No. 2020AP765-OA

STATE OF WISCONSIN
SUPREME COURT

WISCONSIN LEGISLATURE,
Petitioner,

v.

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

On Emergency Petition for Original Action

NON-PARTY BRIEF OF LEGAL SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*

Amici are legal scholars specializing in state and federal constitutional and administrative law. *Amici* have researched and published extensively on the separation of powers, the structure of state government, and related topics. They have a professional interest in promoting a sound understanding of separation-of-powers principles, including the proper application of those principles in the unusual context of a deadly pandemic.

INTRODUCTION

In the throes of a grave public health crisis, the Legislature asks this Court to gut a statute that it passed and to nullify an executive order that aims to abate the worst epidemic to hit this country in more than a century. The Legislature frames this extraordinary request as necessary to respect the separation of powers. The opposite is true. Flouting separation-of-powers principles, the Legislature seeks to meddle in the implementation of the law it wrote. The relief it requests would require this Court to short-circuit established checks and balances and muddy lines of accountability. This Court should decline the invitation.

The challenged Order is far from unique. Public health statutes across the nation, including Wisconsin's Chapter 252, identify epidemics as a threat and authorize the executive branch to respond promptly and vigorously. And state executive officials around the country, including in Wisconsin, are exercising typical executive discretion over how, when, and where to employ the state's powers to preserve public safety and health, just as they have done in past public health crises. Courts, for their part, have never regarded such executive action as a "czar-like" usurpation of legislative authority. (*Cf.* Pet. 2.) To the contrary, they have long upheld statutes like Chapter 252 and executive actions taken to implement those statutes. Their rulings emphasize that "[l]egislatures cannot anticipate all the contagious and infectious diseases that may break out in a community," which makes it "indispensable to the preservation of public health that some administrative body should be clothed with authority" to act. *People ex rel. Barmore v. Robertson*, 134 N.E. 815, 819 (Ill. 1922). Whatever one thinks about the outer bounds of executive power, deciding how to exercise delegated discretion while a life-

threatening pandemic evolves in real time is a—perhaps the—paradigmatic executive function.

It is the Legislature's position that threatens the separation of powers. Disregarding the constitutional requirements of bicameralism and presentment, the Legislature seeks to rewrite a duly enacted statute through litigation and claw back powers that it properly vested in Wisconsin's Department of Health Services (DHS) through Chapter 252. The Legislature's acknowledged objective is to second-guess the closure and reopening of specific activities and areas. But these are the very powers the Legislature delegated to DHS. No canon of constitutional avoidance could possibly compel the transfer of properly delegated executive discretion into legislative hands.

No one doubts that public health orders must always be subject to constitutional checks and balances. But these exist quite apart from the Legislature's misguided lawsuit. The Legislature itself possesses the most significant check of all: to pass laws. It purports to be drafting legislation at this very moment (Pet.6 n.1); yet, in filing this action, it asks the Court to act in its stead. Oversight of DHS's leadership by elected officials, including legislators, furnishes another important check. The Legislature casts the Secretary-Designee of DHS as unaccountable—deriding her as a "bureaucrat" claiming "monarchical" powers—ignoring that she is a political appointee who reports both to the elected Governor and to them. Finally, the courts remain a crucial check on executive action. For aggrieved parties, judicial review based on a properly developed factual record is available in both state and federal courts. But the Legislature has no need to seek injunctive relief from this Court through an original action, for it can cure its own asserted injury and provide its own remedy at law. If the Legislature is dissatisfied with Chapter 252, it can perform its core institutional role and legislate.

In effect, the Legislature's requested injunction would force the judiciary, without any factual record, to make vital public health decisions in the midst of a pandemic. That is not the judicial role. Like every other state in the nation, Wisconsin has delegated disease control to the executive branch unless and until the Legislature enacts a new law to change course. This Court should

dismiss the petition for an original action or, in the alternative, reject the Legislature's claims and deny the request for injunctive relief.

