No. 130042

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

DONALD JAMES, as Executor of the Estate of Lucille Helen James, Deceased,

MARK R. DONESKE, as Executor of the Estate of Rose H. Doneske, Deceased,

FRANCES G. DEFRANCESCO, as Executor of the Estate of Jack P. DeFrancesco, Deceased,

PATRICIA VELCICH, as Executor of the Estate of Marion May Heotis, Deceased,

FAITH HEMBRODT, as Independent Administrator of the Estate of Carol Orlando, Deceased,

Plaintiffs-Appellants,

v.

GENEVA NURSING AND REHABILITATION CENTER, LLC, an Illinois Limited Liability Company d/b/a BRIA HEALTH SERVICES OF GENEVA,

Defendant-Appellees.

On Appeal from the Appellate Court of Illinois, Second District, No. 2-22-0180

There Heard on Appeal from the Circuit Court of 16th Judicial Circuit, Kane County, Illinois, Case No.:

2020 L 247;
2020 L 259;
2020 L 260;
2020 L 264;
2020 L 273.

Hon. Susan Boles
Judge Presiding

PLAINTIFFS-APPELLANTS' REPLY BRIEF

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ORAL ARGUMENT REQUESTED

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ARGUMENT

I. Whether Bria actually rendered assistance is a matter factually disputed by the parties.

Contrary to Bria's self-serving opinion of its administrator's affidavit and the one-sided recitation of the factual background of this litigation, a threshold question remains as to whether Bria has actually rendered assistance to the State. To be sure, each plaintiff in this appeal alleged that Bria did not render the requisite assistance to the State and the evidence in the record also confirms that Bria did nothing materially different than it did pre-COVID and therefore rendered no qualifying COVID-19 assistance to the State. Worse, the Plaintiffs alleged multiple failures on Bria's part, including the failure to utilize masks, the requiring of staff with COVID symptoms to work, as well as the failure to separate nursing home residents exhibiting COVID symptoms from those without COVID symptoms. *See, e.g.*, (S.R. C14-C17, C28-C30, and C0047-0057. And while Bria disingenuously argues the "uncontroverted affidavit" of its administrator, Patti Long, established without rebuttal that Bria undertook the steps it was required to do to render assistance to the State (Resp. Brief, pp. 28-29), the evidence uncovered through Ms. Long's deposition testimony plainly demonstrates the opposite to be true. Ms. Long's testimony did not bolster the claims asserted in her affidavit; it undermined them.

Specifically, during Ms. Long's deposition, it was revealed that Bria's claimed efforts: (1) were not requested by anyone and did not involve any discussion with a State representative as to what rendering assistance would entail (S.R. C4301-C4302 at pp. 9:10-10:10; C4324-C4325 at pp. 99:19-104:2 and 101:17-22); (2) did not involve any alteration to Bria's then existing day-to-day operations (S.R. C4303 at pp. 15:23-16:23; C4305 at pp. 22:2-23:5; C4307-C4308 at pp. 32:21-35:2; and C4315 at p. 64:3-20); (3) consisted only of things that a nursing home would normally do when no health-care emergency was taking place (S.R. C4309-C4310 at pp. 41:20-42:4 and C4321 at p. 89:17-24); (4) amounted to naked assertions which were not supported by any documentation (S.R. C4304 at pp. 19:2-8 and 20:24-21:10; C4308 at p. 36:15-18; C4323 at p. 95:9-21; C4325-C4326 at pp. 105:10-108:16; and C4329 at p. 118:2-13); (5) included handwashing tutorials, irrelevant to any form of rendering assistance (S.R. C4304 at p. 18:19-23); (6) did not involve any increase in bed capacity (S.R. C4309 at pp. 40:3-42:9); (7) included minimal in-service training on putting on and taking off a facemask during the relevant time period (S.R. C4314-C4315 at pp. 61:13-62:6; and C4321 at pp. 86:24-87:16) and no in-service training on preserving PPE before May 6, 2020, making that effort irrelevant to this case (S.R. C4322 at p. 92:6-8); (8) contained an improper masking policy before April 17, 2020 where staff only wore masks when working with two residents suspected of having COVID symptoms and then, after May 11, 2020, only while in designated

