No. 2020AP0828-OA

In the Supreme Court of Wisconsin

JERÉ FABICK AND LARRY CHAPMAN,

Petitioners,

v.

ANDREA PALM, JULIE WILLEMS VAN DIJK, LISA OLSON, IN THEIR OFFICIAL CAPACITIES AS EXECUTIVES OF WISCONSIN DEPARTMENT OF HEALTH SERVICES; JOSH KAUL, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF WISCONSIN; DAVID ERWIN, IN HIS OFFICIAL CAPACITY AS CHIEF OF THE WISCONSIN STATE CAPITOL POLICE; DAVID MAHONEY, IN HIS OFFICIAL CAPACITY AS SHERIFF OF DANE COUNTY; ISMAEL OZANNE, IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY OF DANE COUNTY; ERIC SEVERSON, IN HIS OFFICIAL CAPACITY AS SHERIFF OF WAUKESHA COUNTY; SUSAN OPPER, IN HER OFFICIAL CAPACITY AS THE DISTRICT ATTORNEY OF WAUKESHA COUNTY; KURT PICKNELL, IN HIS OFFICIAL CAPACITY AS SHERIFF OF WALWORTH COUNTY; AND ZEKE WIEDENFELD, IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY OF WALWORTH COUNTY,

Respondents.

PETITIONERS' NOTICE OF RECENT EVENTS

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PETITIONERS' NOTICE OF RECENT EVENTS

On May 13, this Court issued an opinion in *Wisconsin Legislature v. Palm*, No. 2020AP000765, 2020 WI 42, holding Emergency Order 28 ("EO 28") invalid and unenforceable. Beginning that very same evening, and continuing over the following 24 hours, Respondent Palm, and local government officials throughout the State, took a series of extraordinary and troubling actions designed to empty that opinion of meaning and evade its essential teaching. First, in a transparent attempt to circumvent this Court's judgment, Respondent Palm reached out to various county and municipal governments urging them to readopt the very restrictions this Court had struck down—indeed, going so far as to include a convenient "template" that essentially copied and pasted the text of EO 28, with blanks for municipal officials to fill in their local information and then re-impose EO 28 wholesale. *See* Letter from Andrea Palm 1 (Supp. App. 1); Safer at Home Template 1 (Supp. App. 2).

As a result of Respondents' urging, beginning first thing yesterday morning, numerous local governments encompassing the great bulk of Wisconsin's population (including Dane County, which is a respondent in this Action by virtue of its Sheriff and District Attorney) promulgated local

versions of "Safer at Home," some simply adopting EO 28 *in toto*. *See, e.g.*, Order of Public Health Madison & Dane County (Supp. App. 31); Order of the Brown County Health Officer (Supp. App. 33). Moreover, yesterday evening Respondent Palm began the emergency rulemaking process (as contemplated by this Court's decision) by issuing a "statement of scope" that strongly signals Respondent's intention of re-issuing, as an emergency rule, the very restrictions on religious worship and political assembly that are challenged in this Petition. *See* DHS, Statement of Scope (Supp. App. 24). The end result is this: citizens throughout much of Wisconsin are *still* unable to engage in their fundamental constitutional rights of religious and political assembly, and there is no reason to doubt that in a matter of days, Respondent Palm will again attempt to promulgate a rule imposing many of those challenged restrictions on a statewide and indefinite basis.

Ordinarily, the invalidation in the Legislature's case of the regulation that restricts Petitioners' constitutional rights would put an end to our lawsuit—for "as a general rule this court will not consider questions which have become moot due to a change in circumstances." *State ex rel. Waldeck v. Goedken*, 84 Wis. 2d 408, 413, 267 N.W.2d 362 (1978). However, the ordinary mootness doctrine is subject to several important exceptions, two of

which squarely encompass the concerns that compel Petitioners, here, to file this notice and renew their plea for the Court to consider and resolve their constitutional challenges.

