SUPREME COURT OF WISCONSIN
Case No. 2020-AP-765-OA

WISCONSIN LEGISLATURE,
Petitioner,

v.

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

AMICUS MEMORANDUM OF LEGAL ACTION OF WISCONSIN, INC. IN OPPOSITION TO EMERGENCY PETITION FOR ORIGINAL ACTION AND TO MOTION FOR TEMPORARY INJUNCTION

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STATEMENT OF ISSUES PRESENTED

1. **Does the Wisconsin Legislature identify a protectable institutional interest, as opposed to the interests of individuals as residents, taxpayers, or voters, sufficient to confer standing?**

2. **Should the Petition be denied for lack of a sufficient factual record supporting the Petitioners' claims?**

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument on the question of whether the Petition should be granted is not necessary. The defects with respect to standing and the need for a factual record are apparent from the Petition and will not be meaningfully clarified by oral argument. The decision should be published to guide the political branches on the Court's exercise of original jurisdiction to resolve what amount to partisan differences regarding the meaning of statutes adopted during previous legislative sessions.

STATEMENT OF THE CASE

This is an action seeking to invoke this Court's original jurisdiction to invalidate orders issued in Wisconsin to control and suppress a disease causing a worldwide pandemic. Stripped of its editorial asides,[1] the Petition's Statement of the Case of the historical sequence of orders is accurate.

[1] One example of an inappropriate editorial comment is on page 21 of Petitioners' Memorandum in Support of Legislature's Emergency Petition For Original Action and Emergency Motion for Temporary Injunction, (hereafter, Pet'r. Mem.), which characterizes Secretary-Designee Palm as "deigning" to "begin to reopen the economy[.]" Such snide characterizations occur repeatedly in Petitioners' memorandum. In acknowledging the Petitioners' Statement of the Case fairly recounts the historical sequence of the various orders, this Amicus concedes neither the accuracy of such characterizations nor the accuracy of the multiple "facts" footnoted in the

ARGUMENT

I. The Petitioners Lack Standing to Bring the Claims Made in the Petition.

A. The Wisconsin Legislature has only institutional standing, for which the protectable interest is the constitutional allocation of power, not the protectable interest of individual residents, taxpayers, or voters.

To have standing, a party must have a legally protectable interest in the controversy. See, e.g., *Marx v. Morris*, 386 Wis.2d 122 (2019); *Loy v.Bunderson*, 107 Wis.2d 400, 410 (1982). A party must suffer a direct injury, or demonstrate imminent danger of direct injury, to an interest that is legally protectable. *Marx v. Morris*, 386 Wis.2d at 123; see also *Fox v. DHSS*, 112 Wis.2d 514, 525 (1983). "The injury or threat of injury must be both 'real and immediate,' *not 'conjectural' or 'hypothetical*.'" *Fox v. DHSS*, 112 Wis.2d at 525 (emphasis added). A sufficient personal stake requires a logical link between the interest petitioners seek to vindicate and "the precise nature of the constitutional infringement alleged." *Moedern v. McGinnis*, 70 Wis.2d 1056, 1064 (1975).

Standing is not a matter of jurisdiction, but of sound judicial policy. *McConkey v. Van Hollen*, 326 Wis.2d 1, 12 (2010). The standing requirements are "aimed at ensuring that the issues and arguments presented will be *carefully developed and zealously argued*" as well as "*informing the court of the consequences of its decision." Id.* at 12 (emphasis added). A party seeking to establish standing thus cannot prevail by ignoring the relevant law and

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Memorandum's Statement of the Case. The existence and spread of the COVID-19 contagion are, of course, eligible for judicial notice.

addressing only some of the facts, while substituting rhetorical excess for a fair and careful presentation of what is at stake if the court moves forward as requested by a petitioner.

The Petition begins with a unique premise: it does not allege that it is authorized by action of the full legislature, name any legislators in their official capacity, or allege any personal interest – like that of taxpayers, residents, voters, business owners, potential customers, or health care providers – in the economic and health issues implicated. Certainly, the persons initiating the petition in the name of the "Wisconsin Legislature" have been affected as individuals in some way by the orders being challenged. In this case, however, the Petitioners' protectable interest can only be institutional because the Petitioners sue collectively, as an institution, invoking no other ground or basis for their interest.

