



OFFICE OF THE STATE'S ATTORNEY
SCOTT COUNTY, ILLINOIS

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Re: Enforcement of Executive Orders
In Response to COVID 19 Pandemic

Scott County Residents:

I have been asked by law enforcement agents and by our own Emergency Services and Disaster Agency Coordinator about the current status of the Governor's Executive Orders in light of the successful suit filed by Representative Darren Bailey. More, specifically I have been asked how the various mandates or suggestions contained in the Executive Orders will be enforced. Now, a second suit has been brought against Governor Pritzker by John Cabello, a State Representative from the Rockford area. Both suits attack the legal authority of the Governor to issue said Executive Orders. Additionally, two colleagues and fellow prosecutors, Greg Minger, State's Attorney of Woodford County, and Denton W. Aud, White County State's Attorney, both have stated that they will not enforce the Executive Orders. By this letter I will add my intention to not prosecute offenders of these Executive Orders and will set forth my reasons why.

I took an oath to defend this great nation of ours when I entered military service. I took an oath to uphold the laws and the Constitutions of the State of Illinois and of these United States when I was a police officer and have continued to take that oath during my three terms as the Scott County State's Attorney. A lifetime of commitment to upholding and protecting our rights has created in me the belief that those rights must be always protected and has served to remind me that those rights are meant to constrain the government, not the other way around.

The issue currently before the Illinois Courts is whether or not the Governor has improperly exercised his authority to issue an emergency proclamation beyond a 30 day time period. That time period is set forth in 20 ILCS 3305/7 which states that "[u]pon such proclamation [of a disaster], the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers..." This question will ultimately be answered by courts of review in Illinois

as Governor Pritzker has announced that his administration will seek to have the ruling of the court in Clay County overturned as swiftly as possible. I await that decision.

The issue that causes me concern with the Executive Orders is one that has not been determined as yet but which is the subject of this letter. There is a constitutional concern inherent in these orders. In this nation there is a carefully scrutinized prohibition against the restriction of fundamental constitutional rights such as the freedom of assembly, freedom of religion, the right of just compensation under eminent domain, and the right to liberty and the pursuit of happiness. “An inherent feature of our form of government is that every citizen has the inalienable right to engage in any legitimate trade, occupation, business or profession which he sees fit. His labor is his property and is bulwarked by the full and equal protection of the law afforded by the due process clause of the Federal Constitution. It is also embraced within the constitutional provision which guarantees to everyone liberty and the pursuit of happiness.” *Klein v. Department of Registration and Education*, 412 Ill. 75 (1952), see also *Allgeyer v. Louisiana*, 165 U.S. 578 (1897). Eminent Domain can be found in the Illinois Constitution, Article 1, Section 15 which states “Private Property shall not be taken or damaged for public use without just compensation as provided by law”. Assuming that the shuttering of a retail store in Scott County can be done by the government then a “taking” of a property, namely “labor”, has occurred, or at the very least, the property has been “damaged.” A constitutional right, that of Eminent Domain, has been infringed upon without due process. Due process is another fundamental constitutional right that these Executive Orders violate.

The United States Department of Justice has filed a “Statement of Interest in Support of the Temple Baptist Church” in the case of *Temple Baptist Church v. City of Greenville*, 4:20-CV-64. In that case the members of the Temple Baptist Church were exercising their constitutional rights of Assembly and Freedom of Religion by holding services via drive-in service broadcast by radio with the windows of the cars rolled up. The DOJ made the following statement on page 4 of it’s Statement of Interest: “There is no pandemic exception, however, to the fundamental liberties the Constitution safeguards.” The DOJ acknowledged the government interest in slowing or stopping the spread of COVID-19 but emphasized that Constitutional rights must be protected.¹

¹ <https://www.justice.gov/opa/press-release/file/1268651/download>

The Executive Orders issued by Governor Pritzker in response to the outbreak of COVID-19 have also had the effect of infringing upon the constitutional rights of liberty and the pursuit of happiness, that being the partaking in a lawful trade. The infringement on constitutional rights occasioned by the Executive Orders herein can only be tailored to remove the exact “evil” it seeks to remedy. The State must utilize the means that are the absolutely least restrictive upon said Constitutional Rights and that are necessary to effect its goal. In other words, the State must use a scalpel instead of a saw.

The current figures provided by the State of Illinois are, as of April 30, 52,918 infected and 2,355 killed by COVID-19. According to those figures provide by the State, .04% of the population of Illinois has been infected and .0018% of the population of Illinois has died as a result of COVID-19.² I do not mean to reduce the significance of human life. I am a sworn law enforcement official and an officer of the courts. It is my oath and duty to protect lives. Every life is precious and is deserving of our maximum effort to protect.

Our constitutional rights must also be protected, especially in times of great despair. According to those who provide advice to the various State’s Attorney’s across Illinois, there is a lack of confidence that prosecution of any event stemming from these Executive Orders would stand up to judicial scrutiny. I also share that lack of confidence. Further, a prosecution could subject local law enforcement as well as this office to civil liability under 42 U.S.C. section 1983. I will not subject law enforcement or this office to this sort of liability on such shaky and uncertain grounds. To do so would be reckless.

This letter is not intended to be used as authority for any business to re-open. I do not possess that authority. The various agencies and departments of the State of Illinois still have authority over certain businesses and can take action concerning the licenses of some of those businesses. Nor is this letter a call to stop social distancing or to abandon common sense and reason. If you are sick, stay home and away from others. If you are concerned for your safety, continue to stay at home, wear masks, wash your hands thoroughly, and take whatever other precautions that you feel are necessary. I do not intend to give suggestions as to what method of containment should be employed to stop this virus. I am not a medical doctor and am not qualified to pass judgment on what methods may or may not be effective. I do believe that this pandemic is a public health concern and adherence to the methods suggested to stem the spread of COVID-19 is something

² Source: www.coronavirus.illinois.org and www.census.gov

that every individual must voluntarily decide to follow or to ignore. This is not a matter for law enforcement to arrest and prosecute.

Criminal enforcement of any of the Executive Orders issued by Governor Pritzker would be problematic, to say the least. Accordingly, this office will not prosecute any persons arrested or cited under the Executive Orders issued by Governor Pritzker to date.

Sincerely,

A handwritten signature in cursive script that reads "M. Hill".

Michael L. Hill
Scott County State's Attorney