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STATE OF WISCONSIN
SUPREME COURT

NO. 2020AP765-OA

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.

NON-PARTY BRIEF OF THE TAVERN LEAGUE OF WISCONSIN
Wis. Stat. § (Rule) 809.19(7)

GODFREY & KAHN, S.C.
James A. Friedman, State Bar No. 1020756
Zachary P. Bemis, State Bar No. 1094291
Maxted M. Lenz, State Bar No. 1104692
One East Main Street, Suite 500
P.O. Box 2719
Madison, WI 53701-2719
(Phone) (608) 257-3911
(Fax) (608) 257-0609

Attorneys for the Tavern League of Wisconsin

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTRODUCTION 1

ARGUMENT 3

I. THE COURT SHOULD GRANT THE PETITION AND DETERMINE THE SCOPE OF DHS'S AUTHORITY UNDER § 252.02 SO THAT THE STATE CAN IMPLEMENT EFFECTIVE MEASURES TO CURTAIL THE SPREAD OF COVID-19 CONSISTENT WITH STATE LAW. 3

II. THE COURT SHOULD ACCEPT THE ORIGINAL ACTION PETITION TO MAKE CLEAR THAT THE SAFER AT HOME ORDERS MUST COMPLY WITH PROCEDURAL AND SUBSTANTIVE REQUIREMENTS OF CHAPTER 227. 7

A. The Safer At Home Orders Are Rules Subject To Chapter 227 – Wisconsin's Administrative Procedures Act – And DHS Has Failed To Comply With Those Requirements 8

B. Chapter 227 Contains Vital Procedural And Substantive Protections For The Public That Apply Even In Times Of Emergency. 9

C. By Failing To Comply With Chapter 227, DHS Has Denied The Public Crucial, Democratic, Procedural Safeguards. 14

III. THE SAFER AT HOME ORDERS ARE ARBITRARY AND CAPRICIOUS AS APPLIED TO TLW MEMBERS, BUT FUTURE COMPLIANCE WITH CHAPTER 227 CAN PREVENT THIS HARM. 16

CONCLUSION 20

CERTIFICATION 21

CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12) 22

TABLE OF AUTHORITIES

Page

CASES

Community Nutrition Institute v. Young,
818 F.2d 943 (D.C. Cir. 1987) 10, 11, 12

Dane Cty. v. Wis. Dept. of Health & Social Services,
79 Wis. 2d 323, 255 N.W.2d 539 (1977) 9

Heritage Credit Union v. Office of Credit Unions,
2001 WI App 213, 247 Wis. 2d. 634 N.W. 2d. 593 9

Koschkee v. Taylor,
2019 WI 76, 387 Wis. 2d 552, 929 N.W.2d 600 10

Mack v. Wis. Dep't of Health & Family Servs.,
231 Wis. 2d 644, 605 N.W.2d 651 (Ct. App. 1999) 14, 16, 17

Wisconsin Dolls v. Town of Dell Prairie,
2012 WI 76, 342 Wis. 2d 350, 815 N.W.2d 690 19