ARGUMENT

I. Wisconsin's COVID-19 Response Is a Quintessential—and Lawful—Executive Function.

In Chapter 252, the Legislature expressly granted DHS broad pandemic-response powers that easily encompass the Emergency Order that the Legislature now challenges. The statutory language is expansive, with independent but mutually reinforcing provisions that explicitly include the power for DHS to take "all emergency measures necessary to control communicable diseases." Wis. Stat. § 252.02(6). Separately, DHS may "promulgate and enforce rules" to help prevent and mitigate disease outbreaks and, in addition, "issue orders" to advance those objectives as a crisis unfolds. *Id.* § 252.02(4). To ensure that DHS can indeed do what it must to mount an effective response, the statute takes pains to convey the breadth of the Department's authority. Among other things, it makes clear that DHS may even take actions that one might not immediately expect to be within the Department's purview because they would normally fall within the domain of other public actors or constitutionally protected entities. Thus, the "department may close schools and forbid public gatherings in schools, churches, and other places," § 252.02(3); direct "the quarantine and disinfection of [infected] persons, localities and things," § 252.02(4); and require "the sanitary care of jails, state prisons, mental health institutions, schools, and public buildings and connected premises," *id.*

This statutory authority amply supports Emergency Order 28, which the Legislature challenges here, and Emergency Order 31, which the Legislature criticizes but does not seek to enjoin. Those Orders aim to mitigate a deadly pandemic that has killed over 50,000 Americans since February. Yet at a moment of deep uncertainty about the vectors of contagion, the vulnerability of Wisconsin's residents, and the risk of a resurgence, the Legislature demands that this Court gut the Department's powers by adopting a cramped and implausible reading of Wis. Stat. § 252.02. Defying the statute's text, history, and purpose, the Legislature asks the

Court to ignore § 252.02(6) and strike the language of § 252.02(4) that allows the Department to "issue orders" in addition to promulgating rules. According to the Legislature, this statutory rewrite is justified as a matter of constitutional avoidance. (Pet. 43.)

Contrary to the Legislature's suggestion, neither the statute itself nor DHS's actions under it raise separation-of-powers or nondelegation concerns. Indeed, it is telling that the Legislature does not raise either of these supposed concerns as an independent claim. Longstanding practice and consistent judicial precedent make clear that responding to an epidemic is a core state executive function, and that the norm of delegating expansive authority to public health officials is entirely appropriate given the need for executives to exercise fact-sensitive and adaptive discretion as circumstances evolve.

As a practical matter, when it comes to the authority conferred on DHS in Chapter 252, and DHS's exercise of that authority in response to COVID-19, Wisconsin is in good company. In every state of the Union, statutes vest state health agencies and other executive officials with significant discretion to mitigate pandemics and other acute health threats. *See* Lawrence O. Gostin & Lindsay F. Wiley, Public Health Law 426 (3d ed. 2016) (explaining that states "broadly authoriz[e] action where necessary to protect" the public "in the face of a novel infectious disease"). These provisions vary in certain particulars, but they all contemplate a swift and vigorous executive-led response.[1] That is

[1] For examples from each State, *see* Ala. Code § 22-2-2; Alaska Stat. § 18.15.390; Ariz. Rev. Stat. § 36-788; Ark. Code § 20-7-110; Cal. Health & Safety Code §§ 120140, 120145; Colo. Rev. Stat.. §§ 25-1.5-101, 25-1.5-102; Conn. Gen. Stat. § 19a-131b; Del. Code tit. 16, § 122; Fla. Stat. § 381.00315; Ga. Code § 31-12-2.1; Haw. Rev. Stat. § 325-6; Idaho Code § 56-1003; Ill. Comp. Stat. 2305/2; Ind. Code § 16-19-3-9; Iowa Code § 139A.4; Kan. Stat. § 65-128; Ky. Rev. Stat. § 214.020; La. Stat. § 40:5; Me. Rev. Stat. tit. 22, § 802; Md. Code, Health-Gen. § 18-102; Mass. Gen. Laws ch. 17, § 2A; Mich. Comp. Laws § 333.2253; Minn. Stat. § 144.419; Miss. Code. § 41-23-5; Mo. Stat. § 192.020; Mont. Code §§ 50-1-202, 50-1-204; Neb. Rev. Stat. § 71-502; Nev. Rev. Stat. § 441A.510; N.H. Rev. Stat. §§ 141-C:4, 141-C:11; N.J. Rev Stat § 26:4-2; N.M. Stat. § 24-1-3; N.Y. Pub. Health Law § 2100; N.C. Gen. Stat. §§ 130A-144, 130A-145; N.D. Cent. Code § 23-07.6-03; Ohio Rev. Code § 3701.13; Okla. Stat. tit. 63, § 1-106; Or. Rev Stat § 433.121 et seq.; 35 Pa. Stat. § 521.3; 23 R.I. Gen. Laws § 23-1-1; S.C. Code § 44-1-80; S.D. Codified Laws § 34-1-17; Tenn. Code

why, across the country, executive officials—not legislatures or legislative committees—have been issuing statewide orders in recent weeks to implement coronavirus countermeasures.[2] And such executive action has deep historical roots. During the 1918 influenza pandemic, Wisconsin implemented the predecessor to Chapter 252 to effectuate a statewide shutdown credited with saving thousands of lives.

