

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT OF ILLINOIS
CHRISTIAN COUNTY, TAYLORVILLE, ILLINOIS

JOHN H. McWARD, CHRISTIAN COUNTY)	
STATE'S ATTORNEY, BRUCE)	
KETTLEKAMP, CHRISTIAN COUNTY)	
SHERRIF, <i>et al.</i>)	
Plaintiffs)	
v.)	
KWAME RAOUL,)	22-CH-10
ILLINOIS ATTORNEY GENERAL)	
JAY ROBERT PRITZKER,)	
GOVERNOR OF ILLINOIS,)	
EMANUEL CHRISTOPHER WELCH,)	
SPEAKER OF THE HOUSE,)	
DONALD F. HARMON,)	
SENATE PRESIDENT)	
Defendants)	

AMENDED VERIFIED EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER, FOR PRELIMINARY INJUNCTION, AND FOR EXPEDITED HEARING ON APPLICATION FOR PRELIMINARY INJUNCTION

Now comes Plaintiffs John H. McWard, Christian County State's Attorney, and Bruce Kettlekamp, Christian County Sheriff and for their Emergency Motion for Temporary Restraining Order, for Preliminary Injunction, and for Expedited Hearing on Application for Preliminary Injunction hereby state as follows.

FACTUAL BACKGROUND

On December 28, 2022, Judge Thomas W. Cunnington, Circuit Judge of the 21st Judicial Circuit, entered summary judgment for Plaintiffs James R. Rowe, Kankakee County State's Attorney, and Michael Downey, Kankakee County Sheriff, (collectively the "Kankakee County Plaintiffs") against Defendants Kwame Raoul, Illinois Attorney General, Jay Robert Pritzker, Governor of Illinois, Emanuel Christopher Welch, Speaker of the House, and Donald F. Harmon, Senate President, in the case numbered 22-CH-16 filed in the Circuit Court of the Twenty-First

Judicial Circuit, Kankakee County, Illinois. *See* Memorandum of Decision, attached hereto as Exhibit A. In this decision, the Court declared unconstitutional Illinois Public Acts 101-652 and 102-1104, collectively known as the Safety, Accountability, Fairness and Equity-Today, as amended (the “SAFE-T Act”), insofar as the SAFE-T Act related to the pretrial release system. *Id.* at 32. The Kankakee County Plaintiffs asserted, and the Court agreed, that the pretrial release provisions of the SAFE-T Act constituted an improper attempt to amend the Illinois Constitution, violated the Crime Victims’ Rights provision in Article I, Section 8.1(a)(9) of the Illinois Constitution, violated the provision in Article I, Section 9 of the Illinois Constitution that “[a]ll persons shall be bailable by sufficient sureties,” and violated the separation of powers principle. *Id.* at 15-17, 26-27, 32.

Plaintiffs’ complaint in this present action makes many of these same arguments, specifically the Article I, Section 9 “bailable” argument and the separation of powers argument. The changes to the pretrial release system in the SAFE-T Act which Plaintiffs particularly challenge are to take effect January 1, 2023, or three days from today’s date.

ARGUMENT

Due to this judicial determination that the pretrial release system amendments in the SAFE-T Act are facially unconstitutional, Plaintiffs now move the Court to enter an emergency temporary restraining order to enjoin the applicability of those amendments within Christian County. Recognizing the limited duration of an ex parte temporary restraining order, Plaintiffs also move the Court for entry of a preliminary injunction to the same effect and for an expedited hearing and decision on this motion.

“The granting or denial of a [temporary restraining order] is within the sound discretion of the trial court.” *Stocker Hinge Mfg. Co. v. Darnel Industries, Inc.*, 447 N.E.2d 288, 291 (Ill.

1983). “Its purpose is to allow the trial court to preserve the status quo until it can hold a hearing to determine whether it should grant a preliminary injunction.” *Id.* “A TRO should not be refused or dissolved merely because the court may not be absolutely certain the plaintiff has the right he claims.” *Id.* “The plaintiff is not required to make out a case which would entitle him to judgment at trial; rather, he only needs to show that he raises a ‘fair question’ about the existence of his right and that the court should preserve the status quo until the cause can be decided on the merits.” *Id.*

The finding of the Kankakee County Court that the pretrial detention changes in the SAFE-T Act are facially unconstitutional—on many of the same arguments Plaintiffs make here—shows that Plaintiffs have at least “raise[d] a ‘fair question’” about whether those changes are, in fact, unconstitutional. *Id.* The Kankakee County order also displays that this law cannot constitutionally take effect, as a facially unconstitutional law is simply void. “When a statute is held facially unconstitutional, *i.e.*, unconstitutional in all its applications ... the statute is said to be void *ab initio*.” *People v. Blair*, 986 N.E.2d 75, 81 (Ill. 2013) (italics in original). “The void *ab initio* doctrine is based on the theory that: ‘An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.’” *Id.* (quoting *Perlstein v. Wolk*, 844 N.E.2d 923, 926 (Ill. 2006)). Though this doctrine does not mean that the statute does not exist, it does mean that it is utterly without effect. *Id.* For these reasons, Plaintiffs have met the threshold requirement to entitle them to entry of a temporary restraining order until a preliminary injunction hearing may be held.

However, this motion is made on an emergency, *ex parte* basis. The Illinois Compiled Statutes instruct that:

No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon.