First, even where the controversy between the parties is technically moot, this Court will nonetheless decide it on the merits if "the issues presented are likely to arise again and should be resolved by this court to avoid future uncertainty." *State v. Leitner*, 2002 WI 77, ¶15, 253 Wis. 2d 449, 646 N.W.2d 341 (2002). The reasons of fairness and efficiency that motivate this exception apply with special force here, where the state-wide restrictions very possibly will arise again because Respondent Palm has clearly signaled the State's intention to impose the same measures after the case is dismissed. *See Watkins v. Dept. of Indus., Labor & Human Relations*, 69 Wis. 2d 782, 233 N.W.2d 360 (1975). But even apart from Respondent Palm's effort to replace EO 28 on a statewide basis, this exception plainly applies here, given that numerous local jurisdictions have already essentially reimposed EO 28 root-and-branch, and those mini-safer-at-home orders will certainly lead to further litigation, and continuing uncertainty, over the constitutionality of the very restrictions alleged in this Petition. Indeed, one of those jurisdictions—Dane County, whose law enforcement officers are Respondents in this

lawsuit—has imposed *precisely* the same restriction on political assembly challenged by Petitioner Fabick, with the result that despite this Court's ruling in *Wisconsin Legislature*, Petitioner is *no more able to lawfully attend political assemblies in Madison than he was when this suit was filed.*

Second, this Court will "decide an otherwise moot issue" where it is "of great public importance" or "the constitutionality of a statute is involved." *State v. Fitzgerald*, 2019 WI 69, ¶22, 387 Wis. 2d 384, 929 N.W.2d 165. As our earlier papers have discussed at length, it is difficult to imagine constitutional issues of greater public import than the ones raised in this challenge. Given "the issues . . . of great public importance" raised by our Petition and Motion, and the fact that those issues are not only "likely to arise again" in the near future but have *already* arisen again, *id.*, at ¶22, this case clearly presents the type of exceptional or compelling circumstances that warrant a decision by this Court on the merits of the issues raised in this case. Indeed, as emphasized by Justice Hagedorn's separate opinion in *Wisconsin Legislature*, this case—where "[e]xecutive branch overreach [is] challenged by those who are harmed by the executive branch action"—is *precisely* the context in which the exercise of this Court's law-declaring function is most critically needed. 2020 WI 42, ¶262 (Hagedorn, J., dissenting).

Like many other Wisconsinites, Petitioners were relieved on Wednesday evening when the order restricting their fundamental liberties was struck down. But in the ensuing hours, they watched with growing alarm as Respondents, and numerous local officials throughout the State, conducted a concerted rear-guard action openly designed to evade the force of this Court's ruling by re-imposing the very restrictions on worship, assembly, and travel Petitioners have challenged, and that *even today* prevents Wisconsinites from gathering with more than eight others for religious worship, or attending a political protest, rally, or conference throughout the most populous parts of the State. The compelling reasons for this Court to grant Petitioner's request for an Original Action and Emergency Injunction continue to apply, and Petitioners respectfully submit that the Court should act quickly to finish the work that Wednesday's ruling in *Legislature v. Palm* began but, it now appears, did not complete.

BACKGROUND AND RECENT EVENTS

As discussed at length in the over 230 pages of briefing that has been filed in this action to date, Petitioners challenge as unconstitutional the following provisions of EO 28: (1) the provision of Section 13(h) limiting religious gatherings to fewer than ten people in a room or confined space; (2)

the provision of Section 3 prohibiting all public and private gatherings of any number of people that are not part of a single household and living unit; and (3) the provisions of Section 1 and 5 that together, and with certain exceptions, order all individuals present within Wisconsin to stay at home or at their place of residence and prohibit all forms of "non-essential" travel.

