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Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

20MR000373

McHENRY COUNTY SHERIFF, Plaintiff, v. McHENRY COUNTY HEALTH DEPARTMENT, Defendant,	)	Case No. 20 MR 373
CITY OF McHENRY, an Illinois municipal corporation; VILLAGE OF ALGONQUIN, an Illinois municipal corporation; CITY OF WOODSTOCK; an Illinois municipal corporation; and VILLAGE OF LAKE IN THE HILLS, an Illinois municipal corporation, Plaintiff, v. MELISSA H. ADAMSON, in her official capacity as Public Health Administrator for the McHenry County Department of Health; and the McHENRY COUNTY DEPARTMENT OF HEALTH, Defendants,	)	Case No. 20 MR 387
LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF ILLINOIS, Proposed Intervenor-Defendant.	)	

EMERGENCY PETITION TO INTERVENE AS DEFENDANT BY
LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF ILLINOIS

League of United Latin American Citizens of Illinois (LULAC) hereby petitions this Court, pursuant to 735 ILCS 5/2-408, to intervene in the above-captioned matters, and for leave to file the attached Motion to Reconsider and to Dissolve the Temporary Restraining Order

entered on April 10, 2020 and its accompanying memorandum of law, through their undersigned counsel.

1. LULAC is part of a nationwide organization that seeks to empower Hispanic Americans and build strong communities through state and local programs focused on education, employment, civil rights, and health.

2. LULAC is entitled to intervene as of right under 735 ILCS 5/2-408(a)(2) because "the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action."

3. In the alternative, LULAC seeks leave to intervene by permission under 735 ILCS 5/2-408(b)(2) because their defenses against the relief sought by the McHenry County Sheriff, the City of McHenry, the Village of Algonquin, the City of Woodstock, and the Village of Lake in the Hills have questions of law and fact in common with this case.

4. This emergency petition is timely because this litigation has just commenced and LULAC has filed its petition before Defendants have filed any responsive pleadings. Furthermore, the Court is not set to hear arguments regarding Defendants' motion to reconsider and dissolve the temporary restraining order until May 18, 2020.

5. No party would be prejudiced by granting intervention at this stage.

6. With this emergency petition, LULAC is filing a memorandum of law in support of its emergency petition to intervene.

DATED: May 12, 2020

Respectfully submitted,

/s/ Karen Sheley
Attorney for Petitioner

Colleen Connell (ARDC No. 3126988)
Ameri R. Klafeta (ARDC No. 6286239)
Karen Sheley (ARDC No. 6291976)
Emily Werth (ARDC No. 6307304)
Elizabeth Jordan (ARDC No. 6320871)
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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on May 12, 2020, a true and correct copy of the foregoing document was electronically served upon all counsel of record via i2File.

/s/ Karen Sheley

Attachment 1

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

McHENRY COUNTY SHERIFF, Plaintiff, v. McHENRY COUNTY HEALTH DEPARTMENT, Defendant,	))))))))	Case No. 20 MR 373
CITY OF McHENRY, an Illinois municipal corporation; VILLAGE OF ALGONQUIN, an Illinois municipal corporation; CITY OF WOODSTOCK; an Illinois municipal corporation; and VILLAGE OF LAKE IN THE HILLS, an Illinois municipal corporation, Plaintiff, v. MELISSA H. ADAMSON, in her official capacity as Public Health Administrator for the McHenry County Department of Health; and the McHENRY COUNTY DEPARTMENT OF HEALTH, Defendants,	)))))))))))))))	Case No. 20 MR 387
LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF ILLINOIS Proposed Intervenor-Defendant.	)))	

AFFIDAVIT OF KAREN SHELEY IN SUPPORT OF EMERGENCY PETITION TO INTERVENE AS DEFENDANT BY LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF ILLINOIS

I, Karen Sheley, state under penalty of perjury as follows:

1. I submit this affidavit in support of the Emergency Petition to Intervene as Defendant by League of United Latin American Citizens of Illinois (LULAC).

2. LULAC is part of a non-profit nationwide advocacy organization with statewide and local councils that seek to advance the economic condition, educational attainment, political influence, housing, health and civil rights of the Hispanic population of the United States.

3. Plaintiffs in these consolidated actions have sought the mandated release of identifying information about individuals in McHenry County who have been or will be confirmed to have COVID-19.

4. On April 10, 2020 the Court entered a Temporary Restraining Order (TRO) requiring the Defendants to disclose the names and addresses of all individuals residing within McHenry County who are positive for COVID-19 to the Director of the McHenry County Emergency Telephone System Board for use by all police officers in McHenry County.

5. On April 14, Defendants filed a motion to reconsider and dissolve the TRO.

6. Upon information and belief, Defendants' motion to reconsider and dissolve the TRO is set for hearing by this Court on Monday, May 18, 2020.

7. Petitioner seeks emergency leave to intervene as Defendant in order to submit its own motion to reconsider and to dissolve the TRO in advance of the May 18 hearing, and to provide critical discussion of the strong protections against disclosure of personal health information under the Illinois Constitution, the United States Constitution, and other state law, and how the TRO runs afoul of these protections.

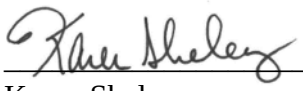
8. Petitioner strongly opposes disclosure of both names *and* addresses of individuals who test positive for COVID-19 because it would undermine the confidentiality of private medical information and threaten individual and community health, especially in the vulnerable communities it serves.

9. Counsel for Defendants is aware of and does not oppose Petitioner's emergency petition to intervene as Defendant.

10. Counsel for Petitioner have informed Counsel for the Plaintiffs about the filing of the emergency petition to intervene as Defendant.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Dated this 12th day of May, 2020.



Karen Sheley

Attachment 2

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

McHENRY COUNTY SHERIFF, Plaintiff, v. McHENRY COUNTY HEALTH DEPARTMENT, Defendant, and	)	Case No. 20 MR 373
CITY OF McHENRY, an Illinois municipal corporation; VILLAGE OF ALGONQUIN, an Illinois municipal corporation; CITY OF WOODSTOCK; an Illinois municipal corporation; and VILLAGE OF LAKE IN THE HILLS, an Illinois municipal corporation, Plaintiff, v. MELISSA H. ADAMSON, in her official capacity as Public Health Administrator for the McHenry County Department of Health; and the McHENRY COUNTY DEPARTMENT OF HEALTH, Defendants, and	)	Case No. 20 MR 387
LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF ILLINOIS Intervenor-Defendant.	)	

INTERVENOR-DEFENDANT'S MOTION TO RECONSIDER AND TO DISSOLVE TEMPORARY RESTRAINING ORDER

Intervenor-Defendant League of United Latin American Citizens of Illinois (LULAC), by and through its undersigned attorneys, hereby moves this Court, pursuant to 735 ILCS 5/2-1203 and 735 ILCS 5/11-108, for reconsideration of and to dissolve the Temporary Restraining Order issued on April 10, 2020. In support of this Motion, Intervenor-Defendant states as follows:

1. On Friday, April 10, 2020, the Circuit Court for the Twenty-Second Judicial Circuit entered an Order granting the consolidated Plaintiffs' Emergency Motions for a Temporary Restraining Order (hereinafter referred to as the "TRO"). The TRO requires the McHenry County Health Department to disclose the names and addresses of all individuals residing in McHenry County that have tested positive for COVID-19 to the McHenry County Emergency Telephone System Board to be entered into its Premise Alert Program for use by all police officers in McHenry County. A copy of the Court's Order is attached as Exhibit A.

2. Intervenor-Defendant LULAC is part of a non-profit nationwide advocacy organization with state and local councils which seeks to advance the economic condition, educational attainment, political influence, housing, health and civil rights of the Hispanic population of the United States. LULAC has more than 280 members in Illinois and 85 members in McHenry County.

3. LULAC has members in McHenry County who are at higher risk of becoming infected with COVID-19 because they perform essential services. LULAC members in McHenry County also have concerns about their names or addresses being provided to law enforcement. There are LULAC members who will avoid seeking medical care if the names or addresses of those in McHenry County who test positive for COVID-19 are disclosed to law enforcement, or who fear how they will be treated by law enforcement of they do decide to obtain COVID-19 testing and have a positive diagnosis which is shared with law enforcement.

4. The relief granted by the TRO violates rights against unreasonable disclosure of individuals' private medical information under the Illinois Constitution and the United States Constitution.

5. The Order granting the TRO also misinterprets Illinois and federal privacy law regarding the narrow circumstances where an individual's medical information may be released to law enforcement entities.

6. "The purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the court's previous application of existing law." *Korogluyan v. Chi. Title and Trust Co.*, 213 Ill.App.3d 622, 627 (Ill. App. Ct. 1991). In this case, the Court did not take account of recognized constitutional protections for the private medical information sought by the Plaintiffs, and also misapplied state and federal laws protecting the privacy of medical information.

7. A court should dissolve a TRO when there is "sufficient grounds to show an abuse of discretion by the court in its entry of the TRO". *Murges v. Bowman*, 254 Ill.App.3d 1071, 1081 (Ill. App. Ct. 1993) (internal quotations omitted). In this case, the Court abused its discretion in entering a TRO which causes the McHenry County Health Department to violate the constitutional rights of individuals to the privacy of their medical information and has no basis in law.

8. Accompanying this Motion is Intervenor-Defendant's memorandum of law in support of its request that the Court reconsider and dissolve the TRO.

Wherefore, Intervenor-Defendant respectfully requests this Honorable Court to reconsider the Order of April 10, 2020 and to dissolve the Temporary Restraining Order entered on that date.

DATED: May 12, 2020 Respectfully Submitted,

/s/ Emily Werth
Attorney for Intervenor-Defendant

Colleen Connell (ARDC No. 3126988)
Ameri R. Klafeta (ARDC No. 6286239)
Karen Sheley (ARDC No. 6291976)
Emily Werth (ARDC No. 6307304)
Elizabeth Jordan (ARDC No. 6320871)
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Exhibit A

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McHENRY COUNTY SHERIFF,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 20 MR 373
	)	
McHENRY COUNTY HEALTH DEPARTMENT,	)	
	)	
Defendant.	)	

DECISION
and
TEMPORARY RESTRAINING ORDER

This case, and those which have been consolidated into it – Case Nos. 20 MR 386 and 387 – have come before the Court on an emergency basis.

Here, the Court addresses the emergency requests of the Plaintiffs for temporary and/or preliminary relief.

Brief Procedural Background

On April 7, 2020, the McHenry County Sheriff, Bill Prim (the "Sheriff"), commenced these proceedings through the filing of his *Verified Complaint for Declaratory Judgment, Writ of Mandamus, and Injunctive Relief* (the "Sheriff's Complaint"), through which he seeks the names and addresses of all individuals that are or become infected with COVID-19 residing within McHenry County to be provided to the McHenry County Emergency Telephone System Board, for release to first responders, by the McHenry County Health Department. The Sheriff executed a Verification of the Sheriff's Complaint.

Also on April 7, 2020, four municipalities - the City of McHenry, the Village of Algonquin, the City of Woodstock, and the Village of Lake in the Hills - filed a *Verified Complaint for Declaratory Judgment, Writ of Mandamus, and Permanent Injunction* (the "Municipal Complaint"), through which they seek relief similar to that sought by the Sheriff, for their police officers.[1] The Police Chief of each municipality executed a Verification of the Municipal Complaint.[2]

Also on April 7, 2020, the McHenry County State's Attorney, Patrick D. Kenneally (the "State's Attorney"), filed an *Emergency Petition for Appointment of a Special Assistant State's Attorney* (the "Emergency Petition for Appointment") through which the State's Attorney asked the Court to appoint a special assistant state's attorney to represent the McHenry County Health Department (the "MCHD") in this case.[3]

In addition to said filings, the parties filed various other items, including requests that the Court hear presentations on certain matters which had filed on an emergency basis on April 9, 2020.

On April 8, 2020, the Court entered *Temporary Assignment Orders* through which each referenced case was assigned to Judge Michael J. Chmiel.[4]

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[1] This case was assigned Case No. 20 MR 387. In this case, the Defendants include Melissa H. Adamson, in her official capacity as Public Health Administrator for the McHenry County Department of Health, and the McHenry County Department of Health. Throughout these proceedings thus far, the "McHenry County Department of Health" and the "McHenry County Health Department" or "MCHD" have been used interchangeably to refer to the same entity.

[2] These verifications were made by John Birk as the Chief of Police of the City of McHenry, John Lieb as Chief of Police of the City of Woodstock, David Brey as the Chief of Police of the Village of Lake in the Hills, and John Bucci as the Chief of Police of the Village of Algonquin.

[3] This case was assigned Case No. 20 MR 386.

[4] Upon these filings, pursuant to Administrative Orders which govern the assignment of cases in this Circuit, these cases were assigned to Associate Judge Kevin G. Costello. With the decrees which have impacted the operations of the Circuit due to the pandemic which plagues the Circuit and the Country, the Civil Division of the Circuit is handling emergencies through certain designated judges each week. For the week of the filings in these cases, Circuit Judge Michael J. Chmiel, who also serves as the Presiding Judge of the Civil Division, has been the Designated Civil Judge, and as such these cases have been temporarily assigned to him for the handling of the emergencies in each.

In the afternoon of April 8, 2020, the Court engaged a hearing by conference call with the attorneys involved in these cases, along with the Sheriff and Melissa H. Adamson who serves as Public Health Administrator and effectively directs the MCHD. In this hearing, the Court addressed the issues raised in Case No. 20 MR 386 and the legal representation of the Sheriff and the MCHD including Ms. Adamson in these cases. The Court also suggested that these cases be handled through CourtCall, which has facilitated remote participation in the Civil Division for the past few years, but acknowledged allowed for the parties to appear in open court following meetings at the Michael J. Sullivan Judicial Center to more fully address the pending matters.

On April 9, 2020, upon the call of these cases in open court, and following opportunity for comment with no objection received, the Court entered an *Order of Consolidation* in Case No. 20 MR 387 on an emergency motion filed by the Municipal Corporations, and an *Order of Consolidation* in Case No. 20 MR 386 on the Court's own motion, through which each of these cases was consolidated into Case No. 20 MR 373.[5]

Next on April 9, 2020, the Court heard from the parties on the Emergency Petition for Appointment. Following the hearing, the Court adjourned the proceedings to work on this petition and another unrelated emergency. Later in the morning, the Court updated the parties and further adjourned the proceedings to further work on the petition. In the afternoon, the Court then entered its *Order of Appointment*,[6] through which special prosecutors were appointed for the MCHD including Ms. Adamson in these cases.[7]

[5] The Court notes the Sheriff, the Chiefs of Police of the Municipal Corporations, Ms. Adamson, and Attorneys Kenneally, Jana Blake, David McArdle, and Douglas Dorando appeared in open Court in the proceedings during the morning of April 9, while the Chiefs of Police were excused for the proceedings which continued in the afternoon.
[6] In the Order of Appointment, Ms. Adamson was inadvertently referenced as the "Director" of the MCHD.
[7] Attorneys Robert J. Long and Douglas Dorando were appointed as the special prosecutors.

Next on April 9, 2020, the Court addressed whether any other matter needed to be addressed, as with the involvement of the parties, their legal representation, or other, and with no other matter to be addressed, the Court turned to the emergency requests of the Plaintiffs for temporary and/or preliminary relief.

Upon requests and agreement of the parties, the Court engaged in a settlement conference with the parties, which lasted late into the afternoon of April 9. The parties then agreed to adjourn to accommodate further work by the parties through the evening, and into the morning of April 10, 2020, whereupon the parties were directed to advise the Court of whether they were able to resolve any of the pending matters. The Court also enabled the parties to provide suggested language for the Court's consideration in the event a resolution could not be reached.

In the morning of April 10, 2020, the Court learned the parties could not resolve the pending matters; as such, the Court decides the pending matters as follows.

Findings and Analysis

Initially, the Court finds it has jurisdiction over this case in terms of its subject matter and the parties involved, and venue is proper in this Circuit, in that this case involves parties who reside and/or operate in McHenry County, Illinois, and the issues concern activity in McHenry County, Illinois. Further, the Defendants – the McHenry County Health Department and Melissa H. Adamson – were personally served with the initial filings in this case, including notice and pleadings, and appeared in open court with counsel with regard to this case. Still further, no objection has been raised with regard to jurisdiction or venue.

Through his pleadings, the Sheriff seeks a preliminary injunction,[8] while the Municipal Corporations seek a temporary restraining order and preliminary injunction.[9] As noted above, each seeks the names and addresses of all individuals that are or become infected with COVID-19 residing within McHenry County to be provided to the McHenry County Emergency Telephone System Board, for release to first responders, by the McHenry County Department of Public Health.

Section 11-101 of the Code of Civil Procedure states:

> Temporary restraining order. 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. Every temporary restraining order granted without notice shall be indorsed with the date and hour of signing; shall be filed forthwith in the clerk's office; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after the signing of the order, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the granting of the extension shall be stated in the written order of the court. 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; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he or she does not do so, the court shall dissolve the temporary restraining order.
>
> On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.
>
> Every order granting an injunction and every restraining order shall set forth the reasons for its entry; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, employees, and

[8] *See Verified Emergency Motion for Preliminary Injunction*, as filed by the Sheriff on April 7, 2020.
[9] *See Emergency Verified Motion for Temporary Restraining Order and Preliminary Injunction with Notice*, as filed by the Municipal Corporations on April 7, 2020.

> attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

735 ILCS 5/11-101 [hereinafter Section 11-101].

Section 11-102 of the Code of Civil Procedure states:

> Preliminary injunction. No court or judge shall grant a preliminary injunction without previous notice of the time and place of the application having been given the adverse party.

735 ILCS 5/11-102 [hereinafter Section 11-102].

Temporary orders of the Court are transitory in nature and are subject to finalization. Temporary restraining orders are designed to preserve the *status quo* or provide certain necessary relief, until a fuller hearing can be engaged. *See Harper v. Missouri Pacific Railroad Co.*, 264 Ill. App. 3d 238, 243 (5th Dist. 1994), *appeal denied*, 157 Ill.2d 500 (temporary restraining order is intended to maintain status quo); *Wilson v. Hinsdale Elem. School Dist.*, 349 Ill. App. 3d 243, 248 (2nd Dist. 2004) ("A TRO is an emergency remedy issued to maintain the status quo until the case is disposed of on the merits."); *Northwestern Steel & Wire Co. v. Industrial Comm'n*, 254 Ill. App. 3d 472, 476 (1st Dist. 1993) (temporary restraining order is emergency remedy issued to maintain status quo until hearing can be held on motion for preliminary injunction). In processing such matters, courts should not decide contested issues of fact or the merits of the action. *Northwestern Steel & Wire Co.*, 254 Ill. App. 3d at 476. As the Appellate Court has stated:

> [I]t is well established that a party seeking a temporary restraining order is not required to make out a case which would entitle him to relief on the merits. He need only show that he raises a "fair question" regarding the existence of his right and that the court should preserve the status quo until the case can be decided on the merits. (*Buzz Barton & Assoc. Inc. v. Giannone* (1985), 108 Ill.2d 373, 91 Ill. Dec. 636, 483 N.E.2d 1271.)

Stanton v. City of Chicago, 177 Ill. App. 3d 519, 524 (1st Dist. 1988).

Nevertheless, temporary restraining orders provide extreme remedies in that they deny restrained and enjoined parties from acting as they might otherwise act. Circumstances which justify a temporary restraining order are extremely rare. *Paddington Corp. v. Foremost Sales Promotions, Inc.*, 13 Ill. App. 3d 170, 174 (1st Dist. 1973). The Court is compelled to require compliance with the detail required for such relief to be granted. Still further, the Court is compelled to rule on such matters expeditiously.

To obtain a temporary restraining order, "A party seeking a TRO must establish, by a preponderance of the evidence, that (1) he or she possesses a certain and clearly ascertainable right needing protection, (2) he or she has no adequate remedy at law, (3) he or she would suffer irreparable harm without the TRO, and (4) he or she has a likelihood of success on the merits." *Wilson*, 349 Ill. App. 3d at 248 (*citing Lo v. Provena Covenant Medical Center,* 342 Ill. App. 3d 975, 987 (4th Dist. 2003)).

Preliminary injunctions require notice, but also bring opportunities for evidence. *See In re T.M.H.*, 2019 IL App (2d) 190614.

In this case, on April 8, 2020, the Defendants provided the Plaintiffs and the Court with *Respondents Memorandum of Law Opposing Consolidated Emergency Motions for Preliminary Injunction*. This memorandum was emailed to the Court by Attorney Robert Long, before he was actually appointed as a special prosecutor for the Defendants. Upon his appointment, however, the Court acknowledged receipt of this memorandum and otherwise provided the memorandum to the Clerk of the Court for filing in this case.