STATUTES

Wis. Stat. § 125.68(5) 4

Wis. Stat. § 227.01(13) 8

Wis. Stat. § 227.01(13)(a)--(zz) 9

Wis. Stat. § 227.135 11

Wis. Stat. § 227.136 11

Wis. Stat. § 227.136(5) 13

Wis. Stat. § 227.16 11

Wis. Stat. § 227.17 11

Wis. Stat. § 227.19 11

Wis. Stat. § 227.19(1)(b) 9, 10

Wis. Stat. § 227.19(1)(b)3 10

Wis. Stat. § 227.24(1)(a) 12

Wis. Stat. § 227.24(1)(e) 12

Wis. Stat. § 227.24(1)(e)1d 16

Wis. Stat. § 227.24(3) 13

Wis. Stat. § 227.24(4) 13, 16

Wis. Stat. § 227.26(2)(L) 13

Wis. Stat. § 227.40(4)(a) 9

Wis. Stat. § 252.02 ..... 1, 3

Wis. Stat. § 252.02(3) 7

Wis. Stat. § 252.02(4) 2, 5

Wis. Stat. § 252.15(7)(a) 9

Wis. Stat. § 93.07(24)(e) 6

Wis. Stat. § 97.59 6

OTHER AUTHORITIES

2015 Wis. Act 55 ..... 3, 4

2015 Wis. Act 55, § 3433 4

2015 Wis. Act 55, § 4036 5

2015 Wis. Act 55, § 4040 6

2015 Wis. Act 55, § 4070 5

2015 Wis. Act 55, § 9118(2) 5

2015 Wis. Act 55, § 9118(2)(f) 5

Arthur Earl Benfield, *An Introduction to the 1981 Model State Administrative Procedure Act, Part 1*, 34 Admin. L. Rev. 1 17

John Dunham & Associates, *American Beverage Licensees COVID-19 Impact Study* (April 6, 2020) 17

Wis. Const. art. I, § 4 14

Wis. Legislative Fiscal Bureau, 2015-17 Wis. State Budget, Comparative Summary Provisions – 2015 Act 55 (Sept. 2015) 4

Wis. Legislative Reference Bureau, Wisconsin Bill Drafting Manual, § 2.04(9)(c)1 5

INTRODUCTION

This case involves important questions regarding the authority of the Department of Health Services ("DHS") to issue emergency orders mandating that individuals remain in their homes and shuttering businesses throughout Wisconsin. Through the Safer at Home Orders, Respondents have done just that without acknowledging a single statutory or constitutional restraint on the process, scope, or duration of the Orders.[1] Whether such orders may be issued without consideration of public comment or input, without legislative oversight, and even, apparently, without explicit approval of the Governor is a critical issue of statewide and immediate importance that the Court should review as soon as possible.

Compounding the procedural harm caused by the failure to comply with chapter 227 is the sweeping breadth of the Safer at Home Orders issued by Secretary-designee Palm. The broad assertion of authority is arbitrary and capricious in its application and ignores recent legislative action transferring key regulatory authority to the Department of Agriculture Trade and Consumer Protection ("DATCP"), which

[1] This memorandum refers to Emergency Orders 12 and 28 as the "Safer at Home Orders." This memorandum applies equally to Emergency Orders 4, 5, and 8 which also derive their authority from Wis. Stat. § 252.02 and prohibit "mass gatherings" of various sizes. These orders also originally imposed the operational restrictions on bars and restaurants that exist in the Safer at Home Orders.

significantly narrowed the authority granted to DHS under s. 252.02(4) for the control and suppression of communicable diseases.

The Tavern League of Wisconsin ("TLW") represents taverns, bars and restaurants throughout all 72 counties of Wisconsin. TLW includes approximately 5,000 members, all of which are small businesses, and many of which are family enterprises. In addition to serving alcohol beverages, many taverns operate as restaurants and serve as both formal and informal meeting and event spaces for Wisconsinites. TLW represents its members before state government, but has been effectively deprived of its ability to do so because of the manner in which DHS has issued the Safer at Home Orders.

TLW submits this non-party brief in support of the Legislature's Emergency Petition for Original Action and urges the Court to grant review, clarify the scope of DHS's communicable disease powers, and direct the appropriate agencies to promulgate any necessary orders through appropriate emergency rulemaking procedures under chapter 227.

To be clear, TLW and its members support public health measures aimed at saving lives and preventing the spread of communicable diseases, like COVID-19. TLW's goal is not to limit the state's efforts to control the spread of COVID-19. Rather, swift action by the Court is necessary to

provide a clear roadmap for how the Legislature and Governor can implement public health policy during the ongoing public health emergency in a manner consistent with state law.

ARGUMENT

I. THE COURT SHOULD GRANT THE PETITION AND DETERMINE THE SCOPE OF DHS'S AUTHORITY UNDER § 252.02 SO THAT THE STATE CAN IMPLEMENT EFFECTIVE MEASURES TO CURTAIL THE SPREAD OF COVID-19 CONSISTENT WITH STATE LAW.