735 ILCS 5/11-101 (2022).

Plaintiffs in this matter will suffer an irreparable injury in the event the SAFE-T Act's pretrial release provisions are enforced despite being unconstitutional. As the Kankakee County Circuit Court found in determining that the Kankakee County Plaintiffs had standing to pursue their action:

the government has a substantial and undeniable interest in ensuring criminal defendants are available for trial. *Bell v. Wolfish*, 441 U.S. 520, 534 (1979). P.A. 101-652, although the effect was lessened somewhat by P.A. 102-1104, the pretrial release provisions still restricts the ability of the court to detain a defendant where the court finds that the defendant will interfere with jurors or witnesses, fulfill threats, or not appear for trial. These provisions will likely lead to delays in cases, increased workloads, expenditures of additional funds, and in some cases, an inability to obtain defendant's appearance in court.

...

Plaintiff Sheriffs also are injured Sheriffs and their deputies are obligated by law to serve and execute all orders within their counties. 55 ILCS 5/3-6019. In the place of the long-standing practice of issuing warrants when defendants fail to appear, P.A. 101-652 and P.A. 102-1104, mandates that the court first consider issuing a summons instead of a warrant. Although the Act, as amended, now provides for the issuance of a warrant as is currently the case, the amendment requires the court to first consider a summons as the appropriate response to a defendant who fails to appear for court. The increased risk and injury to the Sheriff is still present with the added requirement of consideration of a summons in the first instance. These summonses must or most likely will be served by the Sheriff's Office. Unlike arrest warrants, summonses do not authorize the use of force to gain entry into the defendant's dwelling, or even command the individual to open the door, nor authorize taking the defendant into custody. If the defendant still refuses to appear, the Plaintiff Sheriffs must expend resources and endanger their employees in an additional attempt to secure the presence of an unwilling criminal defendant by service of a warrant now authorized by the amendment. This will undoubtedly lead to increased overtime, staffing needs, and other costs. More importantly, it puts the Sheriff's staff at increased risk. The court finds that this issue is not simply a police dispute, as defendants urge, but a clear matter of law enforcement safety.

Exhibit A, at 13-15. While these findings were made with respect to the Kankakee County Plaintiffs, they apply all the same to Christian County's law enforcement officers—and, by extension, Plaintiffs as the chief law enforcement officers of Christian County. Furthermore, the significant disruption which would result from the SAFE-T Act's changes to the pretrial release system would not be adequately remedied by money damages—particularly the increased delays and the increased risk of harm to the County's law enforcement officers.

Furthermore, notice of this action to Defendants before this injury would be incurred is impracticable. Defendants are two of the most senior executive officers in the State of Illinois, and the amendments in the SAFE-T Act to pretrial detention procedures are set to take effect in a mere three days. There is not sufficient time to ensure that the Defendants, who are undoubtedly busy and likely inundated with similar applications from around the State, would be adequately noticed of this action in this incredibly limited timeframe.

Furthermore, both Defendants named in the present action were Defendants in the action filed before the Kankakee County Circuit Court, and had the full opportunity to develop and present their arguments in that forum. As such, Defendants are unlikely to be prejudiced by the issuance of a temporary restraining order to maintain the status quo until a hearing on Plaintiffs' request for a preliminary injunction can be held. For these reasons, Plaintiffs request that this temporary restraining order be entered on an emergency, ex parte basis.

Under the Illinois Compiled Statutes, a temporary restraining order entered on an emergency, ex parte basis may be in effect for only ten days before it expires. 735 ILCS 5/11-101. This same section requires: "In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character." *Id.* Accordingly,

Plaintiffs now move the Court, for the reasons already set out herein and those stated in Count VI of Plaintiffs' Complaint, for entry of a preliminary injunction to the same effect as the requested temporary restraining order, and for an expedited hearing to be set within ten days of the date an order approving Plaintiffs' requested temporary restraining order is filed.

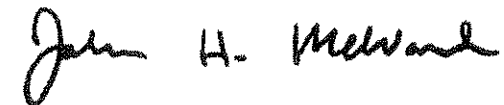
A party requesting a preliminary injunction must show "(1) a clearly ascertained right in need of protection, (2) irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case." *Mohanty v. St. John Heart Clinic, S.C.*, 866 N.E.2d 85, 91 (2006). Irreparable injury and the inadequacy of money damages as a remedy are displayed by the SAFE-T Act's pretrial detention amendments undermining Plaintiffs' need to ensure the efficient administration of justice and protect the safety of County law enforcement personnel, among other interests. Plaintiffs have a likelihood of success on the merits as the provisions of the SAFE-T Act related to pretrial detention are clearly unconstitutional and were passed in an unconstitutional manner.

In sum, Plaintiffs now move the Court for entry of an emergency, ex parte temporary restraining order and preliminary injunction enjoining the application of the pretrial detention changes present in the SAFE-T Act. Plaintiffs also move the Court to set a hearing on Plaintiffs' motion for preliminary injunction within ten days of the date of an order establishing the requested temporary restraining order.

Respectfully submitted,

Date: December 30, 2022

By: _____



John H. McWard
Atty. Reg. No. 6327307
Christian County State's Attorney

VERIFICATION

I certify under penalty of perjury as provided by law pursuant to 5/1-109 of the Illinois Code of Civil Procedure, that I have read the foregoing Verified Emergency Motion for Temporary Restraining Order, for Preliminary Injunction, and for Expedited Hearing on Application for Preliminary Injunction and the statements set forth therein are true and correct.

John H. Melwand

CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2022, I electronically filed the foregoing Verified Emergency Motion for Temporary Restraining Order, for Preliminary Injunction, and for Expedited Hearing on Application for Preliminary Injunction with the Clerk of the Court using the Odyssey Electronic Filing system.

John H. Melwand
