

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT

JOHN HALGREN, JOHN K. STIEGLER, GIL
CORTEZ, CHRIS GARON, ROBERT McCORMICK,
and JOEL FOX, individually and on behalf of similarly
situated employees of the CITY OF NAPERVILLE,

Plaintiffs,

v.

CITY OF NAPERVILLE, EDWARD-ELMHURST
HEALTHCARE, and GOVERNOR JAY ROBERT
PRITZKER,

Defendants.

21-CV-5039

**PLAINTIFFS' PETITION FOR A TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Plaintiffs, JOHN HALGREN, JOHN K. STIEGLER, GIL CORTEZ, CHRIS GARON,
ROBERT McCORMICK, and JOEL FOX, hereby request that this Honorable Court enter a
Temporary Restraining Order and Preliminary Injunction, enjoining Defendants from enforcing
Executive Order 2021-22, specifically, the vaccination mandate portion thereof, and state in support
of the same:

Introduction and Facts

In apparent response to an uptick in COVID-19 cases in Illinois that now appears to be on
the wane¹, the Governor of the State of Illinois instituted a vaccine mandate covering, among others,
“Health Care Workers.” Exhibit A, Executive Order 2021-22. The definition of “Health Care
Workers” in the mandate is extremely broad, and encompasses anyone employed by or who
volunteers for any ambulatory service. Plaintiffs are all employees of the Naperville Fire Department
who function as, among other things, paramedics. They therefore fall under the broad definition of
Health Care Workers. They are literally heroes, who were held up as such mere months ago, for the

¹ <https://www.nbcchicago.com/news/coronavirus/coronavirus-in-illinois-25956-new-covid-cases-285-deaths-142k-vaccinations-in-the-past-week/2615562/>

tireless dedication they demonstrated to saving lives regardless of the personal consequences during the entirety of the last eighteen months. Complaint at ¶ 2. Today, heroes or not, they have been given an ultimatum: get a vaccine for COVID-19, get weekly tests for COVID-19, or find work elsewhere (and not as paramedics).

The COVID-19 epidemic has certainly been, and continues to be, a trying time for many Americans. When it first reared its head on American soil (or, at least, when it was discovered here), some estimates suggested that as many as 2.2 million Americans could or would die of it. Complaint at ¶ 11. Paramedics, as the first responders, and the first people to interact with many COVID-19 patients, were one of the hardest hit subgroups in those early days of COVID-19. Complaint at ¶ 12, citing <https://www.imperial.ac.uk/media/imperial-college/medicine/sph/ide/gida-fellowships/Imperial-College-COVID19-NPI-modelling-16-03-2020.pdf>. Though paramedics have remained an integral part of the nation's response to COVID-19, at no point until the immediate present were they ever forced to submit to regular COVID-19 testing, despite its widespread availability. Complaint at ¶¶ 13-14. This was true at the peak of the epidemic, during the fall and winter of 2020, and again in April of 2021. Complaint at ¶ 15. Today, the rate of new cases is far lower than at both of those points, and is falling. Complaint at ¶ 15. Nonetheless, the requirement of weekly COVID-19 testing was not imposed until now.

Many, though not all, of the paramedics who work for Naperville have contracted COVID-19 and recovered. The first named Plaintiff, for example, John Halgren, is one such paramedic who contracted COVID-19 and recovered. He therefore likely has a natural immunity to COVID-19 that protects him better than any vaccines presently in existence would protect him. The National Institute of Health and other bodies have found that natural immunity to COVID-19 – that is, immunity caused by infection with COVID-19 and recovery – is incredibly strong. Specifically, antibodies against the spike protein of the COVID-19 virus remain in 98% of people who have

recovered from the virus 6 to 8 months after infection (and the outer limit of the study was simply because the study was done on individuals who were 6 to 8 months out of recovery, not because immunity begins to wear off²). Complaint at ¶ 17. Many public figures on the forefront of our nation's response to COVID-19 have admitted publicly that natural immunity is at least as strong as vaccine immunity. See Complaint at ¶ 18. Even Dr. Anthony Fauci has stated that he does not "have a firm answer" on whether vaccine immunity is superior to natural immunity. Complaint at ¶ 19.

The State of Israel's history with COVID-19 has demonstrated this in real time. Israel, which is distributing the Pfizer vaccine, has watched as natural immunity has eclipsed vaccine immunity tremendously. One paper (which awaits peer review presently) found that in a survey of thousands of cases of COVID-19 in Israel, there was a 6-13 fold increased risk of breakthrough infection with vaccines over simple natural immunity. Complaint at ¶ 20. In Israel today, the Pfizer vaccine has proven to be only 64% effective at preventing symptomatic (ie, highly transmissible) cases of COVID-19. Complaint at ¶ 21.

The Governor's Executive Order is allegedly authorized by the Illinois Emergency Management Act, 20 ILCS 3305 *et seq.* That act gives the governor the power, in the case of an emergency, to temporarily take sweeping and drastic *enumerated* measures to mitigate the disaster. See Complaint at ¶¶ 25-26. Among those measures is the power to temporarily and unilaterally control ingress and egress to and from the disaster area. 20 ILCS 3305/7(8). However, none of those powers includes the power to force employers to terminate employees, to regulate the terms of their employment, or to force anybody to take a vaccination. See Complaint at ¶¶ 31-32³. There is

² <https://www.nih.gov/news-events/nih-research-matters/lasting-immunity-found-after-recovery-covid-19>

³ Here is the full list of the Governor's powers under the act:

(1) To suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder or delay necessary action, including emergency purchases, by the Illinois Emergency Management Agency, in coping with the disaster.

(2) To utilize all available resources of the State government as reasonably necessary to cope with the disaster and of each political subdivision of the State.

(3) To 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.

(4) On behalf of this State to take possession of, and to acquire full title or a lesser specified interest in, any personal property as may be necessary to accomplish the objectives set forth in Section 2 of this Act, including: airplanes, automobiles, trucks, trailers, buses, and other vehicles; coal, oils, gasoline, and other fuels and means of propulsion; explosives, materials, equipment, and supplies; animals and livestock; feed and seed; food and provisions for humans and animals; clothing and bedding; and medicines and medical and surgical supplies; and to take possession of and for a limited period occupy and use any real estate necessary to accomplish those objectives; but only upon the undertaking by the State to pay just compensation therefor as in this Act provided, and then only under the following provisions:

a. The Governor, or the person or persons as the Governor may authorize so to do, may forthwith take possession of property for and on behalf of the State; provided, however, that the Governor or persons shall simultaneously with the taking, deliver to the owner or his or her agent, if the identity of the owner or agency is known or readily ascertainable, a signed statement in writing, that shall include the name and address of the owner, the date and place of the taking, description of the property sufficient to identify it, a statement of interest in the property that is being so taken, and, if possible, a statement in writing, signed by the owner, setting forth the sum that he or she is willing to accept as just compensation for the property or use. Whether or not the owner or agent is known or readily ascertainable, a true copy of the statement shall promptly be filed by the Governor or the person with the Director, who shall keep the docket of the statements. In cases where the sum that the owner is willing to accept as just compensation is less than \$1,000, copies of the statements shall also be filed by the Director with, and shall be passed upon by an Emergency Management Claims Commission, consisting of 3 disinterested citizens who shall be appointed by the Governor, by and with the advice and consent of the Senate, within 20 days after the Governor's declaration of a disaster, and if the sum fixed by them as just compensation be less than \$1,000 and is accepted in writing by the owner, then the State Treasurer out of funds appropriated for these purposes, shall, upon certification thereof by the Emergency Management Claims Commission, cause the sum so certified forthwith to be paid to the owner. The Emergency Management Claims Commission is hereby given the power to issue appropriate subpoenas and to administer oaths to witnesses and shall keep appropriate minutes and other records of its actions upon and the disposition made of all claims.

