In the Supreme Court of Wisconsin

No. 2020AP1742

Tavern League of Wisconsin, Inc., Sawyer County Tavern League, Inc. and Flambeau Forest Inn LLC,
Plaintiffs,

v.

Andrea Palm and Wisconsin Department of Health Services,
Defendants-Respondents-Petitioners,

Julia Lyons,
Defendant-Respondent,

THE MIX UP, INC (D/B/A, MIKI JO'S MIX UP), Liz Sieben, Pro-Life Wisconsin Education Task Force, Inc., Pro-Life Wisconsin, Inc. and Dan Miller,
Intervenors-Plaintiffs-Appellants.

ON APPEAL FROM AN ORDER GRANTING TEMPORARY INJUNCTIVE RELIEF, ENTERED IN THE COURT OF APPEALS, DISTRICT III

NON-PARTY BRIEF OF WISCONSIN MANUFACTURERS & COMMERCE, INC.

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INTRODUCTION

This case raises important questions regarding our constitutional separation of powers in the context of Petitioners' issuance of Emergency Order #3 ("EO 3") on October 6, 2020. That order was challenged in this action. The Court of Appeals determined that order was unlawful, and issued a temporary injunction.

The Petitioners asked this Court to declare their challenged order an "exercise of executive discretion in applying to an existing fact situation the specific statutory power to 'forbid public gatherings in schools, churches, and other places to control outbreaks and epidemics.'" Pet. Rev. at 2, citing Wis. Stat. § 252.02(3). However, neither in their Petition for Review nor their opening brief, do Petitioners mention the fact that the legislature also determined their order was a rule and ordered them to promulgate it as such.

The legislature, acting through the Joint Committee for Review of Administrative Rules (JCRAR), determined that EO 3 was a rule, and required DHS to promulgate it as an emergency rule within 30 days' time, pursuant to Wis. Stat. § 227.26(2)(b)[1]. DHS has ignored this properly issued

[1] All statutory citations contained herein are to the current Wisconsin Statutes as of submission of this brief, unless otherwise specified.

legislative mandate. *Amicus curiae* submits this brief not to weigh in on the merits of the underlying policies in EO 3, but rather, to provide additional background for the Court and the parties regarding the legality of EO 3, especially in light of JCRAR's actions.

While this Court has reviewed the constitutionality of Wis. Stat. § 227.26 generally (*see, e.g.*, Martinez v. Dep't of Indus., Labor & Human Relations, 165 Wis. 2d 687, 697, 478 N.W.2d 582, 585 (1992)), the specific issues surrounding JCRAR's power under Wis. Stat. § 227.26(2)(b), and its ability to require an agency to promulgate a statement of policy or interpretation of a statute as an emergency rule, are issues of first impression.

Amicus curiae asks this Court to re-affirm the legislature's oversight authority regarding the administrative rules process—a legislative power that has been delegated to administrative agencies—by deferring to JCRAR's affirmative determination that EO 3 is a rule.

ARGUMENT

I. The Wisconsin Constitution's separation of powers gives core powers to each branch.

"Under our constitutional order, government derives its power solely from the people. Government actors, therefore, only have the power the

people consent to give them." Serv. Employees Int'l Union, Local 1 v. Vos, 2020 WI 67, ¶¶ 1-2, 393 Wis. 2d 38, 48-49, 946 N.W.2d 35, 41.

Under the Wisconsin Constitution the "legislative power shall be vested in a senate and assembly," Wis. Const., Art IV, § 1; the "executive power shall be vested in a governor," Wis. Const., Art. V, § 1; and the "judicial power shall be vested in a unified court system" led by this Court which has "superintending and administrative authority over all courts," Wis. Const., Art. VII, §§ 2-3.

"The Wisconsin constitution creates three separate co-ordinate branches of government, no branch subordinate to the other, no branch to arrogate to itself control over the other except as is provided by the constitution, and no branch to exercise the power committed by the constitution to another." State v. Holmes, 106 Wis. 2d 31, 42, 315 N.W.2d 703, 709 (1982).