In open court, the parties argued whether a temporary restraining order should issue and acknowledged the Court's review was limited to the four-corners of the filings. Accordingly, the

Court has undertaken a review of the filings to determine whether a temporary restraining order should issue, and limits its review to the four-corners of the filings.[10]

Here, in first reviewing the requirements of Section 11-101, the Court finds notice was given to the Defendants. Further, the filings include detail and are verified. Still further, as succinctly provided in the opening of the memorandum of the Defendants (with **emphasis** added):

> This matter arises from the present COVID-19 crisis. Throughout the US, the State of Illinois, and McHenry County, hundreds and thousands of people are infected with COVID-19, a novel severe acute respiratory diseases that has become a worldwide pandemic. Testing is still in its infancy. In New York, and throughout the country, it is clear that hundreds are dying without being tested….
>
> This is a fast-moving situation, where information is changing rapidly….
>
> **In this case, the [MCHD] recognizes that information gathered could be helpful to first responders**….

The memorandum further addresses the filings and the elements at issue before the Court on the emergency basis.

The memorandum *also* challenges the Court in arguing, "The present action is a controversy manufactured to subvert federal law under the color of state law, and to inject this Court's opinion into the place of regulators who are designated by statute to exercise sound, and learned, discretion." With respect for any and all regulators, however, the Court must also engage its role when asked to do so.

In summary analysis here, the Court finds the Plaintiffs are looking to avail their police officers of what is available – namely, the names[11] of individuals who are infected with COVID-

[10] Generally, the four-corners rule may pertain to filings by a plaintiff, especially where a defendant is not involved, but here, for reasons suggested below, and without any noted objection, the Court will take into account the memorandum filed by the Defendants.

[11] Reference to names of infected individuals necessarily includes their addresses as well.

19, with respect for privacy rights of the individuals, so the police officers can carry out their duties to the best of their ability. The Defendants agree the information they hold could help police officers, but argue against making it available, because like everyone else, police officers should treat everyone as if they are infected.

Here, the Court finds police officers are not like everyone else, in that they are sworn to do certain things which others are not required to do. They are thrust into situations which often jeopardize their life and limb, and they are expected (required) to carry out their duties. And while police officers are well-admonished to treat everyone as if they are infected, common sense (expectation) dictates they will typically do what they need to do in a given situation. If they in fact know they are dealing with an infected person, they might be able to pursue an alternative, perhaps personally safer, course of action. While police officers could always pursue personally safer courses of action, if they at least know a person is not listed as infected, they might be more inclined to fully engage a situation, to save life, limb, or liberty, and use all available options and not just those which are personally safer. Here, the Court recognizes the Defendants caution against the reliability of a name not being on the list, in consideration of the challenges with testing, whether the same involve the availability of tests or the lack of perceived need for them. To the extent possible, however, the availability of the names at issue *best* enables police officers to do their job and protect the community to the fullest extent of their ability.

Still further, the Court notes police officers are required to enforce the law. As such, the Court is challenged to think of others who would be better-situated to protect the names at issue, especially with specific safeguards put in place to provide for the same.

With these findings notwithstanding, the Court must still review the elements necessary to provide the relief requested under the law.

First, the Court must find whether a certain and clearly ascertainable right needing protection exists. The Court finds a certain and clearly ascertainable right needing protection exists – the right of police officers to have the names of individuals who reside in McHenry County and who are infected with COVID-19, available through the McHenry County Emergency Telephone System Board, where these names can be secured to protect the privacy rights of individuals under the law, for use by police officers without unnecessary dissemination, and will serve to assist police officers in the performance of their duties to the best of their ability.

Second, the Court must find whether an adequate remedy at law exists for the Plaintiffs. The Court finds an adequate remedy at law does not exist, in that without the provision of the names along the lines suggested, police officers may not be able properly factor alternate courses of action into or out of their deliberations, and have injuries occur which could have otherwise been avoided.

Third, the Court must find whether the Plaintiffs would suffer irreparable harm without the requested temporary restraining order. The Court finds the Plaintiffs would suffer irreparable harm without the requested relief along the lines suggested above, where the availability of the names will serve to facilitate police officers in the performance of their duties and enable them to pursue the best possible courses of action.

Fourth, in consideration of that which is set forth in the pleadings, the Court finds the Plaintiffs have a likelihood of success on the merits.

Lastly, requiring the Defendants to disclose the names of individuals that have tested positive for COVID-19 will not result in a hardship on them.

Bond

Under 735 ILCS 5/11-103, no bond shall be required in this case, in that governmental offices and agencies are involved.

Order

Considering the Foregoing, IT IS ORDERED, ADJUDGED, and DECREED that:

(A) The Defendants - Melissa H. Adamson, in her official capacity as Public Health Administrator for the McHenry County Health Department ("MCHD"), and the MCHD - timely and without unreasonable delay (meaning not more than 24-hours after the time of notice to the MCHD) and continuously, shall disclose the names and addresses of all individuals that reside within McHenry County, Illinois, that are positive for COVid-19, to Tiki Carslon, Director of the McHenry County Emergency Telephone System Board ("ETSB"), and no more than two specified designees, to be entered into its Premise Alert Program, for use by all police officers in McHenry County.

(B) The McHenry County Emergency Telephone System Board ("ETSB") shall enter the names and address of said individuals into its Premise Alert System with the following notations: "Immediate PPE Alert".

(C) The names and addresses of the individuals disclosed pursuant this Order shall be purged by the ETSB seven (7) days after the MCHD deems these individuals to no longer be contagious.

.

(D) All COIVD-19 information disclosed to any person pursuant to this Temporary Restraining Order ("TRO") shall remain and be kept confidential and shall only be used for purposes consistent with this TRO.

(E) Any police officer who utilizes the information provided through this TRO shall participate in an in-house (including remote) training, through each respective, regarding the appropriate use and disclosure of information obtained pursuant to this TRO, as soon as possible.

(F) This Temporary Restraining Order shall be in force and effect pending hearing on Plaintiffs' requests for preliminary injunction which hearing date shall be scheduled by further court order.

(G) This case is continued until April 20, 2020, at 10:00 a.m. for status, with the Court to notify the attorneys for the parties by email by Noon on April 16, 2020, of the time and place for same.

(H) Bond is hereby waived.

Dated: April 10, 2020
Time: 8:25 p.m.

ENTERED:

_____

Michael J. Chmiel
Circuit Judge

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

McHENRY COUNTY SHERIFF, Plaintiff, v. McHENRY COUNTY HEALTH DEPARTMENT, Defendant, and	)	Case No. 20 MR 373
CITY OF McHENRY, an Illinois municipal corporation; VILLAGE OF ALGONQUIN, an Illinois municipal corporation; CITY OF WOODSTOCK; an Illinois municipal corporation; and VILLAGE OF LAKE IN THE HILLS, an Illinois municipal corporation, Plaintiff, v. MELISSA H. ADAMSON, in her official capacity as Public Health Administrator for the McHenry County Department of Health; and the McHENRY COUNTY DEPARTMENT OF HEALTH, Defendants, and	)	Case No. 20 MR 387
LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF ILLINOIS Intervenor-Defendant.	)	

MEMORANDUM OF LAW IN SUPPORT OF INTERVENOR-DEFENDANT'S MOTION TO RECONSIDER AND TO DISSOLVE TEMPORARY RESTRAINING ORDER

This Court has issued a Temporary Restraining Order (hereinafter referred to as the "TRO") forcing the McHenry County Health Department, a government agency, to disclose the identities of individuals residing in McHenry County who already have suffered the grave

misfortune of being confirmed as having COVID-19. This release of information is dangerous. Intervenor-Defendant League of United Latin American Citizens of Illinois (LULAC) has worked to build trust between vulnerable immigrant communities and the Health Department in order to improve the health of the Latino community in McHenry County. The release of names and addresses of people by the Health Department to law enforcement is a breach of that trust. Some will not seek medical treatment for COVID-19 at all if that places their name or address on a law enforcement list. The laudable intent to protect law enforcement is not served by disclosing this personal health information because officers will only have the small list of people who have been diagnosed, and there are many undiagnosed but contagious people.

In addition to increasing risk of stigma, discrimination and potential violence, the wholesale invasion of thousands of individuals' private medical information ordered by the Court runs afoul of the Illinois Constitution, the United States Constitution, and state and federal law. The law provides significant privacy protections to this type of medical information. There is simply no rational justification for disclosure of individuals' private health information to law enforcement officials in McHenry County; this disclosure in no way actually promotes safety or health interests, and actually undermines public health. For the reasons set forth below, the Court should reconsider its Order of April 10, 2020 and dissolve the TRO against the McHenry County Health Department.

FACTUAL BACKGROUND

These consolidated cases were filed in the Circuit Court of the Twenty-Second Judicial Circuit on April 7, 2020 by the McHenry County Sheriff's Office and four municipalities within McHenry County seeking to force the McHenry County Health Department to provide the private medical information of residents of the County diagnosed with COVID-19 over the

objection of public health officials. On April 10, 2020, the Circuit Court entered an Order granting the consolidated Plaintiffs' emergency motions for a TRO. The TRO requires the Health Department to disclose the names and addresses of all individuals residing in the County that have tested positive for COVID-19 to the McHenry County Emergency Telephone System Board to be entered into its Premise Alert Program for use by all police officers in McHenry County. On April 14, 2020, the Health Department filed a motion to reconsider and dissolve the TRO, which is set for a hearing on May 18.

Intervenor-Defendant League of United Latin American Citizens of Illinois (LULAC) is part of a non-profit nationwide advocacy organization with state and local councils which seeks to advance the economic condition, educational attainment, political influence, housing, health and civil rights of the Hispanic population of the United States. Aff. of Maggie Rivera in Supp. of Emergency Pet. to Intervene as Def. at ¶ 3 (attached as Exhibit A). LULAC has more than 280 members in Illinois and 85 members in McHenry County. Ex. A at ¶ 7. LULAC has members in McHenry County who are at higher risk of becoming infected with COVID-19 because they perform essential services. Ex. A at ¶ 8. LULAC members in McHenry County also have concerns about their names or addresses being provided to law enforcement. There are LULAC members who will avoid seeking medical care if the names or addresses of those in McHenry County who test positive for COVID-19 are disclosed to law enforcement, or who fear how they will be treated by law enforcement of they do decide to obtain COVID-19 testing and have a positive diagnosis which is shared with law enforcement. *See* Ex. A at ¶¶ 9–11.

The Latino community in McHenry County has been disproportionately impacted by the COVID-19 pandemic: a quarter of people who have tested positive for COVID-19 in McHenry County are Hispanic or Latino, though only about 13 percent of the population in McHenry

County is Hispanic or Latino. *Compare* McHenry Cnty. Dep't of Health, McHenry County COVID-19 Dashboard, *available at* https://mchenry-county-coronavirus-response-mchenrycountygis.hub.arcgis.com/ (last visited May 10, 2020) *with* U.S. Census Bureau, QuickFacts, McHenry County, Illinois, *available at* https://www.census.gov/quickfacts/mchenrycountyillinois (last visited May 10, 2020).

ARGUMENT

"The purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the court's previous application of existing law." *Korogluyan v. Chi. Title and Trust Co.*, 213 Ill.App.3d 622, 627 (Ill. App. Ct. 1991). A court should dissolve a TRO when there is "sufficient grounds to show an abuse of discretion by the court in its entry of the TRO". *Murges v. Bowman*, 254 Ill.App.3d 1071, 1081 (Ill. App. Ct. 1993) (internal quotations omitted). In granting the TRO, the Court did not take account of recognized constitutional protections for the private medical information sought by the Plaintiffs, and also misapplied state and federal laws protecting the privacy of medical information. The Court abused its discretion in entering a TRO which causes the McHenry County Health Department to violate the constitutional rights of individuals to the privacy of their medical information and has no basis in law.

I. The Relief Ordered by the Temporary Restraining Order Violates Informational Privacy Protections under the Illinois and United States Constitutions

A. Disclosing the Names and Addresses of People with Confirmed COVID-19 is an Unreasonable Invasion of Privacy under the Illinois Constitution

The Illinois Constitution provides that "[t]he people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable . . . invasions of privacy[.]" Ill. Const. art. I, § 6. "[T]he confidentiality of personal medical information is,

without question, at the core of what society regards as a fundamental component of individual privacy" protected by this provision. *Kunkel v. Walton*, 179 Ill.2d 519, 537 (1997). *See also Hope Clinic for Women, Ltd. v. Flores*, 991 N.E.2d 745, 762 (Ill. 2013) ("[O]ur state constitutional privacy guarantee protects a person's reasonable expectation of privacy in his or her personal medical information.")

The Illinois Constitution forbids "unreasonable invasions of privacy." *Kunkel*, 179 Ill.2d at 538. For example, in Kunkel the Illinois Supreme Court held that forcing the disclosure in discovery of highly personal medical information having no relevance to the issues in a lawsuit was a substantial and unjustified invasion of privacy. *Id*. at 538–40. *See also People v. Nesbitt*, 405 Ill.App.3d 823, 830–34 (2010) (holding law enforcement's request for personal banking records without a subpoena, warrant, or defendant's consent amounted to an unreasonable intrusion on her right to privacy under the Illinois Constitution); *Carlson v. Jerousek*, 68 N.E.3d 520, 530, 536 (Ill. App. Ct. 2016) (finding that discovery request for forensic imaging of party's computers was unreasonable and hence unconstitutional where it would unduly burden the significant interest in privacy without offering information of sufficient probative value).

The release of identifying information about people with confirmed COVID-19 ordered by the TRO is a textbook example of an unreasonable encroachment on the individual's right to privacy in personal medical information. The interest of individuals in maintaining the privacy of their medical information clearly outweighs the claimed governmental interest here—a desire to protect police from transmission of the coronavirus, which is an interest that will *not* be served by the mandated disclosures.

The Illinois Department of Public Health has explicitly declared that sharing this information with law enforcement or other first responders has "limited epidemiologic and

infection control value" because of the large number of asymptomatic cases and cases unconfirmed by testing during the current pandemic. Ill. Dep't of Pub. Health, *Guidance to Local Health Departments on Disclosure of Information Regarding Persons with Positive Tests for COVID-19 to Law Enforcement* 2, *available at* https://www.dph.illinois.gov/sites/default/files/20200401_Guidance_on_Disclosure_of_Private_Information.pdf. Numerous other public health experts agree with this assessment. *See, e.g.*, Verified Statement of Ronald C. Hershow, MD (attached as Exhibit B); *Nw. Cent. Dispatch Sys. v. Cook Cnty. Dep't of Pub. Health*, No. 20 CH 03914, *14–15 (Cir. Ct. Cook Cnty. May 1, 2020) (attached as Exhibit C) (describing "thorough and informative" affidavit from Dr. Rachel Rubin, Co-Administrator of Cook County Department of Public Health); Letter from Chicago Mayor Lori Lightfoot to Illinois Attorney General Kwame Raoul (April 23, 2020) (attached as Exhibit D) (describing opinion of Chicago Department of Public Health Commissioner Dr. Allison Arwady that there is "no public health reason for disclosure of positive COVID-19 cases"). In fact, this is the position of the McHenry County Health Department itself. *See* Def.'s Mot. to Reconsider and Dissolve T.R.O. Ex. C, Aff. of Melissa H. Adamson, at ¶ 14 (listing reasons "why providing the [name and address information] requested by the Sheriff… is not medically or epidemiologically appropriate" including limitations on testing, transmission by individuals that are asymptomatic or have not been tested, and the risk of individuals being unwilling to be tested or cooperate with public health authorities if such disclosures are made).

The Circuit Court of Cook County recently relied on similar considerations in the course of denying a motion for a temporary restraining order filed by an emergency dispatch center seeking information about individuals with COVID-19. In discussing the balancing of the harms for purposes of preliminary injunctive relief, the judge in that case declared: "The harm feared by

[the plaintiff dispatch system] . . . simply will not be avoided by the relief it seeks. Whereas the harm to the [defendant health department] and public interest," including the public's privacy rights and health privacy rights, especially, are "real, concrete, and avoidable." *Nw. Cent. Dispatch Sys.* at 18. Informed by a number of factors, the judge concluded that disclosure of the names and addresses of people with confirmed COVID-19 would not reasonably provide meaningful relief to first responders, and actually would endanger them. *See Nw. Cent. Dispatch Sys.* at 16–17. Those factors include: the large number of untested people, the infectiousness of asymptomatic carriers, and the futility of relying on an individual's placement on a list of confirmed cases when they may no longer be contagious. *Id*.

On the other hand, protecting the confidentiality of medical information is essential to ensuring that people access needed medical care for appropriate diagnosis and treatment. A leading public health law scholar has noted:

> People suffering from or at risk of a stigmatizing condition may not come forward for testing, counseling or treatment if they do not believe their confidences will be respected. They are also less likely to divulge sensitive information about risk factors . . . Failure to divulge health information for fear of disclosure can be detrimental to treatment and put others at risk of exposure to disease. Informational privacy, therefore, is valued . . . to protect patients' . . . health and the health of the wider community.

Lawrence O. Gostin & Lindsay F. Wiley, *Public Health Law: Power, Duty, Restraint* 319 (3d Edition 2016). Our relatively recent experience during the HIV epidemic demonstrates that protecting confidentiality "reduces fear of stigma and discrimination, builds trust and opens channels of communication between patients and health-care workers, leads to more ready access to testing services and enhances compliance with public health and clinical advice." UNAIDS, *Rights in the time of COVID: Lessons from HIV for an effective, community-led response* 9, *available at* https://www.unaids.org/sites/default/files/media_asset/human-rights-and-covid-19_en.pdf; *see also* Janlori Goldman, *Protecting Privacy to Improve Health Care*, 17

Health Aff. 47, 48 (1998), *available at* https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.17.6.47; Ex. B at ¶¶ 6, 10–13.

The Illinois Supreme Court has recognized the paramount value of safeguarding the right of privacy in personal medical information in a variety of circumstances, including some similar to those posed by this case. For example, in *People ex rel. Director of Public Health v. Calvo*, 89 Ill.2d 130, 137 (1982), the Court held that a State's Attorney could not subpoena reports of individual cases of sexually transmitted disease from the Department of Public Health. In so doing, the Court recognized strong public policy justifications for protecting an individual's private medical information, reasoning:

> Without an assurance of confidentiality, fear of social embarrassment resulting from disclosure of their identities and physical conditions might cause individuals with such a disease to shun treatment, while at the same time others to whom they may have transmitted the disease might remain unaware that they are in need of treatment.

Id. at 132–33. *See also Best v. Taylor Mach. Works*, 179 Ill.2d 367, 459 (1997) (citing *Petrillo v. Syntex Labs.*, 148 Ill.App.3d 581 (1986)) ("[W]e conclude that patients in Illinois have a privacy interest in confidential medical information, and that the *Petrillo* court properly recognized a strong public policy in preserving patients' fiduciary and confidential relationship with . . . physicians.")

The concerns the Illinois Supreme Court recognized in *Calvo* are just as strong and relevant today as our state fights the COVID-19 pandemic. Widespread screening will be critical to slowing the spread of the disease. *See* Office of Governor J.B. Pritzker, *Restore Illinois: A Public Health Approach to Safely Reopen Our State* 6–10 (May 5, 2020), *available at* https://coronavirus.illinois.gov/sfc/servlet.shepherd/document/download/069t000000BadS0AAJ?operationContext=S1. It is therefore crucial to reduce all barriers to screening for individuals. But given the fears of stigma and discrimination surrounding any infectious disease, the

possibility of identifying information being disclosed by public health authorities to law enforcement will likely deter some people from being screened in the first place—particularly communities of color, immigrants, and others who may already have historic distrust of the police and/or the medical profession. *Cf.* UNAIDS at 9. Media reports show that concerns about harassment against those who are confirmed or even just suspected as having COVID-19 are justified. *See, e.g., Local COVID-19 patient asks people to stop threatening her,* WICS NEWSCHANNEL 20 (March 16, 2020), https://newschannel20.com/news/local/springfield-park-board-member-confirms-she-has-covid-19; Esther Yoon-Ji Kang, *Asian Americans in Chicago Feel the Bite of Prejudice During the Spread of the Coronavirus*, WBEZ (March 31, 2020), https://www.wbez.org/stories/asian-americans-in-chicago-feel-the-bite-of-prejudice-during-the-spread-of-the-coronavirus/687b0f4e-fed8-4fca-90c4-b7c3c495b4cf.

There is a significant imbalance in the current circumstances between the critical importance of protecting individual privacy rights for both individual and community health, and the minimal—or even negative—benefit of disclosing personal medical information to law enforcement. For the McHenry County Health Department to provide the name and addresses of people with confirmed COVID-19 to law enforcement is thus unreasonable, and an infringement of the right to informational privacy afforded by the Illinois Constitution.

