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Today, the law firm Cooper & Kirk, PLLC, has filed a lawsuit against the state of Wisconsin for violating the fundamental rights of conscience, assembly, and travel. Wisconsin has powers to confront the ongoing COVID-19 pandemic, but the “Safer at Home” Executive Order is unconstitutional in singling out religious worship and political gatherings for special restrictions. Under the Wisconsin order, religious worship is capped at nine people and any gathering to engage in political speech is banned, while grocery stores and other exempted facilities can see dozens, if not hundreds, of people gathered at the same time. Wisconsin must strike a proper balance to protect both the public health and individual rights.

Please see below for statements from the petitioner and legal counsel, an excerpt from the brief, and a one page memo on the case.

STATEMENTS:

“The State has clearly gone too far, needlessly infringing our most basic constitutional liberties – to an extent that is without precedent and that would have been virtually unimaginable in a free society just two months ago.” - Jeré Fabick, petitioner

“The fundamental constitutional freedoms to gather together for worship and for political speech and association are not fair weather rights, but rather were designed, as United States Supreme Court has put it, to endure through “the various crises of human affairs.” The restraints that Wisconsin’s executive officials have placed on the State’s citizens to combat the Covid-19 crisis, while no doubt well-intentioned, have needlessly and discriminatorily infringed on these fundamental rights of the people.” - Charles J. Cooper, Founding Partner Cooper & Kirk, Former Assistant Attorney General in the Reagan Justice Department

“As a former Attorney General, I understand that Government needs space to protect its citizens during times like these. While much of Wisconsin’s approach to fighting the pandemic is lawful, the state has clearly overstepped important Constitutional boundaries and has failed to protect its citizens’ fundamental liberties of freedom of conscience, right to assembly and free exercise, and the right to travel.” - Adam P. Laxalt, Partner Cooper & Kirk, Former Attorney General of Nevada

BRIEF EXCERPTS:

“Petitioners do not question the seriousness of the present health crisis, or the weight of the State’s interest in dealing with it. But the inexplicable lines drawn and distinctions made in the Order that Respondents have promulgated in response to the epidemic refute any contention that these constitutional infringements are the least restrictive means, or even sensible means, of combatting the virus. While EO 28 permits 60 individuals—ten adult staff and 50 children (who obviously can not be required or expected to be properly masked and distanced)—to gather together in a day care center, it does not allow even ten religious believers (who can be required and expected to observe recognized protective measures) to gather together for worship. While Respondents allow hundreds of customers into Costco at any given time, no group of any size is allowed to assemble in the park, or any other public or private place, to engage in political protest or expression.”

“Even a public health crisis does not give the State’s executive authorities license to impose measures that are arbitrary and irrational, or that patently violate our most sacred constitutional rights. This Court should exercise original jurisdiction and grant a temporary and permanent injunction.”

MEMORANDUM

Date: May 4, 2020

Re: *Fabick v. Palm*: Constitutional Challenges to Wisconsin's Shutdown

Two Wisconsin residents today sued State and local officials in the Supreme Court of Wisconsin to challenge the state's "Safer at Home" Order (E.O. 28). Plaintiffs in *Fabick v. Palm* allege that the Order violates fundamental rights protected by the Wisconsin Constitution by infringing upon the right to freedom of religious worship, the right to free speech and political assembly, and the right to travel. Plaintiffs also allege that Wisconsin's Order has failed to strike the proper balance between government's emergency police powers and constitutionally protected individual liberties. As Attorney General Barr has made clear, "the Constitution is not suspended in times of crisis."

The Wisconsin Order imposes a nine-person cap on gatherings for religious worship, and it forbids gatherings of any size for the purpose of engaging in political speech—such as the recent protest at the State Capitol. Plaintiffs argue that these limits unconstitutionally single out religious worship and political gatherings for special treatment while allowing other sorts of activities. For example, the Order allows hundreds of customers to shop at Menards and exempts day care centers—allowing 60 people to gather together there. Treating religious worship and political assembly less favorably is both unconstitutional and unjustified by public health concerns.

The Petitioners filing suit are Jeré Fabick and Larry Chapman, two Wisconsin residents. Mr. Fabick has been concerned about many of the actions taken in response to the pandemic and wishes to peacefully and safely protest some of them. He did not participate in a recent protest at the State Capital because he feared criminal sanction for participating in a gathering—that though is constitutionally protected—is currently banned by the Order. He also alleges that the "Safer at Home" order has limited his constitutionally protected right to travel. Mr. Chapman is a member of a local church, which has been forced to discontinue Sunday worship because of the Order, even though its facility is large enough to hold small services with families while maintaining safe social distancing protocols.

Cooper & Kirk, PLLC, a premier Constitutional Litigation Boutique Firm based in the District of Columbia and local Wisconsin counsel drafted and filed the suit.