The Legislature asserts that, in addition to failing to comply with the procedural requirements of chapter 227, the Safer at Home Orders also exceed DHS's statutory authority. Petitioner's Memorandum, pp. 40-55. TLW also asks the Court to define the limits of DHS's authority under chapter 252, in light of recent changes to the food service and restaurant regulation in Wisconsin. Immediate action by the Court is necessary so that future emergency rules or orders are promulgated by the proper agency with the appropriate authority.

The Safer at Home Orders ignore the intent and effect of 2015 Wisconsin Act 55, which transferred responsibility for regulating restaurants and taverns to from DHS to DATCP. In so doing, the Legislature narrowed the scope of DHS's communicable disease powers over these entities. Instead, DATCP is now vested with responsibility to

regulate sanitary conditions and communicable diseases at restaurants and taverns.

The 2015 Budget Bill, 2015 Wisconsin Act 55, restructured the state regulation of certain establishments, including taverns and restaurants. Before Act 55, DHS had authority to regulate taverns, restaurants and food safety, recreational facilities, and lodging, including hotels and campgrounds. Following Act 55, DATCP now has primary authority for regulating restaurants and taverns in Wisconsin.[2]

The transfer of responsibility from DHS to DATCP was total. The Legislative Fiscal Bureau noted: "The provision is intended to consolidate food-related and other public health regulatory responsibilities in one state agency, under Chapter 97 of the statutes." *Wis. Legislative Fiscal Bureau*, 2015-17 Wis. State Budget, Comparative Summary Provisions – 2015 Act 55, p. 103 (Sept. 2015).

Act 55 changed all references from DHS to DATCP in state statutes regulating taverns, including sanitation rules. *See* 2015 Wis. Act 55, § 3433. All statutory references to restaurants and taverns under chapter 254 were renumbered into statutes administered by DATCP. *See*,

[2]*See*, *e.g.*, Wis. Stat. § 125.68(5) (requiring "Class B" licensee alcohol beverage retailers to comply with rules promulgated by DATCP governing restaurants").

e.g., 2015 Wis. Act 55, § 4070 ("254.61(5) of the statutes is renumbered 97.01(14g), and 97.01(14g) (intro.), as renumbered, is amended to read ...."). Additionally, Act 55 transferred all assets, liabilities, contracts in effect, and pending matters primarily related to food, lodging, and recreation from DHS to DATCP. *See* 2015 Wis. Act 55, § 9118(2). Act 55 further specified the transfer of all rules promulgated and orders issued by DHS related to certain statutory sections. *See* 2015 Wis. Act 55, § 9118(2)(f).

As part of this transfer of authority from DHS to DATCP, DHS's communicable disease powers were explicitly limited, including one of the primary sources of authority relied on by the DHS Secretary-designee. Act 55 amended DHS's authority under section 252.02(4) by creating two exceptions explicitly related to public health responsibilities for entities regulated by DATCP, including restaurants and taverns.[3] *See* 2015 Wis. Act 55, § 4036 ("252.02(4) of the statutes is amended to read: 252.02(4) ~~The~~ Except as provided in ss. 93.07(24)(e) and 97.59, the department may promulgate and enforce rules or issue orders ....").

[3] The Legislative Reference Bureau's Drafting Manual makes clear, "if two statutes cannot be applied consistently, you may use either 'notwithstanding' in one or 'except as provided in' in the other ...." *Wis. Legislative Reference Bureau, Wisconsin Bill Drafting Manual*, § 2.04(9)(c)1.

First, Act 55 created an exception to DHS's communicable disease powers related to DATCP's regulatory responsibilities for the sanitary care of entities subject to regulation by DATCP. Act 55 makes clear that responsibility and authority to enforce the laws for sanitary care of entities regulated by DATCP rests with DATCP. Among the changes transferring regulatory responsibility to DATCP was the creation of § 93.07(24)(e). This statute grants to DATCP the duty "[t]o enforce … all other laws entrusted to its administration, and especially … [t]o enforce the laws for the sanitary care of … other persons or entities subject to regulation by the department." Wis. Stat. § 93.07(24)(e).