In their briefing on their own motion for reconsideration and to dissolve the TRO, Defendants have adopted a position of conceding to the sharing of addresses where individuals confirmed to have COVID-19 live, while objecting to the further disclosure of names mandated by the TRO. *See* Def.'s Mot. to Reconsider and Dissolve T.R.O. at ¶ 11; *but see id.* at ¶ 14 ("Even the provision of addresses is questionable[.]"). However, sharing just addresses without names still involves the same serious concerns about undermining individual and public health

and significant limitations on the usefulness of disclosing this information to law enforcement.[1] *See* Ex. B at ¶ 18. As a result, the sharing of addresses, even in the absence of names, is itself an unreasonable violation of the right to privacy under the Illinois Constitution and should not be ordered by this Court.

B. Disclosing the Names and Addresses of People with Confirmed COVID-19 Also Infringes on Rights Protected Under the United States Constitution

The federal courts have also identified protections for an individual's interest in the privacy of medical and other sensitive information arising from the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution. *See, e.g., Wolfe v. Schaefer*, 619 F.3d 782, 785 (7th Cir. 2010) ("[C]ourts of appeals, including this court, have interpreted [Supreme Court precedent] to recognize a constitutional right to the privacy of medical, sexual, financial, and perhaps other categories of highly personal information[.]"); *Coons v. Lew*, 762 F.3d 891, 900 (9th Cir. 2014) (recognizing a "fundamental privacy right in non-disclosure of personal medical information"); *Burns v. Warden, USP Beaumont*, 482 Fed.App'x 414, 417 (11th Cir. 2012) (recognizing a constitutional interest in avoiding disclosure of personal matters); *Gruenke v. Seip*, 225 F.3d 290, 302–03 (3d Cir. 2000) (recognizing right to protection against disclosure of medical information).

The Seventh Circuit Court of Appeals has stated that an infringement on this constitutional privacy interest is permissible "only upon proof of a strong public interest in access to or dissemination of the information." *Wolfe*, 619 F.3d at 785. As discussed in Part I.A, *supra*, a "strong public interest in access to or dissemination" of information about individuals

[1] In fact, the federal Health Insurance Portability and Accountability Act (HIPAA) regulations specifically include addresses in the category of data that makes a person's health information individually-identifiable and thus subject to the law's privacy protections. *See* 45 C.F.R. § 164.514(b)(2)(B).

with confirmed COVID-19 is lacking here, because numerous experts—including the Illinois Department of Public Health *and* the McHenry County Department of Health's own leadership—have opined that releasing this information to law enforcement authorities actually has limited value in terms of promoting or protecting public health. *See also, e.g., Grimes v. County of Cook*, No. 19 C 1691, 2020 WL 1954149, at *2–4 (N.D. Ill. Apr. 23, 2020) (denying motion to dismiss claim for violation of right to medical privacy under Fourteenth Amendment's Due Process Clause where defendants did not argue that public interest justified disclosure of plaintiff's transgender status); *Fort Wayne Women's Health v. Bd. of Comm'rs, Allen Cty., Ind.*, 735 F.Supp.2d 1045, 1061 (N.D. Ind. 2010) (finding plaintiff likely to succeed on merits of due process claim where there was a "mismatch between the [challenged law's] goals and the requirement for and inspection of patient notification forms containing patient identifying signatures"); *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 552–53 (9th Cir. 2004) (holding regulation which gave agency access to unredacted medical records violated informational privacy rights of patients where access to the unredacted records would not actually promote government's interest in health and safety); *Sterling v. Borough of Minersville*, 232 F.3d 190, 196–97 (3d Cir. 2000) (finding violation of constitutionally protected privacy interest where police officer threatened to reveal arrestee's homosexuality and conceded "he would have no reason to disclose" this sensitive information).

II. There is No Legal Basis for the McHenry County Health Department to Disclose the Names and Addresses of People with Confirmed COVID-19 to Law Enforcement Authorities

Contrary to Plaintiffs' assertions and the Court's TRO order, state statutes governing public health authorities' access to and maintenance of individuals' medical information do not create legally enforceable rights that empower law enforcement to force broad disclosures of

private medical information. Rather, these public health laws recognize that strong confidentiality provisions are necessary to promote the sharing of private patient information with public health officials that is required to achieve the compelling health goals that underlie public health surveillance and reporting requirements. *See* Gostin & Wiley at 306.

Illinois public health laws explicitly call on public health authorities to safeguard the confidentiality of private medical information about individuals that they collect as part of their public health mission. For example, the Illinois Department of Public Health Act provides that:

> [T]he identity of or facts that would tend to lead to the identity of the individual who is the subject of [a report to the Department of Public Health] . . . shall be strictly confidential, are not subject to inspection or dissemination, and shall be used only for public health purposes by the Department, local public health authorities, or the Centers for Disease Control and Prevention.

20 ILCS 2305/2(i)(C). *See also* Department of Public Health Act, 20 ILCS 2305/2(h) ("[T]he Department, local boards of health, and local public health authorities shall protect the privacy and confidentiality of any medical or health information or records or data obtained[.]"); Communicable Disease Report Act, 745 ILCS 45/1 ("The identity of an individual . . . who is identified in a report of an injury, medical condition or procedure, communicable disease, venereal disease, sexually transmitted disease, or food-borne illness or an investigation conducted pursuant to [such report] shall be confidential and . . . shall not be disclosed publicly.").

State law explicitly limits to narrow circumstances any discretion afforded to public health authorities to disclose private medical information about individuals to law enforcement. Such disclosure is only permitted where it would actually promote public health. The Illinois law requiring the reporting of communicable disease cases to the state Department of Public Health includes a very limited exception to the general obligation to maintain the confidentiality of

identifying information about individuals when "necessary . . . for the protection of the health of others". 77 Ill. Adm. Code 690.200(d)(5).

Such circumstances are not present here where experts, including the Illinois Department of Public Health and the McHenry County Health Department's own leadership, maintain that releasing the identities of those with COVID-19 would undermine public health practice. *See supra*, Part I.A. Moreover, updated guidance from the Centers for Disease Control and Prevention for first responders instructs dispatch operators to make inquiries to determine whether a specific caller has or may have COVID-19. Centers for Disease Control and Prevention, *Interim Guidance for Emergency Medical Services (EMS) Systems and 911 Public Safety Answering Points (PSAPs) for COVID-19 in the United States* (updated Mar. 10, 2020), *available at* https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-for-ems.html. Following this guidance provides real-time information that is likely to be more accurate and up-to-date—and thus more protective of first responders—than a list of individuals that likely includes people who are no longer infectious and that is woefully incomplete given the lack of sufficient testing to identify all people with COVID-19. *See Nw. Cent. Dispatch Sys.* at 17; Ex. B at ¶¶ 25–26.

The only Illinois law that discusses any requirement of information sharing between public health authorities and law enforcement agencies—Section 2.1 of the Illinois Department of Health Act—is simply not relevant to the current COVID-19 pandemic. Section 2.1 creates a mandatory reporting obligation for state and local law enforcement, and a reciprocal obligation on IDPH and local public health authorities. 20 ILCS 2305/2.1(a)–(b). The specific and limited purpose of this reporting obligation imposed on public health authorities is apparent on the face of subsection (b) of the law—to give law enforcement authorities information they may need for "the purpose of conducting a criminal investigation or a criminal prosecution." *See Nw. Cent.*

Dispatch Sys. at 10. *See also* 93rd Ill. Gen. Assem., Senate Proceedings, May 11, 2004, at 46 (statements of then-Senator Obama that the purpose of 2004 amendments which added Section 2.1 to the law was to provide for an "effective response to an incidence of bioterrorism").

Plaintiffs incorrectly cited to subsection (c) of Section 2.1 as an authority that supposedly supported their claims of entitlement to receive identifying information about individuals with COVID-19 from the Health Department. However, the accurate interpretation is that subsection (c) lays out the extent of permissible information-sharing in just those limited circumstances where disclosure is specifically mandated by the remainder of Section 2.1—with public health departments for the purpose of investigating and preventing a public health emergency in accordance with subsection (a), or with law enforcement for the purpose of conducting a criminal investigation or prosecution in accordance with subsection (b). *See Nw. Cent. Dispatch Sys*. at 10. Plaintiffs' reliance on Section 690.1405 of the Control of Communicable Diseases Code was likewise misplaced as the close similarities in language demonstrate that this regulation should be understood as merely codifying Section 2.1 and thus limited to the same criminal investigation and prosecution purposes as Section 2.1. *Id*. at 11.

Plaintiffs' arguments for relief also relied on language in the federal Health Insurance Portability and Accountability Act (HIPAA) regulations which permits disclosure of patient information without prior authorization if "necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public". 45 C.F.R. 164.512(j)(1)(i). Where there is a state law that is "more stringent" and provides greater privacy protection than HIPAA, however, the state law controls. *See* 45 C.F.R. 160.203(b); *see also Nat'l Abortion Fed'n v. Ashcroft*, No. 04 C 55, 2004 WL 292079, at *2–4 (N.D. Ill. Feb. 6, 2004). Furthermore, HIPAA requires any person making a disclosure pursuant to this provision both to have a "good faith"

belief that sharing the information would in fact serve this purpose, 45 C.F.R. 164.512(j)(1), and to limit the information disclosed to the "minimum necessary" to accomplish this purpose. 45 C.F.R. 164.502(b). In light of the position taken by the McHenry County Health Department's own leadership that releasing identifying information to law enforcement about those with COVID-19 is not a good public health practice, this HIPAA exception is inapplicable to current circumstances.

The Illinois legislature has imposed strong confidentiality protections when public health authorities collect individuals' private medical information. Nothing in that body of law creates a legally enforceable right for law enforcement to demand identifying information from the Health Department about individuals who have been confirmed to have COVID-19. The conclusion reached by the Court in granting the TRO was in error.

CONCLUSION

Upholding individual privacy is what will best protect the people in McHenry County who need to access medical care, the broader public health, and first responders themselves during the current pandemic. The TRO requiring the McHenry County Health Department to disclose the personal health information of individuals confirmed to have COVID-19 to law enforcement is contrary to state and federal protections for medical privacy.

For the foregoing reasons, the Court should reconsider its Order of April 10, 2020, and dissolve the Temporary Restraining Order against the McHenry County Health Department in its entirety.

DATED: May 12, 2020 Respectfully Submitted,

/s/ Emily Werth
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Exhibit A

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

McHENRY COUNTY SHERIFF, Plaintiff, v. McHENRY COUNTY HEALTH DEPARTMENT, Defendant,	))))))))	Case No. 20 MR 373
CITY OF McHENRY, an Illinois municipal corporation; VILLAGE OF ALGONQUIN, an Illinois municipal corporation; CITY OF WOODSTOCK; an Illinois municipal corporation; and VILLAGE OF LAKE IN THE HILLS, an Illinois municipal corporation, Plaintiff, v. MELISSA H. ADAMSON, in her official capacity as Public Health Administrator for the McHenry County Department of Health; and the McHENRY COUNTY DEPARTMENT OF HEALTH, Defendants,	)))))))))))))))	Case No. 20 MR 387
LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF ILLINOIS Proposed Intervenor-Defendant.	)))	

AFFIDAVIT OF MAGGIE RIVERA IN SUPPORT OF EMERGENCY PETITION TO INTERVENE AS DEFENDANT BY LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF ILLINOIS

Maggie Rivera, states under penalties of perjury as follows:

1. I submit this affidavit in support of the Emergency Petition to Intervene as Defendants by League of United Latin American Citizens of Illinois ("LULAC").

2. I am the Illinois State Director for LULAC.

3. LULAC is part of a non-profit nationwide advocacy organization with statewide and local councils that seek to advance the economic condition, educational attainment, political influence, housing, health and civil rights of the Hispanic population of the United States.

4. National LULAC's Latinos Living Healthy initiative seeks to address health disparities and to engage community partners to impact the healthcare related needs of Latinos in local communities, including in Illinois.

5. Throughout the current pandemic, LULAC has engaged in advocacy efforts to improve the health and safety of immigrants and communities of color, including by advocating for more access to testing and treatment.

6. In addition to its many other objectives, LULAC continues to use its resources to improve health outcomes in its membership communities, many of which have been disproportionately impacted by the novel coronavirus and COVID-19.

7. LULAC has more than 280 members in Illinois and 85 members in McHenry County.

8. LULAC has members in McHenry County who are at higher risk of becoming infected with COVID-19 because they perform essential services.

9. Many members of the Latino community, including LULAC's members, are fearful of having their names or addresses provided to law enforcement officers.

10. If the names or addresses of individuals who have or will test positive for COVID-19 are shared with law enforcement officers, many members of the Latino community in McHenry County, including LULAC's members, will avoid seeking medical care and receiving a positive diagnosis.

11. Other members of the Latino community, including LULAC's members, who do seek medical care and receive a positive COVID-19 diagnosis, will fear how they will be treated by law enforcement officers because of their diagnosis. For example, many individuals in these communities already fear that law enforcement officers in McHenry County will racially profile them, and a positive COVID-19 diagnosis only increases this fear of unfair treatment or targeting. Many individuals also fear that if they are victims of a crime and have tested positive for COVID-19, they may not receive a prompt or adequate response by law enforcement officers.

12. The fear of personal information being disclosed to law enforcement officers creates an additional barrier to healthcare and will result in increased health disparities in the Latino community in McHenry County. Not only does this put the Latino community, including LULAC's members, at higher risk of exposure to COVID-19 because fewer individuals will know whether they have been infected, but many members of this community will avoid seeking medical care altogether, even for non-COVID-19 concerns.

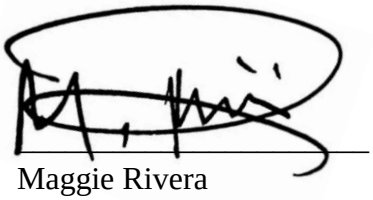
13. LULAC will need to spend a significant amount of its resources to address these resulting disparities and additional healthcare needs. The increased attention on healthcare needs will detract from the resources LULAC has available to spend on its economic, educational, political, housing, and civil rights objectives.

14. Furthermore, the disclosure of personal health information threatens to reverse the significant progress LULAC has made in recent years to build the Latino community's trust and

confidence in the McHenry County Department of Health. For example, LULAC has recruited people to attend free classes with the Department of Health. Many individuals will feel betrayed by these disclosures and will lose trust in LULAC and its programs.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Dated this 12th day of May, 2020.



Maggie Rivera

Exhibit B

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MCHENRY COUNTY, ILLINOIS

McHENRY COUNTY SHERIFF, Plaintiff, v. McHENRY COUNTY HEALTH DEPARTMENT, Defendant, and	)	Case No. 20 MR 373
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LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF ILLINOIS Intervenor-Defendant.	)	

VERIFIED STATEMENT OF RONALD C. HERSHOW, M.D.

I, Ronald C. Hershow, M.D., state under penalty of perjury as follows:

1. I am Dr. Ronald C. Hershow, Director of the Division of Epidemiology and Biostatistics, School of Public Health, University of Illinois, Chicago (UIC). I joined the faculty of the School of Public Health in 1987 and became the Director of the Division of Epidemiology

and Biostatistics in 2012. In addition to directing the work of the Division, I also teach epidemiology courses and give lectures in the undergraduate public health program, and continue to research and write in the areas of my professional expertise and interest. These include HIV/AIDS particularly as it affects women and substance users, viral hepatitis, health care-associated infections and, most pertinently, emergency response and emerging infectious diseases.

2. I obtained my medical degree in 1978 from State University of New York at Stony Brook Medical School. I received my B.A. in Biology in 1974 from Hofstra University.

3. I have more than 35 years of experience working in public health. Before I joined the UIC faculty, I was an Epidemic Intelligence Service (EIS) officer at the Center for Disease Control and Prevention from 1985 to 1987. My curriculum vitae is attached as Exhibit A.

4. In my experience in the community health context, I have found it necessary and appropriate to release some information—albeit not personally identifying health information—to protect the public health. For example, it is appropriate to provide reporting about the number of infections in a particular area. That reporting is at the community level and does not involve releasing personal health information.

5. Patients have strong privacy rights under principles of medical ethics, public health ethics, and state and federal law.

6. My research and my practice underscores the harms that accrue from the release of personal health information, including a person's name, address and whether he or she tested positive for an infectious disease. Those harms include the risk of stigma, embarrassment, loss of one's livelihood, and in some cases, the risk of physical harm. As such, in my research and

practice, I am always careful to protect the privacy and confidentiality of research subjects, a core principle of biomedical research ethics.

7. I am ethically bound to ensure that patient health information remains confidential to the greatest extent possible under medical and public health codes, along with various state and federal laws.

8. I have found that good public health and medical practice typically does not permit the release of names or other identifying information of individuals with infectious diseases. In some cases, it may be necessary and appropriate to release some information, but such disclosures must be limited to narrow circumstances where the disclosure would actually promote public health.

9. Such circumstances are not present in the current situation, as the release of the identities (via name or address) of those with COVID-19 would do more to harm public health than promote it.

10. Protecting the confidentiality of medical information is essential to ensuring that people are able to access needed medical care for appropriate diagnosis and treatment. It is widely accepted among public health scholars, and has proven true in my experience, that individuals suffering from or at risk of a stigmatizing condition may not come forward for medical care if they do not believe their medical information will remain confidential.

11. It is my belief and an accepted public health principle that widespread screening will be critical to slowing the spread of COVID-19.

12. It is therefore crucial to reduce all barriers to screening for individuals, including reducing fears of stigma and discrimination that surrounds any infectious disease.

13. I am very concerned about how potential stigma would affect efforts to respond to the health crisis in McHenry County. For instance, current data suggests that COVID-19 disproportionately impacts the Hispanic community. According to the McHenry County Health Department, as of May 9, 2020, people who identify as Hispanic or Latino comprise one quarter of total COVID cases in McHenry County. McHenry Cnty. Dep't of Health, McHenry County COVID-19 Dashboard, *available at* https://mchenry-county-coronavirus-response-mchenrycountygis.hub.arcgis.com/ (last visited May 10, 2020)..

14. It is my understanding and an accepted public health principle that the Hispanic community, undocumented people, and families with mixed immigration statuses tend to have less than average access to healthcare and more likely to experience poor outcomes from a variety of diseases. Further, many members of these communities may already have a historic distrust of the medical profession and/or police. Disclosure of personal health information may create an additional barrier to this community's access to testing, frustrating efforts to respond to the COVID-19 pandemic.

15. In addition, considering the potential impact of providing information about those diagnosed with COVID-19 to first responders, I am of the strong opinion that providing such information will not make first responders safer, and may actually put them at greater risk.

16. I am aware that this view is shared by the Illinois Department of Public Health (IDPH), which on April 1, 2020 issued guidance on this issue. The IDPH guidance states: "[P]roviding first responders and law enforcement with the identity of positive COVID-19 cases has limited epidemiologic and infection control value and therefore IDPH does not recommend notification to law enforcement of individuals who have tested positive for COVID-19. Rather, IDPH recommends that first responders and law enforcement take appropriate protective

precautions when responding to all calls." Ill. Dep't of Pub. Health, *Guidance to Local Health Departments on Disclosure of Information Regarding Persons with Positive Tests for COVID-19 to Law Enforcement, available at* https://www.dph.illinois.gov/sites/default/files/20200401_Guidance_on_Disclosure_of_Private_Information.pdf.

17. I agree with the IDPH guidance and find it to be in accord with sound public health policy and practice. This type of universal precautions approach is sensible given that in general community rates of testing for COVID-19 have been low and testing has been often restricted to those with severe symptoms. As such, many infected persons have not been identified.

18. Providing addresses alone, even without also providing names, creates the risk of revealing personal health information—including the names of infected people—and the incumbent harms, and presents no significant health benefit for the first responders

19. The specific features of the COVID-19 pandemic make it such that information about individuals' diagnosis is not particularly helpful and could give first responders a false sense of security when considering when to take particular precautions.

20. It is likely that hundreds of McHenry County residents have, or have had, the virus but have not been tested, and hundreds more are projected to be infected with the virus in the coming weeks. As of May 9, 2020, there have been 940 known cases and 50 known deaths from COVID-19 complications in McHenry County. McHenry Cnty. Dep't of Health, McHenry County COVID-19 Dashboard, *available at* https://mchenry-county-coronavirus-response-mchenrycountygis.hub.arcgis.com/ (last visited May 10, 2020). These numbers likely dramatically underreport the number of infections because community spread has outpaced

testing efforts across the state and nation. In other words, the virus has been spreading through community contact largely undetected, and testing has been primarily limited to persons who are symptomatic, those who have been in close contact with persons who are symptomatic, or who are in residential settings where a cluster of infections has already been identified.

21. In Illinois, with a population estimated at 12.8 million, as of May 11, 2020, IDPH has reported 442,425 tests have been administered. This means that, thus far, just over 3% of Illinois residents have been tested. Ill. Dep't of Public Health, COVID-19 Statistics, *available at* https://www.dph.illinois.gov/covid19/covid19-statistics (last visited May 11, 2020).