This Court has not previously decided who has standing to sue on behalf of the entire Wisconsin Legislature. Historically, the Assembly Speaker, Senate Majority leader, joint committees, or individual legislators (identifying their interests as resident or taxpayers) have standing to raise a limited issue in a dispute between the legislative and executive branch *vis a vis* the constitutional allocation of power between the branches, either through constitutional language or the separation of powers doctrine. See, e.g*., Panzer v. Doyle,* 271 Wis.2d 295 (2004) (abrogated on other grounds by *Dairyland Greyhound Park, Inc. v. Doyle*, 295 Wis.2d 1 (2006)) (evaluating allocation of power conferred by the Constitution to regulate gaming and the power to waive sovereign immunity); *Risser v. Klauser*, 207 Wis.2d 176, 180 (1997) (reviewing the constitutional scope of governor's veto power);

Citizens Utility Board v. Klauser, 194 Wis.2d 484 (1995) (another review of governor's veto power); *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis.2d 429 (1988); *State ex rel. Kleczka v. Conta*, 82 Wis.2d 679, 683 (1978) (holding that governor's veto power is a "legally protectable interest" in "the constitutional prerogatives of both the Governor and the Legislature").

In *State ex rel. Wisconsin Senate v. Thompson*, the legislative parties were the Joint Committee on Legislative Organization, and Senator Risser and Representative Loftus, who filed the action as individual Wisconsin taxpayers, as well as in their official capacities. *State ex rel. Wisconsin Senate v. Thompson*, *supra*, at 435–36. The issue was whether the governor could exercise partial veto authority over appropriation bills by striking portions of the bill, including words, letter, and numbers. The Court found that the legislators' apparent authority to file suit on behalf of the Legislature was partially conferred by "a resolution adopted by the Joint Committee on Legislative Organization on September 1, 1987, authorizing the Assembly Speaker and the Senate President to retain counsel for the legislature, the joint committee itself, and any other appropriate parties in this litigation." *Wisconsin Senate,* 144 Wis.2d at 435. The Court reasoned that it should resolve constitutional disputes between different branches of state government, while noting the inherent political implications. *Id.* 436-37. Nevertheless, because the vetoes directly affected the functioning of the legislative procedure mandated by the Constitution – by creating new words and numbers and thus completely changing the legislature's language – the Court held that standing was appropriate. *Id*.

Petitioners do not explain why this Court should extend existing standing doctrine to the institutional entity of the Wisconsin Legislature simply because the individuals supporting the petition represent it as a petition from the legislative body politic. Petitioners similarly have not argued that this Court should extend existing doctrine to allow any individual member of the legislature to bring an action in the name of the whole body.

That failure reflects two realities. First, the legislature has no legally protectable interest in an advisory opinion from the Supreme Court on a statutory interpretation about which some portion of the legislation disagrees with the executive branch's interpretation. The understanding of many different legislators as to the meaning of statutes – whether adopted by themselves or by colleagues from prior legislative sessions – is neither unanimous nor relevant. These Petitioners have no protectable interest in any interpretation of a statute. Their only interest is the allocation of power by the constitution. Second, the legislature as a whole has no legally protectable collective interest in any of the competing protectable interests of individual shop owners, customers, health care providers, infected residents, taxpayers, farmers, or office workers.

As a whole, the legislature's institutional interest is in the allocation of power between the branches of government. As a matter of judicial policy, by limiting the institutional standing of the legislature to valid disputes about the allocation of power, this Court avoids being coopted into partisan political quarrels over competing political choices.

B. None of the Petitioners' claims or arguments concern the allocation of power between the executive and the legislative branches by the Constitution.

Even if the Court determines that individual members of the legislature can, without alleging authorizing legislative actions, litigate for the institution, this Petition does not satisfy that requirement for standing. The Petition's supporting memorandum identifies three statutory arguments: (1) the process argument of promulgation and review of rules by the Joint Committee on Review of Administrative Rules (JCRAR); (2) the exceeding statutory authority argument; and (3) the substantive argument that the policy choices embodied in the orders are "arbitrary and capricious." Pet'r Mem. at 37-39, 40-55, 55-72. Each of these arguments is incorrect, as a matter of statutory construction. More importantly for the question of standing, none implicates the separation of powers or allocation of power by the Constitution.