"COVID areas"; (9) did not consist of any newly developed policies that Bria could produce (S.R. C4323 at p. 95:9-21 and C4327 at p. 118:2-13); and, (10) did not consist of any "specific information" that can "identify any care that BRIA provided to any of its residents in rendering assistance to the State under Executive Order 19." (S.R. C4328 at pp. 115:23-116:14). Moreover, Bria never treated nor was it qualified to treat the coronavirus and it could not even test its residents for COVID, choosing instead to send its elderly residents to hospitals for testing and then later accepting the residents back only after the hospital had managed to stabilize the resident's condition. (S.R. C4313 at pp. 55:21-56:6).

For each of the aforementioned reasons, Bria's claim that Ms. Long's assertions were "uncontroverted" is without merit. See *Marshal v. City of Chicag*o, 2012 IL 112341, ¶50 ("***[a] moving party's affidavits may be contradicted by deposition testimony or other evidence."). What Ms. Long's testimony actually established, is that Bria should not be characterized as even a remote participant in the State's efforts during the coronavirus pandemic, which on its face, should necessarily preclude it from enjoying any immunity conveyed by EO20-19 as any assistance provided during the operative time in question was illusory.

II. Courts do not consider the subjective interpretations of the intended audience when construing an executive order.

Should this Court acknowledge the chief objective in interpreting an executive order is to give effect to the Governor's intent, such a conclusion

would not open the door to an executive bait-and-switch as erroneously suggested by Bria. (Resp. Brief pp. 18, 30). Rather, it would appropriately give effect to Governor Pritzker's expressed intention of combatting and limiting the tragedy that the COVID-19 outbreak presented when he issued EO20-19 pursuant to the powers vested in him as Governor of the State of Illinois and pursuant to the IEMA Act, 20 ILCS 3305. See EO20-19.

This Court has previously said "[t]he cardinal rule of interpreting statutes, to which all other canons and rules are subordinate, is to ascertain and give effect to the intent of the legislature. In determining legislative intent, a court first should consider the statutory language." *McNamee v. Federated Equip. & Supply Co.*, 181 Ill. 2d 415, 423 (1998); see *Mich. Ave. Nat. Bank v. County of Cook*, 191 Ill. 2d 493, 503 (2000)(describing the "ultimate goal" in interpreting the meaning of statutory language is to ascertain and give effect to the legislature's intent); see also *Roselle Police Pension Bd. v. Vill. of Roselle*, 232 Ill. 2d 546, 552 (2009). While Bria's response brief does not dispute these cannons of statutory interpretation should be carried over and applied when interpreting executive orders, it minimizes the cardinal rule of interpretation and invents an additional lens through which it argues the executive order should be viewed with "equal if not greater importance," namely, the way the Governor's words in the executive order could have been expected to have been understood by the intended audience. (Resp.

Brief 18). Put differently, Bria takes the unbelievable position in its brief that its subjective interpretation of EO20-19, rather than the intent of the Governor, is what should carry the weight of the day.

Of course, Bria cites no relevant or persuasive authority to this Court in support of the incredible proposition that an executive order should be interpreted as it was understood by a self-interested entity seeking to qualify for the gift of immunity the executive order is bestowing. Instead, Bria generally refers the Court to John Hart Ely's Democracy and Distrust for the proposition that courts must police issues that ordinary democratic process cannot be trusted to handle, and *McCulloch v. Maryland*, 17 U.S. 316, 428-29 (1819) (holding states are without the power to tax federal banks). The failure to cite relevant authority is undoubtedly because no such authority exists. A court of review is entitled to have citations to pertinent authority. *Dillon v. Evanston Hosp.*, 199 Ill.2d 483, 494 (2002). While this Court has indeed said there is nothing inherently objectionable about a court using common sense when deciphering a statute, it *has not* said or much less suggested that subjective beliefs are a substitute in any way, for legal reasoning and authority when doing so. *See Nelson v. Artley*, 2015 IL 118058, ¶29.