Our constitution deliberately separates the powers of government amongst the three coequal branches in order to preserve liberty. "The preservation of liberty in Wisconsin turns in part upon the assurance that each branch will defend itself from encroachments by the others." Gabler v. Crime

Victims Rights Bd., 2017 WI 67, ¶ 31, 376 Wis. 2d 147, 171, 897 N.W.2d 384, 396.

a. Administrative agencies, as creations of the legislature, have only those powers given to them by law.

Administrative agencies are legislative creations, limited in what they are able to do—and may not exceed the authority given to them by the legislature. This Court has "long recognized that administrative agencies are creations of the legislature and that they can exercise only those powers granted by the legislature." Martinez, 165 Wis. 2d at 697, citing Thomson v. Racine, 242 Wis. 591, 597, 9 N.W.2d 91 (1943).

> The very existence of the administrative agency or director is dependent upon the will of the legislature; its or his powers, duties and scope of authority are fixed and circumscribed by the legislature and subject to legislative change … An administrative agency is subject to more rigid control by the legislature and judicial review of its legislative authority and the manner in which that authority is exercised.

Schmidt v. Dep't of Res. Dev., 39 Wis. 2d 46, 56-57, 158 N.W.2d 306, 312 (1968). The Wisconsin Department of Health Services (DHS) is an agency of the State of Wisconsin under the direction and supervision of the Secretary of Health Services. Wis. Stat. § 15.19. Both DHS and the DHS Secretary meet the statutory definition of an "agency" under Wis. Stat. § 227.01(1) (defining "agency" as "a board, commission, committee,

department or officer in the state government, except the governor, a district attorney or a military or judicial officer"). DHS issued EO 3, which is the subject of this ongoing litigation.

As an administrative agency, DHS and its Secretary can only do those things the legislature has authorized them to do, and even when doing those things it is authorized to do, it must follow the statutorily prescribed process for doing so.

b. Rulemaking is a legislative function which has been delegated to administrative agencies.

"Powers constitutionally vested in the legislature include the powers: "'to declare whether or not there shall be a law; to determine the general purpose or policy to be achieved by the law; [and] to fix the limits within which the law shall operate.'"" Koschkee v. Taylor, 2019 WI 76, ¶ 11, 387 Wis. 2d 552, 562, 929 N.W.2d 600, 605 *citing* Schmidt, 39 Wis. 2d at 59, (*quoting* State ex rel. Wis. Inspection Bureau v. Whitman, 196 Wis. 472, 505, 220 N.W. 929 (1928)).

This court has long held that rulemaking is inherently a legislative function that has been delegated to administrative agencies. *See, e.g.*, Koschkee, 2019 WI 76, ¶ 33 ("Agencies in Wisconsin have no inherent authority to make rules. Their rulemaking authority comes from the

legislature, and may be limited, conditioned, or taken away by the legislature"); and Wisconsin Legislature v. Palm, 2020 WI 42, ¶ 33, 391 Wis. 2d 497, 522, 942 N.W.2d 900, 912 ("We have allowed the legislature to delegate its authority to make law to administrative agencies").

II. The legislature may impose restrictions on the exercise of its own delegated powers.

While the legislature may delegate some of its power to agencies in the form of rulemaking, such delegations of legislative power are allowed under our constitutional structure only if certain standards and safeguards are in place. "A delegation of legislative power to a subordinate agency will be upheld if the purpose of the delegating statute is ascertainable and there are procedural safeguards to insure that the board or agency acts within that legislative purpose." J.F. Ahern Co. v. Wisconsin State Bldg. Comm'n, 114 Wis. 2d 69, 90, 336 N.W.2d 679, 689 (Ct. App. 1983), *citing* Watchmaking Examining Bd. v. Husar, 49 Wis.2d 526, 536, 182 N.W.2d 257, 262 (1971).

a. The Chapter 227 rulemaking process, and being subject to JCRAR oversight, are restrictions and requirements imposed upon agencies in order for them to exercise authority delegated to them by the legislature.

Since agencies are creations of the legislature, and have been delegated limited powers by the legislature, "[t]he legislature may therefore

retract or limit any delegation of rulemaking authority, determine the methods by which agencies must promulgate rules, and review rules prior to implementation." Koschkee, 2019 WI 76, ¶ 20, *See also* Serv. Employees Int'l Union, 2020 WI 67, ¶ 79.