On May 13, this Court issued its decision in *Wisconsin Legislature*, the original action filed by the Wisconsin Legislature raising procedural and statutory challenges to EO 28. This Court concluded that because EO 28 was a "rule" under controlling precedent of the Court, and because statutorily-required rulemaking procedures were not followed when EO 28 was promulgated, EO 28 "is unenforceable" in its entirety. *Id.* ¶58. The Court further held that the provisions of EO 28 "confining all people to their homes, forbidding travel and closing businesses" exceeded DHS's authority under WIS. STAT. Section 252.02. *Id.* ¶59. The Court thus issued an immediately effective declaration that EO 28 was "unlawful, invalid, and unenforceable." *Id.*[1]

Under this Court's decision in *Wisconsin Legislature*, all of the provisions of EO 28 that Petitioners challenge have, for the time being at least,

[1] The Court's decision that EO 28 was unenforceable did not apply to Section 4.a of the Order, the provision closing public schools. *Id.*, ¶58 n.21. Section 4.a is not at issue in this action.

been declared unlawful and unenforceable. However, at least as to those provisions of EO 28 restricting Petitioners' exercise of their fundamental rights to religious worship and assembly, this Court's decision allows Respondents to promulgate a new order, following emergency rulemaking procedures, re-imposing the very same restrictions in fairly short order.[2] Indeed, under Chapter 227's expedited procedures for emergency rulemaking, it is possible that DHS will be in a position to issue a new rule reimposing these restrictions within a matter of days. *See Wisconsin Legislature*, 2020 WI 42, ¶29 (discussing emergency rulemaking proceduresThis Court took pains to note that it *expected* the parties to that case to work together cooperatively, and expeditiously, to issue such a rule. *See id.* ¶57; *see also id.* ¶65 (Roggensack, C.J., concurring) ("I trust that the parties will . . . work together in good faith to quickly establish a rule that best addresses COVID-19 and its devastating effects on Wisconsin.").

In keeping with this Court's expectation, yesterday evening Respondent Palm issued, and Governor Evers approved, a "Statement of Scope" for

[2] Because EO 28's provisions confining people to their homes and forbidding non-essential travel were declared to exceed DHS's statutory authority, it does not appear to Petitioners that, absent action by the Legislature, DHS would have statutory authority to issue a rule reimposing those restrictions.

a new emergency rule. Statement of Scope (Supp. App. 24). While this statement is short on details, it is long on suggestive rhetoric, and all of that rhetoric points in the same direction: Respondent Palm clearly intends to impose the same or similar restrictions on worship and political assembly that Petitioners challenge here and that the State has vigorously defended. According to DHS's statement, the emergency rule "is likely to include a variety of temporary measures, . . . including, but not limited to: limitations on the number of persons in a given confined space; requirements for social distancing; limitations on mass gatherings; and basic safeguards for businesses to protect employees and visitors." Statement of Scope at 3 (Supp. App. 26). The statement also notes that while this Court's decision in *Wisconsin Legislature* "did not define the precise scope of DHS's authority" under WIS. STAT. § 252.02 to address communicable diseases, DHS continues to assert, and intends to exercise,

> clear, broad, and explicit authority to close schools and forbid public gatherings in schools, churches, or other places. This statutory delegation of authority does not impose any bright-line rule as to the gathering sizes DHS may require or on the places where such limits may be put into effect. . . . DHS is further granted the explicit authority to implement all other emergency measures necessary to control communicable diseases, and DHS has explicit authority to make its rules applicable to the whole or any specific part of the state.