b. When the compensation to be paid for the taking or use of property or interest therein is not or cannot be determined and paid under item a of this paragraph (4), a petition in the name of The People of the State of Illinois shall be promptly filed by the Director, which filing may be enforced by mandamus, in the circuit court of the county where the property or any part thereof was located when initially taken or used under the provisions of this Act praying that the amount of compensation to be paid to the person or persons interested therein be fixed and determined. The petition shall include a description of the property that has been taken, shall state the physical condition of the property when taken, shall name as defendants all interested parties, shall set forth the sum of money estimated to be just compensation for the property or interest therein taken or used, and shall be signed by the Director. The litigation shall be handled by the Attorney General for and on behalf of the State.

c. Just compensation for the taking or use of property or interest therein shall be promptly ascertained in proceedings and established by judgment against the State, that shall include, as part of the just compensation so awarded, interest at the rate of 6% per annum on the fair market value of the property or interest therein from the date of the taking or use to the date of the judgment; and the court may order the payment of delinquent taxes and special assessments out of the amount so awarded as just compensation and may make any other orders with respect to encumbrances, rents, insurance, and other charges, if any, as shall be just and equitable.

(5) When required by the exigencies of the disaster, to sell, lend, rent, give, or distribute all or any part of property so or otherwise acquired to the inhabitants of this State, or to political subdivisions of this State, or, under the interstate mutual aid agreements or compacts as are entered into under the provisions of subparagraph (5) of paragraph (c) of Section 6 to other states, and to account for and transmit to the State Treasurer all funds, if any, received therefor.

(6) To recommend the evacuation of all or part of the population from any stricken or threatened area within the State if the Governor deems this action necessary.

(7) To prescribe routes, modes of transportation, and destinations in connection with evacuation.

(8) To control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein.

(9) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.

a further limitation in that the Act shall not be construed to “affect the jurisdiction or responsibilities of police forces, fire fighting forces, units of the armed forces of the United States, or of any personnel thereof, when on active duty; but State and political subdivision emergency operations plans shall place reliance upon the forces available for performance of functions related to emergency management.” 20 ILCS 3305/3(c).

This matter has been somewhat convoluted by the fact that nobody wants to take responsibility for this sweeping government overreach. The Governor wrote the Executive Order, but leaves the firing up to employers, whether private or public. In this case, the paramedic Plaintiffs are employed by Naperville, but their EMS Medical Director is an employee of Edward-Elmhurst. Complaint at ¶¶ 4-6, 34-39. Each of these parties, therefore, seeks cover to an extent from the other parties. But each of these parties is acting under color of law in upholding the Governor’s unconstitutional and illegal Executive Order.

This Motion incorporates the Complaint, the most pertinent allegations of which have been repeated here. It is also supported by affidavits which are attached as Exhibit B hereto.

(10) To make provision for the availability and use of temporary emergency housing.

(11) A proclamation of a disaster shall activate the State Emergency Operations Plan, and political subdivision emergency operations plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces that the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled or arranged to be made available under this Act or any other provision of law relating to disasters.

(12) Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services; and perform and exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population.

(13) During the continuance of any disaster the Governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty. To the greatest extent practicable, the Governor shall delegate or assign command authority to do so by orders issued at the time of the disaster.

(14) Prohibit increases in the prices of goods and services during a disaster. 20 ILCS 3305/7.

Argument

A plaintiff seeking a preliminary injunction must establish 1.) that he is likely to succeed on the merits, 2.) that he is likely to suffer irreparable harm in the absence of preliminary relief, 3.) that the balance of equities tips in his favor, and that an injunction is in the public interest. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20, 129 S. Ct. 365, 374, 172 L. Ed. 2d 249 (2008). Each of these factors weighs heavily in favor of Plaintiffs.

I. Plaintiffs are likely to succeed on the merits of their case.

“As an initial matter, plaintiffs must show a likelihood of success on the merits of these claims. The threshold for this showing is low. Plaintiffs need only demonstrate a better than negligible chance of succeeding.” Cooper v. Salazar, 196 F.3d 809, 813 (7th Cir. 1999). There is a likelihood of success on the merits for two reasons: 1.) the Executive Order, and therefore the decision of Naperville and Edward-Elmhurst, violates the US Constitution’s guarantee of substantive due process; and 2.) the Executive Order is illegal under Illinois law, and therefore violates Plaintiffs’ rights to procedural due process.

A. Plaintiffs have a due process right to be free from intrusions into their privacy and bodily autonomy.

Whenever a fundamental right is implicated, the Supreme Court tells us, Courts must apply strict scrutiny in evaluating the constitutionality of the laws at issue. Specifically, the Supreme Court states that the state may only threaten a fundamental right when it is justified by a “compelling state interest,” and when the “legislative enactments [are] narrowly drawn to express only the legitimate state interests at stake.” Roe v. Wade, 410 U.S. 113, 155 (1973); See also Planned Parenthood of Se. Pennsylvania v. Casey, 505 U.S. 833, 871 (1992). Bodily autonomy, including over medical decisions, is a “significant liberty interest.” Washington v. Harper, 495 U.S. 210 (1990). “A competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment.” in Cruzan

v. Director, Missouri Dep't of Health, 497 U.S. 261, 278 (1990). Further, it is beyond doubt that the right to earn a living is a protected right under the Fourteenth Amendment. See Martinez v. Fox Valley Bus Lines, 17 F. Supp. 576, 577 (N.D. Ill. 1936), citing Terrace v. Thompson, 263 U.S. 197 (1923).

True, the Supreme Court, in 1905, ruled that vaccinations can be compelled on threat of a small fine. Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11 (1905). Twenty-two years thereafter, the Supreme Court ruled that individuals could be forcibly sterilized if they were determined to be insane or imbeciles – part of this nation's flirtations with eugenics. Buck v. Bell, 274 US 200 (1927). Some years after that, the Supreme Court found that Japanese Americans could be locked up against their will simply for being Japanese Americans. Korematsu v. United States, 323 US 214 (1944).

The recognition of this history serves more than a rhetorical function: the subordination of the individual right of bodily autonomy to concerns about public health (in whatever forms they come) is part of a bygone era in American jurisprudence. The Supreme Court has, since then, found that the potential life of an unborn fetus is subordinate to the privacy interest of pregnant women. Roe v. Wade, 410 U.S. 113 (1973). The Court did not shy away from recognizing the competing understandings of the risk that allowing an abortion to occur would constitute the termination of a human life. Rather, it found that

We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer. *Id.* at 159.