22. Even as testing has increased in the United States, the positivity rate of the tests has stayed around 20 percent; the positivity rate in Illinois has hovered at about 15%. This means that even as more and more people are tested, the rate of infection has stayed relatively constant. This is an indicator of how dramatically current counts likely understate the number of people infected with the virus. *See, e.g.*, R. Meyer and A. Madrigal, "A New Statistic Reveals Why America's COVID-19 Numbers Are Flat," Atlantic Monthly (Apr. 16, 2020), *available at* https://www.theatlantic.com/technology/archive/2020/04/us-coronavirus-outbreak-out-control-test-positivity-rate/610132/.

23. My view is supported by studies indicating that COVID-19-infected individuals may be most contagious before they develop symptoms significant enough to cause them to seek testing or treatment. *See*, R. Wolfel, *et al.*, "Virological assessment of hospitalized patients with COVID-19," Nature (Apr. 1, 2020), *available at* https://www.nature.com/articles/s41586-020-2196-x_reference. ("Critically, the majority of patients in the present study seemed to be beyond their shedding peak in samples from the upper respiratory tract when they were first tested, whereas the shedding of infectious virus in sputum continued throughout the first week of

symptoms."); *See also* W. Wei, *et al.* "Presymptomatic Transmission of SARS-CoV-2 — Singapore, January 23–March 16, 2020," Morbidity and Mortality Weekly Report (Apr. 10, 2020), *available at* https://www.cdc.gov/mmwr/volumes/69/wr/mm6914e1.htm.

24. Given the pervasive community spread of COVID-19, along with the often asymptomatic presentation of infected individuals, I believe that the McHenry County Department of Health must not release the names and addresses of COVID-19-infected persons.

25. I am aware that the Center for Disease Control (CDC) has provided Interim Guidance for Emergency Medical Services (EMS) Systems and 911 Public Safety Answering Points (PSAPs) for COVID-19 in the United States. Centers for Disease Control and Prevention, *Interim Guidance for Emergency Medical Services (EMS) Systems and 911 Public Safety Answering Points (PSAPs) for COVID-19 in the United States* (updated Mar. 10, 2020), *available at* https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-for-ems.html. This guidance instructs dispatch operators how to make inquiries to determine whether a specific caller has or may have COVID-19. It is my belief that following this guidance is likely to be more accurate and up-to-date, and thus more protective of first responders, than a list of individuals that likely include people who are no longer infectious and that is woefully incomplete given the continuing testing challenges.

26. In my professional opinion, I believe that following the recommended procedures for PSAPs and first responders in every case is far more likely to help prevent infection than any marginal benefit that could come from taking special precautions in the instances where first responders are informed in advance of a confirmed COVID-19 diagnosis. Above all, first responders should wear masks and gloves, and when appropriate, goggles, whenever they are in direct contact with a member of the public.

27. It is important to acknowledge that, because the disease is highly contagious even among people who appear asymptomatic, the wearing of PPE is critical not just for the safety of first responders, but also to protect the public with whom they interact, because a first responder may also be infected with the virus even when he or she appears to have no symptoms.

28. Although not ideal, under these unprecedented circumstances, there are ways to extend the use of PPE and mitigate the issues that arise when insufficient PPE is available. For example, masks can be reused, and items can be disinfected between uses. In addition, the CDC opines that regular surgical facemasks are an acceptable alternative, even for contact with individuals confirmed or suspected to have COVID-19, until the supply chain of N-95 respirators is restored. Centers for Disease Control and Prevention, *What Law Enforcement Personnel Need to Know about Coronavirus Disease 2019 (COVID-19), available at* https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-law-enforcement.html.

29. In my judgment, providing consistent guidance and training for first responders, improving testing, and increasing PPE and other medical resources are key to combatting the pandemic within McHenry County. However, providing first responders with the names and addresses of persons diagnosed with COVID-19, contributes minimally, if at all, to public health, and is outweighed by the imperative to protect individuals' privacy.

Dated: May 11, 2020

Ronald C. Hershow, M.D.

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Ronald C. Hershow, M.D.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

CURRICULUM VITAE

NAME **RONALD C. HERSHOW, M.D.**

DATE OF BIRTH April 28, 1952

CITIZENSHIP U.S.A.

PRESENT POSITION Associate Professor of Epidemiology, and Director, Division of Epidemiology and Biostatistics, University of Illinois at Chicago (UIC) School of Public Health; Clinical Associate Professor of Medicine, UIC College of Medicine, Section of Infectious Diseases

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CERTIFICATION and LICENSURE

Illinois Medical License, July, 1987
Board Certified in Infectious Diseases, November, 1986.
Board Certified in Internal Medicine, September, 1982.
Diplomate, National Board of Medical Examiners, March, 1979.

EDUCATION

1974-1978	Medical Student, State University of New York at Stony Brook Medical Center. Received M.D. in June, 1978.
1970-71,72-74	Undergraduate Student, Hofstra University, Hempstead, NY. Received B.A. Magna Cum Laude in June, 1974, with a major in biology.
1971-1972	Undergraduate Student, Cornell University, Ithaca, NY.
1966-1970	Attended Carle Place High School, Carle Place, NY. Received academic diploma in June, 1970.

POSTGRADUATE TRAINING

10/83-06/85	Fellowship, Infectious Diseases, Washington Hospital Center, Washington, DC
1981-1982	Chief Medical Resident, Washington Hospital Center, Washington, DC
1978-1981	Resident, Medicine, Washington Hospital Center, Washington, D.C.

WORK EXPERIENCE

2/2012-Present — Director, Division of Epidemiology and Biostatistics, University of Illinois at Chicago School of Public Health. My duties included leading the division in team building and collegiality that actively support the missions of the school and university, setting strategic priorities, planning and implementing new initiatives, providing vision and leadership for research, teaching, service and other scholarly activities of the division. I also recruit, supervise, evaluate, and mentor faculty, staff and students and manage personnel and resources for the maximal benefit of the division and school.

8/2010-2/2012 — Interim Director, Division of Epidemiology and Biostatistics, University of Illinois at Chicago School of Public Health.

8/1987-8/2010 — University of Illinois at Chicago (Joint Appointment): Associate Professor of Epidemiology School of Public Health, Assoc. Professor of Clinical Medicine in the College of Medicine. My duties included outpatient I.D. consultation, one morning each week. I teach Infectious Diseases, Epidemiology, and Preventive Medicine to graduate students at the School of Public Health, medical students, house staff, and fellows. My research interests include acquired immune deficiency syndrome (AIDS), viral hepatitis, and nosocomial infections.

7/85-8/87 — Epidemic Intelligence Service (EIS) Officer
Centers for Disease Control
Hepatitis Branch Bldg. 7, Room 154
1600 Clifton Road
Atlanta, GA 30333

I worked as an Epidemic Intelligence Service Officer in the Hepatitis Branch at the Centers for Disease Control. My major investigations concerned delta hepatitis in Illinois facilities for the developmentally disabled, an epidemic of acute hemorrhagic conjunctivitis in American Samoa, and a nosocomial outbreak of hepatitis B in Haifa, Israel. I also authored a protocol to study the need for universal screening for hepatitis B surface antigen in Mexican-American women on the Texas-Mexican border.

1/85-6/85 — Clinico de Pueblos
Washington, DC

Provided acute medical care for Central Americans who had recently emigrated to Washington, DC.

6/83-9/83	Friends Hospital Kaimosi P.O. Private Bag Tiriki, Kenya, East Africa Worked in 120 bed hospital serving a population of 100,000 in Western Kenya under the auspices of Direct Relief International. Provided medical care in outpatient, medical and surgical wards. Taught clinical medicine to Kenyan, German, British, and American medical students. Also as a member of a mobile medical unit visited remote villages to provide vaccinations, prenatal, and acute medical care.
3/83-4/83	Lima, Peru Iquitos, Peru Rotated through several hospitals in Lima and Iquitos joining staff rounds, teaching, and providing consultation on difficult cases.
10/82-2/83	Sanatorio La Esperanza Asuncion, Paraguay (urban clinic); Ybycui, Paraguay (rural clinic) Worked in a clinical setting both in the countryside and in the capital of Paraguay providing outpatient medical care.
6/82-10/82	Worked as a physician in the Admissions Ward of Khao-I-Dang Refugee Camp, adjacent to the Thai-Cambodian border. This ward functioned as an emergency room for a camp of 140,000 inhabitants, 60% of whom are children. I also served as head of triage and intake for wounded civilians during the Vietnamese invasion (June 23 to June 30) with a caseload of approximately 100 patients a day. This program was under the auspices of the International Rescue Committee and Cornell University Medical Department.
1979-1982	Volunteer, Washington Free Clinic, Washington, DC. I supervised medical care at clinic sessions and trained lay volunteers.
1974-1978	Coordinator, Riverhead, NY, Free Clinic for Migrant Workers. As a member of the Coalition of Concerned Medical Professionals, I helped organize health care for migrant workers on Long Island, NY.

Summer, 1974 Teacher, Bedford-Stuyvesant Manpower Center, Brooklyn, New York.

I prepared disadvantaged adults for high school equivalency examinations in program sponsored by the New York Board of Education.

PROFESSIONAL ACTIVITIES

Member, Epidemiology Advisory Group, Chair: Roderick Jones, Illinois Department of Public Health, Provide epidemiologic advice and consultation. 2011-2014

Member, Technical Advisory Group (Communicable Diseases), Chicago Department of Public Health, 1999 - Present.

Moderator, 9th International Congress on AIDS in Asia and the Pacific (9th ICAAP), August 9-13, 2009, Bali, Indonesia, Session on "Consider Co-infection"

Member, Hepatitis C Task Force, Chicago Department of Public Health, 2003 - 2010.

Peer Reviewer for:

- PLOS Medicine
- American Journal of Public Health
- Journal of Infectious Diseases
- Journal of Acquired Immunodeficiency Syndrome
- Clinical Infectious Diseases
- International Journal of Infectious Diseases
- Infections in Medicine
- American Journal of Infection Control
- Addiction
- Annals of Epidemiology
- International Journal of Gynecology and Obstetrics
- The American Journal of Tropical Medicine and Hygiene

Moderator, Society of Epidemiologic Research (SER) Conference 2008, Chicago, IL, Spotlight Session on HIV/AIDS

Co-Chair, Clinical Working Group of the Women and Infants Transmission Study (WITS), an NIH-funded, multicenter study of HIV-infected women (enrolled when pregnant) and their children. Clinical Working Group developed research agenda pertaining to the maternal and pediatric study populations. (2001-2006)

Chair, Drug Use Working Group of the Women and Infants Transmission Study (WITS), an NIH-funded,

multicenter study of HIV-infected women (enrolled when pregnant) and their children. Drug Use Working Group developed research agenda pertaining to substance use in the maternal population. (2001-2006)

Consultant, National Institutes for Health, AIDS Clinical Studies and Epidemiology Study Section Meeting, 2007

Member, Strategic Steering Committee to Formulate Statewide Hepatitis Prevention Plan, Illinois Department of Public Health, 2004-2005.

Consultant, AMA Foundation Seed Grant Competition Review Panel, 2002-2004.

Evaluator, Topoff 2 (Chicago Bioterrorism Simulation Exercise), Illinois Department of Public Health, May 2003.

Member, Chicago Asthma Consortium (2001-2002)

Consultant, National Institutes for Health, National Institute of Child Health and Human Development, AIDS & Related Research Review Panel. 2000

Consultant, National Institutes of Health, Center for Scientific Review, Member of CSR special emphasis panel (ARG1 AARR-1), 2000.

Consultant, National Institutes for Health, National Institute of Child Health and Human Development, AIDS & Related Research Review Panel (AARR8). 1998

Invited participant, External Scientific Advisory Panel for the REACH (Reaching for Excellence in Adolescent Care and Health) Project of the Adolescent Medicine HIV/AIDS Research Network for National Institute of Child Health and Human Development (NICHD). November 1997

Chair, Statewide Committee on Infection Control in Facilities for the Developmentally Disabled and Mentally Ill. Springfield, IL 1993 - 1999.

PEER-REVIEWED PUBLICATIONS

JOURNAL ARTICLES

Suda KJ, Calip GS, Zhou J, Rowan S, Gross AE, **Hershow RC**, Perez RI, McGregor JC, Evans CT. Assessment of the appropriateness of antibiotic prescriptions for infection prophylaxis before dental procedures. JAMA Netw Open. 2019 May 3;2(5):e193909. doi: 10.1001/jamanetworkopen.2019.3909.

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Umar E, Levy JA, Bailey RC, Donenberg G, **Hershow RC,** Mackesy-Amiti ME. Virological non-suppression and its correlates among adolescents and young people living with HIV in Southern Malawi. AIDS and Behavior. 2018 https://doi.org/10.1007/s10461-018-2255-6.

Babb C, Makotsi N, Heimler I, Bailey RC, **Hershow RC**, Masanga P, Mehta SD. Evaluation of the effectiveness of a latrine intervention in the reduction of childhood diarrhoeal health in Nyando District, Kisumo County, Kenya. Epidemiol Infect. 2018 Jul;146(9):1079-1088. doi: 10.1017/S0950268818000924. Epub 2018 May 10.

Rubinstein I, Weinberg G, van Breemen R, **Hershow RC**, Feinstein DL. Treatment for long acting anticoagulant rodenticide poisoning – beyond INR monitoring? Toxicol Commun. 2018;2(1):59-61. doi: 10.1080/24734306.2018.1500152. Epub 2018 Aug 13.

Hotton AL, Weber KM, **Hershow RC,** Anastos K, Bacchetti P, Golub ET, Gustafson D, Levine AM, Young M, Cohen MH. Prevalence and predictors of hospitalizations among HIV-infected and at-risk HIV-uninfected women. J Acquir Immune Defic Syndr. 2017 Jun 1;75(2):e27-e35. doi: 10.1097/QAI.0000000000001278.

Limper HM, Slawsky L, Garcia-Houchins S, Mehta S, **Hershow RC,** Landon E. Assessment of an aggregate-level hand hygiene monitoring technology for measuring hand hygiene performance among healthcare personnel. Infect Control Hosp Epidemiolol. 2017 Mar;38(3):348-352. doi: 10.1017/ice.2016.298.Epub 2016 Dec 19.

Dam L, Cheng A, Tran P, Wong SS, **Hershow R**, Cotler S, Cotler SJ. Hepatitis B stigma and knowledge among Vietnamese in Ho Chi Minh City and Chicago. Can J Gastroenterol Hepatol. 2016;2016:1910292. doi: 10.1155/2016/1910292. Epub 2016 Dec 22.

Burke-Miller JK, Weber K, Cohn SE, **Hershow RC**, Sha B, French AL, Cohen MH. Measurement of neighborhood context in an urban cohort of HIV-infected or at risk low-income women. J Poverty. 2017;21(1):80-96. doi: 10.1080/10875549.2016.1262933. Epub 2016 Dec 9.

Kuniholm MH, Jung M, Del Amo J, Talavera GA, Thyagarajan B, **Hershow RC,** Damas OM, Kaplan RC. Awareness of hepatitis C virus seropositivity and chronic infection in the Hispanic Community Health Study/Study of Latinos (HCHS/SOL) J Immigr Minor Health. 2016 Dec;18(6):1257-1265.

Burke-Miller JK, Weber K, Cohn SE, **Hershow RC,** Landon E. Neighborhood community characteristics associated with HIV disease outcomes in a cohort urban women living with HIV. AIDS Care. 2016 Oct;28(10):1274-9. Doi: 10.1080/09540121.2016.1173642. Epub 2016 Apr 21.

Limper HM, Garcia-Houchins S, Slawsky L, **Hershow RC**, Landon E. A validation protocol: Assessing the accuracy of Hand Hygiene Monitoring Technology. Infect Control Hosp Epidemiol. 2016 Aug;37(8):1002-4. Doi: 10.1017/ice.2016.133.

Sharma A, Hoover DR, Shi Q, Gustafson D, Plankey MW, **Hershow RC**, Tien PC, Golub ET, Anastos K. Relationship between Body Mass Index and Mortality in HIV-infected HAART users in the Women's Interagency HIV Study. Plos One. 2015 Dec 23; 10(12):e0143740. doi. 10.1371/journal.pone.0143740. eCollection 2015.

Cohen MH, Weber KM, Hotton A, **Hershow RC.** Gender-related risk factors improve mortality predictive ability of VACS Index among HIV-infected women. J Acquir Immune Defic Syndr. 2015 Dec 15;70(5):538-44. doi: 10.1097/QAI.0000000000000795.

Ricks PM, **Hershow RC**, Rahimian A, Hou D, Prachand N, Jimenez A, Wiebel W. A randomized trial comparing completion of treatment between two models for treating substance users with tuberculosis.Int J Tuberc Lung Dis. 2015 Mar; 19(3):326-32. Doi: 10.5588/ijtld.14.0471.

Li Y, **Hershow R**, Irwanto, Praptoraharjo I, Setiawan M, Levy J. Factors associated with symptoms of depression among injection drug users receiving antiretroviral treatment in Indonesia. J AIDS Clin Res 2014, 5:5, http://dx.doi.org/10.4172/2155-6113.1000303.

Sharma A, Bynum SA, Plankey MW, Cox C, Tien PC, **Hershow RC**, Gustafson D, Schneider MF. Changes in body mass index following HAART initiation in HIV-infected women. J AIDS Clin Res 2014, 5:7 http://dx.doi.org/10.4172/2155-6113.1000323.

Magee M, Blumberg HM, Broz D, Furner S, Samson L, Singh S, **Hershow R.** Prevalence of drug-resistant tuberculosis among patients at high-risk for HIV attending outpatient clinics in Delhi, India. Southeast Asian Journal of Tropical Medicine. 2012;43(2):354-63.

Dorevitch S, Dworkin MS, Deflorio SA, Janda WM, Wuellner J, **Hershow RC.** Enteric pathogens in stool samples of Chicago-area water recreators with new-onset gastrointestinal symptoms. Water Res. 2012;46(16):4961-72.

Hershow RC. Commentary on Thorne et al. (2012): HIV prevention and treatment in female injection drug users – a work in progress. Addiction. 2012;107(1):129-130.

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Boodram B, **Hershow RC,** Cotler SJ, Ouellet LJ. Chronic hepatitis C virus infection and increases in viral load in a prospective cohort of young, HIV-uninfected injection drug users. Drug and Alcohol Depend. 2011;119(3):166-71.

Kessler C, **Hershow RC** et al. Underreporting of Blood and Body Fluid Exposures among Healthcare Students and Trainees in the Acute Care Setting: A 2007 Survey. American Journal of Infection Control. 2011;39(2):129-34.

Boodram B, **Hershow RC**, Klinzman D, Stapleton JT. GB virus C infection among young, HIV-negative injection drug users with and without hepatitis C virus infection. J Viral Hepat. 2010 Aug 3. [Epub ahead of print]

Sreeramoju PV, Cadena J, Fiebelkorn KR, Sanchez R, Guerra FA, **Hershow RC.** Community outbreak of acute hepatitis B detected by the infection control program at a public hospital system. Texas Public Health Journal. 2010;62(4):18-22.

Ouyang DW, Brogly SB, Lu M, Shapiro DE, **Hershow RC**, French AL, Leighty RM, Thompson B, Tuomala RE. Lack of increased hepatotoxicity in HIV-infected pregnant women receiving nevirapine compared to other antiretrovirals. AIDS. 2010:24(1):109-14

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French AL, Gawel S, **Hershow R**, Benning L, Hessol NA, Levine AM, Anastos K, Augenbraun M, Cohen MH. Trends in mortality and causes of death among women with HIV in the US: A ten year study. J Acquir Immune Defic Syndr. 2009:51(4):399-406.

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Evans CT, Burns SP, Chin A, Weaver FM, **Hershow RC**. Predictors and outcomes of inadequate antibiotic treatment in bloodstream infections in veterans with spinal cord injury. Arch Phys Med Rehabil 2009;90(8):1364-70.

Evans CT, **Hershow RC**, Chin A, Foulis PR, Burns SP, Weaver FM. Bloodstream infections and setting of onset in persons with spinal cord injury and disorder. Spinal Cord Aug:47(8):610-5. Epub 2009 Feb 24.

Broz D, Levin EC, Mucha AP, Pelzel D, Wong W, Persky VW, **Hershow RC**. Lessons Learned from the Chicago Department of Public Health Emergency Response to Mass Evacuations due to Hurricane Katrina. Am J Pub Health 2009 Jun 18. [Epub ahead of print]

Dowd KA, **Hershow RC**, Yawetz S, LaRussa P, Diaz C, Landesman SH, Paul ME, Read JS, Lu M, Thomas DL, Netski DM, Ray SC. Maternal Neutralizing Antibody and Transmission of HCV to her Infant. J Inf Dis 2008;198(11):1651-5.

Herrmann JA, **Hershow RC**. One medicine, one university: the DVM/MPH program at the University of Illinois. J Veterinary Med Ed 2008 Summer;35(2):194-8.