Id. at 6 (Supp. App. 29). Finally, the Scoping Statement confirms that DHS intends "to proceed as quickly as possible to develop the rule." *Id.*

Apart from Respondent Palm's scoping statement, her other actions, apparently beginning Wednesday evening, are of a more startling nature. At the same time Respondents were proceeding to replace EO 28 as a statewide emergency rule, they were also taking action—notwithstanding this Court's conclusion that the restrictions in EO 28 could only be imposed by rulemaking and that several of those restrictions were beyond DHS's statutory authority—to reimpose the Order at the county and local levels. Thus, on the very evening that this Court issued its decision in *Wisconsin Legislature*, Respondent Palm and Governor Evers sent a letter to local public health officials assuring them that notwithstanding this Court's decision, those local officials could "still issue local orders to protect their communities from communicable diseases like COVID-19," and encouraging them to issue orders explicitly modeled on Emergency Order 28 and Emergency Order 31 (the so-called "Badger Bounce Back" order). Letter from Andrea Palm (Supp. App. 1). Accompanying the letter was a "template order," apparently prepared by DHS, "modeling Safer at Home and the Badger Bounce Back." *Id.* The letter assured the local health officials that by "adopting this template

order," they would "maintain as much consistency as possible between the counties and *consistency with the rules and guidelines that everyone has already come to know under Safer at Home*." *Id.* (emphasis added).[3]

Respondents' efforts in the waning hours of May 13 were not in vain. A number of county and local officials accepted Respondents' invitation and essentially re-adopted EO 28 wholesale, thereby re-imposing its severe restrictions at the county or local level. Indeed, several local health authorities, including Public Health Madison & Dane County, the Rock County Public Health Department, the Brown County Health Officer, and the Racine Public Health Department, have dispensed with the bother of adapting the "template" provided by DHS and have instead chosen to simply and formally adopt EO 28 by name. *See* Supp. App. 31–63. Other officials, including public health officers in the City of Milwaukee and suburban Milwaukee County, have fashioned their own orders adopting and imposing many of the same restrictions found in EO 28. *See* Supp. App. 64, 78. While the new Dane County and Racine orders appear to drop EO 28's nine-person cap on

[3] Nowhere in Respondent Palm's and Governor Evers's letter to local public health officials did they attempt to explain how the statutes governing local officials' authority to address communicable diseases somehow granted those local officials the very power that this Court held WIS. STAT. Section 252.02 *did not* confer upon DHS.

religious gatherings, virtually all of the new orders reimpose restrictions on religious worship, political gatherings, and travel that are substantially similar—and in many cases identical—to the restrictions in EO 28.[4]

DISCUSSION

If this were ordinary litigation, there would be no need, once this Court had declared EO 28 unenforceable, for it to then decide whether the Order's restrictions on religious worship, assembly, and travel also violate Petitioners' constitutional rights. After all, this Court, "like courts in general, will not consider a question the answer to which cannot have any practical effect upon an existing controversy." *State ex rel. La Crosse Trib. v. Circuit Court*, 115 Wis. 2d 220, 228, 340 N.W.2d 460 (1983). Petitioners' constitutional freedoms would be restored, and the case, in short, would be moot.

But as this Court by now surely appreciates, litigation regarding the governmental response to the current pandemic is about as far from ordinary as litigation can get, and compelling reasons exist for this Court not to pretermit its consideration and resolution of the critically important constitutional issues raised in this case. Given the speed with which Respondents

[4] Indeed, it does not appear that any of the new orders adopt the saving construction permitting outdoor political assemblies that Respondents announced in their responsive brief in this case.

are moving to reimpose most, and perhaps all, of EO 28's restrictions on a statewide basis—and the speed at which some local authorities *have already moved*, at Respondent Palm's urging and in open defiance of this Court's decision in *Wisconsin Legislature*, to reimpose those same restrictions at the county and local level—this Court's resolution of Petitioners' constitutional challenge is still urgently needed.

For even if the Court were to assume that Petitioners' constitutional challenge is technically "moot," this Court's precedents make clear that it has the unquestioned authority to nevertheless decide that challenge on the merits. In cases such as this one—indeed, even in cases much less compelling than this one—this Court has recognized that it "has a law-declaring function" to resolve "matters of serious public concern which are likely to cause judicial disputes in the future," so long as "a factual basis on which a judicial declaration may be made to guide future conduct is presently before the court." *Id.* at 228–29. In such cases, it is "not inappropriate for this court, where a problem is likely to recur, to declare the law for the guidance of other courts, even though the particular controversy is moot." *Id.* at 230.