In other words, the risk notwithstanding, some liberty interests, including the right of privacy and the right of bodily autonomy, trump a concern about the possible loss of life. This holding was affirmed in Planned Parenthood of Se. Pennsylvania v. Casey, 505 U.S. 833, 871 (1992). As the

Court, in that decision, stated, there is no simple formula for determining which rights are fundamental and therefore deserving of strict protection. Rather, the development of such rights are part of a “rational process.” *Id.* at 850, citing Poe v. Ullman, 367 U.S. 497, 543 (1961)(dissent). “Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education.” *Id.* at 851. “Our cases recognize the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.” *Id.* “Our precedents ‘have respected the private realm of family life which the state cannot enter.’” *Id.*

Important in this analysis is the recognition that the Court has never found that the state, or, indeed, a society, has no interest in regulating such private matters. To the contrary, abortion:

is an act fraught with consequences for others: for the woman who must live with the implications of her decision; for the persons who perform and assist in the procedure; for the spouse, family, and society which must confront the knowledge that these procedures exist, procedures some deem nothing short of an act of violence against innocent human life; and, depending on one's beliefs, for the life or potential life that is aborted. *Id.*

Rather, the Court has found that *despite these interests*, the government may not so invade a person's privacy. *Id.* That privacy is a fundamental right.

The rejoinder is, by now, well known: in this case, a person's interest in their privacy may impact another person's, and, indeed, society's right to be free from life-threatening viruses. But if it truly was that straightforward, some simple questions demand answers: why did the State of Illinois not require testing of employees for COVID-19 at any time prior to the imposition of the vaccine mandates? Why did this state witness several large spikes in cases and deaths due to COVID-19 with not a hint of any such requirement, only to see it put in place at the tail end of a relatively smaller spike in cases? Plaintiffs here have been interacting with the public – have been the front line in the

protection of public health during this pandemic – for the last eighteen months. They have been more exposed to COVID-19 than society at large. They have risked infection, and in many cases have become infected with COVID-19 as a result of their heroic role in protecting public health. They have done so without ever being told that they needed to submit to regular tests. It cannot seriously be maintained, at this late stage, that weekly COVID-19 tests are integral to the health of those fortunate enough to be rescued by Plaintiffs or their fellow employees, or those with whom they interact.

Further, the testing requirements ignore the reality on the ground: those with natural immunity are better protected than those with vaccine immunity. Yet the mandates do not require those with vaccine immunity (with or without natural immunity) to test weekly. This suggests two things: a.) the mandate discriminates arbitrarily against those with only natural immunity in favor of those with only vaccine immunity; and b.) the mandate is, itself, arbitrary. The compelling societal interest being ostensibly promoted should not be vaccination in and of itself. It should be public health; but if the Governor were promoting public health, the Executive Order would not ignore the fact of natural immunity in favor of compelling vaccinations for their own sake.

The other obvious rejoinder to Plaintiffs is that vaccine mandates of some kind or another have long-existed, and are largely uncontroversial. See, for example, Klaassen v. Trustees of Indiana University, 2021 WL 3073926, 24 (N.D. Indiana, 2021)(noting that several appellate and Supreme Court decisions since Jacobson have upheld compulsory vaccinations). However, there is a difference between the COVID-19 vaccinations and vaccinations for long extant viruses of the kind typically vaccinated against by students in elementary school. The COVID-19 vaccines are, like COVID-19, extremely novel. As Dr. Kathleen Mullane explains, regarding the Pfizer and Moderna vaccines (in a video created for the purpose of promoting widespread comfort and acceptance with

life-saving COVID-19 vaccinations), the COVID-19 vaccines are “the first messenger RNA [elsewhere, mRNA] vaccines to be approved for widespread use in the US.”⁴

With each news cycle, Americans learn new things about these vaccines. One of the things we have recently learned about the COVID-19 vaccines is that they are far less effective than originally advertised⁵. They are also not without risks, as Klaassen points out. *Id.* at 10 (“Many recipients experience mild local and systemic reactions, including fever, headache, muscle pain, chills, and tiredness. In very rare cases, more serious side effects seem to emerge such as allergic reactions or blood clots with low platelets. For young men specifically, experts are studying a temporal correlation between vaccines and myocarditis, an inflammation of the heart muscle, or pericarditis, inflammation of tissue around the heart”)(citations omitted). Some medical doctors have cautioned the public regarding the risks associated with vaccination. Dr. Joseph Lapado, with the UCLA Geffen School of Medicine, and Dr. Harvey Risch, with the Yale School of Public Health, noted that “[t]he large clustering of certain adverse events immediately after vaccination is concerning, and the silence around these potential signals of harm reflects the politics surrounding Covid-19 vaccines. Stigmatizing such concerns is bad for scientific integrity and could harm patients.”⁶ As the doctors point out, there has been a politicization of vaccines that has made

⁴ <https://www.uchicagomedicine.org/forefront/coronavirus-disease-covid-19/what-is-an-mrna-vaccine> at 0.25.

⁵ See, for example, <https://www.medrxiv.org/content/10.1101/2021.08.24.21262415v1.full.pdf>, quoted in the Complaint.

⁶ <https://townhall.com/tipsheet/katiepavlich/2021/06/24/doctors-from-yale-and-ucla-there-are-concerns-about-the-vaccine-officials-may-not-be-telling-you-about-n2591466>, and https://www.wsj.com/articles/are-covid-vaccines-riskier-than-advertised-11624381749?st=xanwe361hampa5l&reflink=article_imessage_share. They continue:

Four serious adverse events follow this arc, according to data taken directly from Vaers: low platelets (thrombocytopenia); noninfectious myocarditis, or heart inflammation, especially for those under 30; deep-vein thrombosis; and death. Vaers records 321 cases of myocarditis within five days of receiving a vaccination, falling to almost zero by 10 days. Prior research has shown that only a fraction of adverse events are reported, so the true number of cases is almost certainly higher. This tendency of underreporting is consistent with our clinical experience. [...] Analyses to confirm or dismiss these findings should be performed using large data sets of health-insurance companies and healthcare organizations. The CDC and FDA are surely aware of these data patterns, yet neither agency has acknowledged the trend...the implication is that the risks of a Covid-19 vaccine may outweigh the benefits for

obtaining an accurate understanding (much less a consensus) on the risks of the vaccines hard to come by, but there have nonetheless been several noted cases of otherwise healthy people dying, or suffering severe episodes, immediately after taking COVID-19 vaccines⁷.

The question of the constitutionality of the mandate does not merely involve the question of whether an individual can be compelled to violate his conscience in the interest of public health; it also involves the question of whether an individual can be compelled to subject himself to risk of illness or death (however remote that may be – and the jury is out on that question) in the interest of public health. Add to that mix the increasing realization that the vaccines are not the panacea they were originally thought to be, and the issue of prior precedent in favor of mandating the vaccination of school children with long-tested vaccines adds little to the analysis here.

Even under the more deferential rational basis test, the Executive Order is unconstitutional. “Under rational basis review, a state law is constitutional even if it is unwise, improvident, or out of harmony with a particular school of thought. The law must merely bear a rational relationship to some legitimate end.” Goodpaster v. City of Indianapolis, 736 F.3d 1060, 1071 (7th Cir. 2013). Yet again here, the legitimate end is public health, not public vaccination. If the mandates were rationally related to the promotion of *public health*, those who have been vaccinated but who do not have natural immunity would not be exempt from the weekly-testing requirement, given that their immunity is inferior to that of those who have natural immunity but have not been vaccinated.

certain low-risk populations, such as children, young adults and people who have recovered from Covid-19. This is especially true in regions with low levels of community spread, since the likelihood of illness depends on exposure risk.