1. The Department of Health Services' power to issue orders under Wis. Stat. § 252.02(4) is not subject to the rule promulgation requirement of Wis. Stat. Chapter 227, and therefore does not implicate the separation of powers.

Despite Petitioners' assertions, the plain language of Wis. Stat. § 252.02(4) exempts orders issued to control contagion from the promulgation and JCRAR review of other administrative agency rules. Here, the question is not whether some "orders" can be "rules" subject to the promulgation requirement of Wis. Stat. § 227.24(1), but rather whether Wis. Stat. § 252.02(4) – the specific provision on controlling contagion – exempts orders made under its authority from the more general promulgation requirement in

Chapter 227.

The plain language of § 252.02(4) repeatedly and explicitly distinguishes between "promulgation of a rule" and "issu[ing] orders." In the very first sentence of § 252.02(4), the term "or" separates "may promulgate and enforce rules" from "issue orders." The two actions are explicitly different. The plain language of each of the other sentences in Wis. Stat. § 255.02(4) maintain that distinction. The second sentence continues the distinction between "rules" and "orders" and expressly authorizes orders to be applicable to the entire state. Within Wis. Stat. § 227.01(13), any such orders would be a "rule" subject to promulgation, but in §252.02(4) an explicit distinction is made between promulgating rules and issuing orders.

The third sentence of Wis. Stat. § 255.02(4), further underscores the distinction, dropping the "promulgate rules" language, and expressly authorizing the Department to issue "orders" affecting entire counties without promulgation. Any order affecting an entire county would, if the analysis were confined to Wis. Stat. § 227.01(13), be a "rule."

Finally, in the last sentence of Wis. Stat. § 252.02(4), the legislature returned to and underscored the distinction between promulgated rules and orders issued under that provision to ensure § 252.02's preemption of any and all conflicting or less stringent local ordinances.

There is a valid reason the legislature would, in Wis. Stat. § 252.02(4), distinguish between promulgating rules and issuing orders. Contagion spreads. The legislature used different language in Wis. Stat. § 252.02(4) because the Department is explicitly authorized to "issue orders" in crisis situations rather than having to

wait to promulgate "rules."

The distinction in Wis. Stat. § 252.02(4) between promulgating rules and issuing orders does not implicate the constitutional allocation of power between the legislative and executive branches. The "separation of powers doctrine allows the sharing of powers and is *not inherently violated* in instances when *one branch exercises powers normally associated with another branch*." *Martinez v. Department of Industry, Labor and Human Relations,* 165 Wis.2d 687, 696 (1992)(emphasis added). Additionally, in *Panzer v. Doyle, infra,* the Court upheld the delegation of some of the legislature's power to regulate gambling. *Panzer v. Doyle,* 271 Wis.2d at 337-41. *Panzer* held unconstitutional, on separation of powers grounds, the governor's attempt to contract away the legislature's authority to, in the future, reclaim legislative power, and his claim to a power prohibited by Article IV, § 24 of the Constitution. *Id.* at 347-48, 357, respectively.

The present case is nothing like *Panzer*. The legislature unequivocally shared its rule-making powers with the Department in § 252.02, authorizing it to issue orders without promulgation, in order to maximize the Department's ability to react quickly and effectively to the public health hazard of contagion. Because that delegation does not raise a constitutional allocation of power issue, the Petitioners have no standing to bring it in this form. If the entire legislature believes the statute does not authorize the Department's actions, the legislature retains the power to amend Wis. Stat. §252.02.

2. The Petitioners' "exceeding statutory authority" argument does not implicate the allocation of power between the legislative and executive branches.

The Petitioners' argument on pages 40 through 55 of their Petition does not raise a separation of powers issue. Petitioners cannot seriously claim that the power to "close schools and forbid public gatherings in schools, churches *and other places*" is not explicitly conferred in Wis. Stat. § 252.02 (emphasis added). Petitioners' real argument is that they believe their interpretation of "other places" must be correct and that no other reasonable interpretation of the language is possible. Petitioners similarly dismiss that the Department's powers to control communicable diseases are explicitly conferred. The fact that the Petitioners do not like how the Department has exercised those explicitly conferred powers does not make them "general" powers. The "general powers" of the Department are described, within the meaning of Wis. Stat. § 227.11(2)(a)2, two chapters earlier, in Wis. Stat. § 250.04. Petitioners' other arguments about the Department's exceeding its statutory authority are merely variations on the same flawed theme: Petitioners believe their interpretation of the powers they have conferred on the Department is the only correct interpretation.