Aside from the absence of authority supporting the notion that the intended audience's interpretation of an executive order is an equal, if not greater consideration than the intentions of its drafter, the reasons Bria's view should be flatly rejected are obvious. It would require this Court to

proclaim the ultimate goal when construing an executive order is inherently different from the ultimate goal when construing a statute. *McNamee v. Federated Equip. & Supply Co.*, 181 Ill. 2d 415, 423 (1998); *Mich. Ave. Nat. Bank v. County of Cook*, 191 Ill. 2d 493, 503 (2000). Additionally, if a Health Care Provider's subjective interpretation of an executive order was placed on equal footing (or greater footing) as the intent of the Governor, the extent and application of the executive order would be ripe for subversion and immediately exposed to a litany of interpretations, such as in this case, where Bria appears to suggest it read and understood the executive order to allow it to act negligently during the operative time period without limitation because, according to Bria, every facilities' actions in the early pandemic were inextricably linked to the provision of COVID-19 assistance. Because the subjective interpretation of EO20-19 is a dubious and unrecognized consideration when construing an executive order, Bria's request for this Court to consider what it believed the executive order meant is without merit and therefore must be rejected.

III. EO-19 requires actual assistance to the State through COVID-related efforts.

In support of its argument against the existence of a relatedness requirement, Bria also contends that the Plaintiffs' and the Attorney General's position contradicts the plain language and ordinary meaning of EO20-19, namely, that immunity is extended to "any injury or death

alleged to have been caused by any act or omission." (Resp. Brief p. 19, citing EO20-19, §3). The way Bria would have it, the only limitation this Court should recognize is that the immunity conferred by the Governor does not extend to willful misconduct. (Resp. Brief p. 20). But to get there, Bria commits a worse transgression than the one it wrongly accuses Plaintiffs and the Attorney General of by initially ignoring multiple lines the Governor expressly included in the executive order setting forth a temporal element, requiring that the immunity bestowed relates to injuries or deaths "which occurred *at a time* when the Health Care Facility was engaged *in the course of* rendering assistance to the State by providing health care services in response to the COVID-19 outbreak***." EO20-19, §3 (emphasis added). By doing so, Bria violates the very authority it cites to in its brief, which recognizes that a statute, or in this case an executive order, must be construed as a whole. *Mosby v. Ingalls Memorial Hospital*, 2023 IL 129081, ¶30.

This Court cannot subscribe to the narrowest of readings that Bria employed when construing EO20-19 because the Court must give effect to the entire scheme of the executive order, therefore, words and phrases should not be construed in isolation but must be interpreted in light of other relevant portions of the executive order. See e.g. *Krautsack v. Anderson*, 223 Ill.2d 541, 553 (2006) (setting forth the appropriate cannons of statutory construction). Bria's argument becomes all the more untenable because by acknowledging that the lessons of statutory

construction should be carried over to the construction of an executive order, it therefore admits the presence of surplusage is not to be presumed and that each word, clause or sentence must, if possible, be given some reasonable meaning. *Hirschfield v. Barrett*, 40 Ill.2d 224 (1968).

When Bria finally does address the Governor's use of the phrases "at a time" and "engaged in the course of" later in its brief, it argues the phrases do not limit the immunity conferred to conduct completely unrelated to the provision of COVID-19 assistance, they expanded it. (Resp. Brief. P. 24). To support its flawed interpretation of EO20-19, Bria relies on a strained reading of the First District case of *Romito v. City of Chicago*, 2019 IL App (1st) 181152.

The primary issue in *Romito*, was whether Section 2-202 of the Tort Liability Act absolved the negligence of police officers who double parked an unlit squad car on a city street out of necessity when responding to a report of domestic violence, which later caused an automobile collision. In recognizing the officers' immunity stemmed from the fact the negligent act occurred while the officers were carrying out their duties in furtherance of the Domestic Violence Act, the *Romito* court noted that Section 2-202 of the Tort Liability Act provides that "[a] public employee is not liable for his act or omission *in the execution or enforcement of any law* unless such act or omission constitutes willful and wanton negligence." *Romito* at ¶¶37,38, citing 745 ILCS 10/2-202 (emphasis added). Specifically, the act of the officers returning to their squad car to complete a required domestic

violence report with the intention of providing a completed copy of the report to the victim is what demonstrated to the *Romito* court that the officers were still in the execution or enforcement of the Domestic Violence Act when the injurious event occurred, which is what qualified them for immunity. *Romito* at ¶¶42,43. In other words, immunity applied because the negligent conduct in question bore a relation to and occurred at a time when the officers were discharging their duties under the Domestic Violence Act.