⁷ See, for example, <https://www.foxnews.com/media/covid-vaccine-heart-condition-17-year-old-father-friends>, <https://www.thecollegefix.com/northwestern-student-appears-to-have-died-from-heart-inflammation-linked-to-covid-vaccine/>, <https://www.mercurynews.com/2021/06/25/teen-boy-dies-a-few-days-after-receiving-second-covid-vaccine-shot/>, and <https://www.nbcconnecticut.com/news/coronavirus/covid-vaccine/mom-of-conn-teen-speaks-after-son-suffers-heart-condition-days-after-covid-19-vaccine/2495057/>,

Meanwhile, those who do not have the vaccines but do have natural immunity would be exempt. The Executive Order is punitive rather than ameliorative.

The COVID-19 vaccines may well be an element in the fight against COVID-19. But to mandate them, and particularly to do so the way this Executive Order does (and the other Defendants do) violates Plaintiffs' interest in privacy and their bodily autonomy. The mandate is unconstitutional. Defendants should be enjoined from enforcing them on Plaintiffs.

B. The Governor exceeded his authority under Illinois law in enacting Executive Order 2021-22.

The Governor has no power to unilaterally require Plaintiffs to vaccinate, or to submit to medical testing, on penalty of losing their livelihood. The last eighteen months of successive Executive Orders have been premised on the Illinois Emergency Management Act, 20 ILCS 3305. See Cassell v. Snyders, 458 F.Supp.3d 981 (Ill. N.D., 2020). Though that law does give the Governor the power to control ingress and egress from a disaster area (and, in the context of the last eighteen months, the “disaster area” has been the entire state), there is no component of the law that gives the governor the power, absent any specific legislative guidance, to enact the broad and sweeping enactments that comprise Executive Order 2021-22. The Governor's power under the Act is not “without restraint.” *Id.* at 1002. “Should this or any future Governor abuse his or her authority by issuing emergency declarations after a disaster subsides, affected parties will be able to challenge the sufficiency of those declarations in court.” *Id.*

“[P]rocedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” Mathews v. Eldridge, 424 U.S. 319, 332 (1976). Regardless of the substantive due process right that these Plaintiffs have to their privacy and their autonomy, they also have a right not to be denied the same absent the proper process. The Governor's power is not

unlimited. The legislature has remained silent on the subject of vaccine mandates. Executive Order 2021-22 was, therefore, a massive overreach. It violates Plaintiffs' rights under the US Constitution and under Illinois law.

II. Plaintiffs will suffer irreparable harm if Defendants are not enjoined.

The matter of irreparable harm is somewhat simpler. The Seventh Circuit has found that violations of individuals' constitutional rights constitute irreparable harm as a matter of law. Joelner v. Village of Washington Park, Illinois, 378 F.3d 613, 620 (7th Cir., 2004); see Klaassen v. Trustees of Indiana University, 2021 WL 3073926, 41 (N.D. Indiana, 2021), applying the same analysis to vaccine mandates in the context of students at a university.

The fact that the Executive Order gives Plaintiffs the option of submitting to weekly testing does not save the Executive Order. Weekly testing is still an invasion of Plaintiffs' privacy. Further, it treats Plaintiffs differently on the basis of their disclosure of their vaccination status and therefore renders them second-class employees. Naperville is not paying for these tests. Surely, if any other basis was concocted for treating one class of employees differently (race, religion, etc.), it would be considered irreparable harm, even if some explanation could be offered for the disparate treatment. The analysis of irreparable harm here (separate and distinct from the analysis of their fundamental rights) should be subject to the same scrutiny.

III. The Balancing of Equities, and the Public Interest Favors Plaintiffs.

“The court weighs the balance of potential harms on a ‘sliding scale’ against the movant's likelihood of success: the more likely he is to win, the less the balance of harms must weigh in his favor; the less likely he is to win, the more it must weigh in his favor.” Turnell v. CentiMark Corp., 796 F.3d 656, 662 (7th Cir.2015). The sliding scale approach is not mathematical in nature, rather it is more properly characterized as subjective and intuitive, one which permits district courts to weigh the competing considerations and mold appropriate relief.” Stuller, Inc. v. Steak N Shake

Enterprises, Inc., 695 F.3d 676, 678 (7th Cir.2012). “Stated another way, the district court ‘sit[s] as would a chancellor in equity’ and weighs all the factors, ‘seeking at all times to minimize the costs of being mistaken.” *Id.* “This weighing process, as noted, also takes into consideration the consequences to the public interest of granting or denying preliminary relief.” Abbott Lab'ys v. Mead Johnson & Co., 971 F.2d 6, 12 (7th Cir. 1992).

The balancing of the equities favors Plaintiffs for the reasons addressed above. There is a likelihood of success on the merits. The public interest is best upheld through fidelity to the rule of law and the Constitution. The vaccines pose potential harms to Plaintiffs, and the requirement of weekly testing threatens their privacy and autonomy. To the claim that the vaccine mandate may save lives – the more we learn about them, the less certain that is. Plaintiffs have been functioning as paramedics, having significant interactions with the community around them, for the last eighteen months. There has been no showing, either in the factual recitations of the Executive Order, or in the findings of any of the other Defendants, that Plaintiffs pose a risk to their surroundings. To the contrary, they are a credit to the institutions of health and wellbeing in the State of Illinois. To now scapegoat them by implying that absent some top-down mandate impacting their fundamental rights that they pose a risk to the community they heroically serve is a disservice to them and the people of this State.

Finally, since the Executive Order is illegal under the Illinois Emergency Management Act, and since the legislature has had ample opportunity to act (and continues to be able to do so), were the Court to determine that the most successful prong of this attack is the procedural prong, it would not be denying the State the opportunity to write and pass whatever legislation is necessary to protect the populace. This state has existed far too long in a state of executive fiat. The long-term impact of that power grab may be at least as far reaching as the long-term impact of the pandemic, and may well exceed it.

Conclusion

Plaintiffs have made a showing that they are entitled to a Temporary Restraining Order and a Preliminary Injunction. While the pandemic is, indeed, a frightening affair – many if not all of the people in this country have lived in understandable fear for the greater part of the last eighteen months – it should not be an excuse to turn the procedural and substantive rights of the people of this state on their heads. Plaintiffs are entitled to an injunction as a matter of law and fact.

WHEREFORE, Plaintiffs request that this Honorable Court enter a Temporary Restraining Order and a Preliminary Injunction enjoining Defendants from enforcing Executive Order 2021-22, and from requiring vaccination or weekly testing as a term of their employment.