Second, Act 55 also removed from DHS the authority to regulate food handling practices related to communicable diseases. 2015 Wis. Act 55, § 4040 ("252.18 of the statutes is renumbered 97.59 and amended to read …"). Wis. Stat. § 97.59 prohibits a person in charge of an establishment where food products are consumed by others from knowingly employing any person handling food products who has a disease in a form that is communicable by food handling. By removing this provision from chapter 252, Act 55 makes clear DHS no longer has the authority to regulate restaurants—even as it relates to sanitary practices and communicable diseases.

The Legislature also has raised numerous other questions regarding the true authority granted to DHS in its communicable disease statute that require attention from the Court. For instance, the Legislature proposes that DHS's expansive interpretation of § 252.02(3) must be limited by the *noscitur a sociis* cannon of construction. Under this interpretation, DHS's authority to close locations and prohibit gatherings is limited to "gatherings presenting the same risk of 'outbreaks and epidemics.'" *Petitioner's Memorandum,* p. 46.

The same canon has another application: the section grants DHS the authority to "forbid public gatherings in schools, churches, and other places to control outbreaks and epidemics." Wis. Stat. § 252.02(3). However, there are no references in section 252.02(3) to businesses or commercial operations similar to taverns or restaurants. If the Legislature intended to give DHS the authority to regulate taverns in section 252.02(3), likening them to churches was an ineffective way to do so.

II. THE COURT SHOULD ACCEPT THE ORIGINAL ACTION PETITION TO MAKE CLEAR THAT THE SAFER AT HOME ORDERS MUST COMPLY WITH PROCEDURAL AND SUBSTANTIVE REQUIREMENTS OF CHAPTER 227.

The Court also should accept the Petition to provide direction regarding the authority and procedure through which DHS may issue public health orders under its communicable disease power. TLW's members,

like all citizens of the state, appreciate efforts to keep Wisconsin residents safe. Clear direction on the existing authority—and responsibilities—of the executive and legislative branches is essential, however, to improve the effectiveness of future emergency rules, limit arbitrary and capricious behavior by state agencies, and ensure fidelity to the enforcement of emergency measures.

A. The Safer At Home Orders Are Rules Subject To Chapter 227 – Wisconsin's Administrative Procedures Act – And DHS Has Failed To Comply With Those Requirements.

The Safer at Home Orders clearly are rules, as defined in state law. Under chapter 227, "rule" means a "general order of general application that has the force of law and that is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency …." Wis. Stat. § 227.01(13). The Safer at Home Orders are of general application to all citizens and businesses, including taverns and restaurants, within the state of Wisconsin, and violators purportedly are subject to fines and imprisonment.

The failure to comply with chapter 227 renders the orders invalid. A rule is "invalid" if it "violates constitutional provisions or exceeds the statutory authority of the agency or was promulgated or adopted without compliance with statutory rule-making or adoption procedures."

Wis. Stat. § 227.40(4)(a). "Since 'promulgat[ion] without compliance with statutory rule-making procedures' is one ground for declaring a rule invalid," the safer at Home Orders are invalid because they "have not been promulgated as required by Wis. Stat. § 227.10." *See Heritage Credit Union v. Office of Credit Unions*, 2001 WI App 213, ¶ 24, 247 Wis. 2d. 589, 634 N.W. 2d. 593; *Dane Cty. v. Wis. Dept. of Health & Social Services*, 79 Wis. 2d 323, 255 N.W.2d 539 (1977).

Chapter 227 includes a sprawling list of dozens of types of governments or publications that are exempt from the definition of rule and, therefore, chapter 227. Wis. Stat. § 227.01(13)(a)–(zz). None of these exemptions applies to the Safer at Home Orders. *Id.* Other provisions of DHS communicable disease statutes further underscore that compliance with chapter 227 is required. Elsewhere in chapter 252, for example, state law explicitly exempts DHS from compliance with rulemaking requirements in specific, narrow instances related to validating HIV tests. Wis. Stat. § 252.15(7)(a) ("Notwithstanding ss. 227.01(13) and 227.10(1), for purposes of this subsection ....").