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Fiore A, Baxter LC, Bell BP, **Hershow R**, Passaro D, Twiddy S, Baxter R, Levy PS. Hepatitis A vaccination 2004 in children: Methods and findings of a survey in two states. Am J Prev Med 2007;33(4):346-52.

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BOOK CHAPTERS

Hershow RC, Nusbaum KE. Emerging infectious diseases: Old nemesis, new challenges. In Beyond One Health: From Recognition to Results. John Wiley & Sons, Inc. 2018.

Hershow RC. An outbreak of fulminant hepatitis B in a medical ward in Israel. In Outbreak Investigations Around the World: Case Studies in Infectious Disease Field Epidemiology. Jones & Bartlett Publishers, 2009

Oleske DM, **Hershow RC**. Control of Communicable Diseases in Health Care Settings. In Epidemiology and the Delivery of Health Care Services: Methods and Applications, Second Edition, Kluwer Academic/Plenum Publishers, New York, 2000.

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Hershow RC. Review of Kalichman/ Denying AIDS: Conspiracy Theories, Pseudoscience, and Human Tragedy. Available:http://www.doody.com. (Accessed May 15, 2009)

SELECTED PRESENTATIONS

Hershow R, Li Y, Irwanto I, Praptoraharjo I, Kamil O, Tambunan R, Lenggogeni S, Setiawan M, Levy J. Factors associated with poor HIV treatment outcomes among intravenous drug users (IDUs) receiving antiretroviral (ARV) treatment in Jakarta and Bali, Indonesia. XIX International AIDS Conference, Washington, DC, USA, 7/22-27/2012.

Hershow R, Li Y, Irwanto I, Kamil O, Tambunan R, Lenggogeni S, Setiawan M, Levy J. Parental involvement in anti-retroviral (ARV) treatment among HIV-positive injection drug users (IDUs) in Jakarta and Bali. XVIII International AIDS Conference, Vienna, Austria, 7/18-23/2010.

Li Y, **Hershow R**, Irwanto I, Kamil O, Tambunan R, Lenggogeni S, Setiawan M, Levy J. Risk factors for depression among intravenous drug users (IDUs) receiving antiretroviral therapy (ARV) treatment in Jakarta and Bali, Indonesia. XVIII International AIDS Conference, Vienna, Austria, 7/18-23/2010.

Hershow RC, Lenggogeni S, Kamil O, Setiawan M, Tambunan R, Irwanto. Family support of Jakarta and Bali injection drug users (IDUs) receiving antiretrovirals (ARVs). 9th International Conference on AIDS in Asia and the Pacific. Bali, Indonesia, 8/9-13/2009.

Ricks PM, **Hershow RC**, Rahimian A, Hou D, Prachand N, Jimenez A, Wiebel W, Paul W. TB control among persons using substances: a randomized directly observed therapy study. 40th Union World Conference on Lung Health, Cancun, Mexico, December 2009.

Boodram B, **Hershow RC**, and Stapleton JT. Prevalence and interaction of GB virus C (GBV-C) and hepatitis C (HCV) among injection drug users (IDUs) in metropolitan Chicago. Congress of Epidemiology. Seattle, WA, 6/23/2006.

Boodram B, **Hershow RC**, and Ouellet LJ. Barriers to seeking medical treatment for chronic hepatitis C virus infection among young injection drug users (IDUs) in metropolitan Chicago. American Public Health Association 133rd Annual Meeting & Exposition. Philadelphia, PA, 12/12/2005

Boodram B, **Hershow RC**, Gao W, and Ouellet LJ. Factors associated with the presence of hepatitis C (HCV) infection among young injection drug users (IDUs) in metropolitan Chicago. 56th Annual Meeting of the American Association for the Study of Liver Diseases. San Francisco, CA, 11/13/2005

Hershow RC, Minkoff H, Frederick M, Watts H, Tuomala R, Zorrilla C, Hammill H, Pitt J. Effect of pregnancy on HIV Disease Progression in the Women and Infants Transmission Study (WITS). XIVth International AIDS Conference. Barcelona, Spain, 7/10/2002.

Navas-Nacher EL, Leighty R, Read JS, Tuomala R, Zorrilla C, Landesman S, Rosenblatt H, Matzen E, Brown G, **Hershow RC.** The effect of mode of delivery on maternal HIV-1 disease progression. International Conference on AIDS. Barcelona, Spain, 7/10/2002.

Thorpe L, Frederick M, Buscher S, Davenny K, Green K, Landesman S, Miotti P, Pitt J, Zorrilla C, **Hershow R**. A Longitudinal assessment of the effects of hard drug use on virological and immunological parameters of HIV-infected Women. 8th Conference on Retroviruses and Opportunistic Infections. 2/5/01.

Prachand N, **Hershow R,** Rahimian A, Jimenez W, Wiebel W. Employing indigenous community health workers to provide directly observed therapy for latent tuberculosis infection (LTBI) to children exposed to drug users with tuberculosis. 5th International Union Against Tuberculosis and Lung Disease (IUATLD) North American Region Conference, Vancouver Canada, February 2000.

Rader M, Prachand N, **Hershow R**, Rahimian A, Jimenez A, Wieber W. The role of depression in the treatment of tuberculosis among substance users. American Public Health Association 127th Annual Meeting, Chicago, IL, November 1999.

Hershow R, Prachand N, Rahimian A, Jimenez A, Wiebel W. Role of indigenous outreach workers (former

addicts) in the treatment and control of TB among drug users in Chicago. 1999 American Thoracic Society Conference, May 1999.

Prachand N, **Hershow R,** Rahimian A, Jimenez A, Wiebel. Levels of tuberculosis knowledge and related stigma among close contacts of substance users with active tuberculosis: Implications for prevention. American Public Health Association 126th Annual Meeting, Washington, DC, November 1998.

Hershow RC, Rahimian A, Jimenez A, Johnson W, Prachand N, Wiebel W. The role of Indigenous outreach workers in the contact investigation of active tuberculosis cases among substance users in Chicago. American Public Health Association 125th Annual Meeting, Indianapolis, IN, November 1997.

Prachand NG, Rahimian A, Jimenez AD, Wiebel W, **Hershow RC.** Factors related to poor adherence to directly observed tuberculosis therapy among drug users in Chicago: The effect of a community-based intervention. American Public Health Association 125th Annual Meeting, Indianapolis, IN, November 1997.

Sullivan JF, **Hershow RC**, Benson CA. Onset Age for Oral and Anal Intercourse Among-College-education White Homosexual Men. Second National Conference on Human Retoviruses and Related Infections. Washington, DC, February, 1995.

Hershow RC, Fukuda K, Graber J, et al. Incidence of Thrombocytopenia in HIV-Infected Drug Users (Abstract PC0129). Xth International Conference on AIDS, Yokohama, Japan, 1994.

Hershow RC, Fukuda K, Graber J, Vlahov D, Rezza G, Klein RS, et al. CDC International Collaborative Study: Is HTLV-II a risk factor for low CD4 cell levels in HIV-infected intravenous drug users. IXth International Conference on AIDS, Berlin, Germany, 1993

Graber J, **Hershow RC**, Trowbridge J, Penley K, Cavanagh M, Judson F, Doll L. HIV Counseling and Testing and Risk Reduction Among Asymptomatic Gay Men. VIII International Conference on AIDS, Amsterdam, the Netherlands,1992.

Khayr W, **Hershow RC**, Schreckenberger P. Ciprofloxacin Resistance in Methicillin-Resistant Staphylococcus Aureus in a University Hospital. Interscience Conference on Antimicrobial Agents and Chemotherapy, 31st Annual Meeting, 1991.

Hershow RC, Targonski P, Trowbridge J, Cavanagh M, Graber J, Holmberg S. HLA Association with HIV Infection and Progression in Chicago Men. VII International Conference on AIDS, Florence, Italy,1991.

Lampinen T, Wiebel W, **Hershow RC**, Joo E, Barrett M, et al. Age Bias in Treatment-Based HIV Serosurveys: Implication for Monitoring the Epidemic Among Younger Intravenous Drug Users. American Public Health Association, 117th Annual Meeting, 1989.

Wiebel W, Lampinen T, Stevko B, Chene D, **Hershow RC**, Horan H, et al. Intravenous Drug Users on the

Streets: HIV Seroprevalence and Behavioral Factors in an Understudied High Risk Group. American Public Health Association, 116th Annual Meeting, Boston, MA,1988.

Lampinen T, Wiebel W, Stevko B, Chene D, **Hershow RC**, et al. Active versus passive monitoring of HIV seroprevalence in IV drug users (IVDUs): Implications for surveillance. American Public Health Association, 116th Annual Meeting, Boston, MA,1988.

Sukavachana O, Shapiro CN, Hadler SC, **Hershow RC**. "Epidemiology of Hepatocellular Carcinoma in the United States, 1968-1985." American Public Health Association,116th Annual Meeting, Boston, MA, 1988.

AWARDS RECEIVED

1997, 2007	"Golden Apple Award" for outstanding teaching at the UIC School of Public Health
2007	Illinois Public Health Association's Public Health Student Group of the Year Award (Accepted on behalf of the Student Epidemiology Corps which I directed)
2004	Campus-wide University of Illinois at Chicago (UIC) Excellence in Teaching Award
1997	Election to the Delta Omega Honor Society for public health scholarship, teaching, and research

INVITED LECTURES AND TALKS

- "A Compelling Example of One Health: Rabies in Tanzania." Public Health Forum for Illinois Wesleyan University Students. UIC School of Public Health. March 11, 2019. (Speaker)
- "Emergency Preparedness and Response in Israel and the United States: Reflection on the 2009 Influenza Pandemic and West African Ebola Virus Outbreak." UIC Global Health Lecture. UIC School of Public Health. February 9, 2017 (Organizer and Moderator).
- "The Ebola Outbreak: A Panel Presentation on What We Do and Don't Know About the Current Ebola Outbreak". UIC School of Public Health. November 12, 2014 (Keynote and Panel Moderator).
- "Local Host Greeting" American College of Epidemiology (ACE) Annual Meeting. September 10, 2012.
- "Developing a Research Plan to Assess Challenges of Treating HIV/AIDS in Indonesian Injection Drug Users". Medical Scientist Training Program at the University of Illinois at Chicago Dinner Seminar. February 17, 2010.
- "Treating HIV/AIDS in Injection Drug Users (IDUs): Challenges to Adherence and Possible Solutions," Medicine Grand Rounds. University of Illinois at Chicago (UIC). Chicago, IL, December 8, 2009.
- "Treating HIV/AIDS in Injection Drug Users (IDUs): Challenges to Adherence and Possible Solutions," International Workshop on HIV/AIDS Prevention and Control in Guangxi. Co-Sponsored by UIC School of Public Health, University of Nebraska, Centers for Disease Control, China. Guilin, China, October 25-28, 2009
- "Viral Co-infections with HIV," 2nd Co-infections Meeting, Memphis, Tennessee, May 2009

- "Pandemic Flu: Implications for Essential Services," Board of Commissioners, Chicago Water District, Chicago, IL, May 2009
- "UIC School of Public Health: the Student Epi Corps" John Marshall Law School, Chicago, IL, April 2008
- "UIC School of Public Health: the Student Epi Corps", Prague Committee of the Chicago Sister Cities International Program, February 2008.
- "Lesson Learned from Hurricane Katrina – Chicago's Experience Assisting Displaced Persons. Rural Public Health Institute, Mid-America Health Training Center, Effingham, IL, March 2006.
- "Lessons Learned from Hurricane Katrina: the Chicago Response" University of Illinois School of Public Health, Dean's Forum. November 2006.
- "Co-pathogens of Importance in HIV infection: Community Approaches to Prevention and Control of Viral Hepatitis and Tuberculosis," Community Approaches to Confronting HIV/AIDS, Co-sponsored by School of Public Health, Fudan University and AIDS International Training & Research Program, UIC. Shanghai, China. April 2006.
- "Co-pathogens of Importance in HIV infection: Community Approaches to Prevention and Control of Viral Hepatitis and Tuberculosis," Community Approaches to Confronting HIV/AIDS, Co-sponsored by School of Public Health, Peking University and AIDS International Training & Research Program, UIC. Beijing, China. April 2006.
- "An Overview of Clinical Working Group Research: External Review of the Women and Infants Transmission Study (WITS)," San Juan, Puerto Rico, April 2004.
- "An Overview of Drug Use Working Group Research: External Review of the Women and Infants Transmission Study (WITS)," San Juan, Puerto Rico, April 2004.
- "HCV: Epidemiology, Transmission, and the Importance of HIV Coinfection," University of Chicago, Chicago, IL, October 2003.
- "National Perspective on Correctional Health and Infectious Diseases," Public Health and Corrections Institute, Chicago IL, November 2002.
- "Bioterrorism: A Clinician's Perspective", UIC Obstetrics and Gynecology Department Grand Rounds, Chicago, IL, February 2002.
- "Bioterrorism: What We've Seen and What We Haven't. Part II: Smallpox" University of Illinois School of Public Health Dean's Forum, Chicago IL, January 2001.
- "Anthrax: Clinical Presentation, Treatment, and Prevention," University of Illinois School of Public Health Dean's Forum, Chicago, IL, November 2001
- "Town Hall Meeting on Bioterrorism" Organized by Congressman Danny Davis, Chicago IL, October 2001
- "Hepatitis C Virus Infection," 1999 Clinical Topics in HIV and Sexually Transmitted Diseases Conference, Springfield, IL, November 1999.
- "Prevention of Occupational Bloodborne Pathogen Acquisition," Great Lakes Center, UIC, May 1999.
- "Infectious Diseases and Breast Feeding," Lactation Support Group, Chicago, IL, October 1998.
- "HIV-Infection in the Chemically Dependent Population" Sponsored by Burroughs Wellcome Co. and World Health Communication. Boston, MA, August 1992.
- "Viral Hepatitis Epidemiology – An Update" Illinois Public Health Association, 51st Annual Meeting,

Springfield, IL, May 1991.

COURSES TAUGHT

Epid 408 Biological, Chemical, Explosives, and Nuclear Weapons a Public Health Threats 2002-2018
Epid 510 Advanced Infectious Disease Epidemiology 1988-2019
Epid 410 Introduction to Infectious Disease Epidemiology 1987-2019
HON 130 Public Health and the Study of Diseases and Epidemics 2011, 2012
PubH 120 Public Health and the Study of Diseases and Epidemics 2012
Epid 594B, Special Topics in Infectious Disease Epidemiology 2004.

OTHER TEACHING

Lecturer, UIUC College of Veterinary Medicine Health Policy Course 2010-2018
Lecturer, HON 201 Introduction to Clinical and Translational Science 2012-13
Lecturer, PubH 320 Ecologies of Health and Modern Life 2013
Lecturer, PubH 120 Public Health and the Study of Diseases and Epidemics 2013-2017
Lecturer, Epid 409, Epidemiology of HIV/AIDS (2000-2001, 2003, 2008-2015:)
Lecturer, Epid 594, Epidemiology of Sexually Transmitted Diseases (2009)
Lecturer, Epid 494, Outbreak Investigation (2006, 2009 - 2013)
Lecturer, General Clinical Research Center (GCRC), "Issues in Study Design", Core Curriculum Research Series (2002-2008)
Lecturer and co-developer, Workshop: Essential Functions of Health Departments in Preparing for, and responding to terrorist incidents. (2002)

MENTORING

Chicago Developmental Center For AIDS Research (DCFAR) (2010-2015)

As co-chair of the Developmental Core, I helped to establish a mentorship program for junior faculty at the 3 partner institutions of the Chicago DCFAR including a new program: "The Community of Scholars: A Cohort Approach to Mentoring"

Current Students

Chair, Doctoral Dissertation Committee, Trang Pham
Chair, Doctoral Dissertation Committee, Jessica Levy
Chair, Doctoral Dissertation Committee, Ryan Chopra
Chair, Doctoral Dissertation Committee, Patpong Udompat
Chair, Doctoral Dissertation Committee, Yi Li
Chair, Doctoral Dissertation Committee, Shaveta Khosla
Member, Doctoral Dissertation Committee, Kate Vergara
Chair, Master of Science Thesis Committee, Jesse Blumenstock
Member, Doctoral Dissertation Committee, Mindi Manes
Member, Doctoral Dissertation Committee, Cheryl Ward
Member, Doctoral Dissertation Committee, Palak Panchal

Former Students

Member Doctoral Dissertation Committee, Apurba Chakraborty, PhD attained 2018.
Member, MS Thesis Committee, Nicholas Davis, MS attained 2018.
Member, Doctoral Dissertation Committee, Drew Nannini.
Member, Doctoral Dissertation Committee, Ping Ji, PhD attained 2017.
Chair, Doctoral Dissertation Committee, Heather Limper, PhD attained, 2016.
Chair, Master of Science Thesis Committee, Yang Li, MS attained, 2016.
Member, Master of Science Thesis Committee, Monica Nordstrom, MS attained, 2016.
Member, Doctoral Dissertation Committee, Amy Johnson, PhD attained, 2015.
Member, Doctoral Dissertation Committee, Joelle Hallok, PhD attained, 2015
Member, MS Thesis Defense, Courtney Babb, MS attained, 2015.
Member, Master of Science Thesis Committee, Sweta Basnet, MS attainted, 2015
Member, Doctoral Dissertation Committee, Evi Sukmaningrum, PhD attained, 2015
Member, Master of Science Thesis Committee, Chris Kabir, MS attained, 2013
Member, Master of Science Thesis Committee, Kathy Tossas-Milligan, MS attained, 2013
Member, Doctoral Dissertation Committee, Samsriyaningsih Handayani, PhD, 2013
Member, Doctoral Dissertation Committee, Nelli Westercamp, PhD attained, 2013
Member, Doctoral Dissertation Committee, John Rogers, PhD attained, 2013
Member, Master of Science Thesis Committee, Kyle Popovich, MS attained, 2012
Member, Doctoral Dissertation Committee, Pat K Bertsche, PhD attained, 2011
Member, Doctoral Dissertation Committee, Anna Louise Hotton, PhD attained, 2011
Member, Doctoral Dissertation Committee, Maria Contanza Camargo, PhD attained, 2010
Member, Doctoral Dissertation Committtee, Margit Javor, PhD attained, 2010
Chair, Master of Science Thesis Committee, Patpong Udompat, MS attained, 2010
Member, Master of Science Thesis Committee, Sarwat Shah, MS attained, 2010
Chair, Doctoral Dissertation Committee, Susan Gawel, PhD attained, 2010
Chair, Doctoral Dissertation Committee, Basmattee Boodram, PhD attained, 2009
Chair, Doctoral Dissertation Committee, Wade Ivy, PhD attained, 2009
Member, Doctoral Dissertation Committee, Dita Broz, PhD attained, 2009
Member, Doctoral Dissertation Committee, Iko Safika, PhD attained, 2009
Chair, Doctoral Dissertation Committee, Philip Ricks, PhD attained, 2008
Chair, Doctoral Dissertation Committee, Anne McIntyre, PhD attained, 2007
Chair, Doctoral Dissertation Committee, Charlesnika Evans, Phd attained, 2007
Chair, Master of Science Thesis Committee, Alfreda Beth Holloway, MS attained 2007
Member, Doctoral Dissertation Committee, Christine Mattson, PhD attained 2007
Member, Doctoral Dissertation Committee, Alicia Siston, PhD attained 2007
Chair, Doctoral Dissertation Committee, Dezheng Guo, PhD attained, 2005.
Chair, Doctoral Dissertation Committee, Jennifer Layden, PhD attained 2005.
Member, Doctoral Dissertation Committee, Mary Turyk, PhD attained 2005.
Chair, Master of Science Thesis Committee, Marc Oliver-Wright, MS attained 2004.
Member, Doctoral Dissertation Committee, Rachel Enriquez, PhD attained 2004
Chair, DrPH Dissertation Committee, Michael Vernon, PhD attained 2003.

Member, Doctoral Dissertation Committee, Alicia Shillington, PhD attained 2003.
Chair, Master of Science Thesis Committee, Elena Navas-Nacher, MS attained 2002.
Chair, Master of Science Thesis Committee, Brandon Zagorkski, MS attained 2002.
Chair, Doctoral Dissertation Committee, Lorna Thorpe, PhD attained 2000.
Chair, Master of Science Thesis Committee, Dawn Sievert, MS attained 2000.
Member, Master of Science Thesis Committee, Rachel Enriquez, MS attained 2000.
Chair, Master of Science Thesis Committee, David Barr, MS attained 1997.
Chair, Master of Science Thesis Committee, Judith Graber, MS attained 1994.
Chair, Master of Science Thesis Committee, Thomas Lampinen, MS attained, 1993.
Member, Doctoral Dissertation Committee, Laura Schieve, PhD attained, 1993.

