

STATE OF WISCONSIN

SUPREME COURT

No. 2020-AP-000765

WISCONSIN LEGISLATURE,

Petitioner,

v.

SECRETARY-DESIGNEE ANDREA PALM; JULIE WILLEMS
VAN DIJK AND NICOLE SAFAR, IN THEIR OFFICIAL
CAPACITIES AS EXECUTIVES OF WISCONSIN DEPARTMENT
OF HEALTH SERVICES,

Respondents.

NOTICE OF MOTION AND MOTION OF THE WISCONSIN
ASSOCIATION OF LOCAL HEALTH DEPARTMENTS AND
BOARDS AND ASSOCIATED MUNICIPALITIES AND
COUNTIES FOR LEAVE TO FILE A NON-PARTY BRIEF

Pursuant to Wis. Stat. § 809.19(7) and this Court’s order of April 21, 2020, the Wisconsin Association of Local Health Departments and Boards as well as associated municipalities and counties (the “Local Health Officers”) respectfully move this Court for leave to file a non-party brief. The Local Health Officers’ brief, opposing the Wisconsin

Legislature’s petition for leave to commence an original action and motion for temporary injunction, accompanies this Motion.

In support of their motion, the Local Health Officers state as follows:

1. The Wisconsin Association of Local Health Departments and Boards (“WALHDAB”), formed in 1991, is an 89-member non-profit association comprised of local health departments and boards and tribal health centers from cities and counties around the State. The WALHDAB is the statewide leader and voice for local governmental public health.

2. The Local Health Officers comprising the WALHDAB provide local public health services and work in conjunction with the Wisconsin Department of Health Services (“DHS”). Local health officers throughout the state are statutorily charged under Wis. Stat. § 252.03 to act to stop the spread of communicable diseases such as the untreatable COVID-19.

3. These Local Health Officers seek to protect people across the State, ranging from smaller municipalities and counties to the largest and most diverse municipalities in the state. To date, the vast majority

of these Local Health Officers have experienced COVID-19 in their community.

4. The Local Health Officers have a substantial interest in maintaining the Safer at Home Order to ensure the health and well-being of their residents, including healthcare and other frontline workers. The Local Health Officers face challenges that are unprecedented, given the absence of an effective vaccine or treatment; the communicability of the virus; and the unavailability of sufficient personal protective equipment for healthcare and other frontline workers.

5. Historically, DHS and local health officers have been accorded authority to act in an emergency manner to prevent the spread of communicable disease. For example, the State's Board of Health (predecessor to the Department of Health Services) issued unchallenged statewide orders to prevent the spread of influenza during the 1918 influenza pandemic.

6. The Local Health Officers have a substantial interest in ensuring that decisions involving communicable diseases and the health and well-being of their respective residents are made immediately and

promptly by DHS, as provided under the applicable statutes, including Wis. Stat. §252.02. The Legislature’s petition for original jurisdiction and motion for temporary injunction would interfere with that statutory grant of authority to DHS and to prevent the spread of the virus.

7. Further, the Legislature’s petition and motion do not account for the efforts undertaken by the Local Health Officers, alongside those of state public health officials, to “flatten the curve,” reduce community spread, and protect healthcare and other frontline workers. The Local Health Officers have a substantial interest in preserving the status quo to continue protecting the health and well-being of their residents.

8. The nonparty brief sought to be filed here falls squarely within the now-established practice in Wisconsin of permitting participation in important cases by a wide range of interested nonparties, including citizens, municipalities and their organizations, associations, and corporations. This is consistent with the practice that has developed in the Supreme Court of the United States over the past seventy years. *See generally* Joseph D. Kearney & Thomas W. Merrill, *The Influence of Amicus Curiae Briefs on the Supreme Court*, 148 U. Pa. L. Rev. 743 (2000).

9. The Local Health Officers’ nonparty brief provides the Court with a “boots on the ground” perspective of how DHS’ immediate and comprehensive response to COVID-19 mitigated the spread of the virus and is helping to flatten the curve of infections and providing needed testing and personal protective equipment (“PPE”).

10. Critical to that “boots on the ground” perspective is how Wisconsin communities would be adversely affected if the Court removes the ability of DHS to act in an emergency capacity. This can be seen in epidemiological modeling and transportation data. Simply put, Local Health Officers will be the first group directly affected by the Court’s decision.

11. The brief also provides a highly relevant perspective absent from the Legislature’s presentation and explains why continuing the Safer at Home Order, without modification, is the best course of action to assist the Local Health Officers in their fight to protect lives throughout Wisconsin.

For the foregoing reasons, the Local Health Officers, and associated municipalities and counties, respectfully request that this Court grant them leave to file a non-party brief.

Dated this 29th day of April, 2020.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul Gagliardi", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that pursuant to the Court's April 21, 2020 Order in the above-captioned case, on April 29, 2020, I submitted the foregoing Notice of Motion and Motion For Leave To File A Non-Party Brief as an attachment in .pdf format to the Clerk of the Court for filing via electronic mail to this address: clerk@wicourts.gov.

On April 29, 2020, I also caused an original and one copy of this document to be hand delivered to the Clerk of Court and caused this document to be served on all counsel of record via electronic mail and U.S. Mail (First Class).



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