The legislature has provided a specific process by which agencies are to exercise their delegated rulemaking functions:

> Chapter 227 of the Wisconsin Statutes governs agency rule-making and legislative review of agency rules, among other things. These statutes comprise a system devised by the legislature itself to govern the legislature's role in, and oversight of, agency rule-making. Chapter 227 provides for expansive legislative review of rules both before their promulgation and after their promulgation.

Wisconsin Realtors Ass'n v. Pub. Serv. Comm'n of Wisconsin, 2015 WI 63, ¶¶ 97-98, 363 Wis. 2d 430, 459, 867 N.W.2d 364, 378. Chapter 227 requires "[e]ach agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute." Wis. Stat. § 227.10(1). This is important because the statutory rulemaking process, aside from being a necessary procedural safeguard under our constitutional separation of powers, is intended to protect the public from subjective applications of law by government officials. *See* Palm, 2020 WI 42, ¶ 28

("Rulemaking exists precisely to ensure that kind of controlling, subjective judgment asserted by one unelected official … is not imposed in Wisconsin"). That is, when agencies are exercising discretion granted to them by the legislature in the manner that DHS did with EO 3, they must do so through the rulemaking process.

This statutory rulemaking process is vital in our constitutional separation of powers, because when an agency interprets a law, "[t]hose who are or will be affected generally by this interpretation should have the opportunity to be informed as to the manner in which the terms of the statute regulating their operations will be applied … This is accomplished by the issuance and filing procedures established by [Chapter 227]." Schoolway Transp. Co. v. Div. of Motor Vehicles, Dep't of Transp., 72 Wis. 2d 223, 237, 240 N.W.2d 403, 410 (1976).

To ensure this process is followed and to provide constitutionally required oversight on the exercise of legislative power, the legislature created JCRAR. JCRAR was created by Wis. Stat. § 13.56(1) and given "the powers and duties specified under ss. 227.19, 227.24 and 227.26." Wis. Stat. § 13.56(3). "Pursuant to these statutes, the legislature has the opportunity to request modifications to proposed rules, to prevent the promulgation of

proposed rules, to temporarily suspend rules that have been promulgated, and to repeal promulgated rules altogether." Realtors, 2015 WI 63, ¶ 98 (footnotes omitted). Additionally, JCRAR may review statements of policy or interpretations of statute made by agencies, and "[i]f the committee determines that a statement of policy or an interpretation of a statute meets the definition of a rule, it may direct the agency to promulgate the statement or interpretation as an emergency rule under s. 227.24 (1) (a) within 30 days after the committee's action." Wis. Stat. § 227.26(2)(b).

In enacting Wis. Stat. § 227.26(2)(b), the legislature reserved for itself the ability to determine whether any agency action amounted to "rulemaking"—and when it made such a determination—to require those agencies to promulgate such actions as emergency rules within 30 days' time. *See, e.g.*, Wis. Legis. Council, Administrative Rules Procedures Manual, November, 2020, pages 58 and 74 ("If JCRAR determines that a statement of policy or an interpretation of a statute meets the definition of a rule, JCRAR may direct the agency to promulgate the statement or interpretation as an emergency rule within 30 days after JCRAR's action. [s. 227.26 (2) (b), Stats.] These emergency rules are not required to have a finding of emergency. [s. 227.24 (3), Stats.]"); *See also* Wisconsin Legislative Council,

Assembly Committee Procedures and Powers, March 11, 2019, page 26 (Explaining that "[i]f JCRAR determines that an agency's statement of policy or an interpretation of a statute meets the definition of a rule, it may direct the agency to promulgate the statement or interpretation as an emergency rule within 30 days of JCRAR's action. Further, by a majority vote of a quorum of the committee, JCRAR may require any agency promulgating rules to hold a public hearing with respect to general recommendations of JCRAR and to report its actions to JCRAR within a specified time.").

The legislature's oversight of the rulemaking process is paramount. This Court has held that "[i]n light of the statutes' providing for expansive legislative review of rules and limited judicial review of rules, it is incumbent upon the court to exercise both deference and restraint" when reviewing legislative oversight of the administrative rulemaking process. Realtors, 2015 WI 63, ¶ 99.

