E-FILED
Transaction ID: 4-22-0090
File Date: 2/7/2022 12:17 PM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

No. 4-22-0090

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

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

STATE DEFENDANTS-PETITIONERS' MEMORANDUM IN SUPPORT OF RULE 307(d) PETITION FOR REVIEW OF TEMPORARY RESTRAINING ORDER

INTRODUCTION

In response to the Covid-19 pandemic, Defendant-Petitioner Governor JB Pritzker issued executive orders requiring students and school staff to wear masks inside schools and, if they test positive for or have been exposed to Covid-19, to stay home until it is safe for them to return. These requirements—which have been in place for nearly six months—allow schools to protect their students and staff while providing in-person learning to the most students possible. The circuit court drastically altered this status quo

by taking the extraordinary step of entering a temporary restraining order, which it described as a "Judgment" and impermissibly stated would remain in effect until trial, SR1886-87, that immediately halted the mask and exclusion requirements in 147 school districts across the State.

For several reasons, the circuit court had no basis to grant such extraordinary relief. First, the circuit court incorrectly held that plaintiffs were likely to prevail on the merits based on the Department of Public Health Act ("IPDH Act"), 20 ILCS 2305/1, *et seq*. The court concluded that section 2 of the IDPH Act compels State defendants to seek a court order to impose either the masking or exclusion requirements, but section 2(m) of that statute expressly states that it does not supersede the Governor's exercise of his emergency powers and, regardless, neither masking nor exclusion constitute a quarantine that would trigger the IDPH Act. Second, the court's finding of irreparable harm was based on plaintiffs' supposed rights under the IDPH Act, which, again, do not apply. Finally, the court abused its discretion in refusing to balance the harms caused by its TRO, especially since that TRO risks school staff shortages requiring full remote learning or school closures, hospitalizations, and deaths. This court, therefore, should vacate, reverse, and dissolve the TRO.

BACKGROUND

State defendants' response to Covid-19 in schools

In March 2020, the Governor proclaimed the Covid-19 pandemic a disaster in Illinois under the Illinois Emergency Management Agency Act ("IEMA Act"), 20 ILCS 3305/1 *et seq*. SR236. In recent months, cases have surged as a result of the Delta and

Omicron variants, including among school-aged children. SR1107.[1] Between June and December 2021, the case rate in Illinois for those under 20 increased from 11 per 100,000 to 556 per 100,000. *See* SR1107. And by January 29, 2022, infections of those under 20 were even worse, reaching 872 per 100,000.[2]

Throughout the pandemic, the Governor has issued executive orders responding to various aspects of the ongoing public health emergency.[3] Relevant here, the Governor issued Executive Order ("EO") 2021-18 and EO 2021-20 in August 2021, requiring Illinois schools to implement an indoor masking requirement. SR44-48. On September 17, the Governor issued EO 2021-24, which required schools to temporarily exclude from school grounds students who have (a) confirmed cases of Covid-19; (b) probable cases of Covid-19; (c) "close contacts" of confirmed or probable cases of Covid-19; or (d) symptoms consistent with Covid-19. SR49-56. Students temporarily excluded from school must be offered remote learning. SR49-56. Subsequent executive orders extended the masking and exclusion requirements, which are still in effect. *E.g.*, EO2021-30; EO 2021-32; EO 2022-03; EO 2022-04; SR4892-96.

These executive orders also authorized state agencies, including Defendant-Petitioner the Illinois Department of Public Health ("IDPH"), to promulgate emergency rules to effectuate the masking and exclusion requirements. Accordingly, IDPH filed an

---

[1] *See Daily Cases Change Over Time* (All Time), https://dph.illinois.gov/covid19.html. This court may take judicial notice of the information on government websites cited in this memorandum, as well as from mainstream internet sources. *See, e.g.*, *People v. Johnson*, 2021 IL 125738, ¶ 54; *Kopnick v. JL Woode Mgmt. Co.*, 2017 IL App (1st) 152054, ¶ 26.

[2] *See Weekly Age-Specific Case Report Per 100,000*, https://dph.illinois.gov/covid19/data.html.

[3] All of the Governor's executive orders and disaster proclamations can be found at https://www.illinois.gov/government/executive-orders.html.