For their part, courts have repeatedly upheld delegations akin to those the Legislature made in Chapter 252. Whatever their more general views on delegation and the administrative state, jurists around the nation have held again and again that the overriding need for urgent, scientifically informed action to confront life-or-death public health challenges fully justifies laws like § 252.02—and, indeed, requires those laws to be construed broadly, not narrowly. As the U.S. Supreme Court explained more than a century ago (during an era of regulatory skepticism), the authority to respond to public health crises must be "lodged somewhere," and it is "surely" appropriate, and "not an unusual, nor an unreasonable or arbitrary, requirement," to vest authority to respond to public health crises with administrators, "appointed, presumably, because of their fitness to determine such questions." *Jacobson v. Commonwealth of Mass.*, 197 U.S. 11, 27 (1905). Shortly thereafter, in the wake of the 1918 influenza pandemic, the Illinois Supreme Court reflected that the "necessity of delegating to an administrative body the power to [identify] and take necessary steps to restrict and suppress [contagious] disease is apparent to everyone who has followed recent events." *People ex rel. Barmore*, 134 N.E. at 819; *see also Ex parte McGee*, 185 P. 14, 16 (Kan. 1919) (accepting the "necessity for legislation" conferring broad authority on state health officials "to prevent the spread and dissemination of diseases dangerous to the public health").

As the case law makes clear, there is good reason for these ubiquitous delegations. Courts have long recognized the

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§ 68-1-201; Tex. Health & Safety Code §§ 81.081, 81.082; Utah Code § 26-6-3; Vt. Stat. tit. 18, § 126; Va. Code § 32.1-42; Wash. Rev. Code § 43.70.130; W. Va. Code § 16-3-1; Wyo. Stat. § 35-1-240.

[2] *See, e.g.*, Kaiser Family Foundation, *State Data and Policy Actions to Address Coronavirus* (Apr. 28, 2020), available at https://bit.ly/2xYzKBc.

"paramount necessity" for "a community … to protect itself against an epidemic of disease which threatens the safety of its members." *Jacobson*, 197 U.S. at 27. The state, courts have observed, must "act with promptness[] when the public health is endangered." *Kirk v. Wyman*, 65 S.E. 387, 389 (S.C. 1909); *see also State v. Rackowski*, 86 A. 606, 607–08 (Conn. 1913) (describing epidemic response as "a chief end of government"). Accordingly, the state has "an imperative obligation" "to take all necessary steps" to safeguard public health. *Blue v. Beach*, 56 N.E. 89, 92 (Ind. 1900).

Legislatures, however, are not well-equipped institutionally to make and enforce speedy judgments based on rapidly changing vectors of contagion, shifting epidemiological understandings, and unexpected implementation challenges. Rather, in Wisconsin and elsewhere, lawmakers have recognized that the fast-moving demands of a pandemic cannot be met through the legislative process or addressed solely in the form of durable law-like pronouncements. Through statutes that place flexible discretion in executive departments, lawmakers have sought to avoid "the confusions and delays" that would arise were they compelled to respond legislatively in the midst of an acute public health crisis. *State v. Superior Court for King Cty.*, 174 P. 973, 978 (Wash. 1918). They have also sought to minimize "the danger of partisan opinion" flaring up and wreaking havoc. *Id.*; *see also id.* (observing that "the judgment and discretion of [those] learned in the science of medicine" is indispensable during an acute public health crisis).

