

618.382.7522 Ext.5
FAX:618.382.7212



307 East Cherry St.
Carmi, Illinois 62821

Denton W. Aud
White County State's Attorney

April 29, 2020

RE: Governor Pritzker's COVID-19 Stay at Home Executive Orders

White County Residents,

White County law enforcement officials have been asked by many citizens and now the local press questions about our position regarding enforcement of Governor Pritzker's Stay at Home Executive Order that is to be effective May 1, 2020. Sheriff Doug Maier, Chief Jason Carter, Chief Diana Tharp, Chief Dave Burrows, Officer Mark Worlds, and myself are all in agreement with one another. To be clear, we do not doubt the sincerity of the governor and believe that the actions of Gov. Pritzker's administration are well-intentioned based on the available information. We also agree that individuals should be practicing proper recommendations of health officials, and none of us are telling anyone to not follow recommendations by health officials such as social distancing, washing your hands, staying at home while sick, etc. Furthermore, for reasons that follow, we will not encourage anyone to intentionally violate the Stay at Home Order. What we can say is what our position has been since before the effective date of the first Stay at Home Executive Order and is still our position with said new order effective May 1, 2020: for the constitutional and statutory reasons stated herein, unless there are independent lawful grounds, we will not arrest or prosecute anyone for conduct that would be merely in violation of the Stay at Home Order (We will take any lawful steps necessary to effectuate a lawful order by the local health department, such as a valid quarantine or closure, and approved by a court of law). Arrests and prosecutions arise from the violation of laws enacted by the People's legislative branch, not by executive edicts. Good intentions are not a valid basis for overriding the rule of law.

Upon taking office, all of us swore an oath to support the Illinois Constitution and the United States Constitution. The Constitution, not any individual, is the supreme governing authority of our land. There are basic civil rights that we as citizens have that are protected by our Constitutions. In Illinois, some of these notable rights being impacted at this time are due process, religious freedom (including "mode of worship" protection), right to assemble and petition, right of just compensation under eminent domain, and the basic right of movement that is inherent in the concept of liberty. Furthermore, there is no provision in the Illinois Constitution that allows the duly elected governor to suspend constitutional rights. As contained in the statement of interest in support that was filed by the United States Department of Justice on April 14, 2020 in *Temple Baptist Church v. City of Greenville*, 4:20-CV-64, "There is no pandemic exception, however, to the fundamental liberties the Constitution safeguards." When constitutional rights are infringed upon by the government, the government's actions must be narrowly tailored to the compelling State interest and must utilize the least restrictive means

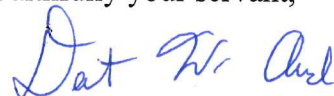
consistent with the attainment of its goal. This action is subjected to strict scrutiny by the courts. According to those who advise us, there is a lack of confidence that our enforcement of Governor Pritzker's Stay at Home Orders would survive judicial scrutiny, either constitutionally or statutorily. Furthermore, we have been advised that our enforcement of said orders would subject us to serious civil liability for unlawfully infringing on the rights of the citizenry. Due to our oaths and advice that we have received, this is something we cannot do.

As to the statutory authority that has been cited by Gov. Pritzker's Stay at Home Order, there has been great concern that the Stay at Home Orders exceed said statutory authority (it is important to point out that statutory authority does not supersede constitutional rights of citizens). Those who advise us also concluded that the Stay at Home Order appears to exceed the statutory authority as well. Plus, the Emergency Management Agency Act is clear that the emergency powers that the executive can exercise cannot exceed 30 days. There is a lack of clarity statutorily as to what needs to be done after 30 days; however, a recent lawsuit with Rep. Darren Bailey resulted in a Temporary Restraining Order being entered against Gov. Pritzker on those grounds. We await its conclusion.

Again, we do not doubt the intentions of the administration; however, as stated, good intentions do not provide a basis for overriding the rule of law. From our perspective and the perspective of those who advise us, under Illinois' Constitution and current statutes, this is essentially a public health matter which people will have to voluntarily decide to follow, rather than a law enforcement matter of arrest and prosecution. Just as our hearts go out to those who have been impacted by COVID-19 infection, we are completely distraught over what is happening to businesses and the individuals whose livelihoods are dependent on said businesses. Nevertheless, though we will not arrest and prosecute anyone for merely violating the provisions of the Stay at Home Order without independent criminal acts, we have not and are not advising any businesses to violate said Stay at Home Order as those with licenses could be putting their license at risk with whichever agency is responsible for said licensing and could also face possible civil liability. Instead, we encourage business owners to contact their own legal advisers as to what steps, if any, they can and should take.

These are difficult and unusual times, but a quote from Justice Lloyd Karmeier's 2015 opinion of *Heaton v. Quinn* most aptly describes the current obligation of law enforcement: "Crisis is not an excuse to abandon the rule of law. It is a summons to defend it. How we respond is the measure of our commitment to the principles of justice we are sworn to uphold." Our prayer is that everyone will stay safe and respect others through their actions and words, and that we will ultimately get through this crisis soon.

Faithfully your servant,



Denton W. Aud
White County State's Attorney