This Court has recognized that it may decide an otherwise moot issue if resolution of that issue falls under any one of at least five exceptions:

> [T]his court has held that it will retain a matter for determination although that determination can have no practical effect on the immediate parties: [1] Where the issues are of great public importance; [2] where the constitutionality of a statute is involved; [3] where the precise situation under consideration arises so frequently that a definitive decision is essential to guide the trial courts; [4] where the issue is likely to arise again and should be resolved by the court to avoid uncertainty; or [5] where a question was capable and likely of repetition and yet evades review because the appellate process usually cannot be completed and frequently cannot even be undertaken within the time that would have a practical effect upon the parties.

La Crosse Tribune, 115 Wis. 2d at 229 (citations omitted); *see also Fitzgerald*, 387 Wis. 2d 384, ¶22.

A compelling case can be made here that each of those five exceptions applies, but as discussed below, there can be no legitimate dispute that at least two of those exceptions are tailor-made for the present controversy. First, in light of the events that have already taken place in the hours since this Court decided *Wisconsin Legislature*, it simply cannot be disputed that the constitutional issues raised in this action are "likely to arise again and should be resolved by the court to avoid uncertainty." *Id.* Indeed, those issues have *already* arisen again, and the need for this Court to resolve them is just as acute as it was before this Court decided *Wisconsin Legislature*. Second, no one can dispute that the constitutional issues raised in this matter are of "great public importance," as they involve questions regarding the extent to which Wisconsin's government officials may impose severe restrictions

on Wisconsinites' fundamental rights to religious freedom and political assembly.

I. THE CONSTITUTIONAL ISSUES RAISED BY PETITIONERS' CHALLENGE ARE LIKELY TO RECUR, AND INDEED ARE ALREADY RECURRING.

The constitutional questions raised here, and thoroughly briefed by the parties, will surely recur if this Court does not resolve them now, and indeed are already recurring at the local level.

A. As discussed above, this Court's decision in *Wisconsin Legislature* left the State free to re-impose two of the restrictions challenged here—on in-person worship and political assemblies—through the emergency rulemaking process. And it is clear that Respondent Palm believes she has the power to re-impose those restrictions, given that the State zealously defended their constitutionality in this very litigation.

It is now clear, in light of the statement of scope that Respondent Palm issued on Thursday, that Respondent intends to re-impose the same or similar restrictions contained in EO 28 on religious and political gatherings. As noted above, DHS's statement indicates that its emergency rule "is likely to include . . . limitations on mass gatherings." Scoping Statement at 3 (Supp. App. 26). And it re-asserts, and invokes, DHS's "clear, broad, and explicit

authority to . . . forbid public gatherings in schools, churches, or other places," which, says DHS, "does not impose any bright-line rule as to the gathering sizes DHS may require or on the places where such limits may be put into effect," *id.* at 6 (Supp. App. 29). Wisconsinites can therefore draw no comfort that the State does not intend to use its power to re-impose the very types of numerical restrictions Petitioners challenge, here.

B. Even apart from Respondent Palm's intentions for a new statewide rule, Petitioners' constitutional claims *continue* to be in live dispute because numerous county and municipal officials have *already* re-imposed EO 28's restrictions (in some cases *in haec verba*)—*at the behest of Respondent Palm herself*. Respondent Palm instigated these local attempts to evade this Court's judgment only hours after it was handed down—even though the statute that Respondent and the local officials have invoked as the basis for local authority is a subsection of *the very same statute this Court held did not grant any such authority*. *See Wisconsin Legislature*, 2020 WI 42 ¶¶43–57; *compare* WIS. STAT. § 252.02, *with id.* § 252.03. But even if DHS were not actively encouraging and assisting county and local health officials to do what this Court held DHS could not itself do, the fact that so many of those officials have already taken such action (and others may