Just as the grant of immunity under the Tort Immunity Act requires a public employee to demonstrate that the negligence occurred when he was engaged in a course of conduct designed to carry out or put into effect any law, it necessarily follows that the immunity EO20-19 bestows is limited in the same fashion. *Romito* most certainly did not "broaden" the scope of immunity under the Tort Immunity Act as Bria incorrectly suggests. (Resp. Brief p.24). The decision merely clarified the evidence necessary for a public employee to receive immunity for its alleged negligence under the Tort Immunity Act. *Romito* at ¶43. The *Romito* court's observance of the temporal elements necessary for a public employee to satisfy and procure benefit from the Tort Immunity Act were not novel. This Court made a similar observation long before then. See *Fitzpatrick v. Chicago*, 112 Ill.2d 211, 221 (1986) ("[W]here the evidence establishes that at the time of his alleged negligence a public employee was engaged in a course of conduct designed to carry out or put into effect any law," an

affirmative defense based upon the Tort Immunity Act should be available). More importantly, the *Romito* decision did not suggest that immunity would be available for a "swath" of negligent acts that occurred at a time when a law was not being effectuated or were otherwise unrelated to the carrying out of any law. Accordingly, *Romito* undercuts Bria's argument rather than bolsters it because the First District recognized the negligence at issue had to have occurred at a time and in relation to the carrying out or effectuation of a law. The same recognition should be made by this Court with respect to EO20-19.

IV. Recognizing the existence of a relatedness requirement would not undermine the Governor's intent in issuing EO20-19.

Bria's attempt to mischaracterize Plaintiffs' position by claiming it undermines the Governor's intent by "grafting" a relatedness requirement onto EO20-19 is unfounded for multiple reasons.

i. The Governor's intent was to procure assistance for the State's response to the COVID-19 pandemic.

First, Bria argues against the existence of a relatedness requirement by presenting an abbreviated recitation of the language contained in the preamble to EO20-19: "ensur[ing] the Illinois healthcare system has adequate capacity to all who need it." (Resp. Brief p. 28). In doing so, it is Bria who overlooks the actual context in which the executive order was issued: to garner assistance in response to the COVID-19 pandemic.

The very title of the executive order states in boldface type that it is, indeed, an: "**EXECUTIVE ORDER IN RESPONSE TO COVID-19**." Exec.

Order No. 2020-19, 44 Ill. Reg. 6192 (April 1, 2020) (emphasis in original). Moreover, the recital immediately preceding the one Bria references definitively states: "WHEREAS, ensuring the State of Illinois has adequate bed capacity, supplies, and providers to treat *patients afflicted with COVID-19*, as well as patients afflicted with other maladies, is of critical importance." *Id.* (emphasis added). In Section 3 of EO20-19, the Governor deliberately limited immunity to those instances where "injury or death occurred at a time when a Health Care Facility was engaged in the course of rendering assistance to the State *by providing health care services in response to the COVID-19 outbreak*." *Id.* (emphasis added). The significance of that charge and the specificity as to what the Governor was seeking assistance for and what conduct he was extending immunity for, do not disappear as a result of Bria's attempt at re-envisioning the aims sought to be achieved when EO20-19 was issued.

Contrary to Bria's assertion, EO20-37 is not "highly instructive" for interpreting E020-19. Initially, as a practical matter, the directive to "construe [an executive order] as a whole" cannot be taken to mean EO20-19 should be considered in light of another executive order that did not exist at the time it was issued. *Mosby v. Ingalls Memorial Hospital*, 2023 IL 129081, §30. This is also true given the language of Governor Pritzker's executive orders were evolving in light of the information then available and the pandemic realities then and there existing. *See e.g.* EO20-19, §2 (requiring "rendering assistance" to include measures such as increasing

the number of beds, preserving personal protective equipment, or taking steps necessary to treat patients with COVID-19); EO20-37, (requiring "rendering assistance" to include measures such as increasing the number of beds, preserving and properly employing personal protective equipment, conducting widespread testing, and taking steps necessary to provide medical care to patients with COVID-19).