Respectfully Submitted,

s/Jonathan Lubin
Attorney for Plaintiff

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Exhibit A



FILED
INDEX DEPARTMENT
SEP 03 2021
IN THE OFFICE OF
SECRETARY OF STATE

September 3, 2021

Executive Order 2021-22

EXECUTIVE ORDER 2021-22
(COVID-19 EXECUTIVE ORDER NO. 88)

WHEREAS, since early March 2020, Illinois has faced a pandemic that has caused extraordinary sickness and loss of life, infecting over 1,538,300, and taking the lives of more than 24,000 residents; and,

WHEREAS, at all times but especially during a public health crisis, protecting the health and safety of Illinoisans is among the most important functions of State government; and,

WHEREAS, the Illinois Department of Public Health (IDPH) has determined that the Delta variant is the most dominant strain of COVID-19 in Illinois and has spread quickly among unvaccinated people of all ages in Illinois; and,

WHEREAS, the Delta variant is more aggressive and more transmissible than previously circulating strains, and poses significant new risks in the ongoing effort to stop and slow spread of the virus; and,

WHEREAS, the Delta variant also may cause more severe disease than prior strains of the virus; and,

WHEREAS, the Centers for Disease Control and Prevention (CDC) estimates that the Delta variant now accounts for more than 90 percent of all sequenced coronavirus cases in the U.S.; and,

WHEREAS, the CDC has issued guidance recommending wearing a mask indoors in public in most circumstances, even for fully vaccinated people,¹ as well as where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance; and,

WHEREAS, every region in the State is experiencing increased numbers of COVID-19 cases and increased numbers of hospital beds and ICU beds utilized by COVID-19 patients; and,

WHEREAS, there are parts of the country in which there are few if any available ICU beds as a result of the Delta variant, and in many parts of Illinois, the number of available ICU beds has been decreasing in recent weeks as a result of the Delta variant; and,

WHEREAS, the CDC continues to advise that cloth face coverings or masks protect persons who are not fully vaccinated from COVID-19; and,

¹ Individuals are considered fully vaccinated 2 weeks after their second dose in a 2-dose series, such as the Pfizer-BioNTech or Moderna vaccines, or 2 weeks after a single-dose vaccine, such as Johnson & Johnson's Janssen vaccine. Individuals who do not meet these requirements, regardless of age, are not considered fully vaccinated.

WHEREAS, social distancing, face coverings, and other public health precautions have proved to be critical in slowing and stopping the spread of COVID-19; and,

WHEREAS, COVID-19 cases for 5 to 11-year-olds and 12 to 17-year-olds went up dramatically over the past month; and,

WHEREAS, the CDC has recognized vaccination as the leading public health prevention strategy to end the COVID-19 pandemic and recommends that all teachers, staff, and eligible students be vaccinated as soon as possible; and,

WHEREAS, COVID-19 vaccines are safe, effective, and widely available free of cost to any Illinois resident 12 years of age and older; and,

WHEREAS, while over 6.7 million Illinoisans have been fully vaccinated against COVID-19, in order to protect against the rapid spread of the Delta variant, additional steps are necessary to ensure that the number of vaccinated residents continues to increase and includes individuals working in certain settings of concern, including those who work around children under the age of 12; and,

WHEREAS, increasing vaccination rates in schools is the strongest protective measure against COVID-19 available and, together with masking and regular testing, is vital to providing in-person instruction in as safe a manner as possible; and,

WHEREAS, health care workers, and particularly those involved in direct patient care, face an increased risk of exposure to COVID-19; and,

WHEREAS, stopping the spread of COVID-19 in health care settings is critically important because of the presence of people with underlying conditions or compromised immune systems; and,

WHEREAS, requiring individuals in health care settings to receive a COVID-19 vaccine or undergo regular testing can help prevent outbreaks and reduce transmission to vulnerable individuals who may be at a higher risk of severe disease; and,

WHEREAS, statewide measures are necessary to protect particularly vulnerable individuals, as well as employees, in high-risk health care settings; and,

WHEREAS, it is the duty of every employer to protect the health and safety of employees by establishing and maintaining a healthy and safe work environment and requiring employees to comply with health and safety measures; and,

WHEREAS, in light of the continued spread of COVID-19, the increasing threat of the Delta variant, and the significant percentage of the population that remains unvaccinated, I declared on August 20, 2021 that the current circumstances in Illinois surrounding the spread of COVID-19 continue to constitute an epidemic emergency and a public health emergency under Section 4 of the Illinois Emergency Management Agency Act;

THEREFORE, by the powers vested in me as the Governor of the State of Illinois, pursuant to the Illinois Constitution and the Illinois Emergency Management Agency Act, 20 ILCS 3305, Sections 7(1), 7(2), 7(3), 7(8), 7(12), and Section 19 thereof, and consistent with the powers in public health laws, I hereby order the following effective immediately:

Section 1: Face covering requirements for individuals. Beginning on Monday, August 30, 2021, all individuals in Illinois who are age two or over and able to medically tolerate a face covering (a mask or cloth face covering) shall be required to cover their nose and mouth with a face covering when in an indoor public place. All employers must ensure that employees wear face coverings in indoor workplaces. Illinoisans should also consider wearing a mask in crowded outdoor settings and for activities that involve close contact with others who are not fully vaccinated.

Face coverings may be removed temporarily while actively eating or drinking (including in bars or restaurants), and may be removed by employees at workplaces when they can consistently maintain six feet of distance (such as when employees are in their office or cubicle space).

All individuals, including those who are fully vaccinated, shall continue to be required to wear a face covering (1) on planes, buses, trains, and other forms of public transportation and in transportation hubs such as airports and train and bus stations; (2) in congregate facilities such as correctional facilities and homeless shelters; and (3) in healthcare settings.

Section 2: Vaccination and Testing Requirements for Health Care Workers.

a. Definitions

- i. “Health Care Worker” means any person who (1) is employed by, volunteers for, or is contracted to provide services for a Health Care Facility, or is employed by an entity that is contracted to provide services to a Health Care Facility, and (2) is in close contact (fewer than 6 feet) with other persons in the facility for more than 15 minutes at least once a week on a regular basis as determined by the Health Care Facility. The term “Health Care Worker” does not include any person who is employed by, volunteers for, or is contracted to provide services for any State-owned or operated facility. The term “Health Care Worker” also does not include any person who is present at the Health Care Facility for only a short period of time and whose moments of close physical proximity to others on site are fleeting (e.g., contractors making deliveries to a site where they remain physically distanced from others or briefly entering a site to pick up a shipment).
 - ii. “Health Care Facility” means any institution, building, or agency, or portion of an institution, building or agency, whether public or private (for-profit or nonprofit), that is used, operated or designed to provide health services, medical treatment or nursing, or rehabilitative or preventive care to any person or persons. This includes, but is not limited to, ambulatory surgical treatment centers, hospices, hospitals, physician offices, pharmacies, emergency medical services, IDPH licensed emergency medical service vehicles, chiropractic offices, dental offices, free-standing emergency centers, urgent care facilities, birth centers, post-surgical recovery care facilities, end-stage renal disease facilities, long-term care facilities (including skilled and intermediate long-term care facilities licensed under the Nursing Home Care Act, the ID/DD Community Care Act or the MC/DD Act), Specialized Mental Health Rehabilitation Facilities, assisted living facilities, supportive living facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatment facilities, and adult day care centers. The term “Health Care Facility” does not include any State-owned or operated facilities.
 - iii. An individual is “fully vaccinated against COVID-19” two weeks after receiving the second dose in a two-dose series of a COVID-19 vaccine authorized for emergency use, licensed, or otherwise approved by the U.S. Food and Drug Administration (FDA), or two weeks after receiving a single-dose COVID-19 vaccine authorized for emergency use, licensed, or otherwise approved by the FDA.
- b. All Health Care Workers must have, at a minimum, the first dose of a two-dose COVID-19 vaccine series or a single-dose COVID-19 vaccine by September 19, 2021, and the second dose of a two-dose COVID-19 vaccine series within 30 days following administration of their first dose in a two-dose vaccination series. Any Health Care Workers who have not established that they are fully vaccinated against COVID-19 must be tested consistent with the requirements of Subsection (d). To establish that they are fully vaccinated against COVID-19, Health Care Workers must provide proof of full vaccination against COVID-19 to the Health

Care Facility. Proof of COVID-19 vaccination may be met by providing one of the following: (1) a CDC COVID-19 vaccination record card or photograph of the card; (2) documentation of vaccination from a health care provider or electronic health record; or (3) state immunization records.