follow their lead) itself demonstrates that questions concerning the constitutionality of the restrictions challenged in this case will inevitably arise again and again. Indeed, Respondent Attorney General Kaul stated just this morning that "he expected legal challenges to stay-at-home orders issued by local officials."[5] Given the urgent public importance of these constitutional issues, discussed further below, it is evident that they urgently need to be resolved promptly and authoritatively by this Court not only to avoid uncertainty but to avoid patchwork litigation yielding inconsistent results and to ensure that the ability of the citizenry to fully exercise their fundamental rights under the State's Constitution does not depend on the accident of where in the State they happen to reside, worship, or assemble.

Among the questions that this Court has held to fall under the "likely to recur" exception are (1) whether a candidate is entitled to have both his full-first and full-middle names included on the ballot, *Fine v. Elections Board*, 95 Wis. 2d 162, 289 N.W.2d 823 (1980); (2) "whether a trial court may order a juvenile incarcerated in a secure detention facility for a status offense," *In Interest of DLD*, 110 Wis. 2d 168, 169 n.2, 327 N.W.2d 682

[5] *See* Molly Beck & Patrick Marley, *Top GOP lawmakers now want to leave virus plan in the hands of local officials*, MILWAUKEE JOURNAL SENTINEL (May 14, 2020), https://bit.ly/2yYaNGo.

(1983) (3) "whether during the pendency of a divorce action the family court commissioner and the trial judge have authority to evict a spouse from the homestead of the parties where there is no actual or threatened physical violence between them," *Sandy v. Sandy*, 109 Wis. 2d 564, 565–66, 326 N.W.2d 761 (1982); (4) the constitutionality of the involuntary medication statute, *Fitzgerald*, 387 Wis. 2d 384, ¶22; and (5) whether (a) a statute requires district attorneys and law enforcement agencies to expunge their records documenting the facts underlying an expunged record of a conviction and (b) whether the circuit court may consider expunged criminal records when sentencing, *Leitner*, 253 Wis. 2d 449, ¶15. The logic applied in these cases can dictate but one conclusion in this one: the Court should take up now these critical and recurring constitutional issues pending before it in our Petition. *See, e.g., Pritzlaff v. Archdiocese of Milwaukee*, 194 Wis.2d 302, 325 (1995) (invoking mootness exception where question presented was "a matter of great public importance and has been fully briefed by the parties" and "a number of cases of this sort are pending, both at circuit courts and at the court of appeals.").

Indeed, it bears emphasis that Petitioner Fabick's challenge to the violation of his right of assembly *continue to be violated*—such that that

portion of this action is not moot *at all*. Dane County—the very locale where Petitioner Fabick desired to engage in political assembly but was chilled by EO 28 from doing so—*continues* to be an Article I, Section 4 free-zone. Yesterday morning Dane County imposed—and Respondent Dane County officials are therefore obligated to enforce—EO 28's ban on assembling indoors and outdoors for expressive purposes *in haec verba*. Importantly, while the State has adopted, in this litigation, a strained narrowing construction of EO 28 that allowed outdoor assemblies, that construction is plainly *not* binding on Dane County—nor is there any indication, in the County's order, that it intends to adopt it. Petitioner Fabick is thus no freer to attend a political rally, indoor or out, in Madison today than he was a week ago. Petitioner Fabick's constitutional claim is thus not moot at all.

II. PETITIONERS' CHALLENGE RAISES CONSTITUTIONAL ISSUES OF URGENT, COMPELLING PUBLIC IMPORTANCE THAT NEED TO BE AUTHORITATIVELY RESOLVED NOW.