The fatal defect in all of these arguments is that there is no question that the legislature retains the constitutional power to amend all of Wis. Stat. § 252.02. These arguments thus do not implicate the constitutional allocation of power.

Petitioners' statutory argument that the Department exceeded its authority under Wis. Stat. § 255.02(3) depends on their assertion that one "must" understand "churches, schools, and other places" to be limited to "public gatherings" of "substantial" numbers. Pet'r.

Mem. at 46. To the contrary, one need go no further than the Christian Bible, in the book of Matthew, Chapter 18, verse 19, to understand that wherever two or more gather in the name of the religion a church is present. This is not a religious argument. It reveals the logical failure of Petitioners' *ejusdem generis* "canon" argument. A "church" is easily understood to be communal, sacred, and limited as a "public" activity involving "substantial numbers" of celebrants. Similarly, "school" does not imply large or public. A school, particularly a faith-based school, could be both small and exclusive. Perhaps both terms imply the coming together of persons from different households, but not any range of numbers of people.

The Petitioner's leap of logic—that the statute authorizes only control of "substantial" gatherings—is even more seriously impaired by the specific power of § 252.02(3) and the very broad scope of § 252.02(4) to "control and suppress communicable disease." Contagion spreads person to person. A single spreader can infect a single other person or many. Each other infected person can in turn infect others, and so on. While exposure of a "substantial" number of people gathered in close quarters at one event will undoubtedly accelerate the spread of any contagion, other kinds of transmission exist and pose a threat. The legislature can confer the power to control contagion by controlling person-to-person spread whether the "public" gathering is in a retail store, office, church, school, or playground. In Wis. Stat. § 252.02(3), "other" means other and "places" means places.

There would clearly be a point at which a constitutional right to privacy or religion would limit the government's reach in public health emergencies, but this Petitioners do not make that argument, present a factual record to permit its resolution, or have institutional

standing to raise it.

Similarly, Petitioners' argument that § 252.02(4) is "carefully crafted" and subsections (3), (4), and (6) must be construed as mutually exclusive lest the "surplusage" canon be offended, fails because subsections can overlap without creating surplusage. Pet'r. Mem. at 49-51. If the closing of a school requires an "outbreak or epidemic" under Wis.Stat. § 252.02(3), that condition certainly exists here. Without rendering any part of subsection (3) surplusage, other actions with respect to schools (expressly including the power to "issue orders" . . . "for the sanitary care . . . of schools" under (4)) may be taken in the absence of "outbreak or epidemic." Similarly, Wis. Stat. § 252.02(4) and (6) are not mutually exclusive. While subsection (6) arguably requires an "emergency" and (4) does not, the powers conferred in (4) do not simply evaporate in an emergency.

Petitioners' argument is not salvaged by the command in Wis. Stat. § 227.11(2)(a)2 that the Department can only exercise powers that are "explicitly" conferred. The powers of Wis. Stat. § 252.02(3), (4), and (6) are explicitly conferred. Petitioners' hand-wringing characterizations of certain actions as "czar-like," "involving unbridled authority," and "edicts" that threaten to "shutter Wisconsin indefinitely," ignore the language of the extremely broad power the legislature conferred on the Department to control contagion.

For the same reasons, Petitioners' argument about Wis. Stat. § 252.02(6) fail. The "authorize and implement" language of §255.02(6) is hardly limited to "authorizing" out-of-state medical students to treat Wisconsin residents. See Pet'r Mem. at 53. Nothing in the legislature's choice of language in either § 252.02(4) or (6)

implies that an "emergency" under Wis. Stat. § 252.02(6) means only a statewide emergency declared by the governor under Wisconsin Statutes Chapter 323 or that § 252.02(4) is somehow limited to non-emergencies.