Yet should the Court consider the language utilized in EO20-37 when construing EO20-19, the only takeaway that should be gleaned from the Governor's use of the term "relating" in Section 4 of EO20-37, is it resolves all doubt as to what specific type of activity he was conferring limited immunity in exchange for: *the provision of COVID-19 assistance*. This realization is consistent with the point made in Plaintiffs' earlier brief that it would be inconceivable for Governor Pritzker to have intended EO20-19 to result in absurdities such as immunity extending to a surgeon's negligent amputation of the wrong limb when addressing injuries wholly unrelated to COVID-19. (Appellants' Brief, p. 13). Furthermore, this Court should not be bound to a literal reading of the executive order that leads to absurd results the drafter could not have intended. *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶27.

When EO20-19 (or EO20-37) is read as a whole, which the canons of interpretation mandate, it cannot be legitimately argued that the directives in Section 2 of EO20-19 included conduct that was unrelated to the provision of COVID-19 assistance. *Casteneda v. Illinois Human Rights*

Comm., 132 Ill. 2d 304 (1989) (Courts should look to the evil sought to be remedied in addition to examining the language of an act). This is because whether the Governor was addressing healthcare facilities, healthcare professionals, or healthcare volunteers, the phrase "rendering assistance" was immediately followed by the qualifier, "in support of the State's response" to the COVID-19 outbreak. *Id.* at §3. The Governor's intent is clear, as is the complication he was seeking to remedy. This Court should effectuate said intent by recognizing EO20-19 only granted immunity for negligent acts which bore a relationship to and occurred at a time the healthcare facility was rendering assistance to the State.

ii. The relevant sections of the IEMA do not support the expansive immunity Bria seeks under EO20-19.

Second, the overly broad interpretation of EO20-19 Bria employs is at odds with the limits of what the executive order could and could not do. The critical failure in Bria's analysis stems from its failure to recognize or thoughtfully consider that EO20-19 obtains its authority from the powers vested in the Governor of the State of Illinois, and pursuant to what the Legislature delegated to him pursuant to Sections 7(1), 7(2), 7(3), 7(12), 15, and 21 of the IEMA, 20 ILCS 3305. Exec. Order No. 2020-19, at 2. In Section 7(1), the IEMA permits the Governor to "suspend the provisions of any regulatory statute prescribing procedures for conduct of State business." 20 ILCS 3305/7(1). Notably, there is no authority for the Governor, under separation of powers, to repeal or amend a statute. See *Ferguson v. Industrial Commission*, 397 Ill. 348, 353 (1947) (amendment is

a legislative function); *Krebs v. Bd. Of Trustees of Teachers' Ret. Sys.*, 410 Ill. 435, 441 (1951) ("to decide when an exigency exists which requires legislation" is a function of the legislature). Irrespective of Bria's self-serving claim that "facilities' negligent acts or omissions in the early pandemic were inextricably connected" to the unprecedented demands of COVID-19 as they rendered assistance to the State (Resp. Brief p. 30), the Nursing Home Care Act, which grants nursing home residents the right to pursue actions for damages and other relief against nursing home facilities to protect against inadequate, improper, and degrading treatment (*Myers v. Heritage Enterprises, Inc.*, 332 Ill.App.3d 514, 515-16 (4th Dist. 2002)) is not a statute subject to suspension pursuant to Section 7(1) of the IEMA and thus still applies to Plaintiffs' claims.