This Court's review is also, and independently, appropriate under the mootness exception for constitutional issues of compelling public importance. This exception to mootness is substantially similar to the considerations governing the Court's exercise of original jurisdiction in the first place, and since we have discussed the obvious and urgent public importance

of the case in that context at length, we only briefly reiterate it here. In short: the challenged restrictions dramatically affect, in an unprecedented manner, almost every aspect of the lives and livelihood of Wisconsinites throughout the State. And those draconian limits infringe—to such an extreme extent that it would have been virtually unimaginable only months ago—the most basic and fundamental rights and freedoms protected by our Nation's fundamental charters, both state and federal.

Again, a comparison of this case to the ones in which this Court has previously applied this mootness exception illustrates the applicability of the exceptions here beyond any doubt. Among the questions that this Court has considered to be of "great public importance" are: (1) an individual's right to refuse life-sustaining medical treatment, *Matter of Guardianship of L.W.*, 167 Wis. 2d 53, 482 N.W.2d 60, 67 (1992); (2) the propriety of *in camera voir dire* of venire panel members and the refusal to produce a transcript of such *in camera* proceedings, *La Crosse Tribune*, 115 Wis. 2d at 229; (3) the interpretation of the Thomson Anti-Gambling Law to permit corporation counsel in a single county to institute a proceeding to revoke a tavern license, *State v. Seymour*, 24 Wis.2d 258, 261, 128 N.W.2d 680 (1964); (4) the one-year revocation of a driver's license for intoxication based on conviction in

a sister-state, *Carlyle v. Karns*, 9 Wis. 2d 394, 101 N.W.2d 92 (1960); (5) the "question of whether a religious governing body is liable for negligence in hiring, retaining, training or supervising their 'employees' (clergymen) who commit acts which are outside the scope of their employment," *Pritzlaff v. Archdiocese of Milwaukee*, 194 Wis. 2d 302, 325, 533 N.W.2d 780 (1995); (6) the respective powers of a school board and the annual meeting of electors with respect to the closing of a school, *Waldeck*, 84 Wis. 2d at 413; and (7) the constitutionality of a statute addressing involuntary medication of criminal defendants, *Fitzgerald*, 387 Wis. 2d 384, ¶22.

The questions in those cases were certainly of "great public importance." But there can be no question that issues concerning the power of public officials to severely restrict the fundamental rights of all 5.8 million Wisconsin citizens to freely worship, to freely assemble for political purposes, and to leave their homes and freely travel are no less so. Petitioners therefore respectfully urge this Court to decide, as promptly as practicable, the constitutional issues of great public importance that they have raised.

III. AT A MINIMUM, THE COURT SHOULD HOLD THE PETITION AND MOTION IN THIS CASE IN ABEYANCE RATHER THAN DISMISSING THEM.

At a minimum, the Court should hold the Emergency Petition and Emergency Motion in abeyance, pending any decision by the State Respondents to issue a new emergency rule re-imposing the same or similar restrictions challenged in this action. Because this action challenges the State's very power under the Wisconsin Constitution to impose severe restrictions on the exercise of the citizenry's fundamental freedoms to worship and to peaceably assemble, it does not matter whether those restrictions take the form of an administrative order, a general rule, or even legislation. Stated differently, the re-imposition of the same or substantially similar restrictions pursuant to a rule promulgated pursuant to statutorily prescribed procedures would not cure the constitutional violations alleged by Petitioners. Rather than require Petitioners to start from scratch with new proceedings to challenge any such violations, we respectfully submit that the more efficient course, assuming the Court is not inclined to resolve the case now, is to hold proceedings in this action in abeyance until such time as a new rule is issued, at which time the parties can quickly supplement their current filings to

address any new or revised features of the rule that implicate the issues raised in this action.

CONCLUSION

In light of recent events described above, this Court should grant the Petition for original review and issue an emergency injunction, and whatever declaratory and other equitable relief the Court deems necessary or appropriate.

Dated: May 15, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of this Brief is being served upon all parties via e-mail and first-class mail.

Dated: May 15, 2020

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