Emergency Rule on September 17, 2021, *see* 45 Ill. Reg. 12123, because of the "significant public health crisis" caused by Covid-19*, id.* at 12123. SR306. In relevant part, IDPH's Emergency Rule clarified that "requiring . . . the wearing of masks, or excluding a Student . . . shall not constitute . . . quarantine under the [IDPH] Act," and provided that those actions may be taken by schools "without a court order or order by a local health authority." *Id.* at 12148. It also amended IDPH's definition of "quarantine" as that term is used in section 2 of the IDPH Act, to remove "exclusion of children from school" and "requirements for the use of devices . . . intended to limit disease transmission" from the definition of "quarantine." *Id*. at 12139-42.

The measures implemented by the Governor and IDPH are consistent with guidance from public health officials, who promote a layered approach—which includes masking and temporary exclusion of students likely exposed to Covid-19—to stop the spread of Covid-19 in schools. SR271–72. The Centers for Disease Control and Prevention ("CDC") and American Academy of Pediatrics recommend that everyone in K-12 schools wear a mask indoors because a significant portion of the student population is unvaccinated and because masking is proven to reduce transmission of the virus and protect those who are unvaccinated. SR270–71. Temporarily excluding students that likely have been exposed to Covid-19 adds an additional layer of protection beyond requesting that they stay home when they feel sick because people infected with Covid-19 can be asymptomatic, and those that become symptomatic can spread the virus before they display symptoms. SR269, SR271–72.

Circuit Court Proceedings

This appeal arises from *Graves v. Pritzker*, No. 21MR255, initiated in the circuit court of Kendall County on October 18, 2021, by parents of public-school students in two school districts. SR 1, 3-17.[4] In November 2021, the Illinois Supreme Court transferred this action to the circuit court of Sangamon County and consolidated it with others, but the circuit court assigned these actions different case numbers. SR914-16, SR970-71.

Plaintiffs' operative complaint claimed that State defendants and the school districts lacked authority to exclude students exposed to Covid-19 or require them to wear masks without following the procedures in section 2 of the IDPH Act because temporary exclusion and masking are forms of "quarantine" under that statute. SR14-24. They further claimed that the Governor's executive orders and IDPH's Emergency Rule were invalid. SR17-27.

Plaintiffs sought a TRO and preliminary injunction prohibiting State defendants from enforcing the exclusion or masking requirements based on their IDPH Act claim. SR206–07, SR211, SR215, SR229. Plaintiffs asserted that they would suffer irreparable harm without a TRO because they had "a right to insist [on] compliance with" the IDPH Act. SR214. In response, State defendants argued that plaintiffs were unlikely to succeed on their claims and had no clear right needing protection because the IDPH Act did not apply, their asserted harm was not irreparable, and they failed to show that the balance of hardships weighed in their favor. SR243-64.

---

[4] The Kendall County circuit court's online docket in *Graves* is available at: https://www.co.kendall.il.us/offices/circuit-clerk/. 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.

On February 4, 2022, the circuit court entered a TRO order prohibiting State defendants from enforcing EO 2021-18, EO 2021-24, or EO 2021-25, declaring IDPH's Emergency Rule "null and void," and prohibiting schools from implementing the temporary exclusion or masking requirements without acquiring an "order of quarantine" under section 2 of the IDPH Act. SR1859-87 (applying also in *Austin v. Board of Education of Community Unit School District #300*, No. 2021-CH-500002, *Hughes v. Hillsboro Community School District #3* No. 2021-CH-500005, and *Allen v. Board of Education of North Mac Community Unit School District #34*, No. 2021-CH-500007). Recognizing that plaintiffs had disclaimed any constitutional basis for seeking a TRO, *see* SR1877-78, the court concluded that plaintiffs had raised fair questions as to their "likelihood of success on the merits that the IDPH Act is the controlling law." SR1883. The court held that the "only way the due process provisions as found [in] the IDPH Act . . . would not apply is if the Governor suspended them" under section 7(1) of the IEMA Act, but he had not done so. SR1866-67.

Considering IDPH's Emergency Rule, the court stated that IDPH's conclusion that Covid-19 was an emergency was "suspect at best" because the virus had been in existence for more than a year before IDPH promulgated the rule and Delta "has been around since December of 2020." SR1870. The court opined that IDPH's true purpose was not to vitiate a threat to public safety, but rather avoid the IDPH Act's procedural safeguards. SR1870-72, SR1883. Because the court found the Emergency Rule was not validly

promulgated, it applied IDPH's definition of "quarantine" in effect before the rule's adoption and concluded that both exclusion and masking met that definition. SR1881.[5]

As for irreparable harm, the court found that plaintiffs had a "right to insist compliance with" the IDPH Act, citing precedent stating that a violation of constitutional rights constitutes irreparable harm. SR1879-80. As for the balance of hardships, the court recognized that State defendants and the school districts had offered evidence that "masking, vaccination or testing, and other mitigations are the best chance of controlling the spread of [Covid-19]," but discounted that evidence because such mitigations could be imposed if plaintiffs first received "due process under the law." SR1884. The court also determined that it was "not necessary" to "weigh the[ ] potential risks" of hardship to the defendants or the public because "such balancing has already been conducted by the Legislature" in passing the IDPH Act. SR1884-85.