The Governor's limited authority to convey immunity through the IEMA is initially expressed in Section 15, which clearly establishes that the liability limitations it authorizes, "except in cases of gross negligence or willful misconduct", apply to the Governor, the Director, the Principal Executive Officer of a political subdivision, or their agents, employees, or representatives. 20 ILCS 3305/15.[1] It further limits that immunity in a manner consistent with the rationale employed by the First District in *Romito*, to liability for the death of or any injury to persons "as a result of such activity" that was part of the government's emergency response. *Id.*;

[1] Bria has not claimed, nor could it claim, that it was operating as a representative of the State, Governor, or a political subdivision during the time in question. (Resp. Brief p. 23).

Romito v. City of Chicago, 2019 IL App (1st) 181152. Simply stated, the negligent act must be related to the emergency response in order to receive immunity.

Given the limitation that the government's own immunity extends solely for injury or death *as a result of* the disaster related activity, it would be nonsensical to broaden the application of immunity to a private corporation like Bria for acts or omissions unrelated to the provision of COVID-19 assistance. Yet this is precisely what Bria argues for when it disputes the existence of any relatedness requirement in EO20-19 and claims it is entitled to negligence immunity for a broad swath of actions unrelated to the specific assistance it claims to have rendered – an expansive immunity that is not even available to the State, its agents, or its representatives under Section 15 of the IEMA. *Id.*; (Resp. Brief p. 20).

Section 21of the IEMA, the final potential basis for immunity which Bria claims it is entitled to, specifies that immunity is conveyed to three categories: (a) to a person who controls real estate and voluntarily without compensation permits the use of said real estate to shelter persons during an actual or impending disaster, (b) to a person who performs a contract with and under the direction of the State, or (c) to a person who renders assistance or advice at the request from the government. 20 ILCS 3305/21. While Bria argues that EO20-19 constituted a request for assistance which it claims to have provided, Section 21 must be read in context of the overall scheme and the three categories of immunity

authorized in the section. See *Oswald v. Hamer*, 2018 IL 122203, ¶10 (a court must view the statute "as a whole, construing words and phrases in context to other relevant statutory provisions and not in isolation."). Reading EO20-19 this way establishes that the immunity must relate to the actions which were taken to assist the State in its response to the COVID-19 outbreak as opposed to the occurrence of unrelated actions which provided no COVID-19 assistance to the State at all. Exec. Order No. 2020-19, §3, 44 Ill. Reg. 6192 (April 1, 2020).

Additionally, Section 21's parallel contractual and rendering-assistance immunity provisions plainly anticipate a significant connection to the State in these efforts, such as a contract performed under State supervision or through specific State requests that are carried out so that the immunity granted actually relates to the performance of the government-designated task. 20 ILCS 3305/21 (b), (c). Likewise, the providing shelter provision in Section 21 bestows immunity in connection with the provision of shelter and not for boundless unrelated activity that results in injury or death to another. 20 ILCS 3305/21(a).

Because one of the fundamental principles of statutory construction is to view all provisions of the enactment as a whole, in light of other relevant provisions and not in isolation, any fair reading of the IEMA as a whole demonstrates a logical relation to the type of assistance the State seeks is a necessary prerequisite to any type of authorized immunity

conferred. *Michigan Ave. Nat. Bank v. County of Cook*, 191 Ill. 2d 493, 504 (2000).

iii. A relatedness requirement limits EO20-19's application to its intended use.

Contrary to Bria's claim that judicial recognition of a relatedness requirement would "gut" the executive order and render it a sham, such a finding would effectuate the Governor's intentions by limiting the grant of immunity to the type of actions the Governor was actually targeting: the rendering of "assistance in support of the State's response to the disaster recognized by the Gubernatorial Disaster Proclamations (COVID-19 outbreak)." Exec. Order No. 2020-19, §2. An elementary legal requirement posits that there must be a causal connection between the benefit the Governor conveyed and the service the State received.

For example, the Tort Immunity Act provides immunity "arising out of patient care," meaning the injury is "causally connected to the patient's medical care and treatment." *Kaufmann v. Schroeder*, 241 Ill. 2d 194, 200 (2011). Therefore, an unnecessary sedation during a hospitalization as a means to carry out a sexual assault in a medical setting does not arise out of "patient care" and therefore receives no immunity under that Act. *Id.* at 201. The same rule recognizing a relatedness requirement should apply here where none of the Plaintiffs alleged the deaths of the decedents were the result of Bria's rendering assistance to the State.