B. Chapter 227 Contains Vital Procedural And Substantive Protections For The Public That Apply Even In Times Of Emergency.

The Legislature created chapter 227 to facilitate the delegation of rule-making authority to agencies. Wis. Stat. § 227.19(1)(b) ("The

legislature recognizes the need for efficient administration of public policy. In creating agencies and designating their functions and purposes, the legislature may delegate rule-making authority to these agencies to facilitate administration of legislative policy."). Rulemaking is, itself, a delegation of legislative power. *Id*; *Koschkee v. Taylor*, 2019 WI 76, ¶¶ 12, 18, 387 Wis. 2d 552, 929 N.W.2d 600. In delegating this authority to agencies to facilitate the administration of legislative policy, the Legislature explicitly reserved for itself, among other powers, "[t]he right and responsibility to designate the method for rule promulgation, review and modification." Wis. Stat. § 227.19(1)(b)3.

"Before such rules are sanctioned one would think that they should be carefully crafted with the underlying policies embodied in the rule recognized, openly discussed, and deliberately weighed." *Community Nutrition Institute v. Young*, 818 F.2d 943, 950 (D.C. Cir. 1987) (Starr, J. concurring). At the federal level, Congress has provided in the Administrative Procedure Act, "certain procedural protections before that which achieves the lofty status of 'law' is promulgated by an agency acting in its Congressionally authorized lawmaking capacity." *Id.* at 951.

Similarly, enshrined within chapter 227 are numerous opportunities for the public to submit comments and participate in public hearings,

guaranteeing the right of the public and regulated actors to receive adequate notice of regulations with the force of law, and the right to provide comment. *See*, *e.g.*, Wis. Stat. § 227.135 (Statements of scope of proposed rules); Wis. Stat. § 227.136 (Preliminary public hearing and comment period); Wis. Stat. § 227.16 (When hearings required); Wis. Stat. § 227.17 (Notice of hearing); Wis. Stat. § 227.19 (Legislative review before promulgation).

These procedural protections are essential when an agency is creating rules that have the force and effect of law and "defines a standard of conduct that regulated individuals or entities ignore at their peril, in the face of possible enforcement action." *See Young*, 818 F.2d at 950-51 (These procedures "serve as a Congressionally mandated proxy for the procedures which Congress itself employs in fashioning its 'rules,' as it were, thereby insuring that agency 'rules' are also carefully crafted (with democratic values served by public participation) and developed only after assessment of relevant considerations.")

"It is thus, in theory, important for APA procedures to be followed before an agency pronouncement is deemed a binding legislative rule not merely because the APA says so, but because in saying so the APA is protecting a free people from the danger of coercive state power

undergirding pronouncements that lack the essential attributes of deliberativeness present in statutes." *Id.* at 951. "Because of the value inhering in such procedures, it is well-established that 'only reluctantly should courts recognize exceptions therefrom.'" *Id.* (citation omitted).

The same is true with chapter 227 and Wisconsin law. Even in the case of emergency rules, chapter 227 provides important procedural checks that must be followed before subjecting citizens to "up to 30 days imprisonment, or up to $250 fine, or both." Emergency Order 28, § 18.

The emergency rules procedure is specifically made available to state agencies in situations related to the "preservation of the public peace, health, safety, or welfare ...." Wis. Stat. § 227.24(1)(a). In emergencies, like the current COVID-19 pandemic, the agency may promulgate the rule without strictly complying with all of the notice, hearing, and publication requirements of chapter 227. *Id.* Significant procedural safeguards remain with respect to emergency rules, however, including:

- The agency is required to obtain approval of the scope statement from the governor and send the scope statement to the Legislature; the governor must approve the scope statement; the agency must prepare a plain language analysis of the rule; and the agency must prepare a fiscal estimate and share with the Legislature; Wis. Stat. § 227.24(1)(e).