ACADEMIC SERVICE ACTIVITIES

Member, UIC School of Public Health Diversity Leadership Committee (2017-Present)

Director, Division of Epidemiology-Biostatistics, UIC School of Public Health (2/2012-Present)

Interim Director, Division of Epidemiology-Biostatistics, UIC School of Public Health (8/2010-2/2012).

Epidemiology Section Coordinator, Division of Epidemiology-Biostatistics, UIC School of Public Health (1999-8/2010).

Member, Research Advisory Committee, The Illinois Center for One Medicine, One Health, University of Illinois at Urbana-Champaign (UIUC) (5/2009-present)

Chairperson, Ombudsperson for UIC School of Public Health (2007- 2010)

Chairperson, Research Advisory Board for UIC School of Public Health, (9/2008-present)

Member, Conflict of Interest Oversight Committee, UIC, (2008-present)

Member, Excellence in Teaching Award Review Panel, UIC, (2008-2011)

Member, Executive Committee, UIC School of Public Health, (2007 - present).

Member, Office for Access and Equity, Dispute Mediation Program, UIC, (2007 – present)

Member, Scientific Advisory Committee, of the General Clinical Research Center (GCRC), (2001-2008)

Member, Committee charged with developing the Clinical Interface Core section of the Center for Clinical and Translational Sciences (CCTS) application (2007)

Member, Search Committee, UIC School of Public Health, Division of Epidemiology-Biostatistics, Search for Infectious Disease Epidemiologist, Mark Dworkin and Supriya Mehta hired, 2006.

Member, Committee on Admission and Recruitment Policies (CARP), UIC School of Public Health, (2004-2006)

Chair, Oversight Committee for Dr. Robert C. Bailey's Clinical Trial: "A Randomized Controlled Trial of Male Circumcision to Reduce HIV Incidence in Kisumu, Kenya" (2003-2005)

Member, Working Group to Develop a Joint UIUC Veterinary College/UIC School of Public Health DVM/MPH degree program. (2003-2004).

Member, UIC School of Public Health Bioterrorism Task Force. Developed school of public health response to 9/11 attacks and the anthrax outbreak that followed it: training and education, provision of surge capacity through the Student Epidemiology Corps. (2001-2002)

Co-founder and director, Student Epidemiology Corps, provides assistance to local health departments in the event of natural or terrorist-related health threats. (2001-2008)

Chair, Search Committee, UIC School of Public Health, Division of Epidemiology-Biostatistics, Search for Infectious Disease Epidemiologist, Douglas Passaro hired, 2001.

Chair, Hospital Infections Committee, UIC, 1987-1999

Member, University of Illinois Hospital Quality Assurance Committee, 1990 - 1993.

Chair, AIDS Advisory Council, Developed a protocol for zidovudine administration after occupational exposure to HIV infection.

GRANTS AND CONTRACTS OBTAINED

5U01 AI34993-20 (Cohen, MH. – PI) 1/1/13 -12/31/18
NIH/NIAID/NIDC/NIDA
The Chicago WIHS Consortium for the Comprehensive Study of Women Living with HIV (WIHS-V)
The major goal of this project is to determine the spectrum and course of HIV infection in women. Role: Co-

investigator

Ryan White CARE Grant 3/04 –5/17
Sponsor: Chicago Department of Public Health (HRSA flow-through)
Role on Project: HIV care provider; PI – Richard Novak
Amount Funded: $67,704 salary attributable to Hershow

Chicago Developmental Center for AIDS Research (D-CFAR) 8/1/09-7/31/16
Sponsor: Rush University (NIAID flow-through)
Role on Project: Co-Investigator (Developmental Core co-director); PI – Robert Bailey
Amount Requested: $1,461,838 subK to UIC Epi/Bio; $13,348 Hershow personnel; total project budget $3,832,658

2009-34283-20087 UICU College of Veterinary Medicine 9/1/10 – 8/31/13
Medicine (USDA/CREES) (Whitely, H. – PI)
Center for One Medicine
The center funds research by University of Illinois at Urbana-Champaign DVM/MPH students completing the capstone project for the MPH degree. Dr. Hershow participates in the review of capstone research proposals submitted for seed grant funding and participates in educational programs and periodic meetings that are held to shape the research and training plans.
Role: Co-investigator

Illinois Preparedness Emergency and Response Learning Center (IPERLC) (9/30/10 – 9/29/15)
Sponsor: Centers for Disease Control and Prevention
Role on Project: Co-investigator
Overall PI – Bernard Turnock
Amount Funded: $4,828,165 total project; $905,117 Year 1 (current year)

Building AIDS Research Capacity for Indonesia at Atma Jaya Catholic University (9/07-7/12)
Sponsor: National Institute of Childhood Health and Disease (NICHD)
Role on Project: PI for Pilot 1 study - “Social Factors Affecting ARV Adherence in IDUs”;
Overall PI – Judith Levy
Amount Funded: $1,741,333 total project; $59,573 Pilot 1 study (attributable to Hershow)

Quality of Care in STD Clinics (8/08-8/09)
Sponsor: Center for Health Training (Chicago Department of Public Health flow-through)
Role on Project: Principal Investigator
Amount Funded: $15,000

STD Surveillance Network (SSuN) (8/30/08 – 9/29/10)
Sponsor: Chicago Department of Public Health
Role on Project: Principal Investigator

Amount Funded: $98,831

Jesse Blumenstock Fellowship (9/11/10 – 5/15/11)
Sponsor: Hektoen Institute
Role on Project: Principal Investigator
Amount Funded: $12,181

Epidemiologic Study of Recreational Use of the Chicago Waterways (5/07-12/10)
Sponsor: Metropolitan Water Reclamation District of Greater Chicago
Role on Project: Co-investigator; PI – Samuel Dorevitch
Amount Funded: $8,083,061 Total Project, Hershow @ 5% effort

Incarceration Effect on Prevention of Drug Use, STI/HIV, and Recidivism (9/07 – 9/12)
Sponsor: National Institute on Drug Abuse
Role on Project: Co-investigator / mentor; PI – Seijeoung Kim
Amount Funded: K-99 (YRS 1-2): $111,781; $0 attributable to Hershow; R01 (YRS 3-5): $495,507 awarded to date; $0 attributable to Hershow

Women's Interagency HIV Study (WIHS 4) (1/08-12/12)
Sponsor: Hektoen Institute for Medical Research (National Cancer Institute (NCI), the National Center for Research Resources (NCRR), the National Institute of Allergy and Infectious Diseases (NIAID), the National Institute of Child Health and Human Development (NICHD), and the National Institute on Drug Abuse (NIDA flow-through)
Role on Project: Site Principal Investigator
Amount Funded: $521,834 UIC subK inception-to-date

Women's Interagency HIV Study (WIHS 3) (3/03-12/07)
Sponsor: Hektoen Institute for Medical Research (National Cancer Institute (NCI), the National Center for Research Resources (NCRR), the National Institute of Allergy and Infectious Diseases (NIAID), the National Institute of Child Health and Human Development (NICHD), and the National Institute on Drug Abuse (NIDA flow-through)
Role on Project: Site Principle Investigator
Amount Funded: $660,825 UIC SubK; $10,642,749 entire project

Women's Interagency HIV Study (WIHS 2) (3/97 – 2/03)
Sponsor: Hektoen Institute for Medical Research (National Cancer Institute (NCI), the National Center for Research Resources (NCRR), the National Institute of Allergy and Infectious Diseases (NIAID), the National Institute of Child Health and Human Development (NICHD), and the National Institute on Drug Abuse (NIDA flow-through)
Role on Project: Site Principle Investigator
Amount Funded: $742,334 UIC SubK; $9,037,507 entire project

Women's Interagency HIV Study (WIHS 1) (2/93 – 2/97)
Sponsor: Hektoen Institute for Medical Research (National Cancer Institute (NCI), the National Center for Research Resources (NCRR), the National Institute of Allergy and Infectious Diseases (NIAID), the National Institute of Child Health and Human Development (NICHD), and the National Institute on Drug Abuse (NIDA flow-through)
Role on Project: Site Principle Investigator
Amount Funded: $804,889 UIC SubK; $6,908,740 entire project

Women's Interagency HIV Study (WIHS) – Analytic Support (12/05 – 11/07)
Sponsor: Hektoen Institute for Medical Research (National Cancer Institute (NCI), the National Center for Research Resources (NCRR), the National Institute of Allergy and Infectious Diseases (NIAID), the National Institute of Child Health and Human Development (NICHD), and the National Institute on Drug Abuse (NIDA) flow-through)
Role on Project: Principal Investigator (Supervisor of Student Analysts)
Amount Funded: $102,239

Early Natural History of HCV Infection Among IDUs (9/00 – 4/07)
Sponsor: National Institute on Drug Abuse (NIDA)
Role on Project: Principal Investigator
Amount Funded: $1,459,976

Early Natural History of HCV Infection Among IDUs – Year 5 supplement (9/06 – 4/07)
Sponsor: National Institute on Drug Abuse
Role on Project: Principal Investigator
Amount Funded: $45,667

Student Epidemiology Corps (1/07 - 8/07)
Sponsor: Illinois Department of Public Health
Role on Project: Project Director
Amount Funded: $65,000

Student Epidemiology Corps (8/05 – 8/06)
Sponsor: Illinois Department of Public Health
Role on Project: Project Director
Amount Funded: $65,000

Accuracy of Parental Report of Hepatitis A Vaccination (2004-2005)
Sponsor: Research Triangle Institute (Centers for Disease Control)
Role on Project: Consultant; PI – Paul Levy
Amount Funded: $20,000

Female Genital Tract Immunity and HIV Pathogenesis (2/01 – 1/06)

Sponsor: National Institute of Child Health and Human Development (NICHD): Program Project Grant
Role on Project: Co-Investigator (PI – Richard Novak)
Amount Funded: Total project $5,470,515; $1,044,730 subK to UIC; Hershow 5% effort annually

Women and Infant Transmission Study (WITS IV) (9/01-07)
Sponsor: National Institute of Allergy and Infectious Diseases (NIAID), National Institute of Child and Human Development (NICHD)
Role on Project: Co-investigator
Amount Funded: Hershow at 4-9% effort annually

Women and Infant Transmission Study (WITS III) (9/97 – 8/01)
Sponsor: National Institute of Allergy and Infectious Diseases (NIAID), National Institute of Child and Human Development (NICHD)
Role on Project: Co-investigator
Amount Funded: Hershow at 4-9% effort annually

Women and Infants Transmission Study II (WITS II) (9/93 to 8/97)
Sponsor: National Institutes of Health (NIH), National Institute of Allergy and Infectious Diseases (NIAID), National Institute of Child and Human Development (NICHD)
Role on Project: Co-investigator
Amount Funded: $6,123,176 total project; Hershow at 4-9% effort annually

Women and Infant Transmission Study (WITS I) (formerly "Collaborative Prospective Cohort Studies of Vertical Transmission of HIV and Related Retroviral Infections (6/88 - 8/93)
Sponsor: National Institutes of Health (NIH), National Institute of Allergy and Infectious Diseases (NIAID), National Institute of Child and Human Development (NICHD)
Role on Project: Co-investigator
Amount Funded: $5,801,025 subK to UIC; Hershow at 4-9% effort annually

Indigenous Outreach Among IDUs to Treat and Control TB (9/95-8/01)
Sponsor: National Heart, Lung, and Blood Institute (NHLBI)
Role on Project: Principal Investigator
Amount Funded: $ 2,253,701

Natural History of HIV-infection in IVDUs (1991-1994)
Sponsor: Centers for Disease Control (CDC)
Role on Project: Principal Investigator
Amount Funded: $837,167

AIDS/Hepatitis Epidemiologic Study (9/87 – 9/92)
Sponsor: Howard Brown Memorial Clinic flow-through Centers for Disease (CDC) Control Cooperative Agreement

Role on Project: Principal Investigator
Amount Funded: $2,500,000 Total Award; $54,541 subK to UIC

An Assessment of the Need for Universal Screening for Hepatitis B Serologic Markers in Pregnant Women in Chicago (12/87 – 6/92)
Sponsor: Association of Schools of Public Health/CDC Cooperative Agreement
Role on Project: Principal Investigator
Amount Funded: $36,870

Exhibit C

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

NORTHWEST CENTRAL DISPATCH SYSTEM, an Illinois intergovernmental cooperating association, on behalf of its municipal members, Plaintiff(s), v. COOK COUNTY DEPARTMENT OF PUBLIC HEALTH; DR. KIRAN JOSHI, in his official capacity as Co-Administration of the Cook County Department of Public Health, *ET AL.* Defendant(s).	No. 20 CH 03914 Calendar 04

MEMORANDUM OPINION & ORDER

This matter comes before the Court on Plaintiff Northwest Central Dispatch System's (NWCDS) Emergency Motion for Temporary Restraining Order (TRO) and/or Preliminary Injunction with Notice, filed on April 23, 2020. Having reviewed the motion and its exhibits, the verified complaint filed April 20, 2020, Defendants Response Brief filed on April 27, 2020, and heard argument via teleconference on April 27, 2020, and reviewed the supplemental briefing requested by the Court, and thereby being fully informed in the premises, for the following reasons, Plaintiff's motion is DENIED.

OVERVIEW

This case concerns pandemic protocols and requires the balancing of individual privacy rights with the needs of first responder preparedness. Both issues are of extreme importance and warrant careful analysis. Currently, the world is undergoing a pandemic resulting from the deadly COVID-19 virus. Confirmed cases in Illinois number over 50,000 with over 15,000 confirmed infected in Cook County alone. *See* COVID-19 Statistics, ILLINOIS DEPARTMENT OF PUBLIC HEALTH, https://www.dph.illinois.gov/covid19/covid19-statistics visited on 4/30/20.

These numbers climb daily. Notably, though testing is limited, with every increased round of testing the infection rate stays relatively stable at 20% of people testing positive. Response Brief, Ex. 1, Rubin Affidavit ¶17 relying upon Ex. G.

There is a global shortage of personal protective equipment, including glasses, gowns, gloves, and N-95 masks (collectively PPE). Motion for TRO, Ex. 3 Chief's Affidavit, ¶11; *see* Chaib, Fadela, Shortage of personal protective equipment endangering health workers worldwide, WORLD HEALTH ORGANIZATION, https://www.who.int/news-room/detail/03-03-2020-shortage-of-personal-protective-equipment-endangering-health-workers-worldwide visited on 4/30/20. Although the Court notes there is no evidence, or even allegations as to NWCDS' *itself* having a specific shortage.

Plaintiff NWCDS is an emergency dispatch center that provides 9-1-1 services to 11 communities with a combined population of nearly 500,000 and covering over 170 square miles. NORTHWEST CENTRAL DISPATCH SYSTEM, www.nwcds.org, visited on April 28, 2020. It is a suburban cooperative consisting of the fire and police departments of (a) Arlington Heights, (b) Buffalo Grove, (c) Elk Grove Village, (d) Hoffman Estates, (e) Inverness, (f) Mount Prospect, (g) Palatine, (h) Prospect Heights, (i) Rolling Meadows, (j) Schaumburg, and (k) Streamwood. The Defendants in this matter are the Cook County Department of Public Health, its Co-Administrators Doctors Rachel Rubin and Kiran Joshi, and Cook County President Toni Preckwinkle along with Cook County (collectively, Health Department).

On April 20, 2020, NWCDS filed a three-count complaint for (1) Declaratory Judgment; (2) Writ of Mandamus; and (3) Permanent Injunction. All three counts ask for the same relief, that the Health Department be required "to provide the names and address of all individuals that are or become infected with COVID-19 residing within each respective municipality to Plaintiff for release to each Municipal Member's law enforcement and EMS personnel as reasonably necessary." Before the complaint was filed, the parties had been negotiating, and the Cook County Board of Commissioners took a proposal into consideration on April 23, 2020, putting it into committee on that date. The emergency motion for TRO was filed later that day.

STANDARD OF REVIEW

An interlocutory injunction, such as a TRO or preliminary injunction, is an extraordinary remedy typically granted to preserve the status quo pending a full hearing on the merits. *See Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & W. Ry.*, 195 Ill. 2d 356, 365 (2001). Status

quo is defined as the last, actual, peaceable, uncontested status that preceded the pending controversy. *Puleo v. McGladrey & Pullen,* 315 Ill. App. 1041, 1044 (1st Dist. 2000). Injunction may also issue to prevent harm until the merits can be decided. *People v. Kerr-McGee Chem. Corp.,* 142 Ill. App. 3d 1104, 1107 (2d Dist. 1986). Injunction is "an extreme remedy which should be employed only in situations where an emergency exists, and serious harm would result if the injunction is not issued." *Norfolk & W. Ry.*, 195 Ill. 2d at 365.

To obtain a TRO, the Plaintiff needs to show (1) a fair question that the plaintiff possesses a clearly ascertainable right in need of protection; (2) a fair question that there is a likelihood that the plaintiff will succeed on the merits; (3) that the plaintiff will suffer irreparable harm if an injunction is not issued (including harm of a continuing nature); and (4) that the plaintiff has no adequate remedy at law (e.g., that money damages are not an adequate remedy). *Hartlein v. Illinois Power Co.*, 151 Ill.2d 142 (1992); *Buzz Barton & Assoc. v. Giannone*, 108 Ill. 2d 373, 382 (1985) (fair question). But where a statute expressly authorizes injunctive relief, a plaintiff need only show the defendant's violation and their own standing to pursue the cause. This is because when a statute is violated there is a presumption of public harm. *County of DuPage v. Gavrilos,*359 Ill. App. 3d 629, 634 (2d Dist. 2005). The balance of the hardships must also support the relief requested. *Cross Wood Prods., Inc. v. Sutter,* 97 Ill. App. 3d 282, 284 (1st Dist. 1981).

An interlocutory injunction should not be granted if it would grant the ultimate relief sought in the complaint, because this denies the Defendant a full hearing on the merits. *Passon v. TCR, Inc.*, 242 Ill. App. 3d 259, 264-65 (2d Dist. 1993). The trial court should not decide contested issues of fact, nor the merits of the case. *Hartlein*, 151 Ill.2d at 156-57 (contested issues); *Lonergan v. Crucible Steel Co. of Am.*, 37 Ill. 2d 599, 611 (1967) (merits). Generally, injunctive relief is not granted against public officials unless their acts are outside their authority, arbitrary and capricious, or tainted with fraud, corruption, or gross injustice. *Bigelow Grp., Inc. v. Rickert,* 377 Ill. App. 3d 165, 171-72 (2d Dist. 2007). Should an injunction issue, it must be reasonable and go no further than is essential to safeguard the plaintiff's rights. *Lake Louise Improvement Ass'n v. Multimedia Cablevision of Oak Lawn, Inc.*, 157 Ill. App. 3d 713, 717-18 (1st Dist. 1987). The decision to grant or deny interlocutory relief is entrusted to the sound discretion of the trial court. *Desnick v. Dep't of Prof. Reg.*, 171 Ill. 2d 510, 516 (1996).

DISCUSSION

NWCDS' goal is to protect the safety of first responders, and thus, the community at large. It seeks to provide first responders with as much information as possible, so that they can do their jobs as safely and efficiently as possible. This includes, according to NWCDS, the right to affirmatively know if you are about to be exposed to COVID-19. This knowledge would allow first responders to take extra precaution before responding to a dispatch call and immediately self-isolate afterwards. The Health Department's goal is to protect the rights of the public at large, including first responders, and act consistently with its statutory duties to protect the personal health information of the citizens of Cook County.

NWCDS argues that the Health Department has a statutory duty to provide it with the names and address of all individuals that are, have been, or become infected with COVID-19 (hereinafter Covid List). NWCDS claims that the Health Department is being arbitrary and capricious in denying it the Covid List, and that the Health Department lacks discretion in whether to provide this information. NWCDS claims that there are multiple first responders who attend each dispatch event, and that each responder must wear full PPE (including gloves, gowns, glasses, N-95 masks). Because there is a worldwide shortage of PPE, the NWCDS claims the Covid List will help it ration its PPE, ultimately protecting the first responders by ensuring they have proper equipment for the foreseeable future. Currently, the PPE is used for every encounter.

Defendant Health Department argues there is no statutory duty to share the Covid List, and that the statutes cited by NWCDS allow for disclosure, but do not require it. In other words, the Health Department's position is that whether to disclose any Covid List lies in the discretion of the Health Department alone. The Department also points out that NWCDS has provided no proof that the members of the cooperative have an *actual* shortage of PPE, claiming that relying upon the existence of a global shortage is insufficient evidence. Relying on the advice of public health officials, the Health Department claims that the relief NWCDS seeks will not further its goal of protecting first responders. This is because of asymptomatic COVID-19 carriers, lack of testing availability, and the geographic scope of the list. These factors make the allegedly useful Covid List largely useless. The list can never be comprehensive because of the nature of the virus as we know it, and if it is not comprehensive it cannot truly protect first responders.