Acknowledging the existence of a relatedness requirement within EO20-19 is the only logical interpretation this Court should come to

because it promotes the Governor's stated purpose in procuring assistance in responding to the COVID-19 outbreak, and it also safeguards the reward of limited immunity EO20-19 bestowed to the State's allies, which under Bria's reading would be transformed into an unwarranted escape hatch from liability, by providing boundless immunity regardless of whether the assistance provided bore any relation to the injury alleged.

To be sure, Bria's suggestion that all negligent acts and omissions which occurred inside a health care facility should qualify as being in the course of rendering assistance (Resp. Brief p. 37) finds no support in the IEMA or EO20-19. This Court should also not be persuaded by Bria's reading of *Askew v. Triad of Alabama, LLC*, SC-2023-039, 2024 Ala. LEXIS 54, as the Alabama Supreme Court did not adopt a geographic limitations test to determine whether immunity applied, it made a determination that the subject injury occurred in connection with the plaintiff seeking treatment for COVID-19. Bria's suggestion that this Court consider the physical location where the negligence occurs also reveals its underlying motivation is not to ascertain what Governor Pritzker intended when issuing EO20-19, but to refashion his directive in a manner that would provide it a blank check for immunity, regardless of whether such an interpretation would create absurd, inconvenient, and unjust results.

Lastly, to the extent Bria claims a relatedness requirement would provide an avenue for any plaintiff to bypass EO20-19's immunity by arguing a health care facility failed to establish its acts or omissions were

related to the facility's provision of COVID-19 assistance, our system of justice mandates all litigants to provide the trier of fact with evidence in support of any defense raised. *See e.g. Romito v. City of Chicago*, 2019 IL App (1st) 181152, ¶43 ("Where the evidence establishes that at the time of his alleged negligence a public employee was engaged in a course of conduct designed to carry out or put into effect any law, an affirmative defense [pursuant to] the Tort Immunity Act should be available."). There is also nothing stated in EO20-19 that would give credence to Bria's suggestion that a health care facility should be able to avail itself of the executive order's limited immunity when it is without a scintilla of evidence to demonstrate it satisfied an enactment's requirements. The invitation to interpret EO20-19 in a way that allows for such an injustice is one that must be immediately rejected.

CONCLUSION

By analyzing EO20-19 through the canons of statutory construction, the Governor's intent in extending partial immunity to healthcare facilities whose negligent conduct occurred *at a time* the facility was *engaged in the course* of rendering COVID-19 assistance to the State becomes abundantly clear. The time is now for this Court to promote EO20-19 in the limited manner the Governor intended.

For each of the reasons stated herein and those stated previously, Plaintiffs-Appellants respectfully request this Honorable Court reverse the appellate court's judgment, and answer the original certified question in

the negative, and hold EO20-19 only grants immunity for ordinary negligence that bears a relationship to, and occurred at a time the healthcare facility was rendering assistance to the State.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service is 20 pages.

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NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

Donald James, as Executor of the Estate of Lucille Helen James, Deceased, Mark R. Doneske, as Executor of the Estate of Rose H. Doneske, Deceased, Frances G. DeFrancesco, as Executor of the Estate of Jack P. DeFrancesco, Deceased, Patricia Velcich, as Executor of the Estate of Marion May Heotis, Deceased, Faith Heimbrodt, as Independent Administrator of the Estate Of Carol Orlando, Deceased	)	
Plaintiffs-Appellants,	)	No. 130042
v.	)	
Geneva Nursing and Rehabilitation Center, LLC d/b/a Bria Health Services of Geneva,	)	
Defendant-Appellee.	)	

The undersigned, being first duly sworn, deposes and states that on April 3, 2024, the Brief of Appellants was electronically filed and served upon the Clerk of the above court. On April 3, 2024, service of the Brief will be accomplished through email as well as the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Christopher Warmbold
Christopher Warmbold

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Christopher Warmbold
Christopher Warmbold

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CYNTHIA A. GRANT
SUPREME COURT CLERK