This is not to say that courts have no role in the review of rules. Indeed, Chapter 227 requires a court to strike down a rule "if it finds that [a rule] violates constitutional provisions or exceeds the statutory authority of the agency or was promulgated or adopted without compliance with statutory

rule-making … procedures." Wis. Stat. § 227.40(4)(a). Where, as in this case, the legislature has affirmatively acted under its authority to say that an agency's rule was adopted without compliance with statutory rulemaking procedures, this Court should defer to the legislature's decision and in this case, this Court should uphold the Court of Appeals' conclusion that EO 3 is invalid because it was not promulgated as a rule pursuant to Chapter 227.

b. As the administrative state has grown in size and scope, the legislature has expanded oversight over the exercise of delegated legislative power and the rulemaking process.

While the meaning of Wis. Stat. § 227.26(2)(b) is clear, *amicus curiae* provides the following history of this power and its development to add context as to this important oversight role. "…[L]egislative history is sometimes consulted to confirm or verify a plain-meaning interpretation." State ex rel. Kalal v. Circuit Court for Dane Cty., 2004 WI 58, ¶ 51, 271 Wis. 2d 633, 666-667, 681 N.W.2d 110, 126 (citing Seider v. O'Connell, 2000 WI 76, ¶¶ 51-52, 236 Wis.2d 211, 236, 612 N.W.2d 659, 671).

As the administrative state has grown, so has the need for legislative oversight. With enactment of Ch. 331, Laws of 1953, the legislature began to formalize this oversight. "Prior to 1953, the legislature did not maintain a regular review of the determinations of executive agencies. In 1953, the

legislature passed the first law under which it permitted legislative review of executive agency determinations." Wisconsin Legislative Council, Staff Brief 72-17, Background Information for the Special Committee on Administrative Rules Committee Procedures, November 7, 1972, at page 2. This change gave the legislature the power, at any time, by joint resolution, to disapprove of any administrative rule, and such rule became void. Id.

To enhance that legislative oversight power, in 1955, the legislature again moved to expand its oversight by creating the precursor to what we now know as JCRAR. Ch. 221, Laws of 1955, created a "Committee for Review of Administrative Rules," a 5-member legislative committee with advisory powers, to review complaints on rulemaking and provide information and recommendations to the full legislature. *See* Ch. 221, Laws of 1955; *See also*, Staff Brief 72-17, *supra*, at page 2-3.

A decade later, that committee evolved into JCRAR with the enactment of Ch. 659, Laws of 1965, and was given for the first time the power to suspend agency rules. *See* Ch. 659, Laws of 1965; *See also* Staff Brief 72-17, *supra*, at 3.

Nearly a decade after JCRAR was first given the power to suspend rules, the legislature expanded JCRAR's power to allow it to address

instances where administrative agencies were acting *outside* of the rulemaking process. Ch. 162, Laws of 1973. This power was created to respond to an ever-growing administrative state that was avoiding the rulemaking process by making regulatory decisions and simply not calling them "rules" to avoid JCRAR oversight. Wisconsin Legislative Council, Summary of Proceedings of Special Committee on Administrative Rules Committee Procedures, November 14, 1972, pages 7-8.

This legislative change was the precursor to the modern Wis. Stat. § 227.26(2)(b) power that was used by JCRAR to address EO 3. This power was created after the legislature convened a special committee tasked with studying whether "the jurisdiction of the legislature's Joint Committee on Administrative Rules [should] be extended to cover other determinations of executive agencies?" Wisconsin Legislative Council, Summary of Proceedings of Special Committee on Administrative Rules Committee Procedures, November 14, 1972, page 2. The special committee answered in the affirmative, drafting a bill that would ultimately become Ch. 162, Laws of 1973. Wisconsin Legislative Council, Report of the 1973 Legislature on Procedures and Powers of Administrative Rules Committee, February 1973, page 11.

The special committee was formed after a previous legislative attempt to increase legislative oversight over the rulemaking process was vetoed by the Governor, 1971 Senate Bill 232. That legislation initially sought to give JCRAR the power to determine when an agency's action constituted a "rule." It passed both houses of the legislature and then was reported correctly enrolled and presented to the Governor on June 8, 1972. *See* Wisconsin Senate, Journal of the Senate, Thursday, June 8, 1972. The following day the bill was vetoed by Governor Patrick Lucey, who thought the bill gave JCRAR too much power, noting "[t]he defect in Senate Bill 232 is that it gives to [JCRAR] the power to define which agency directives are, in fact, rules, despite the specific statutory definition of 'rules' in the statutes. A potential conflict of interpretation could arise if this bill received my approval." *See* "Executive Communication" from Gov. Patrick Lucey dated June 9, 1972, reported in Wisconsin Senate, Journal of the Senate, Monday, June 12, 1972.