State defendants filed an emergency motion to stay the TRO in the circuit court that same day, SR1888, and a notice of interlocutory appeal on February 6, SR1937. On February 7, the circuit court declined to rule on the stay motion, SR1977, and State defendants filed an emergency motion for a stay in this court.

DISCUSSION

This court should vacate the circuit court's TRO because it is premised on an incorrect reading of the IDPH Act. The procedures in section 2 of the IPDH Act do not apply here because the Governor's executive orders were issued under the IEMA Act, and the IDPH Act states that section 2 should not be read to supersede "response plans and

[5] The court discussed the validity of the joint guidance issued by IDPH and ISBE, but ultimately did not enjoin its enforcement. SR1872-73, SR1886-87.

procedures established pursuant to IEMA statutes." 20 ILCS 2305/2(m). In addition, IDPH's Emergency Rule, which was validly promulgated, clarifies that the masking and exclusion requirements do not constitute quarantines triggering the IDPH Act. Plaintiffs, therefore, are unlikely to prevail on the merits and their alleged irreparable harm—the curtailment of their rights under the IDPH Act—is nonexistent. By contrast, the circuit court's TRO will harm the public and plaintiffs themselves by encouraging the spread of Covid-19, risking deaths, hospitalizations, and school closures.

A. A TRO is an extraordinary remedy that may be granted only when a plaintiff establishes a clear right to emergency relief, and this court should review legal questions *de novo* and the circuit court's ultimate determination for an abuse of discretion.

"A temporary restraining order is an emergency remedy issued to maintain the status quo while the court is hearing evidence to determine whether a preliminary injunction should issue." *Delgado v. Bd. of Election Comm'rs*, 224 Ill. 2d 481, 483 (2007). A party must establish (1) a certain and clearly ascertainable right in need of protection, (2) a likelihood of success on the merits, (3) irreparable harm in the absence of injunctive relief, and (4) the lack of an adequate remedy at law. *Lo v. Provena Covenant Med. Ctr.*, 342 Ill. App. 3d 975, 987 (4th Dist. 2003). Before granting a TRO, the court must also balance the hardships, *Kanter & Eisenberg v. Madison Assocs.*, 116 Ill. 2d 506, 516 (1987), and in doing so, consider the public interests involved, *Clinton Landfill, Inc. v. Mahomet Valley Water Auth.*, 406 Ill. App. 3d 374, 378 (4th Dist. 2010).

De novo review applies to the issue of plaintiffs' likelihood of prevailing on their claims because those claims present questions of law requiring this court to interpret the IDPH Act, the IEMA Act, the Governor's executive orders, and IDPH's Emergency Rule. *See Fox Fire Tavern, LLC v. Pritzker*, 2020 IL App (2d) 200623, ¶ 11 (legal questions raised

in context of TRO appeal, including interpretation of statute, are reviewed *de novo*); *see also Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 16 (regulatory interpretation is a question of law). Abuse of discretion is the standard for the circuit court's determinations on the other TRO factors and its ultimate decision to enter a TRO. *Capstone Fin. Advisors v. Plywaczynski*, 2015 IL App (2d) 150957, ¶ 7. A circuit court abuses its discretion by "applying the wrong legal standard," *Shulte v. Flowers*, 2013 IL App (4th) 120132, ¶ 23, or basing its decision on "an incorrect view of the law," *Campbell v. Autenrieb*, 2018 IL App (5th) 170148, ¶ 26 (quotations omitted).