- There can be a preliminary public hearing and comment period under § 227.136(1), if requested by either co-chairperson of the joint committee for review of administrative rules ("JCRAR"). Wis. Stat. § 227.24(1)(a). As part of the public hearing, the

agency is required to report all public comments and feedback on the statement of scope to the individual with policy-making powers over the subject matter. Wis. Stat. § 227.136(5).

- The agency must file the rule with each member of the Legislature and provide notification to the Legislature of the emergency. Wis. Stat. § 227.24(3).
- The agency promulgating the rule is required to hold a public hearing on the emergency rule within 45 days. Wis. Stat. § 227.24(4).
- Ultimately, the JCRAR may suspend an emergency rule and the agency is prohibited from submitting a new rule with the same substance as the emergency rule during the time the emergency rule is suspended. Wis. Stat. § 227.26(2)(L).

These less onerous requirements still help guarantee at least some oversight, without adversely affecting the state's efforts to combat emergencies, like COVID-19.[4] By refusing to engage in the nimble, emergency rulemaking procedures explicitly spelled out in chapter 227, Secretary-designee Palm has deprived TLW and the public of their ability to avail themselves of these important protections.

[4] DHS also fully understands the emergency rulemaking process; Emergency Rule 1922, relating to youth crisis stabilization facility regulations, is currently in effect and set to expire on May 29, 2020. *Available at:* https://docs.legis.wisconsin.gov/code/emergency_rules/all/emr1922.

C. By Failing To Comply With Chapter 227, DHS Has Denied The Public Crucial, Democratic, Procedural Safeguards.

By failing to follow the emergency rules requirements of chapter 227, the Secretary-designee has denied the Safer at Home Orders of crucial procedural safeguards, including the democratic values served by public participation and the essential attributes of deliberativeness. *See Mack v. Wis. Dep't of Health & Family Servs.*, 231 Wis. 2d 644, ¶ 12, 605 N.W.2d 651 (Ct. App. 1999) ("When an administrative rule is properly promulgated, the process allows for public input and review.")

Failure to comply with these procedural requirements prevents TLW and its members from engaging with state government consistent with chapter 227 at the exact time public participation in the process is most important.[5] The public must maintain the ability to engage with state agencies, including in efforts to amend and improve the Safer at Home Orders.

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[5] The failure to promulgate a rule has deprived the public of the constitutional right to "consult for the common good, and to petition the government, or any department thereof ...." Wis. Const. art. I, § 4. The language of the Wisconsin Constitution could not be stronger: "The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, ***shall never be abridged***." *Id.* (emphasis added). Chapter 227 guarantees and facilitates that ability to "consult" and "petition" with state agencies proposing to take action with the force and effect of law. These requirements undoubtedly have a constitutional undergirding.

TLW has historically been active in representing its members before the legislative and executive branches of state government. In a state like Wisconsin, TLW's members play a vital role in providing a forum and a reprieve in communities throughout the state.

By refusing to promulgate an emergency rule, the Secretary-designee has attempted to remove the Legislature from the process entirely. Rather than directing its comments, suggestions, and concerns regarding the unprecedented, expansive nature of the Safer at Home Orders to 133 elected officials in executive and legislative branches, the public is left seeking relief from a single, unelected, cabinet secretary.

TLW supports efforts to preserve public health, flatten the curve, and limit the spread of COVID-19. Emergency rulemaking provides a forum for TLW to share its proposals for how the state can balance the important interests of keeping Wisconsinites safe while limiting unnecessary economic damage. In fact, TLW has publicly proposed suggestions for reasonable modifications to the Safer at Home Orders allowing taverns and restaurants to function under strict social distancing guidelines, with personal protective equipment requirements, and with capacity restrictions. *See* Steve Sharp, *Area Taverns Share State League's Hope of Reopening May 1*, Watertown Daily Times, April 21, 2020,

https://www.wdtimes.com/news/editors_pick/article_e2f186d6-10e5-529c-9b86-7de7bc96a285.html These are precisely the sort of comments and suggestions the public hearing provisions of the emergency rulemaking process are designed to facilitate. *See* Wis. Stat. § 227.24(1)(e)1d, (4).