Of course, delegations to public health officials must still be bounded, but they surely are under § 252.02. DHS's authority undoubtedly has "ascertainable" limits. *Westring v. James*, 71 Wis. 2d 462, 468, 238 N.W.2d 695 (1976). The Department's actions must, for instance, be reasonably necessary to control a communicable disease outbreak. And, as Part III elaborates, ample "safeguards" already exist to ensure DHS's compliance with the law. *Id.*

In short, across time and across states, courts have considered it "well settled" that administrative actors may "carry out and effectuate the great interests of the public health confided to them by the legislature" and "take prompt action to arrest the spread of contagious diseases." *Blue*, 56 N.E. at 92. Indeed, just

two weeks ago, the Pennsylvania Supreme Court rejected a claim that the Governor usurped legislative authority by restricting business operations and imposing other social distancing requirements in response to COVID-19. *See Friends of DeVito v. Wolf*, No. 68 MM 2020, 2020 WL 1847100, at *14–15 (Pa. Apr. 13, 2020). When state executive officials use their delegated powers to mitigate a deadly pandemic, they are not encroaching on legislative terrain. Instead, as courts have repeatedly concluded, separation-of-powers principles are advanced, not subverted, when public health statutes are construed to enable the executive "to meet the exigencies of the occasion." *Bd. of Trustees of Highland Park Graded Common Sch. Dist. No. 46 v. McMurtry*, 184 S.W. 390, 394 (Ky. 1916).

II. Petitioner's Approach Would Thwart the Separation of Powers.

The real separation-of-powers problem here is not that the executive is improperly legislating; it is that the Legislature (or, more accurately, a single legislative committee) seeks to execute the law. The Legislature's proposed ongoing micromanagement of a contagion-abatement regime defies basic separation-of-powers tenets. "Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them." *Koschkee v. Taylor*, 2019 WI 76, ¶ 11, 387 Wis. 2d 552, 562, 929 N.W.2d 600, 605 (quoting *Schuette v. Van De Hey*, 205 Wis. 2d 475, 480–81, 556 N.W.2d 127 (Ct. App. 1996)). Indeed, enforcement and implementation decisions, and the discretion they entail, are at the heart of the executive power. *See, e.g.*, *Bowsher v. Synar*, 478 U.S. 714, 733 (1986). The "latitude" inherent in implementation may be lodged in the Governor himself, or in those officials who "are designated by statute … to help him discharge his constitutional responsibility," *United States v. Armstrong*, 517 U.S. 456, 464 (1996), to "take care that the laws be faithfully executed," Wis. Const. art. V, § 4. In Wisconsin, as elsewhere, these sensible political arrangements reflect a core separation-of-powers principle: The Constitution designates the executive—not the legislature—as the entity that "carries" the law "into effect (application)." *Tetra Tech EC, Inc. v. Wisconsin Dep't of Revenue*, 2018 WI 75, ¶ 53, 382 Wis. 2d 496, 543, 914 N.W.2d 21, 44.

Yet the Legislature in this case seeks to usurp indisputably executive power and centralize in itself the power both to write the law and to decide how it should be applied. Consider the nature of the Legislature's grievances and the remedy it seeks. For example: the Legislature complains that DHS's orders currently apply not only to metropolitan areas, but also to rural counties with few reported COVID-19 cases (Pet. 2), even as the orders themselves contemplate that DHS may adjust restrictions regionally based on the circumstances. *See* Emergency Order 31 para. 4. Petitioner similarly criticizes the ability of golf courses to open while fishing is prohibited.[3] (Pet. 59.) And it contends that the gating requirements in Emergency Order 31 are either too stringent or too vague. (Pet. 21.) All of these assertions second-guess and ultimately seek to usurp discretionary judgments that belong to the executive under Chapter 252. Having delegated the power to DHS to control communicable disease outbreaks, it is incompatible with the legislative function for the Legislature also to implement the state's day-to-day response to COVID-19.

The Legislature's attempts to recast the DHS orders as rules, and thus legislative in nature, are unpersuasive and, indeed, self-defeating. The Legislature relies heavily on Chapter 227's definition of a rule, which includes a "general order of general application." (Pet. 28–31.) Emergency Order 28, it insists, is "general" (and thus a rule) in light of its statewide scope. (Pet. 30.) But Chapter 252 refutes that reasoning. The Legislature took pains in Chapter 252 to state that *orders*—not just rules—may be imposed on a statewide basis. Wis. Stat. § 252.02(4) ("Any rule or order may be made applicable to the whole or any specified part of the state…."). Under a canon of statutory interpretation that the Legislature itself embraces, that specific provision disposes of the Legislature's argument that, because DHS's Orders apply statewide, they fall within Chapter 227's default definition of a "rule." (*See* Pet. 48–49 (citing *State v. Dairyland Power Co-op.*, 52 Wis. 2d 45, 53, 187 N.W.2d 878 (1971) ("[W]here a general and a specific statute relate to the same subject matter, the specific controls.").)