B. Plaintiffs have no right in need of protection and defendants are likely to succeed on the merits.

Defendants are likely to prevail on plaintiff's claims, and plaintiffs have no right in need of protection, because the executive orders, and IDPH's implementation of those executive orders through emergency rulemaking, are valid exercises of emergency powers under the IEMA Act. That Act authorizes the Governor to issue a proclamation that a "disaster"—which includes an "epidemic," 20 ILCS 3305/4—exists and that proclamation, in turn, triggers his ability to exercise specified emergency powers, *id.* § 7. Relevant here, the statute grants the Governor the authority to "control . . . the occupancy of premises" within a disaster area and "exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population." *Id.* §§ 7(8), (12). And to carry out those functions, powers, and duties, the Governor may "transfer the direction, personnel or functions of State departments and agencies or units thereof for the purpose of performing or facilitating disaster response and recovery programs." *Id.* § 7(3). The IEMA Act further directs that "the officers and personnel of

all [state] departments, offices and agencies are directed, upon request, to cooperate with and extend [their] services and facilities to the Governor." *Id.* § 19.

By requiring schools to exclude students who refuse to wear masks or have been exposed to Covid-19, the Governor was "control[ling] . . . the occupancy of premises" within the disaster area—here, the entire State. *Id.* § 7(8). And he acted within his authority to direct state agencies such as IDPH to carry out that disaster response. *Id.* §§ 7(3), 19. And because those executive orders were issued under the Governor's authority in the IEMA Act, the circuit court was wrong to suggest that State defendants needed to adhere to section 2 of the IDPH Act before enforcing them. Indeed, section 2(m) of the IDPH Act states that section 2 should not be read to supersede "response plans and procedures established pursuant to IEMA statutes." 20 ILCS 2305/2(m). Because the executive orders here fit squarely within such plans and procedures, section 2 of the IDPH Act has no effect on the Governor's exercise of his emergency powers.

In addition, the IDPH Act does not apply because masking and temporary exclusion from school are not a "quarantine" triggering the procedural requirements of section 2(c). *See* 20 ILCS 2305/2(c). The IDPH Act does not define that term, but IDPH's Emergency Rule states that neither masking nor temporary exclusion qualifies as a quarantine. SR2855; 45 Ill. Reg. at 12148; *see also Union Elec. Co. v. Dep't of Revenue*, 136 Ill. 2d 385, 391 (1990) (agency "regulations have the force and effect of law, and must be construed under the same standards which govern the construction of statutes"). The rule goes on to explain that quarantine requires the "physical separation and confinement" of an individual. SR2846, SR2848; 45 Ill. Reg. at 12139, 12141. "'Confinement' . . . has been defined as '[t]he act of imprisoning or restraining someone.'" *People v. Phelps*, 211 Ill. 2d

1, 8 (2004) (quoting Black's Law Dictionary 294 (7th ed. 1999)). The temporary exclusion of students from school because they were likely exposed to Covid-19 does not involve imprisonment or physical restraint—it merely prevents them from entering the school, leaving them otherwise uninhibited. Nor is a student physically restrained when required to wear a mask to enter school.

For its part, the circuit court reasoned that section 2(m) was inapplicable because sections 2(b) and 2(c) of the IDPH Act state that IDPH may order quarantine only with a person's consent or if it obtains a court order. SR1860-70; *see also* 20 ILCS 2305/2(b), (c). In doing so, the court nullified section 2(m)'s clear directive that no part of section 2, including sections 2(b) or 2(c), may supersede plans established under the IEMA Act such as the executive orders. *See Nelson v. Artley*, 2015 IL 118058, ¶ 25 ("Construing a statute in a way that renders part of it a nullity offends basic principles of statutory interpretation."). And the court's conclusion that the "only way" the executive orders could have been effective would have been through an exercise of the Governor's authority to suspend regulatory statutes under section 7(1) of the IEMA, *see* SR1866-67, ignores the Governor's authority to exercise any of the emergency powers in section 7, including sections 7(8) and 7(12). *See* 20 ILCS 3305/7 (after declaring disaster, the "Governor shall have and may exercise . . . the following emergency powers"). It also conflicts with precedent establishing that when, as here, the IDPH Act does not apply, *see* 20 ILCS 2305/2(m), the Governor need not suspend its provisions under section 7(1). *See Fox Fire*, 2020 IL App (2d) 200623, ¶ 41 (Governor not required to suspend section 2(c) of IDPH Act where that provision did not apply to closures of businesses).

The circuit court's holding that IDPH's Emergency Rule is invalid because, in the court's view, it was not justified by an emergency also is incorrect, for at least three reasons. First, the court failed to afford any deference to IDPH's determination that Covid-19 was an emergency, even though an "[e]mergency" encompasses "any situation that an agency finds reasonably constitutes a threat to the public interest, safety, and welfare." 5 ILCS 100/5-45(a); *see also Fox Fire*, 2020 IL App (2d) 200623, ¶ 20 ("Courts should refrain from considering the wisdom behind any adopted methods to combat the spread of disease."); *Champaign-Urbana Pub. Health Dist. v. Ill. Labor Rels. Bd.*, 354 Ill. App. 3d 482, 489 (4th Dist. 2004) ("existence of an emergency is primarily a matter of agency discretion").