In none of these arguments do Petitioners raise a valid issue of the constitutional allocation of power between the executive and legislative branches. The Department's order does not abrogate the legislature's power to amend the statutes at issue and the legislature retains authority to strip the Department of any power to issue orders with respect to communicable disease. The Petitioners' alleged protectable institutional interest has thus suffered no injury.

3. Petitioners' "arbitrary and capricious" argument does not implicate the allocation of power between the legislative and executive branches.

Each of the cases on which Petitioners rely in their petition to support their "arbitrary and capricious" argument involved natural or corporate persons whose actual, legally protectable, interests were affected by the agency action. In *J.F.Ahern Co. v. Wisconsin State Bldg. Comm'n*, 114 Wis.2d 69 (Ct.App. 1983), a taxpayer challenged the Commission's suspension of the contract bidding rule. The taxpayer had standing because the expenditure of government funds allegedly damaged the taxpayer's protectable interest as a taxpayer. *Id.* at 84. Applying the "arbitrary and capricious" standard, the *Ahern* court found a rational basis for the agency's action, regardless of whether "the agency acted on the basis of factual findings," "considered opinions and predictions based on experience," or made its decision without a formal record. *Id.* at 96.

In *National Motorist Association v. Commissioner of Insurance,* 259 Wis.2d 240 (2008), the plaintiff, a seller of a "pre-paid ticket program" for motorists, obviously had a protectable interest in that its product was not covered by Wisconsin insurance laws. That court sustained the Commissioner's determination of coverage under the arbitrary and capricious standard even though other pre-paid plans were exempt and the plaintiff's pre-paid plan involved a small number of Wisconsin residents. *Id.* at 255-56.

In *Wisconsin Professional Police Association v. Public Service Commission,* the multitude of plaintiffs were actual telephone users claiming their interests as telephone users were adversely affected by the Commission's new caller identification rule. *Wisconsin Professional Police Association v. Public Service Commission,* 205 Wis.2d 60 (Ct.App. 1996). The rule was sustained because it was "rational," even though it lacked statistical data, did not persuade the plaintiffs that it was the most effective method, and lacked an appeal mechanism. *Id.* at 75-76.

Petitioners argue, contrary to these cases, that the Department's emergency order must explain to its satisfaction the lines and distinctions drawn. Pet'r Mem. at 56-58. Some lines drawn by Executive Order 28 are so obvious and important as to be "rational" in any context. Sale of packaged liquor for off-site consumption in one's home obviously involves less risk of spreading contagion than trying on clothes and shoes in a retail store. See Pet'r Mem at 57. An "arts and crafts" store is likely to carry consumable goods that need replenishing (and which could be used to construct face masks), while durable goods like furniture can reasonably wait. See Pet'r Mem. at 57. Allowing restaurants to sell food for take-out, but not inside dining, obviously relates rationally to the airborne

spread of contagion. But whether the Petitioners accept each distinction is not the point; the broad scope of the order is obviously rational.

The inflammatory nature of the Petitioners' claims – reflected in the memorandum's characterizations of the Department's order as "czar-like", their references to "shutter[ing] Wisconsin indefinitely" and "unbridled authority" – neither confers standing nor makes "irrational" the difficult choices and distinctions that must be made. Rather, this type of language only underscores the Petitioners' apparent unwillingness to exercise their own authority in concert with the Department.

II. The Court should deny the petition because a factual record is necessary to resolve the issues the Petitioners raise.

Petitions for the exercise of original jurisdiction should be granted "with the greatest reluctance…especially where questions of fact are involved." *In re Exercise of Original Jurisdiction of Supreme Court,* 201 Wis. 123 (1930). The vast majority of cases in which the Court has exercised its original jurisdiction include observations that either a factual record was developed in a trial court or, most often, the parties stipulated to the relevant facts. See, e.g., *State ex rel. Kleczka v. Conta,* 82 Wis.2d 679, 683 (1978) (parties stipulated to facts); *State ex rel. La Follette v. Stitt,* 114 Wis.2d 358, 361 (1983) (facts are undisputed); *State ex rel. Wisconsin Senate v. Thompson, supra,* at 437 (parties stipulated to the relevant facts).