The Court should grant the Original Action Petition to ensure TLW—and the rest of the public—continue to have a voice to hold the executive branch accountable.

III. THE SAFER AT HOME ORDERS ARE ARBITRARY AND CAPRICIOUS AS APPLIED TO TLW MEMBERS, BUT FUTURE COMPLIANCE WITH CHAPTER 227 CAN PREVENT THIS HARM.

Further underscoring the need for compliance with chapter 227, the orders are arbitrary and capricious in their current form. Compliance with Chapter 227 will remedy these flaws.

"The requirement of formal rulemaking requires administrative agencies to follow a rational, public process. This requirement ensures that administrative agencies will not issue public policy of general application in an arbitrary, capricious, or oppressive manner. Many public policy concerns could be illuminated through the rulemaking process." *Mack*, 231 Wis. 2d 644, ¶ 12.

> [Administrative rulemaking] procedures are also geared to assure that rule-making determinations made by agencies are lawful. For this purpose they seek to focus attention on all matters relevant to ascertaining the

> legality of the agency's proposed rule, and to establish a record adequate to facilitate a later judicial determination of its legality.

Arthur Earl Benfield, *An Introduction to the 1981 Model State Administrative Procedure Act, Part 1*, 34 Admin. L. Rev. 1, 7.

The Safer at Home Orders are arbitrary and capricious because of undue hardship imposed by the Orders, and the failure to consider other public policy concerns. *See Mack*, 231 Wis. 2d 644, ¶ 12. Taverns make up a crucial part of Wisconsin's thriving hospitality industry.[6] They also are uniquely harmed by the blunt instruments that are Secretary-designee Palm's Safer at Home Orders. The Safer at Home Orders involve severe limitations on business, preventing nearly all of a tavern's typical activities from occurring. In Wisconsin, the Safer at Home Orders have resulted in the loss of 9,632 tavern and restaurant positions and lost wages of $187,897,000.[7] In Manitowoc County, 50 percent of Tavern League members have closed their businesses. The other half continue to operate with reduced hours, staff and menus, but receive little or no income. Across TLW membership that remain in operation, many have seen a

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[6] In Wisconsin alcohol beverage retail licensees have a $6.43 billion impact on the economy and employ approximately 144,400 individuals with approximately $2.72 billion in wages. Am. Beverage Licensees, *Economic Impact of Direct Retail Alcohol Beverage Sales in Wisconsin* (citing John Dunham & Associates. 2018 Economic Impact Study of America's Beer, Wine and Spirits Retailers (August 2018)).

[7] John Dunham & Associates, *American Beverage Licensees COVID-19 Impact Study* (April 6, 2020).

decline of 70-90 percent in revenue. The economic effects of this order are especially devastating in counties with incredibly few COVID-19 cases and adequate healthcare capacity.

A recent example further highlights the arbitrary and capriciousness of the Safer at Home Orders and the Secretary-designee's continued insistence on operating outside of Chapter 227. In Emergency Order 28, the Secretary-designee allowed golf courses to operate, subject to certain restrictions. Emergency Order No. 28, sec. 4.c.i.1. Golf courses, many of which are also licensed as restaurants and taverns, were directed to continue to abide by the provisions of Emergency Order 28, limiting food service to delivery and take out and prohibiting the consumption of food or drink "on premises, either indoors or outdoors." Emergency Order 28, sec. 13.d.i.

Then, on April 27, 2020, additional guidance emerged stating that, effective Wednesday, April 29, 2020, "food or drink may be consumed on the course while playing." Email from Zach Madden, Legis. Liaison, Off. of Gov. Tony Evers, to Wis. Leg. (April 27, 2020) (on file with attorney). This additional guidance was not included in a formal amendment to Emergency Order 28, or referenced in Emergency Order 33 issued that same day, but was circulated via email from the Governor's office to legislative offices.