Second, the court's conclusion that Covid-19 was not an emergency when the rule was adopted in September 2021 ignored that cases and hospitalizations were rising as the new school year was beginning, *see* SR269, as well as the Emergency Rule's express reference to the Governor's disaster proclamations stating that "[t]he COVID-19 outbreak . . . is a significant public health crisis that warrants these emergency rules." 45 Ill. Reg. at 12123; *see also* 5 ILCS 100/5-45(b) (requiring "agency's finding and a statement of the specific reasons for the finding shall be filed with the [emergency] rule"). By referencing the Covid-19 outbreak and the Governor's related disaster proclamations, IDPH satisfied its duty to state its reasons for finding that an emergency existed, for there can be no dispute that Covid-19 is a threat to public interest, safety, and welfare. *See* SR267–73.

Third, the court's suggestion that IDPH improperly intended to avoid the IDPH Act's procedures rather than respond to Covid-19 ignores that complying with those procedures—particularly the necessity of individual hearings for each student required to

wear a mask or participate in remote learning while potentially infected with Covid-19—would render it impossible for State defendants to act quickly to prevent viral spread. *See infra* pp. 14-16. Indeed, that impossibility is why section 2(m) states that section 2's procedures do not supersede plans and procedures to respond to a public health disaster like Covid-19. *See* 20 ILCS 2305/2(m).

Additionally, the circuit court failed to address State defendants' argument that the executive orders were a proper exercise of the Governor's authority under the Illinois Constitution to act during a public health emergency. *See* SR240. This too demonstrates that State defendants are likely to succeed on the merits.

Lastly, to the extent that the circuit court suggested a "fair question" existed regarding "the legality" of the EOs and Emergency Rules "under the "separation of powers," SR1883, plaintiffs conceded any constitutional basis for their claims during the TRO proceedings, as the circuit court itself acknowledged, SR1877-78. Regardless, plaintiffs could show no likelihood of success on a separation of powers claim. *See* SR239-45. To satisfy the separation of powers doctrine, a statute granting authority to the executive branch must describe: (1) the persons or activities subject to regulation, (2) the harm to be prevented, and (3) the general means available to prevent the identified harm. *StoferMotor Vehicle Cas. Co.*, 68 Ill. 2d 361, 372 (1977). Here, the IEMA Act describes (1) what constitutes a "disaster" subject to emergency regulation, 20 ILCS 3305/4, (2) the harms from disasters that the General Assembly sought to prevent by granting the Governor emergency powers, *id.* §§ 2, 4, 7, and (3) what the Governor may do with those emergency powers, *id.* §§ 6, 7(1)–(14). This level of specificity meets *Stofer*'s test, especially considering the unpredictable "nature of the ultimate objective and problems

involved" in emergency management during a disaster. *Hill v. Relyea*, 34 Ill. 2d 552, 555 (1966).

C. The circuit court abused its discretion in finding that plaintiffs established irreparable harm.

The irreparable harm the circuit court found was the alleged deprivation of plaintiffs' rights under the IDPH Act, SR5585-86, but as discussed, *see supra* pp. 9-13, the IDPH Act does not apply. That misapprehension of law demonstrates that the circuit court abused its discretion in finding that plaintiffs would suffer irreparable harm. *See Campbell*, 2018 IL App (5th) 170148, ¶ 26.

The circuit court further abused its discretion by premising its irreparable harm finding on an incorrect legal standard. The court stated that, "[w]hen a right such as the one being violated here is alleged, irreparable injury is satisfied," SR1880, but cited case law stating that an alleged "violation of *constitutional rights*" is sufficient to show irreparable harm. *Makindu v. Illinois High School Ass'n*, 2015 IL App (2d) 141201, ¶ 42 (emphasis added). This conflicts with the court's recognition that plaintiffs' "request for emergency relief [was] premised . . . upon [a] statutory theory" rather than "constitutional due process," SR1877, as well as its conclusion that plaintiffs raised "a fair question of establishing a likelihood of success on the merits [of their claim] that the IDPH Act is the controlling law," not any constitutional claim, SR1883.