- c. Health Care Facilities shall exclude Health Care Workers who are not fully vaccinated against COVID-19 from the premises unless they comply with the testing requirements specified in Subsection (d).
- d. Beginning September 19, 2021, to enter or work at or for a Health Care Facility, Health Care Workers who have not been fully vaccinated against COVID-19 must undergo testing for COVID-19, as described below, until they establish that they are fully vaccinated against COVID-19:
 - i. Health Care Workers who are not fully vaccinated against COVID-19 must be tested for COVID-19 weekly, at a minimum. The testing must be done using a test that either has Emergency Use Authorization by the FDA or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.
 - ii. Such testing for Health Care Workers who are not fully vaccinated against COVID-19 must be conducted on-site at the Health Care Facility or the Health Care Facility must obtain proof or confirmation from the Health Care Worker of a negative test result obtained elsewhere.
 - iii. IDPH recommends that Health Care Workers be tested using a PCR test if available.
- e. Individuals are exempt from any requirement to be fully vaccinated against COVID-19 if (1) vaccination is medically contraindicated, including any individual who is entitled to an accommodation under the Americans with Disabilities Act or any other law applicable to a disability-related reasonable accommodation, or (2) vaccination would require the individual to violate or forgo a sincerely held religious belief, practice, or observance. Individuals who demonstrate they are exempt from the vaccination requirement shall undergo, at a minimum, weekly testing as provided for in Subsection (d).
- f. State agencies, including but not limited to IDPH, the Illinois Department of Human Services, and the Illinois Department of Healthcare and Family Services, may promulgate emergency rules as necessary to effectuate this Executive Order.

Section 3: Vaccination and Testing Requirements for School Personnel.

- a. Definitions
 - i. “School Personnel” means any person who (1) is employed by, volunteers for, or is contracted to provide services for a School or school district serving students in pre-kindergarten through 12th grade, or who is employed by an entity that is contracted to provide services to a School, school district, or students of a School, and (2) is in close contact (fewer than 6 feet) with students of the School or other School Personnel for more than 15 minutes at least once a week on a regular basis as determined by the School. The term “School Personnel” does not include any person who is present at the School for only a short period of time and whose moments of close physical proximity to others on site are fleeting (e.g., contractors making deliveries to a site where they remain physically distanced from others or briefly entering a site to pick up a shipment).
 - ii. “School” means any public or nonpublic elementary or secondary school, including charter schools, serving students in pre-kindergarten through 12th grade, including any State-operated residential schools such as the Philip J. Rock Center and School, the Illinois School for the Visually Impaired, the Illinois School for the Deaf, and the Illinois Mathematics and Science Academy. The term “School” does not include the Illinois Department of Juvenile Justice.
 - iii. An individual is “fully vaccinated against COVID-19” two weeks after receiving the second dose in a two-dose series of a COVID-19 vaccine authorized for emergency use, licensed, or otherwise approved by the

UFDA, or two weeks after receiving a single-dose COVID-19 vaccine authorized for emergency use, licensed, or otherwise approved by the FDA.

- b. All School Personnel must have, at a minimum, the first dose of a two-dose COVID-19 vaccine series or a single-dose COVID-19 vaccine by September 19, 2021, and the second dose of a two-dose COVID-19 vaccine series within 30 days following administration of their first dose in a two-dose vaccination series. Any School Personnel who have not established that they are fully vaccinated against COVID-19 must be tested consistent with the requirements of Subsection (d). To establish that they are fully vaccinated against COVID-19, School Personnel must provide proof of full vaccination against COVID-19 to the School. Proof of COVID-19 vaccination may be met by providing one of the following: (1) a CDC COVID-19 vaccination record card or photograph of the card; (2) documentation of vaccination from a health care provider or electronic health record; or (3) state immunization records.
- c. Schools shall exclude School Personnel who are not fully vaccinated against COVID-19 from the premises unless they comply with the testing requirements specified in Subsection (d).
- d. Beginning September 19, 2021, to enter or work at or for a School, School Personnel who have not been fully vaccinated against COVID-19 must undergo testing for COVID-19, as described below, until they establish that they are fully vaccinated against COVID-19:
 - i. School Personnel who are not fully vaccinated against COVID-19 must be tested for COVID-19 weekly, at a minimum. The testing must be done using a test that either has Emergency Use Authorization by the FDA or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.
 - ii. Such testing for School Personnel who are not fully vaccinated against COVID-19 must be conducted on-site at the School or the School must obtain proof or confirmation from the School Personnel of a negative test result obtained elsewhere.
 - iii. IDPH recommends that School Personnel be tested using a PCR test if available.
- e. Individuals are exempt from any requirement to be fully vaccinated against COVID-19 if (1) vaccination is medically contraindicated, including any individual who is entitled to an accommodation under the Americans with Disabilities Act or any other law applicable to a disability-related reasonable accommodation, or (2) vaccination would require the individual to violate or forgo a sincerely held religious belief, practice, or observance. Individuals who demonstrate they are exempt from the vaccination requirement shall undergo, at a minimum, weekly testing as provided for in Subsection (d).
- f. State agencies, including but not limited to IDPH and the Illinois State Board of Education, may promulgate emergency rules as necessary to effectuate this Executive Order.

Section 4: Vaccination and Testing Requirements for Higher Education.

- a. Definitions
 - i. “Higher Education Personnel” means any person who (1) is employed by, volunteers for, or is contracted to provide services for an Institution of Higher Education, or is employed by an entity contracted to provide services for an Institution of Higher Education, and (2) is in close contact (fewer than 6 feet) with other persons on the campus or in a campus-affiliated building or location for more than 15 minutes at least once a week on a regular basis. The term “Higher Education Personnel” does not include any person who is present on the campus or at an affiliated off-campus location for only a short period of time and whose moments of close physical proximity to others on site are fleeting (e.g.,