[3] In fact, fishing is not prohibited. *See* Howard Hardee, *Wisconsin DNR tells outdoor enthusiasts to stay at least 3 fish apart amid COVID-19 pandemic*, Wis. State J. (Mar. 28, 2020), available at https://bit.ly/2W6UXki.

Regardless, Executive Order 28 bears little resemblance to the sort of "general order of general application" that Chapter 227 has in mind. This is well illustrated by the rules DHS *has* promulgated. For example, Wis. Admin. Code DHS § 145.04 establishes requirements for individuals, laboratories, and health care facilities to report suspected cases of communicable diseases to state and local health officials. And DHS § 145.06, which Petitioner cites, sets out procedures to follow when individuals with contagious conditions refuse treatment. Rules like this establish durable protocols for issues anticipated to recur across disease outbreaks. DHS's recent orders, in contrast, serve to manage a discrete unfolding crisis. They do not set forth regulatory policies of "general application."

The infeasibility of the Legislature's proposal to treat DHS's orders as rules further underscores that it would subvert the proper allocation of governmental powers. The Legislature requests a "seat at the table" via the JCRAR process as if the rulemaking it seeks will be a one-time endeavor. But this epidemic is not a static situation. (Pet. 3.) *See* White House Guidelines for Opening Up America Again, available at https://bit.ly/2VL55jV (stating that reopening measures should depend on trajectory of cases and symptoms over a 14-day period); Emergency Order 31 (Apr. 20, 2020) (same); Emergency Order 34 (Apr. 27, 2020) (reducing restrictions on businesses in several sectors). Under Petitioner's proposal, *each* update to DHS's response to the epidemic—including those that will relax existing restrictions—would be forced into an emergency rulemaking process that typically takes at least 14 days. And that is even before JCRAR requests a hearing, as the Legislature has indicated it would do. Any emergency rules that resulted from this process would often be moot or no longer appropriately tailored even before they issued. Worse, where there is medical exigency, such rules would come too late. Making these evolving, particularized, and time-sensitive judgment calls would carry the Legislature well beyond its assigned role and put the public at risk.

III. DHS's Powers Are, and Must Be, Subject to Constitutional Checks and Balances.

Petitioner is right in one respect. DHS's power under Chapter 252 is not, and should not be, unbounded by law. The Wisconsin Constitution, like the constitutions of other states and the United States, subjects the exercise of executive discretion to checks and balances from each of the constitutional branches.

A first, fundamental check comes from the Legislature itself. If the Legislature disapproves of the way that DHS exercises the discretion the Legislature previously delegated, the Legislature may wield its most fundamental power: it may pass a new law, including by overriding the Governor's veto. *See* Wis. Const. art. IV, § 17 ("No law shall be enacted except by bill."); *id.* art. V, § 10 (detailing procedure by which Legislature may override gubernatorial veto). And indeed, the Legislature states that it *is* drafting a new law. (*See* Pet. 6, n.1.) As a clearer picture emerges of COVID-19's impact on public health, economic activity, and civil liberties, it is entirely appropriate for the Legislature to develop policies and programs to address the consequences of the pandemic. The Legislature's run to this Court to refashion the power it lawfully delegated is thus peculiar and unnecessary. It is also a blatant evasion of the constitutional requirements of bicameralism and presentment. *See Koschkee*, 387 Wis. 2d at 586, 929 N.W.2d at 616–17 (R. Bradley, J., concurring) (observing that the framers intended to "'forc[e] any legislation to endure bicameralism and presentment'") (quoting *United States v. Nichols*, 784 F.3d 666, 670 (10th Cir. 2015) (Gorsuch, J., dissenting)).