The circuit court's errors aside, plaintiffs failed to show irreparable harm. Temporary remote learning for those likely exposed to Covid-19 will ensure that the most students can continue in-person learning. SR1883. In fact, the unrefuted evidence here showed that, without the temporary exclusion requirement, more schools will shift to full-time remote learning to avoid an outbreak. *See* SR272, SR996 n.11. And requiring

students to continue to wear masks will protect, not harm, them: masks reduce the likelihood that Covid-19 will spread, which is especially important because of the relatively low vaccination rate among children. SR1080-81. The circuit court's TRO, then, did not avoid any harm to plaintiffs—if anything, it will inflict the very harm it sought to avoid.

D. The circuit court abused its discretion in balancing the hardships.

Finally, the circuit court abused its discretion by applying the incorrect standard in balancing the hardships. "In balancing the equities, the court must weigh the benefits of granting the injunction against the possible injury to the opposing party from the injunction," *Guns Save Life, Inc. v. Raoul*, 2019 IL App (4th) 190334, ¶ 63 (quotations omitted), as well as the "effect of the injunction on the public," *Clinton Landfill*, 406 Ill. App. 3d at 378. And a TRO "may not issue . . . unless the balance of hardships and public interests weighs in favor of granting the injunction." *JL Props. Grp. B LLC v. Pritzker*, 2021 IL App (3d) 200305, ¶ 60. Despite recognizing that a court "must" perform this balancing test, SR1879, the circuit court later concluded that it was "not necessary . . . as such balancing has already been conducted by the Legislature." SR1879-80. By failing to consider the effects of its TRO on the parties here and the public, the court applied the wrong standard, thus abusing its discretion. This court should vacate the TRO on this basis. *See JL Props.*, 2021 IL App (3d) 200305, ¶ 57.

Additionally, the balance of hardships strongly weighs against the TRO because of the public health risks and disruptions to in-person education created by that order, on the one hand, and the lack of irreparable harm absent a TRO, on the other. Indeed, the TRO will cause significant, and irreparable, harm while this case proceeds. The circuit court lifted the temporary exclusion and mask requirements at a time when Covid-19 cases in

children have risen. SR1082. This is especially problematic because children 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. SR1080-81. In turn, these infections may lead to a surge in hospitalizations, SR1082, straining Illinois's already-overburdened healthcare system.[6]

Additionally, the heightened risk that their children might contract Covid-19 absent the mitigations likely will cause many parents to remove their children from school and may force schools to shift to full-time remote learning. *See* SR995. And some schools may close entirely because of staffing shortages, further disrupting students' learning and depriving many students of essential food and social and mental health services. SR996 n.12.

The circuit court predicted these harms would not occur because State defendants could impose these same requirements, if they comply with the procedures of the IDPH Act. *See* 1884-85. But this is impracticable. Under the IDPH Act, even an immediate order for a quarantine must be followed by a circuit court hearing within 48 hours. *See* 20 ILCS 2305/2(e). A Covid-19 outbreak in just one school district thus could require initiating and pursuing hundreds or even thousands of hearings. *See Goss v. Lopez*, 419 U.S. 565, 583 (1975) (rejecting argument that individualized hearings were necessary when it would require "countless" hearings on brief student suspensions). The balance of hardships thus weighs heavily in favor of preserving these important mitigation measures.

[6] *See Covid-19 Hospital Resource Utilization*, IDPH, https://dph.illinois.gov/covid19/data/hospitalization-utilization.html.

CONCLUSION

State Defendants-Petitioners request that this court vacate, reverse, and dissolve the TRO.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

By: /s/ Jonathan J. Sheffield
JONATHAN J. SHEFFIELD
ARDC No. 6321505
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2175 (office)
(773) 590-7117 (cell)
CivilAppeals@ilag.gov (primary)
Jonathan.Sheffield@ilag.gov (secondary)

CERTIFICATE OF FILING AND SERVICE

I certify that on February 7, 2022, I electronically filed the foregoing **Memorandum in Support of Rule 307(d) Petition for Review of Temporary Restraining Order** with the Clerk of the Court for the Illinois Appellate Court, Second 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.

Shelli L. Anderson
sla@franczek.com

Jason T. Manning
jmanning@hlerk.com

William J. Gerber
will@gerberlaw.net

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.

By: /s/ Jonathan J. Sheffield

JONATHAN J. SHEFFIELD
ARDC No. 6321505
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2175 (office)
(773) 590-7117 (cell)
CivilAppeals@ilag.gov (primary)
Jonathan.Sheffield@ilag.gov (secondary)