094, all of which are pending before this court.
3. I was the attorney responsible for drafting and filing the memoranda in support of the petitions for review filed in *Austin* and *Hughes* on February 7, 2022.
4. Before filing the memoranda in *Austin* and *Hughes*, I confirmed that they complied with the 4,500-word limit in Illinois Supreme Court Rule 307(d) using Microsoft Word 2016. Counting all words in memoranda below the caption and above the signature block, including headings and footnotes, the *Austin* memorandum contained 4,497 words and the *Hughes* memorandum contained 4,495 words.
5. Based on instructions attorneys from the Civil Appeals Division have previously received from this court’s clerk, I informed the clerk of the word counts for the *Austin* and *Hughes* memoranda by using the Odyssey e-filing system’s “Comments to Court” function.

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.

Executed on February 10, 2022.

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VERIFICATION BY CERTIFICATION

I, LEIGH J. JAHNIG, state the following:

1. I am a citizen of the United States over the age of 18. My current business address is 100 West Randolph Street, 12th Floor, Chicago, Illinois 60601. I have personal knowledge of the facts stated in this verification by certification. If called upon, I could testify competently to these facts.

2. I am an Assistant Attorney General in the Civil Appeals Division of the Office of the Attorney General of the State of Illinois and have been assigned to represent State Defendants-Petitioners Illinois Department of Public Health (“IDPH”); Dr. Ngozi Ezike, in her official capacity as IDPH Director; Illinois State Board of Education (“ISBE”); Dr. Carmen Ayala, in her official capacity as Superintendent of ISBE; and Governor JB Pritzker, in his official capacity as Governor of the State of Illinois, in the interlocutory appeal under Illinois Supreme Court Rule 307(d) in *Allen v. Pritzker*, No. 4-22-0094, which has been consolidated with *Graves v. Pritzker*, No. 4-22-0090; *Austin v. Pritzker*, No. 4-22-0092; and *Hughes v. Pritzker*, No. 4-22-0093, all of which are pending before this court.

3. I was the attorney responsible for drafting and filing the memorandum in support of the petition for review filed in *Allen* on February 7, 2022.

4. Before filing the memorandum in *Allen*, I confirmed that it complied with the 4,500-word limit in Illinois Supreme Court Rule 307(d) using Microsoft Word 2016. Counting all words in memoranda below the caption and above the signature block, including headings and footnotes, the memorandum contained 4,429 words.

5. Based on instructions attorneys from the Civil Appeals Division have previously received from this court’s clerk, I informed the clerk of the word count for the *Allen* memoranda by using the Odyssey e-filing system’s “Comments to Court” function.

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.

Executed on February 10, 2022.

/s/ Leigh J. Jahnig
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CERTIFICATE OF FILING AND SERVICE

I certify that on February 10, 2022, I electronically filed the foregoing **State Defendants-Petitioners' Response to Emergency Motions to Strike Memoranda in Support of Rule 307(d) Petitions** with the Clerk of the Court for the Illinois Appellate Court, Fourth Judicial District, by using the Odyssey eFileIL system.

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

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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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