It is uncontested that NWCDS' motion asks for the same ultimate relief as in its complaint. Normally, a TRO should not be granted if it would grant the ultimate relief sought in the complaint, because this denies the Defendant a full hearing on the merits. *Passon v. TCR, Inc.*, 242 Ill. App. 3d 259, 264-65 (2d Dist. 1993). Moreover, an injunction typically issues to preserve the status quo, defined as the last peaceable moment between the parties. *Puleo v. McGladrey & Pullen,* 315 Ill. App. 1041, 1044 (1st Dist. 2000). Here, the status quo is that NWCDS does not have the information it seeks. NWCDS asks this Court to do the opposite of what the law normally requires, emphasizing that the pandemic has created a true emergency, arguing it is proper to issue an injunction or TRO to prevent harm when extreme circumstances exist. *Kerr-McGee Chem. Corp.*, 142 Ill. App. 3d at 1107.

The Court understands and appreciates NWCDS' urgency – our first responders are going above and beyond in this time of crisis and deserve to be able to do their jobs as efficiently and safely as possible. It is truly astounding that not just Cook County, but the entire nation is experiencing this shortage of essential medical supplies. The Court understands this is no fault of the first responders, but a court order in this cause of action cannot bring those supplies into existence. And this Court must balance the rights of the public at large with the alleged rights of NWCDS, and the last thing this Court would want to do is give our first responders a false sense of security that could lead to tragedy. As such, the Court will analyze each of the elements for a TRO individually, addressing the parties' arguments in turn.

1. Clearly Ascertainable Right in Need of Protection

Whether NWCDS has a clearly ascertainable right in need of protection is a threshold issue which must be met for a TRO to issue. *Hartlein v. Ill. Power Co.*, 151 Ill.2d 142, 156-57 (1922). The failure of the complaint to establish a clearly ascertainable right in need of protection stops the analysis, and no other factors need be considered. *Id.* As with the likelihood of success factor, discussed below, NWCDS need only raise a fair question as to the existence of an ascertainable claim for relief. *See Ford Motor Credit Co. v. Cornfield,* 395 Ill. App. 3d 896, 903-04 (2d Dist. 2009), *appeal denied* 236 Ill.2d 503 (2010).

NWCDS claims it has a right to the names and addresses of all individuals that are or become infected with COVID-19 within its geographical area. NWCDS heavily relies upon a memorandum from the Illinois Attorney General's Office dated April 3, 2020 that offers guidance as to "Disclosing Addresses for Confirmed COVID-19 Cases to First Responders,"

claiming it is the Attorney General's opinion that disclosure is mandatory, thus supporting NWCDS' clearly ascertainable right. *See* Verified Complaint, Exhibit 1, Exhibit C. Putting aside that the Illinois Attorney General's Office, while a respected and learned legal authority, does not create or make binding interpretations of the law, NWCDS' interpretation of the Attorney General's guidance is wrong. The memorandum is clear that "disclosure is permitted, but not required." Verified Complaint, Exhibit 1, Exhibit C, p.1. The document repeats the phrase several times, disclosure is *permitted, but not required.* It also explicitly states that "state and local health public health departments retain discretion in deciding whether to make such disclosures." *Id.* at 1.

NWCDS also claims it has a clearly ascertainable right to the names and address of all individuals that are or become infected with COVID-19 under (A) the Health Insurance Portability and Accountability Act (HIPAA); (B) the Department of Public Health Act; or (C) the Control of Communicable Diseases Code. *See* 45 C.F.R. § 164.512(j)(1) (HIPAA); 20 ILCS 2305.2.1(c) (Department of Public Health Act); 77 ILAC Sec. 690.1405/2.1(c) (Communicable Diseases) (Lexis 2020). The Health Department's position is that, under any of the laws cited by NWCDS, there is no statutory duty to share information. Each of the statutes provide for limited disclosure consistent with the discretion of health officials. The Health Department is correct.

A. HIPAA

Federal regulations under HIPAA are the primary legal standard this Court must follow when it comes to private health information. *See* 45 C.F.R. § 160; § 164, Subparts A and E. The HIPAA Privacy Rule requires health care providers and organizations, as well as their business associates, to develop and follow procedures that ensure the confidentiality and security of protected health information when it is transferred, received, handled, or shared. In general, State laws that are contrary to HIPAA's Privacy Rule are preempted by the federal requirements, which means that the federal requirements supersede them and apply. But the Privacy Rule provides exceptions to the general rule of federal preemption for contrary State laws that (1) relate to the privacy of individually identifiable health information and provide *greater* privacy protections or privacy rights with respect to such information, (2) provide for the reporting of disease or injury, child abuse, birth, or death, or for public health surveillance, investigation, or intervention, or (3) require certain health plan reporting, such as for management or financial audits. *See* U.S. Dep't of Health & Human Services (HHS), Summary of Privacy Rule at

https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html on 4/25/20.

NWCDS claims Section 164.512(j)(1)(i) of HIPAA mandates disclosure, it reads in full:

> (j) Standard: Uses and disclosures to avert a serious threat to health or safety.
> (1) *Permitted disclosures.* A covered entity *may*, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the covered entity, in good faith, believes the use or disclosure:
> (i)
> (A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
> (B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

45 C.F.R. § 164.512(j)(1)(i) (Lexis 2020) (emphasis supplied).

NWCDS is correct that HIPAA regulations do permit disclosure of protected health information "to avert a serious threat to health or safety," when the disclosure is: (i) "necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public," and (ii) "to a person or persons reasonably able to prevent or lessen the threat." 45 C.F.R. § 164.512(j)(1)(i) (Lexis 2020). But any disclosure must be consistent with the law and ethics, and be restricted to the "minimum necessary to accomplish the purpose for which the disclosure is being made." *Id.* at § 502(b).

This limitation on the scope of disclosure underscores the profound privacy interest individuals have in their personal protected health information, an interest receiving substantial protection under both federal and state law. *See* 45 C.F.R. § 164.508; 20 ILCS 2305/2(h). And again, the plaint text of HIPAA is clear that disclosure is permitted. "a covered entity *may*" disclose covered health information. To permit is defined as "to give permission, to license. To grant leave or liberty; to allow to be done by giving consent or by not prohibiting." BALLANTINE'S LAW DICTIONARY, permit (Lexis 2020). Merely because something is permitted does not mean it is *required*, a permission is not an affirmative duty.

The Court also finds it important to note that, after somebody has been exposed to COVID-19, for example, in a hospital room, ambulance, or police car, HIPAA already allows those exposed individuals to be informed and warned. And this information is narrowly tailored, it does not expose identifiable information of the patient, but allows people to take precautions as

soon as possible after being exposed to the virus. This system is retrospective instead of prospective, and it is not perfect, but currently it is the best and most reliable system available. It is uncontested that there are asymptomatic COVID19 carriers. It is uncontested that there is a shortage of COVID19 tests in the State and Cook County. Given these facts, every member of the public potentially has the virus and is contagious.

A list of those who had or have the virus cannot be complete, so it makes no sense to ration PPE to those few known cases when every person potentially has the virus. Indeed, the one of NWCDS's stated goals is the rationing of PPE, however what is known about the virus means that rationing of PPE by not utilizing it if a person is not known to be infected would be unwise. Thus, under NWCDS's own pleadings the procurement of the list may place more first responders in danger than would otherwise be without plaintiffs having access to the Covid List. The best anyone can hope for is to be informed after the fact. Prepare for the worst and pray for the best. And HIPAA already provides for that, a covered health care provider may disclose protected health information as needed to notify a person that they have been exposed to a communicable disease if the covered entity is legally authorized to do so to prevent or control the spread of the disease. *See* 45 CFR 164.512(b)(1)(iv) (Lexis 2020).

B. Department of Public Health Act

NWCDS also states it is entitled to the information sought under the Department of Public Health Act, Section 2.1(c). Section 2.1(c) must be read in conjunction with Section 2(h) and the rest of Section 2.1 to give it its full effect. *See In re Detention of Lieberman,* 201 Ill. 2d 300, 308 (Ill. 2002) (statutes must be read as a whole). Section 2(h) of the Department of Public Health Act (Health Act) gives the governing standard for state and local health department requirements during an infectious disease outbreak. 20 ILCS 2305/2(h) (Lexis 2020). It states that to prevent the spread of a dangerously infectious disease, public health authorities, shall, in relevant part "have emergency access to medical or health information [ ] upon the condition that the [ ] public health authorities shall protect the privacy and confidentiality " of that information in accordance with federal and state law. *Id.* (emphasis supplied). Section 2(h) of the Health Act only entitles public health authorities, such as the Defendant Health Department to this information, although it does not limit the sharing of information authorized under Section 2.1 below. *Id.*

Section 2.1 of the Health Act regulates the sharing of health information regarding the investigation and prosecution of criminal conduct, such as an act of bioterrorism, which has "the potential to be the cause of or related to a public health emergency." 20 ILCS 2305/2.1 (Lexis 2020). This section must be read in conjunction with Section 2(h), which provides the governing standard for disclosure. *Compare* 20 ILCS 2305/2(h) (powers and disease outbreak requirements) *with* 20 ILCS 2305/2.1 (information sharing) (Lexis 2020). It reads in full:

> (b) Whenever the Department or a local board of health or local public health authority learns of a case of an illness, health condition, or unusual disease or symptom cluster, *reportable pursuant to rules adopted by the Department or by a local board of health or a local public health authority*, or a suspicious event that it reasonably believes has the potential to be the cause of or related to a public health emergency, as that term is defined in Section 4 of the Illinois Emergency Management Agency Act, it shall immediately notify the Illinois Emergency Management Agency, *the appropriate* State and local law enforcement authorities, other appropriate State agencies, and federal health and law enforcement authorities and, *after that notification*, it shall provide law enforcement authorities with such other information as law enforcement authorities may request *for the purpose of conducting a criminal investigation or a criminal prosecution of or arising out of that matter. No information containing the identity or tending to reveal the identity of any person may be redisclosed by law enforcement, except in a prosecution of that person for the commission of a crime.*
>
> (c) Sharing of information on reportable illnesses, health conditions, unusual disease or symptom clusters, or suspicious events between and among public health and law enforcement authorities *shall be restricted to the information necessary* for the treatment in response to, control of, investigation of, and prevention of a public health emergency, as that term is defined in Section 4 of the Illinois Emergency Management Agency Act, *or for criminal investigation or criminal prosecution of or arising out of that matter.*"
>
> 20 ILCS 2305/2.1(b); (c) (Lexis 2020) (emphasis supplied).

Section 2.1 imposes mutual mandatory reporting requirements between (i) state and local law enforcement and (ii) state and local public health authorities. *Id.* This section requires state and local law enforcement to alert the Illinois Emergency Management Agency and the Illinois Department of Public Health upon discovering a case of a specified set of diseases or a

suspicious event that may be connected to a public health emergency, and vice versa. 20 ILCS 2305/2.1(a); 2.1(b) (Lexis 2020). This statute again contains discretionary language. The Health Department reports *pursuant to its own rules*, which in this case means reporting to the I-NEDSS network, which it has already done. And NWCDS has already been informed there is COVID-19 in its geographical area, the statute does not mandate more than that absent a crime. The mandatory grounds for sharing more information with law enforcement authorities is explicitly limited to "the purpose of conducting a criminal investigation or a criminal prosecution arising out of that [public health emergency] matter." 20 ILCS 2305/2.1(b) (Lexis 2020). And the statute limits law enforcement from redisclosing information that tends "to reveal the identity of any person" except for prosecuting that person for a crime. *Id.* A list of names and address undoubtedly reveals a person's identity.

Section 2.1(c) states that the sharing of this information between public health and law enforcement authorities "shall be restricted to the information necessary for the treatment" and response to or prevention of a public health emergency. 20 ILCS 2305/2.1(c) (Lexis 2020). Again, tendering a list to NWCDS does not fit these criteria. Because the disclosure under the Health Act primarily revolves around the prevention of, reaction to, and prosecution of a bio-crime or attempted bio-crime, it seems clear that the Health Act does not contemplate the sharing of information with first-responders outside of that specific context.

Reading the text of the Health Act as a whole, as this Court must under the law, reveals that unless the information directly effects treatment, a criminal investigation, or criminal prosecution, NWCDS is not entitled to the health information sought. And NWCDS is not seeking this information in furtherance of an investigation or prosecution, it seeks this information so that it may ration its PPE for its first responders.

C. Control of Communicable Diseases Code

NWCDS also claims it is entitled to the information under the Control of Communicable Diseases Code. The Control of Communicable Diseases Code is part the administrative code and guidelines promulgated by the Illinois Department of Public Health. *See* 77 Ill. Adm. Code 689-99 (Lexis 2020). Section 690.1405 of the administrative code, titled "Information Sharing," states, in relevant part, that whenever a local health department learns of a reportable illness or suspicious event that may be the cause of a public health emergency, then it shall

immediately notify the Department of Illinois Emergency Management Agency, and the appropriate State and local law enforcement authorities. 77 Ill. Adm. Code 690.1405(a) (Lexis 2020). It goes on to state that the sharing of that medical information "shall be restricted to information necessary for the treatment, control of, investigation of, containment of, and prevention of a public health emergency [ ] or for criminal investigation or criminal prosecution of or arising out of that matter." 77 Ill. Adm. Code 690.1405(b) (Lexis 2020). It reads in full:

> a) Whenever a certified local health department learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event that may be the cause of a public health emergency as that term is defined in Section 4 of the Illinois Emergency Management Agency Act, it shall immediately notify the Department, the Illinois Emergency Management Agency, and *the appropriate* State and local law enforcement authorities.
>
> b) Sharing of medical information on persons with reportable illnesses or health conditions, unusual disease or symptom clusters, or suspicious events between the Department, certified local health departments and law enforcement authorities *shall be restricted* to information necessary for the treatment, control of, investigation of, containment of, and prevention of a public health emergency, as that term is defined in Section 4 of the Illinois Emergency Management Act, *or for criminal investigation or criminal prosecution of or arising out of that matter*.
> 77 Ill. Adm. Code 690.1405 (Lexis 2020) (emphasis supplied)

It is uncontested that this language mirrors the language of Section 2.1 of the Health Act above. Both parties arguing it supports their positions. This Court finds that the same limitations discussed above apply – mandatory disclosure to first responders is limited to the prosecution of a crime. And that is not the situation here.

NWCDS need only raise a fair question as to its clearly ascertainable right to relief, in this case, the Covid List. *See Ford Motor Credit Co. v. Cornfield,* 395 Ill. App. 3d 896, 903-04 (2d Dist. 2009), *appeal denied* 236 Ill.2d 503 (2010). But is has failed to meet its burden. Each of the statutes relied upon by NWCDS is either expressly discretionary in the sharing of information, or limits when the information can be shared to a different situation than is before the Court. Individuals have a profound privacy interest in their personal protected health information, an interest receiving substantial protection under both federal and state law. *See* 45 C.F.R. § 164.508; 20 ILCS 2305/2(h). A person's right to privacy is one of the most important

rights found in the Constitution of the United States, and the U.S. Supreme Court has many opinions detailing its importance. *See Griswold v. Connecticut,* 381 U.S. 479 (1965); *Katz v. United States*, 389 U.S. 347, 351 (1967); *Lawrence v. Texas,* 539 U.S. 558 (2003). The statutes and administrative regulation relied upon by NWCDS primarily seek to protect that privacy interest rather than share it, even under these unusual circumstances. Given the limited value of sharing the information NWCDS seeks, this Court will not abrogate that right. NWCDS does not have even a fair question as to a clearly ascertainable right to a Covid List, this factor favors the Health Department.

2. Likelihood of Success on the Merits

To establish a likelihood of success on the merits, NWCDS need not make out a case that in all events will warrant relief at the final hearing. *Tie Sys., Inc., Ill. V. Telcom Midwest, Inc.,* 203 Ill. App. 3d 142, 150-51 (1st Dist. 1990). NWCDS need only raise a "fair question," as to its likelihood of success on the merits. *Buzz Barton & Assocs., Inc. v. Giannone*, 108 Ill. 2d 373, 382 (1985). And if the subject of the injunction is property that may be destroyed, the applicant may not even need to show a likelihood of success. *Save the Prairie Soc. v. Greene Dev. Grp., Inc.,* 323 Ill. App. 3d 862, 870 (1st Dist. 2001).

There are technically three causes of action before the Court, (1) Declaratory Judgement; (2) Writ of Mandamus; and (3) Permanent Injunction. As already pointed out, these causes of action are duplicative, and each asks for the exact same relief. Thus, the Court will go forward with its analysis only as to the Writ of Mandamus, the only proper cause of action raised.

Mandamus is an extraordinary remedy to enforce, as a matter of right, "the performance of official duties by a public officer where no exercise of discretion on his part is involved." *Noyola v. Bd. of Educ.*, 179 Ill. 2d 121, 133 (Ill. 1997) quoting *Madden v. Cronson*, 114 Ill. 2d 504, 514 (Ill. 1986); *Pate v. Wiseman,* 2019 IL App (1st) 190449 ¶25-27 Mandamus is employed to compel a public official to perform a ministerial duty. *People ex re. Birkett v. Dockery,* 235 Ill. 2d 73, 76-77 (Ill. 2009). Where public officials have failed or refused to comply with requirements imposed by statute, the courts may compel them to do so by means of a writ of mandamus, provided the requirements for that writ have been satisfied. *Noyola,* 179 Ill. 2d at 13233.

The court is limited to deciding matters of law only. *Chicago Ass'n of Commerce & Indus. v. Regional Transpo. Auth.*, 86 Ill. 2d 179, 185 (Ill. 1981). Where the performance of an official duty or act involves the exercise of judgment or discretion, the officer's action is not subject to review or control by mandamus. *Id.* Mandamus may be used to compel the exercise of discretion that is vested in a public official, but it may not direct the way the public official's discretion is to be exercised. *Burnidge Bros. Almora Heights, Inc. v. Wiese,* 142 Ill.App.3d 486, 490 (2d Dist. 1986) (emphasis in original). But it also has been held that, if an administrative body abuses its discretion or exercises its authority arbitrarily or for some selfish and unworthy motives, mandamus may issue to correct the matter. *Etten v. Lane,* 138 Ill.App.3d 439, (5th Dist. 1985); *Tanner v. Bd. of Trustees of Univ. of Ill.*, 48 Ill.App.3d 680, (4th Dist. 1977).

A plaintiff seeking a writ of mandamus must plead and prove the following (1) a clear right to have the act performed; (2) every material fact necessary to demonstrate plaintiff's clear right to the writ; (3) a showing that the requested act is the duty of the defendant to perform; (4) a showing that the requested act is in the power and authority of the defendant; and (5) in the case of a private right – rather than a public right – the plaintiff must show a demand and the defendant's refusal to act. *People ex rel. Endicott v. Huddleston,* 34 Ill. App. 3d 799, 802 (Ill. 1st Dist. 1976). A writ is "never awarded in a doubtful case." *Molnar v. City of Aurora,* 38 Ill. App. 3d 580, 583 (Ill. 2d Dist. 1976).

NWCDS claims the Health Department's choice to refrain from sharing the information sought is arbitrary and capricious. Generally, an agency's decision is arbitrary and capricious if it relies upon factors that the statute does not intend, fails to consider an issue or important aspect of the problem before it, the agency offers an explanation for its decision that runs counter to the evidence, the decision is implausible, or when the agency fails to follow its own regulations. *Pollachek v. IDFPR,* 367 Ill. App. 3d 331, 341-42 (1st Dist. 2006); *Marion Hosp. Corp. v. Ill. Health Facilities Planning Bd.,* 324 Ill. App. 3d 451, 457-58 (1st Dist. 2001) (failure to follow regulations). As a matter of public policy, it is a high burden to show a governmental agency's decisions are arbitrary and capricious. *See* 735 ILCS 5/3-110 (Lexis 2020); *Abrahamson v. Ill. Dept. of Professional Regulation,* 153 Ill. 2d 76, 88 (1992).

While a mandamus can issue if an administrative body abuses its discretion or exercises its authority arbitrarily or for some selfish and unworthy motives, that is not the case here. *See Etten v. Lane,* 138 Ill.App.3d 439, (5th Dist. 1985); *Tanner v. Bd. of Trustees of Univ. of Ill.*, 48

Ill.App.3d 680, (4th Dist. 1977). Neither the Verified Complaint, nor NWCDS' Emergency Motion for TRO plead any overt facts showing the Health Department acted in an arbitrary or capricious manner. The Motion for TRO pleads that the Health Department will not release the information sought "because of concerns related to the confidentiality of personal health information," and because its release would "provide a 'false sense of security' because many individuals who are infected with COVID-19 are asymptomatic and have not been tested, or simply have not been tested despite being symptomatic." NWCDS Motion for TRO at 3-4. If anything, this shows a commonsense basis and legal basis for the Health Department's decision, it simply is not arbitrary or capricious. The Response Brief further articulates the legal and scientific bases for the Health Department's decision, supported by a thorough and informative affidavit from Doctor Rachel Rubin.