- contractors making deliveries to a site where they remain physically distanced from others or briefly enter a site to pick up a shipment).
- ii. "Institution of Higher Education" means any publicly or privately operated university, college, community college, junior college, business, technical or vocational school, or other educational institution offering degrees, programs, or instruction beyond the secondary school level.
 - iii. "Higher Education Student" means an individual enrolled in credit-bearing or non-credit bearing coursework at an Institution of Higher Education, either on campus or at an affiliated off-campus location. The term "Higher Education Student" does not include individuals who complete their coursework exclusively remotely.
 - iv. An individual is "fully vaccinated against COVID-19" two weeks after receiving the second dose in a two-dose series of a COVID-19 vaccine authorized for emergency use, licensed, or otherwise approved by the FDA, or two weeks after receiving a single-dose COVID-19 vaccine authorized for emergency use, licensed, or otherwise approved by the FDA.
- b. All Higher Education Personnel and Higher Education Students must have, at a minimum, the first dose of a two-dose COVID-19 vaccine series or a single-dose COVID-19 vaccine by September 19, 2021, and the second dose of a two-dose COVID-19 vaccine series within 30 days following administration of their first dose in a two-dose vaccination series. Any Higher Education Personnel or Higher Education Students who have not established that they are fully vaccinated against COVID-19 must be tested consistent with the requirements of Subsection (d). To establish that they are fully vaccinated against COVID-19, Higher Education Personnel and Higher Education Students must provide proof of full vaccination against COVID-19 to the Institution of Higher Education. Proof of COVID-19 vaccination may be met by providing one of the following: (1) a CDC COVID-19 vaccination record card or photograph of the card; (2) documentation of vaccination from a health care provider or electronic health record; or (3) state immunization records.
 - c. An Institution of Higher Education shall exclude Higher Education Personnel and Higher Education Students who are not fully vaccinated against COVID-19 from the premises unless they comply with the testing requirements specified in Subsection (d).
 - d. Beginning September 19, 2021, to enter or work at or for an Institution of Higher Education, Higher Education Personnel and Higher Education Students who have not been fully vaccinated against COVID-19 must undergo testing for COVID-19, as described below, until they establish that they are fully vaccinated against COVID-19:
 - i. Higher Education Personnel and Higher Education Students who are not fully vaccinated against COVID-19 must be tested for COVID-19 weekly, at a minimum. Testing must be done using a test that either has Emergency Use Authorization by the FDA or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.
 - ii. Such testing for Higher Education Personnel and Higher Education Students who are not fully vaccinated against COVID-19 must be conducted on-site at the Institution of Higher Education or the Institution of Higher Education must obtain proof or confirmation from the Higher Education Personnel or Higher Education Student who is not fully vaccinated against COVID-19 of a negative test result obtained elsewhere.
 - iii. IDPH recommends that Higher Education Personnel and Higher Education Students be tested using PCR tests if available.
 - e. Individuals are exempt from any requirement to be fully vaccinated against COVID-19 if (1) vaccination is medically contraindicated, including any

individual who is entitled to an accommodation under the Americans with Disabilities Act or any other law applicable to a disability-related reasonable accommodation, or (2) vaccination would require the individual to violate or forgo a sincerely held religious belief, practice, or observance. Individuals who demonstrate they are exempt from the vaccination requirement shall undergo, at a minimum, weekly testing as provided for in Subsection (d).

- f. State agencies, including but not limited to IDPH, the Illinois Community College Board, and the Illinois Board of Higher Education, may promulgate emergency rules as necessary to effectuate this Executive Order.

Section 5: Vaccination Requirements at State-Owned or Operated Congregate Facilities.

a. Definitions

- i. "State-owned or operated congregate facilities" means congregate facilities operated by the Illinois Department of Veterans' Affairs, the Illinois Department of Human Services, the Illinois Department of Corrections, and the Illinois Department of Juvenile Justice.
- ii. An individual is "fully vaccinated against COVID-19" two weeks after receiving the second dose in a two-dose series of a COVID-19 vaccine authorized for emergency use, licensed, or otherwise approved by the U.S. FDA, or two weeks after receiving a single-dose COVID-19 vaccine authorized for emergency use, licensed, or otherwise approved by the FDA.

- b. All State employees at State-owned or operated congregate facilities must have both doses of a two-dose COVID-19 vaccine series or a single-dose COVID-19 vaccine by no later than October 4, 2021, subject to bargaining.
- c. All contractors and vendors who work at State-owned or operated congregate facilities must have both doses of a two-dose COVID-19 vaccine series or a single-dose COVID-19 vaccine by no later than October 4, 2021. This does not include any person who is present at a State-owned or operated congregate facility for only a short period of time and whose moments of close physical proximity to others on site are fleeting, as determined by the facility (e.g., contractors making deliveries to a site where they remain physically distanced from others or briefly enter a site to pick up a shipment).
- d. To meet the requirement to be fully vaccinated against COVID-19, State employees and contractors and vendors at State-owned or operated congregate facilities must provide proof of full vaccination against COVID-19 to the State-owned or operated congregate facility. Proof of COVID-19 vaccination may be met by providing one of the following: (1) a CDC COVID-19 vaccination record card or photograph of the card; (2) documentation of vaccination from a health care provider or electronic health record; or (3) state immunization records.
- e. Individuals will be exempt from the requirement to be fully vaccinated against COVID-19 if (1) vaccination is medically contraindicated, including any individual who is entitled to an accommodation under the Americans with Disabilities Act or any other law applicable to a disability-related reasonable accommodation, or (2) vaccination would require the individual to violate or forgo a sincerely held religious belief, practice, or observance. Individuals who demonstrate they meet the requirements for an exemption will be subject to additional testing requirements.
- f. The Illinois Department of Central Management Services Labor Relations team is instructed to negotiate effectuating this Executive Order with the relevant labor unions, and to bargain these provisions as appropriate under the law.

Section 6: Additional Vaccination and Testing Requirements.

- a. Information about available testing resources, including state-supported community-based testing sites, is available at: <http://dph.illinois.gov/testing>. Additional information is also available in IDPH's Interim Guidance on Testing for COVID-19 in Community Settings and Schools, available at:

<http://dph.illinois.gov/covid19/community-guidance/rapid-point-care-testing-covid-19>.

- b. Nothing in this Executive Order prohibits any entity, public or private, from implementing vaccination or testing requirements for personnel, contractors, students or visitors that exceed the requirements of this Executive Order, including a requirement to be fully vaccinated by a date sooner than required by this Executive Order.
- c. Nothing in this Executive Order prohibits any entity, public or private, from implementing a requirement that personnel, contractors, students or visitors be fully vaccinated without providing the alternative to test on a weekly basis, consistent with applicable law.
- d. IDPH and the Illinois State Board of Education may adopt emergency rules to require facilities to conduct more frequent testing than required by this Executive Order, and nothing in this Executive Order is intended to supersede or replace any IDPH protocols for facilities to implement more frequent testing in areas of high transmission or for facilities experiencing an outbreak.
- e. All entities are encouraged to implement robust vaccination and testing programs to reduce the spread of COVID-19.
- f. Entities may permit Health Care Workers, School Personnel, Higher Education Personnel, and Higher Education Students to be present on premises while they are awaiting the results of a weekly COVID-19 test required by this Executive Order as long as they do not have any symptoms of COVID-19 that warrant exclusion until a test result is received.

Section 7. During the duration of the Gubernatorial Disaster Proclamation, the requirement in the Hospital Licensing Act, 210 ILCS 85/10(c) that the Department must receive prior approval from the Hospital Licensing Board before adopting a rule is suspended.

Section 8: Savings Clause. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 9: Prior Executive Orders. This Executive Order supersedes Executive Order 2021-20 and any contrary provision of any other prior Executive Order. Any provisions that are not contrary to those in this Executive Order shall remain in full force and effect.