Golf courses serve food and alcohol beverages pursuant to their license as a restaurant or tavern, not because they are golf courses. Typically, a golf course or campground will have its entire location listed as its "premises." *See Wisconsin Dolls v. Town of Dell Prairie,* 2012 WI 76, 342 Wis. 2d 350, 815 N.W.2d 690. With this additional "email guidance" the state has drawn a distinction regarding certain taverns or restaurants, not previously permitted under the Safer at Home Orders. Food and beverages may now be consumed on the premises of some, but not others.[8]

By what rationale does the state distinguish golf courses from taverns with other forms of outdoor recreation, including outdoor horseshoe pits, volleyball nets, bocce ball courts, or dartboards? What public health data was considered to draw this distinction? What efforts were made to provide notice to the public and affected parties? Chapter 227 would have provided answers to all of these questions. The process employed to date by DHS answers none.

TLW, of course, supports the administration's desire to limit the spread of COVID-19. But the administration must do so in a way that

[8] Of course, TLW believes this exception should remain in place for golf courses, but should be applied equally to all taverns or restaurants with an outdoor, recreational component.

complies with chapter 227. By doing so, many of the errors and shortcomings of the Safer at Home Orders to date would be remedied. The Court should grant the petition so this process can start as soon as possible.

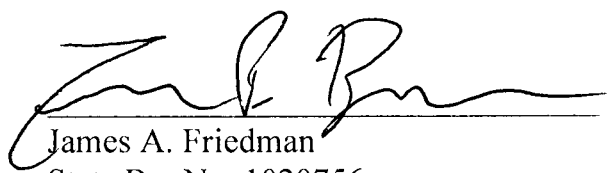
CONCLUSION

The Court should grant the Emergency Original Action Petition and provide clarity on DHS's authority in this space. DHS cannot coopt the authority explicitly granted to other agencies, and it cannot avoid the due process, notice, and legislative oversight guaranteed by chapter 227.

Dated this 29th day of April 2020.

Respectfully submitted,

GODFREY & KAHN, S.C.

By: 

James A. Friedman
State Bar No. 1020756
Zachary P. Bemis
State Bar No. 1094291
Maxted M. Lenz
State Bar No. 1104692

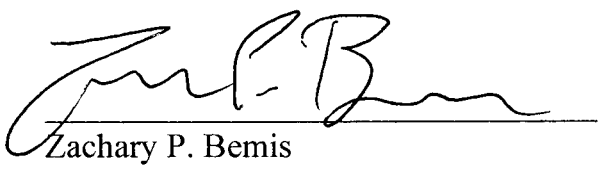
One East Main Street, Suite 500
P.O. Box 2719
Madison, WI 53701-2719
(Phone) (608) 257-3911
(Fax) (608) 257-0609

Attorneys for the Tavern League of Wisconsin

CERTIFICATION

I hereby certify that this brief conforms to the requirements of Wis. Stat. §§ 809.19(8)(b) and (c) and the Court's order in this matter dated April 21, 2020, for a brief produced with a proportional font. The length of this brief is 4,170 words.

Dated: April 29, 2020.

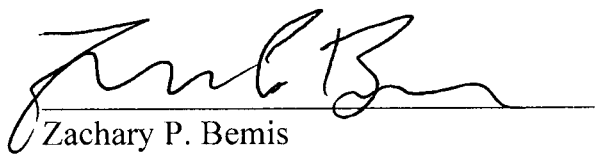


Zachary P. Bemis

CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12)

This brief is being filed in hard copy. Per instructions from the Clerk of Courts, this brief is to be filed electronically only after a favorable ruling from the Court on the contemporaneously submitted motion for leave to file a non-party brief. I understand that, pursuant to Wis. Stat. § 809.19(12), I must file an electronic copy of this brief that is identical in content and format to the printed form of the brief filed on this date.

Dated: April 29, 2020.



Zachary P. Bemis

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