That is, Governor Lucey did not want administrative agencies to be subject to additional legislative oversight and control. Ultimately the special committee developed and the legislature adopted a similar proposal, which

was ultimately signed into law as Ch. 162, Laws of 1973, part of which amended Wis. Stat. § 13.56(2) (1973-74) as follows:

> 13.56(2) The committee shall promote adequate and proper rules, statements of general policy and interpretations of statutes by agencies and an understanding upon the part of the public respecting such rules, statements and interpretations. When the committee determines that a statement of policy or an interpretation of a statute is a rule, as defined in s. 227.01 (3) and (5), it may direct the agency to promulgate the statement or interpretation as an emergency rule pursuant to s. 227.027 within 30 days of the committee's action.

Ch. 162, Laws of 1973, §1. As Representative Shabaz, chairman of the 1972 Special Committee which developed this change, noted, "[O]ften Departments attend the meetings [of JCRAR] and assert that the Committee has no jurisdiction on a certain matter, because the action taken was in the form of a 'directive' or 'policy statement' rather than a rule." Wisconsin Legislative Council, Summary of Proceedings of Special Committee on Administrative Rules Committee Procedures, November 14, 1972, page 4. He further noted this was one of the primary reasons for the initial proposal of 1971 Senate Bill 232. Id. Ch. 162, Laws of 1973 ultimately remedied this concern by finally giving additional oversight powers to JCRAR.

This power for the legislature to determine when agency actions amounted to rulemaking was developed as a necessary check on the legislature's delegation of power to administrative agencies.

III. JCRAR clearly and unambiguously determined that EO 3 was a rule and this Court should defer to that determination and uphold the decision of the Court of Appeals.

As the Intervenors-Plaintiffs-Appellants noted in their Response to the Petition for Review, on October 12, 2020 JCRAR held an executive session to consider EO 3, ultimately concluding that EO 3 was a rule and directing the agency to promulgate EO 3 as an emergency rule within 30 days. Resp. Pet. Rev. at 4-5.

As soon as JCRAR took that vote and exercised its power under Wis. Stat. § 227.26(2)(b), EO 3 was void until it was promulgated as an emergency rule. DHS took no such steps, and instead has continued to defend the legality of its order. As it has done with previous JCRAR determinations over the rulemaking process, this Court should defer to JCRAR's determination here that EO 3 was, in fact, a rule. Realtors, 2015 WI 63, ¶ 99.

To hold otherwise would encourage administrative agencies to ignore JCRAR's commands, as DHS did here. The legislature cannot be expected to litigate every time it exercises oversight over a delegation of its own

constitutional authority. Rulemaking is a legislative power. Administrative agencies are legislative creations.

Rulemaking is a legislative power that has been delegated to legislative creations, administrative agencies. Where, as here, JCRAR has affirmatively determined that an agency it created engaged in a rulemaking, this Court should defer to that determination.

a. JCRAR properly determined that EO 3 was a rule.

This Court should defer to JCRAR's determination that EO 3 is a rule. However, in the interest of completeness, *amicus curiae* offers the following analysis as to why JCRAR's determination was correct.

The statutory definition of a "rule" is broad and encompasses a wide swath of administrative agency activity. This is a deliberate decision made by the legislature as part of its delegation of power to agencies. *See* Staff Brief 72-17, *supra*, at page 5 (noting that the legislature adopted a Legislative Council committee's recommendation "that the statute retain a broad definition of 'rule' " and further that "the statutes should enumerate specific exceptions" to the definition of "rule" that were deemed not to be rules.). This statutory scheme survives to this day: "rule" under Wis. Stat. §

227.01(13) is a broadly defined term with a number of exceptions listed, none of which apply to EO 3.