JB Pritzker, Governor

Issued by the Governor September 3, 2021
Filed by the Secretary of State September 3, 2021

FILED
INDEX DEPARTMENT
SEP 03 2021
IN THE OFFICE OF
SECRETARY OF STATE

Exhibit B

VERIFIED STATEMENT OF John Halgren

1. I, , am an employee of the City of Naperville.
2. I work in the Fire Department.
3. I have been employed by the City of Naperville for 20 years.
4. For the last 18 months, my duties have involved providing EMS services to people in Naperville including those who presented with symptoms of COVID-19. I have interacted with patients that had COVID-19.
5. Recently, I was told that I would be suspended if I did not either get a COVID-19 vaccination and present proof of vaccination to my employers, or submit to weekly COVID-19 tests.
6. I object to both of these things, as they are a violation of my right to privacy and bodily autonomy. I do not believe that I should have to disclose my personal health choices, or other private information to the City of Naperville.
7. The explanation that was given to me by City of Naperville was that Edward-Elmhurst Hospital was requiring this pursuant to EO 2021-22.
8. Many employees of the City of Naperville have already had COVID-19 and recovered, including employees who work in the Fire Department providing EMS services.
9. I have read the Complaint and the Petition for a Temporary Restraining Order and Preliminary Injunction and can affirm that both are true and correct to the best of my knowledge and ability, especially as to those facts of both that pertain to my employment with the City of Naperville.
10. If called to testify, I could testify truthfully to the above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 9/20/21.



VERIFIED STATEMENT OF GURDIT D. CARTER, JR.

1. I, GURDIT D. CARTER, JR., am an employee of the City of Naperville.
2. I work in the Fire Department.
3. I have been employed by the City of Naperville for 26+ years.
4. For the last 18 months, my duties have involved providing EMS services to people in Naperville including those who presented with symptoms of COVID-19. I have interacted with patients that had COVID-19.
5. Recently, I was told that I would be suspended if I did not either get a COVID-19 vaccination and present proof of vaccination to my employers, or submit to weekly COVID-19 tests.
6. I object to both of these things, as they are a violation of my right to privacy and bodily autonomy. I do not believe that I should have to disclose my personal health choices, or other private information to the City of Naperville.
7. The explanation that was given to me by City of Naperville was that Edward-Elmhurst Hospital was requiring this pursuant to EO 2021-22.
8. Many employees of the City of Naperville have already had COVID-19 and recovered, including employees who work in the Fire Department providing EMS services.
9. I have read the Complaint and the Petition for a Temporary Restraining Order and Preliminary Injunction and can affirm that both are true and correct to the best of my knowledge and ability, especially as to those facts of both that pertain to my employment with the City of Naperville.
10. If called to testify, I could testify truthfully to the above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 9/20/2021.



VERIFIED STATEMENT OF Joel M Fox

1. I, Joel m Fox, am an employee of the City of Naperville.
2. I work in the Fire Department.
3. I have been employed by the City of Naperville for 21 years.
4. For the last 18 months, my duties have involved providing EMS services to people in Naperville including those who presented with symptoms of COVID-19. I have interacted with patients that had COVID-19.
5. Recently, I was told that I would be suspended if I did not either get a COVID-19 vaccination and present proof of vaccination to my employers, or submit to weekly COVID-19 tests.
6. I object to both of these things, as they are a violation of my right to privacy and bodily autonomy. I do not believe that I should have to disclose my personal health choices, or other private information to the City of Naperville.
7. The explanation that was given to me by City of Naperville was that Edward-Elmhurst Hospital was requiring this pursuant to EO 2021-22.
8. Many employees of the City of Naperville have already had COVID-19 and recovered, including employees who work in the Fire Department providing EMS services.
9. I have read the Complaint and the Petition for a Temporary Restraining Order and Preliminary Injunction and can affirm that both are true and correct to the best of my knowledge and ability, especially as to those facts of both that pertain to my employment with the City of Naperville.
10. If called to testify, I could testify truthfully to the above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 20, 2021

Joel m fox

VERIFIED STATEMENT OF Robert J. McCormick

1. I, Robert McCormick, am an employee of the City of Naperville.
2. I work in the Fire Department.
3. I have been employed by the City of Naperville for 13 years.
4. For the last 18 months, my duties have involved providing EMS services to people in Naperville including those who presented with symptoms of COVID-19. I have interacted with patients that had COVID-19.
5. Recently, I was told that I would be suspended if I did not either get a COVID-19 vaccination and present proof of vaccination to my employers, or submit to weekly COVID-19 tests.
6. I object to both of these things, as they are a violation of my right to privacy and bodily autonomy. I do not believe that I should have to disclose my personal health choices, or other private information to the City of Naperville.
7. The explanation that was given to me by City of Naperville was that Edward-Elmhurst Hospital was requiring this pursuant to EO 2021-22.
8. Many employees of the City of Naperville have already had COVID-19 and recovered, including employees who work in the Fire Department providing EMS services.
9. I have read the Complaint and the Petition for a Temporary Restraining Order and Preliminary Injunction and can affirm that both are true and correct to the best of my knowledge and ability, especially as to those facts of both that pertain to my employment with the City of Naperville.
10. If called to testify, I could testify truthfully to the above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 9/20/21.

Robert J. McCormick

VERIFIED STATEMENT OF

Shiegler, Tom K.

1. I, Tom K. Shiegler, am an employee of the City of Naperville.
2. I work in the Fire Department.
3. I have been employed by the City of Naperville for 20 years 7 months.
4. For the last 18 months, my duties have involved providing EMS services to people in Naperville including those who presented with symptoms of COVID-19. I have interacted with patients that had COVID-19.
5. Recently, I was told that I would be suspended if I did not either get a COVID-19 vaccination and present proof of vaccination to my employers, or submit to weekly COVID-19 tests.
6. I object to both of these things, as they are a violation of my right to privacy and bodily autonomy. I do not believe that I should have to disclose my personal health choices, or other private information to the City of Naperville.
7. The explanation that was given to me by City of Naperville was that Edward-Elmhurst Hospital was requiring this pursuant to EO 2021-22.
8. Many employees of the City of Naperville have already had COVID-19 and recovered, including employees who work in the Fire Department providing EMS services.
9. I have read the Complaint and the Petition for a Temporary Restraining Order and Preliminary Injunction and can affirm that both are true and correct to the best of my knowledge and ability, especially as to those facts of both that pertain to my employment with the City of Naperville.
10. If called to testify, I could testify truthfully to the above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 20 Sept 2021.



VERIFIED STATEMENT OF Christopher M. Garon

1. I, Christopher M. Garon, am an employee of the City of Naperville.
2. I work in the Fire Department.
3. I have been employed by the City of Naperville for 9 years.
4. For the last 18 months, my duties have involved providing EMS services to people in Naperville including those who presented with symptoms of COVID-19. I have interacted with patients that had COVID-19.
5. Recently, I was told that I would be suspended if I did not either get a COVID-19 vaccination and present proof of vaccination to my employers, or submit to weekly COVID-19 tests.
6. I object to both of these things, as they are a violation of my right to privacy and bodily autonomy. I do not believe that I should have to disclose my personal health choices, or other private information to the City of Naperville.
7. The explanation that was given to me by City of Naperville was that Edward-Elmhurst Hospital was requiring this pursuant to EO 2021-22.
8. Many employees of the City of Naperville have already had COVID-19 and recovered, including employees who work in the Fire Department providing EMS services.
9. I have read the Complaint and the Petition for a Temporary Restraining Order and Preliminary Injunction and can affirm that both are true and correct to the best of my knowledge and ability, especially as to those facts of both that pertain to my employment with the City of Naperville.
10. If called to testify, I could testify truthfully to the above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 09/20/21.