Dr. Rubin is the Co-Administrator of the Cook County Department of Public Health and graduated from Rush Medical College in the '80s. She has been working on the Department's COVID-19 response since January of 2020. Response Brief, Ex. 1, Rubin Affidavit ¶2-3. Ninety percent of her current duties relate to the Department's COVID-19 response. *Id.* She stated that the Department's duties require balancing the need to release appropriate information with individuals' strong and legitimate privacy expectations. *Id.* at ¶6. She avers that the Department is balancing the potential for stigma that individuals or groups may face because of their diagnosis, the potential for individual harassment, the potential that the information may be used to identify and target undocumented aliens, and "the fact that such an approach tends to discourage individuals from coming forward to receive testing and treatment." *Id.*

She also stated that she is "of the strong opinion that provided such information will not make first responders safe, and may actually put them at greater risk," and is aware the Illinois Department of Health (IDPH) shares this same concern. *Id.* at ¶11-12. She is correct that IDPH guidance states that providing first responders and law enforcement with the identity of positive COVID-19 cases has limited epidemiologic and infection control value and therefore IDPH does not recommend notification to law enforcement of individuals who have tested positive for COVID-19. Rather, IDPH recommends that first responders and law enforcement take appropriate protective precautions when responding to all calls." *Id.* at ¶13, relying upon IDPH guidance at Response Brief, Ex. 1, Ex. F. She stated that "the specific features of the COVID-19 pandemic make it such that information about individuals' diagnosis is not particularly helpful

and could give first responders a false sense of security when considering when to take particular precautions." *Id.* at ¶14. She says less than 2% of Illinois residents have been tested. *Id.* at ¶16. Given this background, it was reasonable for Cook County President Toni Preckwinkle to rely on Dr. Rubin's recommendation and refuse to give NWCDS the information unless directed by the Cook County Board as the Board of Public Health.

NWCDS argues that sharing the information sought is a statutory duty, and not a discretionary act. Thus, because the Health Department has not shared its information, it has acted arbitrarily and capriciously by failing to follow the law and its own regulations. *Pollachek v. IDFPR,* 367 Ill. App. 3d 331, 341-42 (1st Dist. 2006); *Marion Hosp. Corp. v. Ill. Health Facilities Planning Bd.,* 324 Ill. App. 3d 451, 457-58 (1st Dist. 2001) (failure to follow regulations). But as discussed above, none of the laws or regulations cited by NWCDS impose a mandatory duty to share the information sought. *See Supra,* Section 1. All of them are discretionary. A mandamus cannot be used to acquire new rights. *See Burnidge Bros. Almora Heights, Inc. v. Wiese,* 142 Ill.App.3d 486, 490 (2d Dist. 1986). And generally, a mandamus will not issue where the plaintiff seeks to change a *discretionary act* by the defendant. *See Chicago Ass'n of Commerce & Industry v. Regional Transportation Authority*, 86 Ill. 2d 179, 185 (Ill. 1981) (emphasis supplied). The Court is limited to deciding matters of law only, it may not substitute its discretion for that of the Health Department. *Id.*[1]

NWCDS cannot pled or prove the five elements necessary for the issuance of a mandamus because it does not have a *clear* right to have the act performed and cannot show the requested act is a *duty* of the Health Department. *People ex rel. Endicott v. Huddleston,* 34 Ill. App. 3d 799, 802 (Ill. 1st Dist. 1976). Even under the charitable "fair question" standard mandated by a TRO proceeding, NWCDS' argument fails. The laws relied upon by NWCDS are clearly discretionary, and the Health Department has used its discretionary powers to make an

[1] The Court notes that some local health departments have been court ordered to release information. *McHenry County Sheriff v. McHenry County Health Dep't.,* No. 20-MR-0373 (Cir. Ct. McHenry Cty. April 10, 2020). Others have exercised their discretion to share information. Some have done so because they issued a local *quarantine order,* as opposed to a mere shelter-in-place order. And first responders do have the authority to enforce a quarantine order. *Compare* 20 ILCS 2305/2(k) (quarantine statute, violation of which is a Class A misdemeanor) *with* Ill. Exec. Order No. 2020-10, (March 20, 2020) (Governor Pritzker's shelter-in-place order). Other health departments are sharing only addresses, and yet others go as far as sharing names, address, dates of birth, gender, and when the person was released from the hospital. This is further proof of the wisdom in letting local health departments exercise their discretion. Courts are not supposed to legislate, and should not be substituting their discretion for public health experts' judgment. *See* NWCDS Supplement Response Brief re Infection Percentage, Ex. 4.

informed and reasoned decision. NWCDS does not have a fair question of a likelihood of success on the merits, this factor favors the Health Department.

3. Irreparable Harm

The harm NWCDS seeks to enjoin must be expected with reasonable certainty, as opposed to a mere possibility. *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & Western Ry.*, 195 Ill. 2d 356, 37172 (2001). NWCDS claims the irreparable harm is to the personal health and safety of first responders. NWCDS claims that "if all possible protective measures are not taken and the COVID19 pandemic is permitted to ravage first responders and the communities they serve, lives will be unnecessarily lost." Emergency Motion for TRO at 11. And although not explicitly articulated as part of the claimed "irreparable harm," the NWCDS' motion and oral argument contains a lot of discussion about its limited supplies of PPE and the need to efficiently use it.

The Health Department persuasively argues the Covid List will not help prevent the harm sought by NWCDS. The Health Department has advised, consistent with State and Federal Guidance, that all first responders treat everyone as if they are positive due to the nature of the virus. Response Brief, Ex. 1, Rubin Affidavit ¶13. As much as this Court respects first responders and wishes to help them, the relief requested simply will not accomplish NWCDS' goals. It will not prevent the alleged irreparable harm, and, in fact, if first responders stopped taking every precaution at every interaction with the public, could bring about the harm alleged.

As discussed above, there are asymptomatic people who can spread the virus, there are people who have the virus but haven't been tested, and, even if the NWCDS obtained the information it sought, what good does knowing about people who tested positively in January and wearing full PPE to that specific encounter do for them? People who tested positive for COVID-19 in January are likely no longer contagious, according to our current understanding of the virus. And regardless of who is on the Covid List, first responders are still at risk of catching the virus from any given person on the street. Moreover, even if NWCDS was granted complete relief, its information would *still* be incomplete for its geographical area because two of its member-municipalities, Palatine and Barrington, are also part of Lake County and beyond the scope of this case. Not to mention that nothing stops a citizen from another part of the state or

country from going through NWCDS' region and interacting with first responders. Either way, NWCDS first responders have incomplete information and are at risk.

The Court recognizes that the more information our first responders have, the better decisions they can make to efficiently and safely serve the community and protect themselves from potential harm. But even in the normal course of duty, the information first responders are entitled to is limited. For example, whether someone may be armed with a dangerous weapon is information highly probative to first responders. Dispatch operators are trained to ask questions about whether there are firearms in the house and pass that information on to the first responders.

Similarly, the Center for Disease Control has issued guidance for modified dispatch caller inquiries to determine whether someone has or may have COVID-19. *See* CDC, Coronavirus Disease 2019 (COVID-19) First Responder Guidance, https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-for-ems.html visited on 4/29/20. This way NWCDS can get names plus much more, like symptomatic patients, by merely following the CDC guidelines for dispatchers that would lead to a safer encounter. This real-time information would likely be more accurate and up to date than any list the NWCDS seeks, and would be easier to obtain. NWCDS' claimed irreparable harm cannot be stopped by the Covid List, this factor favors the Health Department.

4. Inadequate Remedy at Law

An adequate remedy at law is a remedy that is clear and complete and provides the same practical and efficient resolution as an injunction would provide. *Tamalunis v. City of Georgetown, Vermilion County, Ill.*, 185 Ill. App. 3d 173, 189-90 (4th Dist. 1989). An interlocutory injunction should not issue if there is a legal or equitable remedy that will make the plaintiff whole after trial. *Kanter & Eisenberg v. Madison Assocs.*, 116 Ill. 2d 506, 510-11 (Ill. 1987). Injunctive relief is not proper when money damages are an adequate remedy. *Lumbermen's Mut. Cas. Co., v. Sykes*, 384 Ill. App. 3d 207, 230-32 (1st Dist. 2008). There is also some precedent that the availability of specific performance or mandamus as relief preclude the issuance of injunction. *Kanter & Eisenberg*, 116 Ill. 2d at 515-16 (specific performance); *Lyle v. Chicago*, 357 Ill. 41, 44-45 (Ill. 1934). It is uncontested that the only available remedy to NWCDS is an equitable remedy. There is no remedy at law that is clear, complete, and provides the same practical and efficient resolution for NWCDS as being given the Covid List. This factor favors NWCDS.

5. Balancing of the Harms

Generally, a court need only address the balancing of the harms or equities if the first four factors for issuance of a TRO have been satisfied. *Lumbermen's Mut. Cas. Co. v. Sykes*, 384 Ill. App. 3d 207, 232-33 (1st Dist. 2008). Factors that can be considered include public interest and public policy. *Prairie Eye Ctr., Ltd. v. Butler*, 305 Ill. App. 3d 442, 448-49 (4th Dist.) *appeal denied*, 185 Ill.2d 665 (1999), *appeal post-remand*, 329 Ill. App. 3d 293 (4th Dist. 2002). If the balancing does not favor NWCDS then the injunction may be denied. *Clinton Landfill, Inc. v. Mahomet Valley Water Authority*, 406 Ill. App. 3d 374, 380-81 (4th Dist. 2010).

While the majority of the four factors for whether to issue a TRO favor the Health Department, the Court finds it important to make a full and complete record. The harm feared by NWCDS, while real, simply will not be avoided by the relief it seeks. Whereas the harm to the Health Department, and public interest is real, concrete, and avoidable.

The public's privacy rights, and the health privacy rights especially, are some of the strongest rights under the Constitution and laws of the United States and Illinois. Once that data is exposed, there is no taking it back, and it is unclear how NWCDS would be distributing, storing, and destroying the health information it seeks. As with PPE, a secure system for storing medical information on NWCDS servers cannot be instantaneously brought into existence. It is a matter of common sense that the more people who have access to this information, the more likely that the information will somehow be made public. Moreover, the Court is greatly concerned by the possibility for stigma or harassment, should that information be leaked. And recognizes the very real possibility that, if such a list exists in the County, that it may in fact discourage people from getting testing or admitting having symptoms. We have statistics now that the virus disproportionality effects lower income African American communities and undocumented aliens. Response Brief, Ex. 1, Rubin Affidavit ¶6-9. These are already at-risk communities with complicated relationships with many first responders, and being put on a list would only complicate it further.

The laws and regulations already allow for first responders to be informed if they have been directly exposed. And again, NWCDS can more easily get names and much more, like symptomatic patients, by merely following the CDC guidelines for dispatchers which would lead to a safer encounter. *See* CDC, Coronavirus Disease 2019 (COVID-19) First Responder

Guidance, https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-for-ems.html visited on 4/29/20. The Covid List could never be as useful or up-to-date as the information a dispatcher can get from the public while on a call.

The keeping and updating of the Covid List would also pose an undue burden on the Health Department. The information is changing daily, and if this TRO issued, then getting that changing information to NWCDS would also have to be done daily. And there is no mechanism or suggested protocol for when this burden would end, how to remove people who have recovered, people who have died, or people who had a false-positive test.

Another public policy concern is that this could create a piecemeal approach across county and municipal boarders leading to inconsistent treatment of private rights within Illinois. It could also expose the Health Department to a deluge of court cases against it, and burdens the public with their private information being shared. It could also expose the Health Department to inconsistent court mandates from various judges as to its own policies. The reason for the high burden to justify both an injunction and a mandamus is to try to help keep the law consistent in Illinois and support the discretion vested in Illinois agencies. It is a matter of comity, and should only be disturbed in clear and extraordinary circumstances. Unfortunately for NWCDS, its right to relief is not clear, especially when it has less intrusive means of getting more accurate and current information. In times of panic and emergency it is imperative that essential constitutional rights are not lightly thrown aside, the balancing of the harms favors the Health Department.

CONCLUSION

While the Court is sympathetic to its reasons, NWCDS has failed to meet its burden under the law for both procedural reasons and reasons on the merits. A TRO is an extraordinary remedy typically granted to preserve the status quo, defined as the last peaceable moment between the parties. *Puleo v. McGladrey & Pullen,* 315 Ill. App. 1041, 1044 (1st Dist. 2000). Here, the status quo is that NWCDS does not have the Covid List. NWCDS seeks to use a TRO to do the opposite of its purpose under the law.

A TRO can also be used in rare emergency circumstances where an emergency exists, and serious harm would result if the injunction is not issued. *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & W. Ry.*, 195 Ill. 2d 356, 365 (2001). But the law is simply not on NWCDS' side, it does not have a clearly ascertainable right to people's protected health information, even

during a pandemic. The Health Department's expertise and discretion is controlling in this situation, both by statute and as a matter of policy. The harm NWCDS wants to avoid will not be fixed by the sharing of people's protected health information given what we know about COVID-19, especially the existence of contagious asymptomatic carriers. And because of the discretionary nature of both the health laws relied upon by NWCDS, and the mandamus cause of action, NWCDS does not have a likelihood of success on the merits. It simply does not have a basis to force the Health Department to share people's protected health information.

Lastly, the Court wants to make it clear that this order does not prohibit the Health Department from using its discretion in a different way. In the Health Department's supplemental brief, it indicated that it would comply if the Cook County Board enacts the proposed resolution requiring the release of information. A resolution the Board is currently considering as of April 23, 2020. The Court encourages the parties to keep talking. The more information our first responders have, the better they can do their jobs, and they are more essential than ever in this trying time.

IT IS ORDERED:

Plaintiff NWCDS' Emergency Motion for TRO is DENIED.

DATED: May 1, 2020

ENTERED:

Anna H. Demacopoulos

Judge Anna H. Demacopoulos, 2002

Judge Anna Helen
Demacopoulos

MAY 0 1 2020

Circuit Court - 2002

Exhibit D

CITY OF CHICAGO • OFFICE OF THE MAYOR

VIA EMAIL

April 23, 2020

Dear Attorney General Raoul,

I am aware of your Office's recent efforts to provide guidance to State's Attorneys, in its memo of April 3, 2020, concerning whether federal and state law "permit, but do not require, first responders responding to an emergency call for service at a particular address to be notified of the existence of a confirmed COVID-19 case at that address." Your guidance was premised upon the privacy protections flowing from the federal Health Insurance Portability and Accountability Act ("HIPAA"). Respectfully, HIPAA is not relevant to the question of whether individual patient data can be disclosed, and particularly during a pandemic. Your memo recognized that HIPAA applies only to "covered entities" (page 1, n.2), which would not include Chicago Department of Public Health (CDPH) functions in this context. It also recognized (page 3) that, HIPAA and related federal regulations "permit states to adopt 'more stringent' standards relating to 'the privacy of individually identifiable health information,' 45 C.F.R. § 160.203(b)." HIPAA thus provides no authority for the disclosure to first responders by CDPH or other public health bodies of names and addresses of those testing positive for COVID-19.

I do appreciate your Office's recognition that the Illinois Department of Public Health (IDPH) "does not recommend notification to law enforcement of individuals who have tested positive for COVID-19" (April 3 memo at page 2). We agree with the IDPH's conclusion but would go further. Our Corporation Counsel has advised me that state law does not permit this type of notification, at least under current facts and conditions. Further, we are concerned such notification would unfairly and unnecessarily stigmatize those who have the disease; dissuade people from seeking testing; and even expose first responders to greater risks. Also, no public body should be in effect encouraging the creation of a data base of people sick with COVID-19, which is precisely what your guidance would compel first responders to do.

COVID-19 cases are reported to local health authorities, such as the Chicago Department of Public Health (CDPH), under the Illinois Communicable Disease Report Act, 745 ILCS 45/1. That Illinois law, not federal law (HIPAA), applies to CDPH and other public health bodies in this context.[1] That state statute concerns mandatory reporting of diseases such as COVID-19 to

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governmental agencies and officers. It clearly provides that such reports "shall be confidential" and that the "identity of any individual . . . who is identified" in such a report "shall be confidential" and "shall not be disclosed publicly." We understand this to refer to patient names and addresses.

Regulations promulgated under this Illinois law also indicate that, at least with respect to information in I-NEDSS and other IDPH registries, notification is ***not permissible***. I-NEDSS, as you know, is "a secure, web-based electronic disease surveillance application utilized by health care providers, laboratories and State and local health department staff" for reporting, detection, and analytical purposes, 77 Ill. Admin. Code 690.10. CDPH obtains most of the information it has on positive COVID-19 cases through I-NEDSS. The Control of Communicable Diseases Code explicitly provides that "[a] person or institution to whom information" from such databases and registries "is furnished or to whom access to records has been given ***shall not divulge*** any part of the records so as to disclose the identity of the person to whom the information or record relates, *except as necessary* for the treatment of a case or carrier or *for the protection of the health of others*." *Id.* (emphasis added). 77 Ill. Admin. Code 690.200(d)(8)(D).

At the present time, there has been no showing that disclosure of the existence of a confirmed COVID-19 case at an address is necessary for the protection of the health of others. This is plain from IDPH's own guidance recommending against such disclosure, which your Office has acknowledged. IDPH's April 1 and 2 statements on potential disclosure to first responders of names and addresses of individuals testing positive for COVID-19 infection make clear that there is *no* identified public health benefit to, and many negative public health consequences from, such disclosure. For example, IDPH's April 1, 2020 Guidance states that "providing first responders and law enforcement with the identity of positive COVID-19 cases has limited epidemiologic and infection control value and therefore IDPH does not recommend notification to law enforcement of individuals who have tested positive for COVID-19. Rather, IDPH recommends that first responders and law enforcement take appropriate protective precautions when responding to all calls" in lieu of "relying on reports of COVID-19 positive individuals." IDPH added in its April 2, 2020 Guidance that there are "limits on the usefulness of current test result information."

We agree with IDPH's conclusion in its April 1st guidance that the "safety of first responders and law enforcement is of paramount importance." For that reason, this guidance instructed first responders to "assess the likelihood that the person may be experiencing symptoms of COVID-19 or may be under investigation for COVID-19."

IDPH's April 1st guidance further makes clear that, because COVID-19 is "widespread in Illinois," notification of the location of a confirmed COVID-19 case would in fact undermine public health. That is because, as IDPH explains in this guidance, "there are likely a larger number of asymptomatic and cases that have not been confirmed by a laboratory in each community," and provision of information only about individuals known to have been infected could "give first responders and law enforcement a false sense of security, as many people who are ill may not have

been tested yet." Further undermining any value to that information is the fact that, as this guidance also pointed out, "many who have tested positive are no longer contagious."

CDPH Commissioner, Dr. Allison Arwady, similarly found no public health reason for disclosure of positive COVID-19 cases. On April 18, 2020, she opined that "at this point in the outbreak, there is no role for flagging addresses in respiratory/COVID patients." Consistent with IDPH guidance, she explained that, "[g]iven widespread community transmission, it is crucial that first responders use ***universal precautions***, and assume that any individual or address is equally likely to have a person infected with COVID-19." (Emphasis in original.) She pointed out (as did IDPH) that such disclosure could be "detrimental to protecting first responders" because it may "cause first responders to relax their precautions around other locations." Dr. Arwady also opined that "[w]hen it comes to first responder safety," she is "much more concerned about the many people who are unaware they are infected and/or have not been tested and/or are needing transport because they are ill and need to be tested—so again, a universal approach to infection control and self-protection/PPE is safer for first responders." Therefore, in Chicago, given the wide spread of COVID-19 among the population, we have advised first responders to assume that any member of the public might be COVID-19 positive and to take all necessary precautions.

In addition to the lack of medical need for disclosure to protect the health of others, including emergency personnel, IDPH recognized that "protect[ing] the identity of individuals and prevent[ing] stigmatization of patients is also a priority." Given the lack of public health value to disclosure of names and addresses of persons testing positive for COVID-19, this important consideration should be paramount. But there is more. Singling out COVID-19 patients is inappropriate and could cause trauma and the possibility that people will not seek testing or treatment for fear of being labelled. This is particularly true given that the impact of the COVID-19 virus has fallen disproportionately on communities of color who for far too long have suffered under the yoke of racism. No one needs to be labelled at a time when we need to be uniting all our residents in this fight of a lifetime.

In sum, I strongly urge you to revise the April 3, guidance to take into consideration the many instances in state law which preclude the disclosure of individual patient identities acquired through I-NEDSS and other IDPH registries. As set forth herein, any such disclosure will obstruct public health efforts to further identify and control the virus's reach and scope. That, of course, would be deeply counterproductive to public health, and the health of first responders.

I urge you to take these facts and legal principles into consideration in your direction to the State's Attorneys. Happy to discuss further at your convenience.

Sincerely,

Lori E. Lightfoot
Mayor, City of Chicago