Second, the executive and legislative branches alike serve as a check on DHS through their authority over the DHS Secretary-Designee. Petitioner must know that it errs when stating that "no elected official will have any say whatsoever over the extreme and invasive regulation of the lives of millions of Wisconsin citizens inflicted by DHS's emergency order 28." (Pet. 64.) The Governor is elected by, and accountable to, the people, and is chosen in a statewide election. Wis. Const. art. V, § 3. The Governor has a constitutional duty to "take care that the laws be faithfully executed." *Id.* art. V, § 4. If the Governor is not satisfied with the

Secretary-Designee's implementation of Chapter 252, he has authority to remove her. Wis. Stat. § 17.07. Such removal authority, courts have widely recognized, is a linchpin of executive accountability to the people. *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 514 (2010). And it is not just the Governor who plays a role in the Secretary-Designee's continued service. In stark contrast with the Legislature's hyperbolic talk of a "czar-like" and "monarchical" "bureaucrat" lacking accountability, the Secretary-Designee is a political appointee who holds her post because the Legislature has declined to reject her nomination. Moreover, if the Legislature seeks information about DHS's approach, it is free to call any of the respondents to testify before a committee so that legislators could ask questions, probe the agency's approach, and make suggestions.

Finally, although *this* lawsuit is improper, the state and federal judiciaries may decide challenges that proper parties bring to specific DHS actions. Wisconsin courts may review, for example, challenges arguing that the DHS Orders fall outside the public-health mandate of Chapter 252 or that the Orders violate individuals' fundamental constitutional rights. These would be appropriate suits for plaintiffs with standing to bring in courts with fact-finding processes. Indeed, although DHS has broad discretion in carrying out its public health duties, protecting individual civil liberties is a crucial feature of the judicial power.

Here, however, the Legislature presents neither a ripe dispute nor any irreparable harm suitable for maintaining an original action or obtaining injunctive relief. The Legislature purports to be "committed to working with the Evers administration and pursuing legislation that will help Wisconsin weather this crisis." (Pet. 56.) The Legislature can scarcely claim that it lacks an adequate remedy at law when it can *make* law. The notion that the Legislature "will suffer great and irreparable hardship" without an exercise of this Court's original jurisdiction is even more far-fetched. *Application of Sherper's, Inc.*, 253 Wis. 224, 228, 33 N.W.2d 178, 180 (1948). Lawmaking—not litigation—is the Legislature's proper recourse. By asking this Court to step in and "make DHS start over," (Pet. 4), the Legislature is asking this Court to be the scapegoat for the consequences that will follow from a policy vacuum in the midst of this deadly crisis. The

separation of powers is better served by maintaining clear lines of accountability among the branches of government. By staying its hand (or by rejecting this suit on the merits), the Court fulfills its constitutionally assigned role, while allowing the other branches to carry out theirs.

CONCLUSION

DHS has a mandate to stem this epidemic—a mandate the Legislature itself conferred and maintained in light of the devastating effects of past epidemics. Now, contrary to over 100 years of public health law, the Legislature asks the Court to strip DHS of its vested statutory authority and empower the Legislature to execute the law. Nothing in the Wisconsin Constitution permits, let alone requires, such a counterproductive approach to a public health crisis.

DATE: April 29, 2020

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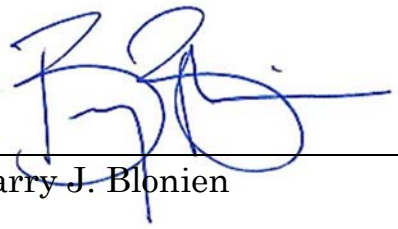
CERTIFICATION AS TO FORM AND LENGTH

I certify that this Non-Party Brief of Legal Scholars as *Amici Curiae* in Support of Respondents conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (d) for a brief produced using Century, a proportional serif font; specifically: minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points, and maximum of 60 characters per full line of body text. The length of this brief is 4,172 words.

DATE: April 29, 2020

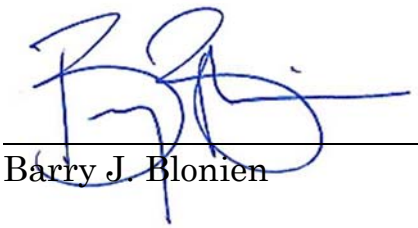


Barry J. Blonien

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that when an electronic copy of this Non-Party Brief of Legal Scholars as *Amici Curiae* in Support of Respondents is submitted to this Court, it will comply with the requirements of Wis. Stat. § 809.19(12) and will be identical in content to the text of the paper copy of the brief. A copy of this certificate is included with the paper copies of this brief that are submitted for filing with the Court and served on all opposing parties.

DATE: April 29, 2020



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