

Florida Supreme Court Holds Pandemic is a “Natural Emergency” That Can Be Addressed by Florida Governor Executive Orders

In his continuing response to the COVID-19 crisis (“the pandemic”), Governor Ron DeSantis (“the Governor”) issued Executive Orders 20-111 and 20-112. Executive Order 20-111 extended prior emergency orders to May 4, 2020, while Executive Order 20-112 provided details for the “Safe. Smart. Step-by-Step. Plan for Florida’s Recovery” plan with an effective date of May 4, 2020. Recently, the Florida Supreme Court (“the Court”) addressed the Governor’s executive powers during the pandemic. Responding to a Petition for Writ of Quo Warranto (“the Petition”), the Court confirmed that the Governor does have the power under Florida law to enact emergency orders and restrictions during a pandemic.

Abramson (“the Petitioner”) submitted the Petition to the Court on May 5, 2020. The Petition questioned whether the Governor had the legal authority to issue Executive Orders. Specifically, the Petition argued that the Governor did not have the legal authority to issue Executive Orders 20-111 or 20-112 (“the Emergency Orders”) in response to the pandemic because neither the Florida Constitution nor Florida Statutes gave the Governor the power to issue emergency orders to close the state.

First, the Petitioner briefly argued that Article IV of the Florida Constitution (“the Constitution”) does not specifically empower the Governor to issue Emergency Orders during a pandemic—either explicitly or implicitly. Rather, the Petitioner argues that this section of the Constitution provides only a generic list of the Governor’s powers.

Second, the Petitioner argued that Florida Statute § 252, commonly known as The State Emergency Management Act (“the Act”), does not provide the Governor with the power to issue Emergency Orders. Under the Act, the Florida Legislature created emergency powers to address “natural, technological, and manmade disasters, all of which threaten the life, health, and safety of its people.” The Act defines a “natural emergency” as “an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake.” The Petitioner argued that under this definition, a pandemic was not intended to be included as a natural emergency. As further proof, the Petitioner pointed out that if a pandemic was to fall under the definition, the government would have been required to develop an emergency plan pursuant to the Act—however, no plan was ever created. The Petitioner concluded that while business and some local government boards were able to require closures and social distancing, the Governor did not have this power. The Petitioner requested that the Court declare the Emergency Orders null and void as an exercise outside of the Governor’s authority.

In its brief, one-page order, the Court rejected all of the Petitioner’s arguments. The Court first found that a pandemic is a “natural emergency” as defined in the Act. Next, the Court found that under section 252.36(1)(b), the Governor had been granted the power to issue the Emergency Orders. Section 252.36(1)(b) states that “the Governor may issue executive orders, proclamations, and rules and may amend or rescind them. Such executive orders, proclamations, and rules shall have the force and effect of law.” The Court then proceeded to quickly deny the Petition without any further reasoning. In summary, the Court upheld the Governor’s ability to issue emergency orders related to the pandemic, rejecting the Petitioner’s arguments completely.

The Court’s order confirms that the government can activate permit extensions under Florida law. Section 252.363(1)(a), Florida Statutes, provides that the declaration of a state of emergency by the Governor tolls the time period remaining to exercise rights under a permit or other authorization for the duration of the emergency declaration and allows for an additional six-month extension to these time periods for each such declaration.