In interpreting the definition of a "rule", this Court has long stated and upheld that:

> [A] rule for purposes of ch. 227 is (1) a regulation, standard, statement of policy or general order; (2) of general application; (3) having the effect of law; (4) issued by an agency; (5) to implement, interpret or make specific legislation enforced or administered by such agency as to govern the interpretation or procedure of such agency.

Citizens for Sensible Zoning, Inc. v. Dep't of Nat. Res., Columbia Cty., 90 Wis. 2d 804, 814, 280 N.W.2d 702, 707 (1979); *See also* Palm, 2020 WI 42, ¶ 3, (noting Citizens for Sensible Zoning is "controlling precedent of this court" to determine whether agency actions are, in fact, rules).

EO 3 is a regulation, standard, statement of policy or general order of general application which has the effect of law, is clearly issued by an agency, and is intended to implement, interpret or make specific legislation enforced or administered by an agency. EO 3 is not "exempted" from the definition of a "rule" under Wis. Stat. § 227.01(13).

EO 3 meets all of the elements of a "rule." In the interest of brevity, *amicus curiae* will only discuss the general applicability portion of the test. EO 3 applies to a general class, namely, all persons in Wisconsin. This court

has long stated that "to be of general application, a rule need not apply to all persons within the state. Even though an action applies only to persons within a small class, the action is of general application if that class is described in general terms and new members can be added to the class." Citizens for Sensible Zoning., 90 Wis. 2d at 815-816.

Where, as here, a rule is generally applicable to all persons in the state, it is clearly of "general applicability" for purposes of the state law. The order applies to a class described in general terms, and anyone who enters Wisconsin is added to the class. It makes no difference that EO 3 was only in force for a limited duration of time. Indeed all "emergency rules" promulgated under Chapter 227 are, by definition, limited in duration to a period of 150 days before they expire per Wis. Stat. § 227.24(1)(c), and there is no doubt that such regulatory actions are "rules" under the purview of that chapter. JCRAR's determination that EO 3 is a rule was proper.

IV. DHS has no power to object to JCRAR's determination: both because they were never given that power statutorily, and because as a subordinate creation of the legislature it cannot possess more power than its creator.

Finally, *amicus curiae* questions whether DHS even has the statutory authority to continue litigating this matter after the legislature's determination that EO 3 was a rule. Under Chapter 227, administrative

agencies have no power to contest the legislature's determination that their actions constitute rulemaking. Once JCRAR makes that determination, the rule is void until the agency promulgates it as an emergency rule within 30 days. That did not happen here.

This Court has previously made clear that agencies do not have the power to contest, or simply ignore, JCRAR's actions with regard to rulemaking:

> When [an agency] instructed employers to ignore JCRAR's changes, it exceeded its powers. The court in Milwaukee v. Railroad Comm., 182 Wis. 498, 501, 196 N.W. 853 (1924), wrote that the legislature "constitutes the original source of power; ... and such power continues under all circumstances ... [however] its creature cannot, at any time, possess powers superior to it." In fact, "administrative agencies are a part of the legislative branch of government that created them and by implication are not clothed with the power to declare unconstitutional the laws of their creator." Milwaukee v. Wroten, 160 Wis.2d 207, 218, 466 N.W.2d 861 (1991). *See also* Kmiec v. Town of Spider Lake, 60 Wis.2d 640, 646, 211 N.W.2d 471 (1973). Thus, [an agency] does not have the authority to declare JCRAR's rule changes void.

Martinez, 165 Wis. 2d at 698–699. To allow an agency to ignore JCRAR's determination that the agency's actions constitute rulemaking would be to give the legislature's creation powers that are superior to the legislature. As the Court noted in Martinez, that cannot be.

In this case, JCRAR issued a clear order to DHS that EO 3 was a rule, and that DHS was to promulgate EO 3 as an emergency rule within 30 days of the committee's action. DHS cannot simply ignore that requirement, and it has no authority to contest it.

CONCLUSION

For the foregoing reasons, *amicus curiae* asks this Court to re-affirm the legislature's oversight authority regarding the administrative rules process—a legislative power that has been delegated to administrative agencies—by deferring to JCRAR's affirmative determination that EO 3 is a rule.

Dated this 30th day of November, 2020.

Respectfully Submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 4,375 words.

DATED this 30th day of November, 2020,

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CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19 (12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

DATED this 30th day of November, 2020,

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