Where a sufficient factual record does not exist, this Court has declined to exercise its original jurisdiction. See, e.g*., Norquist*

v. Zeuske, 211 Wis.2d 241, 252 (1997) ("We agree that the record is not sufficiently developed and that a decision in this case would be premature."); see also *Green for Wisconsin v. State Elections Board*, 297 Wis.2d 300, 302 (2006) (denying petition where "the parties do not appear to agree on what facts are relevant, nor do they agree on the characterization of many facts").

Petitioners not only recognize the problems with their Petition; they then attempt to solve those problems with a bald, and inaccurate, assertion that the Petition raises only questions of law. Pet'r. Mem. at 26. Petitioners' own arguments, however, contradict that assertion.

The Petitioners argue, for example, that "all private gatherings" are barred on page 5 of Executive Order 28, preventing gatherings for "important social bonds and emotional well-being." They ignore, however, that the definition of "essential activities" specifically includes non-familial friends to care for others, presumably including the "important social bonds and emotional well-being." Until someone articulates at least a reasonable threat of enforcement action, this Court has no concrete fact pattern from which to analyze the law and its claims about its excesses.

The Petitioners' "*ejusdem generis*" argument also contradicts their own assertion that only legal issues are involved. Wisconsin Stat. § 252.02(3) authorizes DHS to "close schools and forbid public gatherings in schools, churches, and other places to control outbreaks and epidemics." Outbreaks and contagions may not be defined in the statute, but they clearly include both virus and other "outbreaks" that may occur in various ways, raising critical factual questions. Because the Department may close "other places" to control an epidemic, it certainly matters how transmission in any

particular epidemic occurs – whether, for example, transmission requires intimate personal contact, or if it can occur solely through airborne droplets and surfaces. It also matters whether transmission can occur through contact of some sort with people who are pre-symptomatic and asymptomatic.

Unresolved factual questions also exist with respect to the Department's powers in Wis. Stat. § 252.02(4) "for the quarantine and disinfection of persons, localities, and things infected or suspected of being infected." One cannot possibly claim to know, as a matter of undisputed fact, which people, localities, or things are suspected of being infected. Although, as discussed above, the powers under Wis. Stat. § 252.02(4) are not mutually exclusive of the additional powers in an emergency under § 252.02(6), Petitioners' argument that the Department is acting in excess of its statutory authority cannot be sustained without a factual record, regardless of which subsection is the source of authority to issue orders. What actions "exceed statutory authority" will almost certainly differ depending on whether the epidemic in question is a familiar disease, such as malaria or dengue fever, or COVID-19, a novel and unprecedented threat. A factual record is necessary to narrow what the Petitioners claim exceeds the authority the Legislature granted the Department in Wis. Stat. § 252.02.

Petitioners' objections to the Department's differing treatment of businesses designated either "essential" or "nonessential" likewise requires a factual record for this Court to review. As discussed above, under the "arbitrary and capricious" standard, distinctions need merely be rational and do not need to be justified by extensive Departmental fact-finding. See, e.g., *J.F.Ahern Co. v. Wisconsin State Bldg. Comm'n*, *supra* at 84, 96; see also

Wisconsin Professional Police Association v. Public Service Commission, supra, at 75-76. Petitioners seem to be arguing that the Department's order constitutes economic micromanagement, but whether the purported micromanagement exceeds the statutory power to control contagion conferred on the Department depends on a number of facts, such as the risks associated with particular business models, client and customer bases, location layout and size, and importance to the health and safety of all residents of the state.

In the absence of a factual record or a stipulation to the relevant facts, neither politically charged rhetoric nor the undeniable fact that all residents of Wisconsin are being affected by both the emergency orders and a deadly pandemic provides a sound legal basis for this Court to exercise its original jurisdiction.

CONCLUSION

For the reasons stated above, the Emergency Petition and the Emergency Motion should be denied.

Dated this 27, day of April, 2020.

Electronically signed: /s/ Amanda C. Aubrey

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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 and the Court's April 8, 2020 Administrative Order, on April 27, 2020, I submitted the foregoing document to the Clerk of the Court for filing via electronic mail at this address: clerk@wicourts.gov.

On April 28, 2020, I also caused an original and one copy of this document to be delivered by U.S. Mail (First class) 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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